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Table of Contents

Title 8

Public Officers and Employees

Chapter Page

21. Fees Charged, 8-21-401 1

Title 9

Public Finances

4. State Funds, State Budget and Appropriations, 9-4-213 5

Title 16

Courts

1. General Provisions, 16-1-114 6
15. Courts of General Sessions, 16-15-209, 16-15-5014 6

Title 17

Judges and Chancellors

2. Special Judges and Interchange, 17-2-108, 17-2-109, 17-2-122, 17-2-208 8

Title 24

Evidence and Witnesses

7. Admissibility of Evidence, 24-7-112, 24-7-113, 24-7-117, 24-7-120, 24-7-121, 24-7-123, 24-7-125 9

Title 29

Remedies and Special Proceedings

31. Removal of Disability of Minors, 29-31-101 to 29-31-105 15

Title 33

Mental Health and Substance Abuse and Intellectual and Developmental Disabilities

1. General Provisions, 33-1-101, 33-1-201 to 33-1-204 16
2. Services and Facilities, 33-2-101 to 33-2-106, 33-2-301, 33-2-302, 33-2-401 to 33-2-421, 33-2-701 to 33-2-709, 33-2-1101 to 33-2-1110, 33-2-1201, 33-2-1202, 33-2-1301 to 33-2-1304 20
3. General Rules Applicable to Service Recipients, 33-3-101 to 33-3-126, 33-3-201 to 33-3-221, 33-3-301, 33-3-401 to 33-3-412, 33-3-501 to 33-3-506, 33-3-601 to 33-3-620, 33-3-701 to 33-3-711, 33-3-801 to 33-3-804, 33-3-901 to 33-3-904 41
4. Special Rules for Residential Service Recipients, 33-4-101 to 33-4-110, 33-4-201 to 33-4-210 65

Chapter Page
5. Intellectual and Developmental Disabilities Services, 33-5-101 to 33-5-112, 33-5-201 to 33-5-212, 33-5-301 to 33-5-304, 33-5-401 to 33-5-410, 33-5-505 68
6. Mental Health Service, 33-6-104, 33-6-108, 33-6-201 to 33-6-208, 33-6-301 to 33-6-311, 33-6-401 to 33-6-427, 33-6-501 to 33-6-510, 33-6-601 to 33-6-624, 33-6-701 to 33-6-708, 33-6-801 to 33-6-805, 33-6-901, 33-6-902 79
8. Special Provisions for Children, 33-8-101 to 33-8-106, 33-8-201 to 33-8-203, 33-8-301 to 33-8-316 103
10. Comprehensive Alcohol and Drug Treatment Act of 1973, 33-10-501 to 33-10-506 108

Title 34

Guardianship

1. Guardianships and Conservatorships Generally, 34-1-101 to 34-1-133 109
2. Guardianship Generally, 34-2-101 to 34-2-106 123
6. Power of Attorney, 34-6-301 to 34-6-310, 34-6-401 to 34-6-406 125

Title 36

Domestic Relations

1. Adoption, 36-1-101 to 36-1-305 129
2. Parentage, 36-2-101 to 36-2-403 192
3. Marriage, 36-3-101 to 36-3-701 200
4. Divorce and Annulment, 36-4-101 to 36-4-135 219
5. Alimony and Child Support, 36-5-101 to 36-5-3111 229
6. Child Custody and Visitation, 36-6-101 to 36-6-612 311
7. Uniform Deployed Parents Custody and Visitation Act, 36-7-101 to 36-7-503 348

Title 37

Juveniles

1. Juvenile Courts and Proceedings, 37-1-101 to 37-1-807 354
2. Placement of Juveniles, 37-2-101 to 37-2-605 430
3. Administration of Children and Youth Services, 37-3-101 to 37-3-815 450
4. Interstate Compacts, 37-4-101 to 37-4-207 466
5. Department of Children's Services, 37-5-101 to 37-5-608 475
6-9. [Reserved] 515
10. Miscellaneous Provisions, 37-10-101 to 37-10-501 515
11. Juvenile Offender Surcharges, 37-11-101 to 37-11-103 521

Title 38

Prevention and Detection of Crime

1. Miscellaneous Provisions, 38-1-301 to 38-1-306 522
6. Tennessee Bureau of Investigation, 38-6-109, 38-6-110, 38-6-116, 38-6-117 523

Title 39

Criminal Offenses

13. Offenses Against Person, 39-13-108 to 39-13-110, 39-13-114, 39-13-306, 39-13-502 to 39-13-504, 39-13-506, 39-13-522, 39-13-527 to 39-13-529 524

Chapter Page
14. Offenses Against Property, 39-14-144, 39-14-407, 39-14-408 530
15. Offenses Against the Family, 39-15-101 to 39-15-414 532
17. Offenses Against Public Health, Safety and Welfare, 39-17-422, 39-17-440, 39-17-451, 39-17-911 to 39-17-914, 39-17-1001 to 39-17-1008, 39-17-1303, 39-17-1309, 39-17-1311, 39-17-1312, 39-17-1313, 39-17-1319, 39-17-1320, 39-17-1323, 39-17-1360, 39-17-1362, 39-17-1501 to 39-17-1551, 39-17-1601 to 39-17-1606, 39-17-1701 to 39-17-1704 543

Title 40

Criminal Procedure

35. Tennessee Criminal Sentencing Reform Act of 1989, 40-35-121 562
39. Offender Registration and Monitoring, 40-39-202, 40-39-203, 40-39-206, 40-39-207, 40-39-208, 40-39-215 564

Title 49

Education

1. State Administration, 49-1-206 to 49-1-208, 49-1-214, 49-1-221, 49-1-520 575
2. Local Administration, 49-2-115, 49-2-118, 49-2-124, 49-2-211 579
5. Personnel, 49-5-415 582
6. Elementary and Secondary Education, 49-6-101 to 49-6-110, 49-6-451, 49-6-1014 to 49-6-1019, 49-6-1035, 49-6-1401 to 49-6-1405, 49-6-1501 to 49-6-1510, 49-6-1601, 49-6-3001 to 49-6-3051, 49-6-3301, 49-6-3302, 49-6-3401 to 49-6-3405, 49-6-4001 to 49-6-4009, 49-6-4101 to 49-6-4107, 49-6-4201 to 49-6-4219, 49-6-4301, 49-6-4302, 49-6-4401 to 49-6-4404, 49-6-4501 to 49-6-4506, 49-6-5001 to 49-6-5005 582
10. Special Education, 49-10-601 to 49-10-610, 49-10-1401 to 49-10-1406 620
50. Miscellaneous, 49-50-1602 627

Title 50

Employer and Employee

5. Child Labor, 50-5-101 to 50-5-107, 50-5-201 to 50-5-222 632

Title 55

Motor and Other Vehicles

9. Equipment—Lighting Regulations, 55-9-602, 55-9-603 638
10. Accidents, Arrests, Crimes and Penalties, 55-10-415, 55-10-701 to 55-10-711 642
50. Uniform Classified and Commercial Driver License Act, 55-50-311, 55-50-353 646

Title 62

Professions, Businesses and Trades

38. Tattoos and Body Piercing, 62-38-201 to 62-38-212, 62-38-301 to 62-38-310 648

Title 63

Professions of the Healing Arts

2. Medical Records, 63-2-101 657

Title 67

Taxes and Licenses

Chapter Page
4. Privilege and Excise Taxes, 67-4-411, 67-4-505 659

Title 68

Health, Safety and Environmental Protection

1. Department of Health, 68-1-125, 68-1-801 to 68-1-804 659
3. Vital Records Act of 1977, 68-3-203, 68-3-302, 68-3-305, 68-3-310 661
5. Prevention of Diseases, 68-5-201, 68-5-202, 68-5-401 to 68-5-406, 68-5-501 to 68-5-508, 68-5-601 to 68-5-607, 68-5-701 to 68-5-705 664
6. Sudden Cardiac Arrest Prevention Act, 68-6-101 to 68-6-104 671
10. Sexually Transmitted Diseases, 68-10-101 to 68-10-118 673
12. Treatment of Disabled Children, 68-12-101 to 68-12-112 678
34. Family Planning Act of 1971, 68-34-101 to 68-34-111 681
55. Head and Spinal Cord Injury Information System, 68-55-401, 68-55-402 683
117. Tanning Facility Control Act of 1990, 68-117-101 to 68-117-107 683
141. Poison Control, 68-141-101 to 68-141-108 685
142. Child Fatality Review and Prevention, 68-142-101 to 68-142-111, 68-142-201 to 68-142-209 687
143. Shaken Baby Syndrome, 68-143-101 690

Title 69

Waters, Waterways, Drains and Levees

9. Boating Regulation, 69-9-225 691

Title 71

Welfare

1. Administration, 71-1-130, 71-1-133 691
3. Programs and Services for Children, 71-3-101 to 7-3-126, 71-3-501 to 71-3-518, 71-3-601 to 71-3-612, 71-3-701, 71-3-702 692
5. Programs and Services for Poor Persons, 71-5-101 to 71-5-106, 71-5-134, 71-5-193 733
6. Programs and Services for Abused Persons, 71-6-201 to 71-6-208 741

Tennessee Rules of Juvenile Practice and Procedure, Rules 101 to 404 745
Appendix 777
Rules of the Supreme Court of the State of Tennessee, Rules 13, 24, 40, 40A 779
Tennessee Rules of Appellate Procedure, Rule 8A 801

Indian Child Welfare, 25 USCS §§ 1901 to 1963 803

Index I-1

Tennessee Compilation of Selected Laws on Children, Youth and Families

TITLE 8

PUBLIC OFFICERS AND EMPLOYEES

CHAPTER 21

FEES CHARGED

Part 4. Clerks of Court

SECTION.
8-21-401. Schedule of fees.

PART 4

CLERKS OF COURT

8-21-401. Schedule of fees.

(a) Except as otherwise provided by law, the costs provided in this section in civil cases are chargeable and may be collected at the time the services are requested from the clerk or other officer of the court; however, nothing in this section should be construed to limit the ability of a party to initiate a judicial proceeding by filing a pauper's oath. In cases where payment of the clerk's fees would create a substantial hardship for a party, judges are encouraged to use the discretion provided in Rule 29 of the Tennessee Rules of the Supreme Court to find that the party is indigent, even if that person does not meet the Legal Services Corporation's poverty guidelines. If a party, other than a party who initiated a proceeding under a pauper's oath, pays costs at the time the services are requested, such payment shall be deemed to satisfy the requirement for security to be given for costs, pursuant to § 20-12-120. In proceedings covered by subdivision (b)(1)(A), and in workers compensation complaints, the attorney filing the action shall have the option to sign a cost bond, in lieu of the party paying the clerk's fees at the time services are requested. The clerk shall not refuse to file an action where the attorney has opted to sign a cost bond. In any action where the clerk refuses to accept such cost bond in lieu of the party paying the clerk's fees, all costs in that action shall be forfeited by the clerk. These requirements for fees to be paid or security provided when services are requested from the clerk do not apply in criminal cases. The fees listed in this section do not include officer's fees as provided for in § 8-21-901 and elsewhere. These fees also do not include state and local litigation taxes.

(b) **Fees in civil cases in circuit and chancery court.**

(1)(A) Unless otherwise provided, court clerks in civil cases in courts of record shall charge a standard court cost of two hundred twenty-five dollars ($225) at the institution of a case. The types of cases covered by this fee would include, but not be limited to, actions for enforcement of contracts or breach of contract actions; injunctions; all torts, personal injury and property damage cases, including malpractice actions, health care liability actions, and wrongful death suits; employment discrimination suits; civil rights suits; tax disputes; special remedies; other property disputes; and any other type of actions not otherwise designated in this section or elsewhere by law.

(B) In divorce cases involving minor children, the clerk shall charge a standard court cost of two hundred dollars ($200) at the institution of a case. In divorce cases that do not involve minor children, the clerk shall charge a standard court cost of one hundred twenty-five dollars ($125) at the institution of a case.

(C) In the following specific types of civil actions, the clerk shall charge a standard court cost of one hundred fifty dollars ($150) at the institution of a case:

(i) Appeals to the circuit or chancery court from juvenile court, general sessions court, probate courts, municipal courts or an administrative hearing; writs of certiorari from lower courts; or administrative hearings;

(ii) Transfers of cases from foreign counties;

(iii) Requests for writ of mandamus;

(iv) Worker's compensation actions;

(v) Condemnations and inverse condemnations; and

(vi) Quo warranto proceedings.

(D) In the following specific types of civil actions, the clerk shall charge a standard court cost of one hundred dollars ($100) at the institution of a case:

(i) Adoptions;

(ii) Legitimations;

(iii) Paternity cases;

(iv) Restoration of citizenship;

(v) Termination of parental rights;

(vi) Other domestic relations matters not otherwise designated;

(vii) Name changes;

(viii) Minor settlements;

(ix) Enforcement of foreign judgments;

(x) Civil expungements where authorized by law; and

(xi) Orders of protection.

(E) In the following specific actions, the clerk shall charge a standard court cost of seventy-five dollars ($75.00): child support enforcement and

modification, including interstate support cases and civil contempt actions, and requests for modification of a parenting plan.

(F) In delinquent property tax cases, the clerk shall assess a filing fee of forty-two dollars ($42.00) per parcel. For each parcel of property for which the judge issues an order to sell, there shall be a fee of one hundred dollars ($100) for clerk's services related to that action.

(2)(A) For the purposes of determining the fees of the clerk of court, when any third party complaint in a civil case is filed, the party filing the complaint shall be charged the same fee as was charged at the initiation of the original civil proceeding.

(B) The fee for cross-filings and counter complaints in civil cases in courts of record shall be one hundred dollars ($100).

(c) The clerks of the various courts administering estates, guardianships, conservatorships, and other probate matters are entitled to demand and shall receive for their services the following fees:

(1) For opening and closing an estate, other than a small estate, including giving notice of the opening of the estate to the department of revenue, two hundred thirty dollars ($230);

(A) For filing and docketing claims, giving notice and filing release on each claim for a decedent's estate, to be paid by claimant, eleven dollars ($11.00);

(B) For filing exceptions to claims against estates, mailing notices and entering order, forty-two dollars ($42.00);

(2) For filing small estate affidavits and giving notice of the opening of the estate to the department of revenue, forty-one dollars ($41.00);

(3) For filing a request for letters of guardianship and conservatorship; issuing all initial process and cost bond; entering order and issuing certificate of guardianship and conservatorship, not including fee of the sheriff; and including final accounting and order closing, regardless of court where filed, one hundred sixty dollars ($160);

(4) For filing a new request for removal of disabilities of minority, and incompetence, filing affidavits and entering orders; for filing a new request to legitimate a person, change a name or correct a birth certificate and enter orders; for filing a new request for habeas corpus, filing cost bond, issuing process and enter orders, not including fee of the sheriff, one hundred dollars ($100);

(5) For filing requests under the mental health law, compiled in title 33, issuing notices, entering return, and entering judgments after hearing, not including fee of the sheriff, fifty dollars ($50.00);

(6) For filing and docketing any request on an existing case, other than a request to close the case, not otherwise provided for, eighteen dollars ($18.00);

(7) For entering any order on an existing case, other than closing order, not otherwise provided for, twelve dollars ($12.00);

(8) For issuing summons, subpoenas, citations, writs and notices, including copies of process when required by law, other than initial process, six dollars ($6.00);

(9) For filing any document not otherwise provided for in probate court, seven dollars ($7.00); and

(10) For filing, reviewing, recording annual or interim settlement or accounting and entering order approving settlement only, forty dollars ($40.00).

(d) **Fees in Criminal Cases in Courts of Record.**

(1) Unless otherwise provided in this section, court clerks in criminal cases in courts of record shall charge a standard court cost of three hundred dollars ($300). This fee shall apply per case per defendant.

(2) The clerk shall charge a fee of one hundred dollars ($100) for proceedings related to a violation of probation, any post-judgment actions, or expungements.

(3) The clerk shall charge a fee of seventy-five dollars ($75.00) for criminal contempt actions, including criminal contempt proceedings in civil courts, for failure to appear, requests for bonding company release from final forfeiture, requests to reinstate a driver license, and requests for relief.

(4) Reimbursement from the state shall be limited to the fees as currently allowed by law.

(e) **Fees for Proceedings in Juvenile Court.**

(1) Unless otherwise provided in this section, court clerks in juvenile proceedings shall charge a standard court cost of one hundred dollars ($100). This fee shall apply to all juvenile proceedings not otherwise designated, including, but not limited to, requests to establish support or nonsupport, proceedings related to parentage, paternity cases, and legitimations.

(2) For requests for modification of child support, the clerk shall charge a fee of seventy-five dollars ($75.00).

(3) In the following actions, the clerk of the juvenile court shall charge a fee of forty-two dollars ($42.00): juvenile traffic cases, consent orders, diversion and nonjudicial disposition of juvenile cases, voluntary motions to grant custody, marriage waivers, attachment pro corpus, and bench warrants.

(4) In the following actions, the clerk of the juvenile court shall charge a fee of twenty-five dollars ($25.00): restricted licenses, drug screenings, entering order of appeal and taking appeal bond, entering judgment from appellate court, entering order allowing rehearing, and special pleas.

(5) In the following actions, the clerk of the juvenile court shall charge a fee of sixty-two dollars ($62.00): delinquency and unruly cases, and felony and misdemeanor cases in juvenile court.

(f) **Actions in general sessions court.**

(1) General sessions civil filing fee, forty-two dollars ($42.00). Unless otherwise provided elsewhere in this section, court clerks in civil cases in general sessions court shall charge a standard filing fee of forty-two dollars ($42.00). This fee is intended to cover all initial court clerk's costs for initiating a civil proceeding in general sessions court, including, but not limited to, hearings regarding short term mental health commitments, appeals of decisions denying the issuance of handgun permits, and requests not

otherwise provided for. This fee shall not apply to orders of protection, which shall have the same fee, when costs are adjudged, as in courts of record, of one hundred dollars ($100).

(2) When a general sessions court is exercising concurrent civil jurisdiction with a court of record, the clerk shall charge the litigation taxes and court costs applicable in courts of record.

(g) **Criminal actions in general sessions court.**

(1) General session criminal base fee, sixty-two dollars ($62.00). This fee shall be charged per conviction per defendant. For cases involving traffic citations, instead of sixty-two dollars ($62.00), the base court cost shall be forty-two dollars ($42.00).

(2) Failure to appear, forty dollars ($40.00). In cases where the defendant fails to appear or pay fines or costs and the court issues an attachment, bench warrant, capias or other process to compel the defendant's attendance at the court, the defendant shall be charged an additional fee for clerk's costs of forty dollars ($40.00).

(3) Calling in surety, forty dollars ($40.00). The clerk shall charge the defendant this fee each time a scire facias or other proceeding is instituted to bring in a surety, or make action against a bond in criminal cases for failure to appear.

(4) The clerk shall charge a fee of seventy-five dollars ($75.00) for requests for bonding company release from final forfeiture, or requests to reinstate a driver license.

(5) The clerk shall charge a fee of one hundred dollars ($100) for expungements.

(h) **Clerk's commissions.**

(1) Except as provided in subdivisions (h)(2) and (3), for receiving and paying over all taxes, fines, forfeitures, fees and amercements, the clerk of the court is entitled to a five percent (5%) commission.

(2) In counties having a population of more than seven hundred thousand (700,000), according to the 1990 federal census or any subsequent federal census, the commission for receiving and paying over all taxes, fines, forfeitures, fees and amercements, shall be ten percent (10%), except as provided in subdivision (h)(3).

(3) For receiving and paying over all privilege taxes on litigation, the clerk of the court is entitled to a six and seventy-five hundredths percent (6.75%) commission. The total amount of commissions receivable by the clerk of the court during any fiscal year shall not be less than the amount received by such clerk during the fiscal year ending June 30, 2005; provided, that if the statewide amount of litigation tax collected during such fiscal year is less than the amount collected during the fiscal year ending June 30, 2005, then the total amount of commissions receivable by the clerk of the court for that fiscal year shall be reduced by a percentage equal to the percentage reduction in statewide litigation tax collections for that fiscal year.

(i) **Other fees of court clerks.** The following fees apply uniformly in all courts, general sessions, juvenile, probate, circuit or chancery, and may be charged in addition to the fees for cases listed in this section:

(1) **Standard post-judgment fee.** Unless otherwise provided, court clerks in criminal and civil cases in all courts shall charge a standard post-judgment fee of twenty-five dollars ($25.00). This fee shall be charged per occurrence and shall be charged regardless of whether judgment is enforced by garnishment, execution, levy or other process. This fee shall also apply to post-judgment interrogatories, publications, motions to set installment payments, and orders and pleas.

(2) For issuing a subpoena or subpoena duces tecum, the fee shall be six dollars ($6.00).

(3)(A) In all cases in all courts, the clerk shall charge a fee of five dollars ($5.00) for each requested continuance.

(B) In addition to the fee provided for in subdivision (i)(3)(A), the clerk shall also collect a courtroom security enhancement fee of two dollars ($2.00). The revenues from the two-dollar courtroom security enhancement fee shall be deposited into the county general fund. All revenue from this fee shall be used exclusively for the purposes of providing security and enhancing the security of court facilities in the county. For each fiscal year, the court security committee, created by § 16-2-505(d)(2), shall develop and submit recommendations to the county legislative body regarding how such funds shall be utilized.

(C) The fees for continuances shall be collected at the conclusion of the case. If multiple litigants request a continuance, the judge may assess these fees to one (1) or more parties.

(4) For making copies as requested, other than for an original filing and other than when preparing a record upon appeal, the fee shall be fifty cents (50¢) per page.

(5) For making certification and seal, providing a copy of an abstract, or providing driver license certification, the fee shall be five dollars ($5.00).

(6) For receiving funds paid into court on confirmation of private sales or other funds paid into the clerk pursuant to court order, and collecting and paying out the proceeds, the fee shall be forty dollars ($40.00). This fee also applies where there is a pre-judgment judicial attachment or similar process to bring property into the court's possession prior to judgment. This fee shall not apply to payments of proceeds made pursuant to court order to any person from funds held by the clerk, except for court orders concerning a redemption of delinquent taxes property sale; in such case, the fee shall only be charged one (1) time against the total amount of proceeds generated from the property.

(7) For selling real or personal property under decree of court, and receiving, collecting, and paying out the proceeds, a commission not to exceed three percent (3%) on the amount of sales. The clerk shall collect the sheriff's fee, plus the sheriff's fee for each additional defendant, in a proceeding to sell real estate.

(8) The clerks of the various courts have the authority to invest idle funds held under their control,

not otherwise invested. Such investments shall be in banks or savings and loan associations operating under the laws of the state or under the laws of the United States; provided, that such deposits are insured under the federal deposit insurance corporation. Such investments shall not exceed the amounts that are federally insured, unless otherwise fully collateralized under a written collateral agreement, or unless the funds are deposited with an institution that is a member of the state collateral pool. The interest on such investments shall become part of the fees of the court clerk and the clerk shall be required to account for interest received, the same as with other fees received. Any funds authorized to be invested may be invested by the clerk in the local government investment pool administered by the state treasurer.

(9) Nothing in this section shall be construed to relieve the clerks of courts from the responsibility of investing funds held under their control, pursuant to court order or under the rules of court. The interest on those investments shall accrue to the benefit of those directed by the court or by agreement of the parties to the litigation.

(10) For investing funds, the clerk shall receive a fee of five percent (5%) of the earnings of such investment.

(11) For preparing a record on appeal from a court of record to an appellate court, the fee shall be three hundred dollars ($300).

(12) Whenever the clerk is required by law or by a judge to send documents by certified or registered mail, the clerk is entitled to recover the clerk's actual costs for mailing the documents.

(j) **Earmarked funds for computerization.**

(1) Out of all the general filing fees charged by court clerks, two dollars ($2.00) of the amount collected shall be earmarked for computer hardware purchases or replacement, but may be used for other usual and necessary computer related expenses at the discretion of the clerk. Such amount shall be preserved for these purposes and shall not revert to the general fund at the end of a budget year if unexpended.

(2) Effective July 1, 2012, all the general filing fees charged by court clerks shall be increased by two dollars ($2.00). The amount collected pursuant to this two-dollar increase shall be earmarked, along with the two dollars ($2.00) in subdivision (j)(1), for the purposes set forth in subdivision (j)(1), and shall be preserved for those purposes and shall not revert to the general fund at the end of a budget year if unexpended. Pursuant to subsection (*l*), the fees increased by this subdivision (j)(2) shall not be assessed against the state or otherwise represent a cost to the state in criminal cases, child support actions, mental health proceedings, actions under the Tennessee Adult Protection Act, compiled in title 71, chapter 6, part 1, actions with regard to child care licensing, and collection efforts brought by the department of human services.

(k) **Costs in extraordinary cases.** In any extraordinary cases, the clerk may petition the judge to award reasonable costs, in excess of the amounts provided in this section, to reimburse the clerk for the additional services demanded by the case. In such cases, the clerk may also petition the judge to require an appropriate cost bond. For the purposes of this subsection (k), an extraordinary case is defined as one in which there are ten (10) or more plaintiffs or ten (10) or more defendants.

(*l*) **Charges to the state unchanged.** Notwithstanding any provision of this section to the contrary, any fees increased by this section that are assessed against the state or that otherwise represent a cost to the state in criminal cases, child support actions, mental health proceedings, actions under the Tennessee Adult Protection Act. compiled in title 71, chapter 6, part 1, actions with regard to child care licensing, and collection efforts brought by the department of human services, shall be limited to the amounts chargeable prior to January 1, 2006.

(m) **Indigent parties.** No clerk shall be permitted to collect any fee authorized by this section without permitting any person the opportunity to institute a cause of action by means of a pauper's oath, in accordance with Rule 29 of the Rules of the Tennessee Supreme Court.

(n)(1) Except as provided in subdivision (n)(2), the fees provided for in this section shall not apply to circuit court clerks, criminal court clerks, clerks and masters of chancery courts, clerks of courts of general sessions, county clerks, clerks of juvenile and probate courts, and clerks of law and equity courts in counties with a charter form of government that have a population of not less than three hundred and fifty thousand (350,000) nor more than four hundred and fifty thousand (450,000), according to the 2000 federal census or any subsequent federal census. In those counties, the clerks shall instead charge the fees provided for in § 8-21-409. For the purpose of administering court costs and clerk's fees in counties affected by this subsection (n), any statutory reference to this section shall be deemed to be a reference to § 8-21-409.

(2) The fees provided for in this section shall apply to the criminal court, fourth circuit and the general sessions court-criminal division in any county with a charter form of government that has a population of not less than three hundred and fifty thousand (350,000) nor more than four hundred and fifty thousand (450,000), according to the 2000 federal census or any subsequent federal census.

(o) **Fees for electronic filing and retrieval of court documents.**

(1) In any court where electronic filing, signing, or verification of papers has been authorized by local court rule, and in accordance with Rule 5B of the Tennessee Rules of Civil Procedure, clerks may assess a transaction fee for each filing submitted by a party to the case. The transaction fee shall be limited to a maximum of five dollars ($5.00) per filing up to a maximum of fifty dollars ($50.00) per case. As an alternative to a transaction fee, clerks may assess an annual subscription fee for each registered user of

the electronic filing system. The subscription fee shall permit the registered user unlimited electronic filing for a one-year period. The one-year period shall be defined by the clerk and shall be consistently maintained for all registered users of the electronic filing system. The annual subscription fee shall not exceed three hundred dollars ($300) for each annual period. Each of these fees shall be set in an amount necessary to defray the expenses associated with implementation and maintenance of the electronic filing and document retrieval system and shall be included in the local court rule authorizing it. Pursuant to subsection (*l*), these fees shall not be assessed against the state.

(2) Pursuant to subsection (m), neither the transaction fee nor the subscription fee shall be assessed to a party declared indigent or to that indigent party's legal representative.

(3) In any court where electronic filing, signing, or verification of papers has been authorized by local court rule, the state and any department or contractor of the state shall not be required to file documents electronically, notwithstanding any local court rule.

(4) Neither the electronic filing transaction fee or subscription fee shall limit a clerk's statutory authority to charge subscription fees or transaction fees for obtaining copies of documents maintained by the clerk as part of an electronic filing system of a separate document management system.

History.

Code 1858, §§ 2306, 2844, 4551 (deriv. Acts 1837-1838, ch. 125, § 8); Acts 1897, ch. 6, § 5; 1897, ch. 9, § 2; 1897, ch. 96, § 1; 1899, ch. 96, §§ 67, 68; 1903, ch. 377, § 12; 1917, ch. 63, § 48; Shan., § 6388; Acts 1919, ch. 137, § 1; mod. Code 1932, § 10692; Acts 1951, ch. 157, § 1; 1957, ch. 59, § 1; 1961, ch. 131, § 1; 1961, ch. 202, § 1; 1965, ch. 355, § 1; 1972, ch. 813, §§ 1, 2; modified; 1974, ch. 556, § 1; impl. am. Acts 1976, ch. 529, § 23; Acts 1976, ch. 651, § 1; 1977, ch. 240, § 1; 1977, ch. 291, § 1; impl. am. Acts 1978, ch. 934, §§ 22, 36; T.C.A. (orig. ed.), § 8-2115; Acts 1980, ch. 612, § 1; 1981, ch. 427, § 1; 1981, ch. 488, § 6; 1984, ch. 665, § 1; 1985, ch. 143, § 2; 1985, ch. 304, § 1; 1985, ch. 305, §§ 1, 2; 1986, ch. 701, § 1; 1986, ch. 755, §§ 1, 2; 1987, ch. 135, § 2; 1987, ch. 282, § 8; 1987, ch. 327, § 1; 1987, ch. 414, §§ 1-5; 1991, ch. 415, §§ 1, 2, 6; 1992, ch. 924, § 1; 1995, ch. 456, §§ 1-4; 1996, ch. 675, § 12; 1997, ch. 384, §§ 1, 2; 1999, ch. 530, §§ 1-8; 2005, ch. 429, § 17; 2008, ch. 1047, § 1; 2011, ch. 234, § 1; 2012, ch. 623, § 1; 2012, ch. 798, § 2; 2012, ch. 886, §§ 1, 2; 2012, ch. 998, § 1; 2012, ch. 1039, § 1; 2013, ch. 412, § 1; 2014, ch. 912, § 1; 2016, ch. 731, § 1; 2016, ch. 970, § 1.

Compiler's Notes.

Acts 1997, ch. 384, § 3 provided that subsection (c) (now subsection (b)) shall have no effect unless it is approved by a two-thirds (⅔) of the county commission of Shelby County. Its approval or nonapproval shall be proclaimed by the presiding officer of the county commission and certified to the secretary of state.

Acts 2012, ch. 1039, § 3 provided that the two-dollar increases implemented by the act, which added subdivision (j)(2), shall terminate on July 1, 2016, unless continued by the general assembly. If the two-dollar increases are not continued by the general assembly, §§ 8-21-401(j) and 8-21-409(d), that existed immediately prior to the enactment of the act shall be revived and shall be in effect as they existed immediately prior to July 1, 2012.

Acts 2016, ch. 731, § 1 amended Chapter 1039 of the Public Acts of 2012 to repeal the sunset of the amendments to this section by that act, thereby continuing the two-dollar increases without a termination date.

For table of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

TITLE 9

PUBLIC FINANCES

CHAPTER 4

STATE FUNDS, STATE BUDGET AND APPROPRIATIONS

Part 2. Accounts or Appropriations for Designated Purposes

SECTION.

9-4-213. State appropriations to child advocacy centers.

PART 2

ACCOUNTS OR APPROPRIATIONS FOR DESIGNATED PURPOSES

9-4-213. State appropriations to child advocacy centers.

(a) Except as otherwise provided in subsection (b), on and after July 1, 1998, no state funds appropriated specifically for child advocacy centers shall be allocated or paid to any such center unless the center clearly demonstrates that it:

(1) Is a nonprofit corporation which has received a determination of exemption from the internal revenue service under 26 U.S.C. § 501(c)(3);

(2) Employs an executive director who is answerable to the board of directors and who is not the salaried employee of any governmental entity signing the memorandum of understanding and working protocol identified in subdivision (a)(3);

(3) Has a signed memorandum of understanding and working protocol executed among:

(A) The department of children's services;

(B) All county and municipal law enforcement agencies within the geographical area served by the center;

(C) All district attorneys general offices within the geographical area served by the center; and

(D) Any other governmental entity which participates in child abuse investigations or offers services to child abuse victims within the geographical area served by the center;

(4) Facilitates the use of a multidisciplinary team (representing prosecution, law enforcement, mental health, medical, child protective and social services professionals and the juvenile court) which jointly:

(A) Assess victims of child abuse and their families; and

(B) Determine the need for services;

(5) Provides a facility, located in a neutral, child-friendly and physically separate space from the day-to-day operations of the governmental entities signing the memorandum of understanding and working protocol identified in subdivision (a)(3), at which facility the multidisciplinary team meets to coordinate the efficient and appropriate disposition of child abuse cases through the civil and criminal justice systems;

(6) Provides for the provision of needed services,

referral to such services, and case tracking;

(7) Has written policies and procedures consistent with standards established by the national network of children's advocacy centers; and

(8) Agrees to accurately collect and report key outcome data and information relative to each center's operations to the Tennessee chapter of children's advocacy centers. Such data and information shall be compiled by the Tennessee chapter of children's advocacy centers and shall be reported annually to the chairs of the judiciary committee of the senate, and the civil justice committee of the house of representatives. The data and information collected pursuant to this section shall include, at a minimum, the following:

(A) Number and demographic profiles of cases served by age, gender, race, type of abuse and treatment thereof, including mental health and medical services rendered;

(B) Demographic profiles of perpetrators of abuse by age, gender, race, relationship to victim, and the outcome of any legal action taken against such perpetrators;

(C) The nature of services and support provided by or through the center; and

(D) Data and information relative to community investment in and community support of the center.

(b)(1) On and after July 1, 1998, no state funds appropriated specifically for one-time, start-up assistance for new child advocacy centers shall be allocated or paid to any such center unless the center clearly demonstrates that it:

(A) Has a signed memorandum of understanding and working protocol executed among:

(i) The department of children's services;

(ii) All county and municipal law enforcement agencies within the area served by the center;

(iii) All district attorneys general offices within the area served by the center; and

(iv) Any other governmental entity which participates in child abuse investigations or offers services to child abuse victims within the area served by the center; and

(B) Has formally filed an application for a determination of exemption from the internal revenue service under 26 U.S.C. § 501(c)(3).

(2) After receiving any such start-up assistance, no additional state funds appropriated specifically for child advocacy centers shall be allocated or paid to such center unless the center clearly demonstrates that it complies with the enumerated requirements set forth in subsection (a).

(c) In those geographical areas in which a child advocacy center meets the requirements of subsection (a) or (b), child advocacy center directors or their designees shall be members of the child protective multi-disciplinary teams under title 37, chapter 1, parts 4 and 6, for purposes of provision of services and functions established by this section or delegated pursuant to this section. In such event, child advocacy center directors or their designees may access and generate all necessary information, which shall retain its confidential status, consistent with § 37-1-612.

(d) Notwithstanding any other provision of this section to the contrary, the department of children's services, or any other department administering state funds specially appropriated for child advocacy centers, shall continue to allocate and/or pay such funds to existing child advocacy centers with active applications on file with the department, if such centers demonstrate satisfactory progress in efforts to achieve compliance with this section.

History.
Acts 1998, ch. 988, § 1; T.C.A. § 9-6-123; Acts 1999, ch. 453, § 3; 2011, ch. 410, § 3(a); 2013, ch. 236, § 21.

TITLE 16

COURTS

CHAPTER 1

GENERAL PROVISIONS

Part 1. In General

SECTION.
16-1-114. Immunity for judges sitting specially or by interchange.

PART 1

IN GENERAL

16-1-114. Immunity for judges sitting specially or by interchange.

Any judge or lawyer sitting specially under § 16-15-209 or § 17-2-208 or by interchange shall have the same immunity as the judge for whom the judge or lawyer is sitting, and the state or county that would provide the defense for the judge for whom the lawyer or judge is sitting shall be required to provide the defense for the substitute judge.

History.
Acts 1997, ch. 473, § 1.

CHAPTER 15

COURTS OF GENERAL SESSIONS

Part 2. Judge

SECTION.
16-15-209. Failure of judge to attend — Selection of special judge.

Part 50. Compensation and Qualifications of Judges — Jurisdiction

16-15-5014. Domestic violence court for Shelby County.

PART 2

JUDGE

16-15-209. Failure of judge to attend — Selection of special judge.

(a) If the judge of a court of general sessions or juvenile court finds it necessary to be absent from

holding court, the judge may seek a special judge in accordance with the requirements of and in the numerical sequence designated by this section.

(1) If a special judge is necessary, the judge shall attempt to identify another judge who may serve by interchange, pursuant to § 17-2-208. If another judge cannot serve by interchange, a judge may seek to find any former or retired judge, who will, by mutual agreement, sit as special judge. The special judge shall serve by designation of the chief justice of the supreme court.

(2) If the judge is unable to secure a judge under subdivision (a)(1), the judge may apply to the administrative office of the courts for assistance in finding a judge to sit by designation of the chief justice as a special judge.

(3) Only after exhausting the procedures set out in subdivisions (a)(1) and (2), a judge may appoint a lawyer from a list, on a rotating basis, of lawyers that have been previously approved by the judge or judges of the district or county who are constitutionally qualified, in good standing, and possess sufficient experience and expertise. A lawyer appointed is subject to the following limitations, which shall be made known to persons attending any court proceeding presided over by a lawyer, as evidenced by an entry in the minutes or other permanent record of the court:

(A) The lawyer may preside only if the parties and counsel are notified that the duly elected or appointed judge will be absent and that a practicing lawyer will serve as a special judge;

(B) The parties choose to proceed and not to continue the case pending return of the duly elected or appointed judge;

(C) The lawyer shall not approve the payment of attorney's fees involving an indigent defense claim or any discretionary fees. A special judge shall approve fees only when the exact amount is set by statute; and

(D) At the opening of any court session presided over by a lawyer appointed pursuant to this section, an announcement shall be made to persons in attendance conveying the information contained in subdivisions (a)(3)(A) and (B). The making of such an announcement constitutes compliance with the notice requirements of this section.

(b) A general sessions or juvenile judge assigned to a court outside the judge's county of residence shall receive reimbursement for travel expenses from the county to which the judge is assigned. Reimbursement shall be in an amount in accordance with the comprehensive travel regulations promulgated by the supreme court.

(c) The county legislative body, by resolution adopted by a two-thirds (⅔) vote, may authorize the payment of compensation to a special judge selected pursuant to subdivision (a)(2). The amount of compensation shall not exceed the rate of compensation for other judges of the general sessions court or juvenile court for the county.

(d) Notwithstanding the provisions of subdivisions (a)(1) and (2), a general sessions or juvenile judge who encounters a sudden and unexpected emergency which causes the judge to be absent from court may forego the requirements of those subdivisions and appoint a lawyer in accordance with subdivision (a)(3). The circumstances requiring the appointment of a lawyer pursuant to this subsection (d) shall be entered upon the minutes or other permanent record of the court in addition to the information required in subdivision (a)(3).

(e)(1) Upon approval of this subsection (e) and subsections (f)-(h) by resolution adopted by a two-thirds (⅔) vote of the county legislative body of any county having a population in excess of eight hundred thousand (800,000), according to the 1990 federal census or any subsequent federal census, and notwithstanding any other provision of this subsection (e) and subsections (f)-(h) to the contrary, if a judge of a court of general sessions or juvenile court in the county finds it necessary to be absent from holding court, another judge may sit by interchange for the absent judge upon entering an order finding it in the best interest of judicial efficiency. The order shall identify the absent judge and the interchanging judge, and shall be kept on file in the office of the clerk of the court. Upon a finding that interchange is not in the best interest of judicial efficiency, the judge so finding may appoint an attorney as a special judge. The appointments shall be on a rotating basis, from a list of attorneys previously approved by all of the duly elected or appointed general sessions or juvenile court judges, as being constitutionally qualified, in good standing, and possessing sufficient experience and skill. The appointment of a special judge shall be by written order, identifying the absent judge and the special judge, and shall be kept on file in the office of the clerk of the court.

(2) During the month of September each year, the clerk of the court shall prepare, for each division of court governed by subdivision (e)(1), an annual report for the preceding twelve (12) months, setting out the total number of sessions of court presided over by a special judge, or by a judge sitting by interchange. The clerk shall also report the total number of sessions of court that are scheduled in each division of court for that period. The orders and reports required by this subdivision (e)(2) shall be filed, and kept open for public inspection, by the clerk of the court. The clerk of the court shall promptly file a copy of the annual report with the administrative office of the courts, created by § 16-3-801.

(f) All special judges appointed under subsection (e) shall be subject to the following limitations:

(1) All parties and counsel appearing before the special judge shall be notified that the duly elected or appointed judge is absent, and that a practicing attorney is serving as special judge;

(2) If there is no duly elected or appointed judge available to preside over the trial of a contested case, either side shall be entitled to continue the case pending the return of a duly elected or appointed judge;

(3) A special judge shall not preside over a contested cause without a consent form signed by all

litigants who are present at the beginning of the proceeding. The consent form shall be kept on file with the clerk of the court as part of the legal record of that cause; and

(4) A special judge shall not approve the payment of attorney fees, involving an indigent defense claim or any discretionary fees; provided, that a special judge may enter a judgment for attorney fees when:

(A) The exact amount is set by statute; or

(B) The party to be charged has executed a written agreement calling for the payment of attorney fees, and the fees shall be the amount specified in the agreement, but in no case more than one third (⅓) of the principal amount of the debt upon which the suit is brought.

(g)(1) Subsections (e) and (f) shall not apply where a judge finds it necessary to be absent from holding court and appoints as a special judge:

(A) A duly elected or appointed judge of any other juvenile or general sessions court, a trial court judge; or

(B) A full-time officer of the judicial system under the judge's supervision whose duty it is to perform judicial functions, such as a juvenile magistrate, a child support magistrate or clerk and master, who is a licensed attorney in good standing with the Tennessee supreme court. The judicial officer shall only serve as special judge in matters related to that officer's duties as a judicial officer.

(2) Notwithstanding subsections (e) and (f), a general sessions or juvenile court judge shall have the authority to appoint a special judge as provided in subdivision (g)(1).

(h)(1) Notwithstanding any other provision of law to the contrary, in any county having a population of more than eight hundred thousand (800,000), according to the 1990 federal census or any subsequent federal census, the county governing body of that county may appoint a special substitute judge or judges to serve as a judge in the court of general sessions or juvenile court in the county in the absence of any one (1) of such elected judge or judges.

(2) A special substitute judge appointed shall be an attorney licensed to practice law by this state and in good standing with the board of professional responsibility.

(3) The compensation for a special substitute judge pursuant to subsections (e)-(f) and this subsection (h) shall be fixed by the county governing body and shall be paid from any fund appropriated for such purpose by the county governing body.

History.

Acts 1959, ch. 109, § 14; 1968, ch. 533, § 1; T.C.A., § 16-1114; Acts 1994, ch. 751, § 1; 1997, ch. 473, § 3; 1998, ch. 943, § 1; 2009, ch. 235, § 1; 2010, ch. 757, §§ 1, 2.

Compiler's Notes.

For table of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

Acts 2009, ch. 235, § 1 directed the code commission to change all references from "child support referee" to "child support magistrate" and all references from "juvenile referee" to "juvenile magistrate" and to include all such changes in supplements and replacement volumes for the Tennessee Code Annotated.

PART 50

COMPENSATION AND QUALIFICATIONS OF JUDGES — JURISDICTION

16-15-5014. Domestic violence court for Shelby County.

(a) In order to maximize and concentrate limited prosecutorial, counseling and other social resources to victims of domestic violence, the tenth division of the Shelby County general sessions court shall serve as the domestic violence court for Shelby County.

(b) Provided that the caseload of the domestic violence court does not exceed the capacity of the tenth division to hear all such cases, the tenth division of the Shelby County general sessions court shall have exclusive jurisdiction over matters involving domestic violence, orders of protection, domestic assault and all other cases incident to domestic abuse as defined in § 36-3-601; provided, however, that the tenth division may retain concurrent jurisdiction over other types of cases. The determination whether the tenth division of the Shelby County general sessions court has exceeded its capacity to hear all domestic violence cases shall be made by the presiding judge of the tenth division in consultation with the chief judge of the Shelby County general sessions court.

(c) If it has been determined pursuant to subsection (b) that the caseload of the domestic violence court exceeds the capacity of the tenth division of the Shelby County general sessions court to hear all such cases, then the excess cases shall be distributed among the remaining divisions of the Shelby County general sessions court to be heard.

(d) The general sessions court shall commence as the domestic violence court for Shelby County no later than September 1, 2009.

History.

Acts 2009, ch. 391, § 1.

TITLE 17

JUDGES AND CHANCELLORS

CHAPTER 2

SPECIAL JUDGES AND INTERCHANGE

Part 1. Special Judges

SECTION.
17-2-108. [Repealed.]
17-2-109. Special judge by judicial appointments.
17-2-122. Failure of judge to attend — Selection of special judge.

Part 2. Interchange

17-2-208. Interchange of general sessions and juvenile court judges.

PART 1

SPECIAL JUDGES

17-2-108. [Repealed.]

Compiler's Notes.

Former § 17-2-108 (Code 1858, § 3921 (deriv. Acts 1857-1858, ch. 90, § 1); Shan., § 5717; Code 1932, § 9903; T.C.A. (orig. ed.), § 17-214), concerning special judge or chancellor by consent, was repealed by Acts 1997, ch. 473, § 4.

17-2-109. Special judge by judicial appointments.

(a)(1) Whenever litigation in any chancery, circuit, criminal, general sessions, juvenile, probate or appellate court of this state becomes congested or delay in the disposition of litigation becomes imminent for any reason, the chief justice of the supreme court shall assign a retired or regular chancellor or judge to assist in the removal of the congestion or delay; provided, that the assignment shall not materially interfere with the performance of the assigned chancellor's or judge's official duties. In such situation both chancellors or judges may hear, try and dispose of litigation in such court at the same time, both signing their respective minutes.

(2) Whenever litigation in any chancery or circuit court of this state becomes congested, or whenever litigation in any chancery or circuit court has required the recusal of a chancellor or judge, or whenever delay in the disposition of litigation becomes imminent for any reason, the chief justice of the supreme court may assign a former chancellor or judge to assist in the removal of the congestion or delay.

(b) Notwithstanding subsection (a), any chancellor or judge has the discretion to request another chancellor or judge to assist in the removal of congestion or delay if the original chancellor or judge becomes aware of the need for assistance before the supreme court makes the assignment; and, in such situation, both the requesting chancellor or judge and the requested chancellor and judge may hear, try and dispose of litigation in such court at the same time, both signing their respective minutes.

(c) Nothing in this section shall be construed to interfere with the appointment of special chancellors or judges as provided elsewhere by statute.

History.

Acts 1949, ch. 278; § 1; C. Supp. 1950, § 9945.7 (Williams, § 9923.1); Acts 1963, ch. 87, § 1; T.C.A. (orig. ed.), § 17-215; Acts 1987, ch. 65, § 1; 1995, ch. 236, § 1; 1997, ch. 473, § 5; 1999, ch. 23, § 1.

17-2-122. Failure of judge to attend — Selection of special judge.

(a) Notwithstanding § 16-15-209 or § 17-2-109 or any other relevant provision to the contrary, a judge shall have the authority to appoint a special judge as provided in this section.

(b) Sections 16-15-209 and 17-2-109 and any other relevant provision shall not apply where a judge finds it necessary to be absent from holding court and appoints as a substitute judge an officer of the judicial system under the judge's supervision whose duty it is to perform judicial functions, such as a juvenile magistrate, a child support magistrate or clerk and master, who is a licensed attorney in good standing with the Tennessee supreme court. The judicial officer shall only serve as special judge in matters related to their duties as judicial officer.

History.

Acts 1997, ch. 473, § 6; 2009, ch. 235, § 1.

Compiler's Notes.

Acts 2009, ch. 235, § 1 directed the code commission to change all references from "child support referee" to "child support magistrate" and all references from "juvenile referee" to "juvenile magistrate" and to include all such changes in supplements and replacement volumes for the Tennessee Code Annotated.

PART 2

INTERCHANGE

17-2-208. Interchange of general sessions and juvenile court judges.

Notwithstanding any other law to the contrary, judges of courts of general sessions and juvenile courts may interchange with each other whenever causes exist making an interchange necessary or for mutual convenience. The interchanging judge shall not be required to be a resident of the county of the judge for whom such judge is sitting, but must otherwise possess the same qualifications as such judge.

History.

Acts 1973, ch. 41, § 1; T.C.A., § 17-229; Acts 1997, ch. 473, § 2.

TITLE 24

EVIDENCE AND WITNESSES

CHAPTER 7

ADMISSIBILITY OF EVIDENCE

SECTION.

24-7-112. Tests to determine parentage — Admissibility in evidence — Costs.
24-7-113. Voluntary acknowledgment of paternity.
24-7-117. Audio-visually recorded testimony in child sexual abuse proceedings.
24-7-120. Child's testimony—Closed circuit television.
24-7-121. Child support payment records.
24-7-123. Admission of video recording of interview of child describing sexual conduct.
24-7-125. Admissibility of evidence of other crimes, wrongs, or acts — Conditions for admission.

24-7-112. Tests to determine parentage — Admissibility in evidence — Costs.

(a)(1)(A) In any contested paternity case, unless the individual is found to have good cause under § 454(29) of the Social Security Act (42 U.S.C. § 654(29)), the court, or the department of human services in Title IV-D child support cases, shall order the parties and the child to submit to genetic

tests to determine the child's parentage upon the request of any party if the request is supported by an affidavit of the party making the request:

(i) and such affidavit: Alleges paternity, and sets forth facts establishing a reasonable possibility of the requisite sexual contact between the parties; or

(ii) Denies paternity, and sets forth facts establishing a reasonable possibility of the nonexistence of sexual contact between the parties;

(iii) and such affidavit: Denies paternity.

(B) In addition, upon the court's own motion, at such times as it deems equitable, or by administrative order by the department of human services in Title IV-D child support cases, tests and comparisons pursuant to this section shall be ordered; or

(C) In any case, except terminations of parental rights or adoptions under title 36 or title 37, in which the paternity of a child is at issue and the question of parentage arises, and an agreed order or divorce decree has been entered finding that an individual is not the parent of the child, the finding shall not be entitled to preclusive effect unless the finding was based upon scientific tests to determine parentage which excluded the individual from parentage of the child in question.

(2) During any other civil or criminal proceeding in which the question of parentage arises, upon the motion of either party or on the court's own motion, the court shall at such time as it deems equitable order all necessary parties to submit to any tests and comparisons which have been developed and adapted for purposes of establishing or disproving parentage.

(3) In any civil or criminal proceedings pursuant to this section, the tests ordered shall be conducted by an accredited laboratory. In the case of genetic tests, and at such time as the secretary of health and human services designates accreditation entities which acknowledge the reliability of types of genetic tests used in the establishment of paternity, such genetic tests shall be of the type which are generally acknowledged as reliable by accreditation entities designated by the secretary, and the genetic tests shall be performed by a laboratory approved by such a designated accreditation entity.

(4) The results of such tests and comparisons which are ordered pursuant to this section, including the statistical likelihood of the alleged parent's parentage, if available, may be admitted into evidence as provided in subsection (b).

(b) Upon receiving the results of the tests and comparisons conducted pursuant to subsection (a), the court shall proceed as follows:

(1)(A) Either party may request an additional parentage test upon the advanced payment of the costs of the additional parentage test. If the additional tests are requested by the department of human services, its contractors or any state agency, the costs of such additional tests shall be paid for upon being billed for such by the testing agent and may be recovered by those entities in any parentage proceeding from the person established as parent of the child.

(B)(i) If the results of the first test exclude paternity and the second test also exclude paternity, or, if the initial test results are negative on the issue of paternity establishment and no second test is requested, this shall be conclusive evidence of non-paternity and the action shall be dismissed.

(ii) If the results of the first test establish paternity and the second test again establishes a positive statistical probability of parentage as described in subdivision (b)(2)(B) or (C), the positive test results with the greater positive probability of parentage shall be definitive for purposes of the application of the appropriate evidentiary standards relative to the presumptions and the defenses available in subdivision (b)(2).

(iii) If the results of the second test are different from the first test in their outcome relative to the exclusion or establishment of paternity, the court, or the department in appropriate cases, may order a third test, or the court may make a determination between the accuracy of the previous two (2) tests for purposes of determining paternity.

(C) The results of any tests which may exclude a person as the father shall not preclude the initiation of a new paternity action involving another putative father or by a putative father against a mother to establish his paternity.

(2)(A) In any proceeding where the paternity of an individual is at issue, the written report of blood, genetic, or DNA test results by the testing agent concerning the paternity is admissible without the need for any foundation testimony or other proof of the authenticity or accuracy of the test unless a written objection is filed with the court and served upon all parties thirty (30) days prior to the date of the hearing. For purposes of this section, service shall be deemed made upon the date of mailing.

(B) A rebuttable presumption of the paternity of an individual is established by blood, genetic, or DNA testing showing a statistical probability of paternity of that individual at ninety-five percent (95%) or greater. In such event, the case shall be tried before the court without a jury regarding the issue of paternity without the evidentiary limitations of subdivision (b)(2)(C).

(C) When the results of blood, genetic or DNA tests show a statistical probability that a man is the father of the child in question by a statistical probability of ninety-nine (99%) or greater, the putative father may only attempt to rebut his paternity of the child by filing a motion with the tribunal and establishing upon clear and convincing evidence one (1) or more of only the following circumstances:

(i) The putative father had undergone a medical sterilization procedure prior to the probable period of conception, or other medical evidence demonstrates that he was medically incapable of conceiving a child during the probable period of

conception;

(ii) That the putative father had no access to the child's mother during the probable period of conception;

(iii) That the putative father has, or had, an identical twin who had sexual relations with the child's mother during the probable period of conception; or

(iv) The putative father presents evidence in the form of an affidavit that another man has engaged in sexual relations with the mother of the child in question during the period of probable conception. In this case, the court shall order genetic testing of that other man in conformity with this section. The results of that genetic test must indicate that the other man has a statistical probability of paternity of ninety-five (95%) or greater to establish an effective defense pursuant to this subdivision.

(D)(i) If, after test results showing a statistical probability of ninety-nine (99%) or greater, the putative father is able to show by clear and convincing evidence to the court that one (1) of the enumerated defenses in subdivision (b)(2)(C) is present, the matter shall be set for trial before the court without a jury.

(ii) If the putative father does not raise one (1) of the enumerated defenses in subdivision (b)(2)(C) or does not establish by clear and convincing evidence that one (1) of the enumerated defenses in subdivision (b)(2)(C) is present after test results showing a statistical probability of paternity of ninety-nine (99%) or greater, the court shall, upon motion by the other party, establish that individual as the father of the child in question, and shall order child support as required by the provisions of title 36, chapter 5.

(E) An affidavit documenting the chain of custody of any specimen used in any test pursuant to this section is admissible to establish the chain of custody.

(3) All costs relative to the tests and comparisons under this section shall be paid initially by the party requesting such tests with the final allocation of costs awaiting the outcome of the proceedings, at which time the court shall determine the proper allocation of costs. Costs for initial tests requested by the department of human services or its contractors or any other state agency shall be paid by those entities with the costs to be recovered in any parentage proceeding from the person established as parent of the child.

History.

Acts 1957, ch. 30, § 1; T.C.A., § 24-716; Acts 1983, ch. 459, § 1; 1991, ch. 268, § 1; 1994, ch. 988, §§ 2-4; 1997, ch. 551, §§ 43, 44; 2000, ch. 922, § 1.

24-7-113. Voluntary acknowledgment of paternity.

(a) A voluntary acknowledgment of paternity which is completed under the provisions of § 68-3-203(g), § 68-3-302, or § 68-3-305(b) or under similar provisions of another state or government shall constitute a legal finding of paternity on the individual named as the father of the child in the acknowledgment, subject to rescission as provided in subsection (c). The acknowledgment, unless rescinded pursuant to subsection (c), shall be conclusive of that father's paternity without further order of the court.

(b)(1) A voluntary acknowledgment of paternity which is completed under the provisions of § 68-3-203(g), § 68-3-302, or § 68-3-305(b), or under similar provisions of another state or government, when certified by the state registrar or other governmental entity maintaining the record of the acknowledgment, or the copy of the voluntary acknowledgment completed pursuant to § 68-3-302(d), shall be a basis for establishing a support order without requiring any further proceedings to establish paternity.

(2) An acknowledgment of paternity executed as described in subdivision (b)(1) shall be entitled to full faith and credit in any judicial or administrative proceeding in this state.

(3) No judicial or administrative proceedings are required, nor shall any such proceedings be permitted, to ratify an unchallenged acknowledgment of paternity in order to create the conclusive status of the acknowledgment of paternity.

(c) A signatory to a voluntary acknowledgment shall be permitted to rescind the voluntary acknowledgment at the earlier of:

(1) The completion and submission of a sworn statement refuting the named father on a form provided by the state registrar. This form must be filed in the office of vital records of the department of health, together with the fee required by the registrar within sixty (60) days of the date of completion of the acknowledgment; or

(2) Within the sixty-day period following completion of the acknowledgment, at any judicial or administrative proceeding during that period at which the signatory is a party and which proceeding relates to the child, by completion of the form described in subdivision (c)(1) or by the entry of an order by the administrative or judicial tribunal which directs the rescission of such acknowledgment.

The registrar may impose a fee for the filing of the rescission of voluntary acknowledgment in subdivision (c)(1) and the registrar shall send a copy of the rescinded acknowledgment to the other signatory of the original acknowledgment. If an individual seeking to rescind an acknowledgment completes an affidavit of indigency which accompanies the rescission form, the fee shall be waived. Any fee for filing a rescission of a voluntary acknowledgment based upon fraud shall be assessed by the court against the person found to be the perpetrator of the fraud.

(d) If, at any time during the hearing described in subdivision (c)(2), the court, the referee, or the hearing officer has reasonable cause to believe that a signatory of the acknowledgment is or was unable to understand the effects of executing such acknowledgment, the court, the referee or hearing officer shall explain orally

to the individual the effects of the execution of the acknowledgment, and the right to rescind the voluntary acknowledgment pursuant to subsection (c), and the right to parentage tests to determine paternity pursuant to the provisions of § 24-7-112 in any proceeding relative to the issue of paternity of the child.

(e)(1) If the voluntary acknowledgment has not been rescinded pursuant to subsection (c), the acknowledgment may only be challenged on the basis of fraud, whether extrinsic or intrinsic, duress, or material mistake of fact.

(2) The challenger must institute the proceeding upon notice to the other signatory and other necessary parties including the Title IV-D agency within five (5) years of the execution of the acknowledgment, and if the court finds based upon the evidence presented at the hearing that there is substantial likelihood that fraud, duress, or a material mistake of fact existed in the execution of the acknowledgment of paternity, then, and only then, the court shall order parentage tests. Such action shall not be barred by the five-year statute of limitations where fraud in the procurement of the acknowledgment by the mother of the child is alleged and where the requested relief will not affect the interests of the child, the state, or any Title IV-D agency. Nothing herein shall preclude the challenger from presenting any other form of evidence as a substitute for the parentage tests if it is not possible to conduct such tests.

(3) The test results certified under oath by an authorized representative of an accredited laboratory shall be filed with the court and shall be admissible on the issue of paternity pursuant to § 24-7-112(b). If the acknowledged father is found to be excluded by the tests, an action seeking support shall be dismissed or the acknowledgment of paternity shall be rescinded, as appropriate. If the test results show a statistical probability of ninety-five percent (95%) or greater, a rebuttable presumption of paternity shall be established and the issue of paternity shall be tried before the court without a jury. If the test results show a probability of paternity of ninety-nine percent (99%) or greater, the acknowledgment of paternity will become conclusive and no further action shall be necessary to establish paternity unless a motion asserting the defenses of § 24-7-112(b)(2)(C) is successfully brought.

(4) The burden of proof in any such proceeding shall be upon the challenger.

(5) During the pendency of the hearing under this subsection and any appeal from such hearing, the legal responsibilities of the signatory, including any child support obligations, may not be suspended, except for good cause shown.

(f) The state of Tennessee, its officers, employees, agents or contractors, or any Title IV-D child support enforcement agency shall not be liable in any case to compensate any person for repayment of child support paid or for any other costs as a result of the rescission of any voluntary acknowledgment or the rescission of any orders of legitimation, paternity, or support entered under this section.

(g)(1) The rescission of an acknowledgment of paternity or entry of any order rescinding any acknowledgment of paternity pursuant to subsection (c) shall not preclude the initiation of a paternity action against the signatory who is the alleged putative father, or by a putative father against a mother to establish his paternity, nor shall it preclude the initiation of a paternity action against another putative father.

(2) If, however, the voluntary acknowledgment is rescinded by order of the court based upon tests conducted pursuant to subsection (e) which excluded a person as parent, no further action may be initiated against such excluded person.

(h)(1) The original of the form rescinding the voluntary acknowledgment of paternity or a certified copy of any order rescinding a voluntary acknowledgment of paternity or a prior order of legitimation or paternity shall be sent by the person rescinding it or, as the case may be, by the clerk to the state registrar at the office of vital records of the department of health.

(2) Upon receipt of the form rescinding the acknowledgment which was executed and filed with the registrar within the sixty-day period or upon receipt of the order which shows on its face that the voluntary acknowledgment has been rescinded at the hearing which is held no later than the sixtieth day following the completion of the voluntary acknowledgment, or upon receipt of a certified court order with a finding shown clearly in the court order that the voluntary acknowledgment of paternity was rescinded due to fraud, either intrinsic or extrinsic, duress or material mistake of fact, the registrar shall make the appropriate amendments to the birth certificate of the child who was the subject of the order.

History.

Acts 1994, ch. 988, § 1; 1997, ch. 551, § 35; 1998, ch. 1098, §§ 1, 2; T.C.A., § 24-7-118.

Compiler's Notes.

Former § 24-7-113, concerning inadmissibility of testimony before committee of the general assembly, was transferred to § 24-7-114 in 2000.

24-7-117. Audio-visually recorded testimony in child sexual abuse proceedings.

(a) This section shall apply to proceedings in the prosecution of offenses defined in § 37-1-602 as "child sexual abuse" and to any civil proceeding in which child sexual abuse as defined in § 37-1-602 is an issue, and it shall apply only to the statements of a child or children under the age of thirteen (13) years of age who are victims of such abuse.

(b) The court may, on the motion of any party, order that the testimony of the child be taken outside the courtroom and be recorded for showing in the courtroom before the court and the finder of fact. Only the court, the attorneys for the parties, the defendant, persons necessary to operate the equipment, and any person whose presence would contribute to the welfare and well-being of the child may be present in the room with the child during the child's testimony. Only the

attorneys or the court may question the child. The persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror that permits such persons to see and hear the child during the child's testimony, but does not permit the child to see or hear them. The court shall permit the defendant to observe and hear the testimony of the child in person. The court shall also ensure that:

(1) The recording is both visual and oral and is recorded on film or videotape or by other similar audio-visual means;

(2) The recording equipment was capable of making an accurate recording, the operator was competent, and the recording is accurate and is not altered;

(3) Each voice on the recording is identified; and

(4) The attorney for the defendant is afforded an opportunity to view the recording before it is shown in the courtroom.

(c) The court may, on the motion of either party upon showing of good cause, order that additional testimony of the child be taken, if time and circumstances permit, outside the courtroom and be recorded for showing in the courtroom before the court and the finder of fact in the proceeding in accordance with subsection (b). If time and circumstances do not permit such additional out of court recording, the court may order the child to testify in court. The testimony of the child shall be restricted to the matters specified by the court as the basis for granting such order.

(d) If the court orders the testimony of a child to be taken under subsection (b) or (c), the child shall not be required to testify in court at the proceeding for which the testimony was taken, unless so ordered pursuant to subsection (c).

History.

Acts 1985, ch. 478, § 18; 1991, ch. 273, § 29; T.C.A., § 24-7-116.

Compiler's Notes.

Former § 24-7-117, concerning admissibility in evidence of DNA analysis, was transferred to § 24-7-118 in 2000.

24-7-120. Child's testimony—Closed circuit television.

(a) In a criminal case where the victim of any of the offenses listed in subsection (e) was thirteen (13) years of age or younger at the time the offense was committed, the court may order the child's testimony be taken outside the courtroom by means of two-way closed circuit television, hereafter referred to as "CCTV." Prior to entering such an order, the trial judge must make a case-specific finding of necessity that:

(1) The particular child involved would be traumatized;

(2) The source of the trauma is not the courtroom generally, but the presence of the defendant; and

(3) The emotional distress suffered by the child would be more than de minimis, such that the child could not reasonably communicate.

(b) If the testimony of a child is ordered to be taken by two-way CCTV, it shall be taken during the judicial proceeding and the following rules shall apply:

(1) Only the prosecuting attorney, the attorney for the defendant, and the judge may question the child;

(2) The operators of CCTV shall make every effort to be unobtrusive;

(3) Only the following persons shall be permitted in the room with the child while the child testifies by CCTV:

(A) The prosecuting attorney;

(B) The attorney for the defendant;

(C) An interpreter, where necessity dictates;

(D) The operators of CCTV equipment;

(E) Court security personnel, where required;

(F) A parent, counselor or therapist; and

(G) Any person whose presence, in the opinion of the court, contributes to the well being of the child, including a person who has dealt with the child in a therapeutic setting concerning the offense;

(4) The child's testimony shall be memorialized by video taped recording;

(5) During the child's testimony by CCTV, the judge, jury and the defendant shall remain in the courtroom;

(6) The judge and the defendant shall be allowed to communicate with those persons in the room where the child is testifying by any appropriate electronic method; and

(7) The defendant shall not be allowed to enter the room where the child is testifying by way of CCTV, except where the defendant is acting as an attorney pro se.

(c) This section shall not be interpreted to preclude, for the purpose of identification of the defendant, the presence of both the victim and the defendant in the courtroom at the same time.

(d) The provisions of this section shall also apply to a witness who was not the victim of any of the offenses set out in subsection (e) but who was thirteen (13) years of age or younger at the time the offense which gave rise to the criminal case was committed; provided, there is an individual finding of necessity by the trial judge that conforms to the requirements of this section.

(e) The offenses to which this section applies are:

(1) Aggravated sexual battery, as defined in § 39-13-504;

(2) Rape of a child, as defined in § 39-13-522;

(3) Incest, as defined in § 39-15-302;

(4) Aggravated child abuse, as defined in § 39-15-402;

(5) Kidnapping, as defined in § 39-13-303;

(6) Aggravated kidnapping, as defined in § 39-13-304;

(7) Especially aggravated kidnapping, as defined in § 39-13-305;

(8) Criminal attempt, as defined in § 39-12-101, to commit any of the offenses enumerated within this subsection (e);

(9) Trafficking for commercial sex act as defined in § 39-13-309; and

(10) Patronizing prostitution as defined in § 39-13-514.

History.
Acts 1998, ch. 1086, § 1; 2013, ch. 251, § 1.

Compiler's Notes.
Acts 1998, ch. 1086, § 2 applies to all applicable criminal trials occurring on or after July 1, 1998.

24-7-121. Child support payment records.

(a)(1)(A) The department of human services child support payment records shall be the official records for all payments which have been appropriately sent to the central collection and distribution unit pursuant to § 36-5-116.

(B) Notwithstanding any other law or rule of evidence to the contrary, a computer printout or copy, by telecopier facsimile or otherwise, an electronic mail copy or copy obtained by way of Internet access, of the child support payment screen which is generated from the Tennessee child support enforcement system (TCSES) operated by the department or its contractors shall be admitted into evidence as a non-hearsay, self-authenticating document in all judicial and administrative proceedings without the need for certification by a records custodian.

(2) No conclusive presumption of correctness shall attach to such record following admission, but the record shall constitute prima facie evidence of its correctness and shall be subject to rebuttal by alternative or conflicting documentary evidence of payment of the support obligation.

(b)(1) In order to implement the provisions of subsection (a) and to provide access to any other requesting persons, the department shall develop child support program policies and procedures which allow the department, through its staff or its contractors, to provide copies of payment information from the TCSES child support payments screens utilized by the department or its contractors to any person requesting such information. The department may provide such information in any suitable manner which provides the information necessary for judicial or administrative proceedings under subsection (a) including, but not limited to, the transmission of the hard-copy prints of the TCSES child support payment screens by facsimile or by transmission by any electronic means, and may, specifically, make such payment records available through electronic mail of the record, or by Internet access to information contained on TCSES. The department may establish a reasonable fee for such services.

(2) Any individual who knowingly alters, or who assists any individual to alter, any information obtained from the department pursuant to this section and such altered information is utilized for the purposes of establishing, enforcing, or modifying child or spousal support or defending such actions, or for the purposes of defending or prosecuting any contempt action involving child or spousal support, commits a Class A misdemeanor.

(c) For purposes of the Uniform Interstate Family Support Act (UIFSA), in title 36, chapter 5, parts 21-29, the department or its contractors shall be considered custodians of the support records subject to such act.

(d) In the event that any testimony regarding payment records is required by any state officer, employee or contractor of the department in any child support case, no personal appearance shall be required and such officer, employee or contractor of the department shall have the option to appear in person or to testify by telephonic or other suitable electronic means or by affidavit. In no event shall any state officer, employee or contractor of the department be required to testify in any proceeding unless such officer, employee or contractor of the department has personal knowledge of the facts underlying such payment record.

History.
Acts 2000, ch. 922, § 2.

24-7-123. Admission of video recording of interview of child describing sexual conduct.

(a) Notwithstanding any provision of this part to the contrary, a video recording of an interview of a child by a forensic interviewer containing a statement made by the child under thirteen (13) years of age describing any act of sexual contact performed with or on the child by another is admissible and may be considered for its bearing on any matter to which it is relevant in evidence at the trial of the person for any offense arising from the sexual contact if the requirements of this section are met.

(b) A video recording may be admitted as provided in subsection (a) if:

(1) The child testifies, under oath, that the offered video recording is a true and correct recording of the events contained in the video recording and the child is available for cross examination;

(2) The video recording is shown to the reasonable satisfaction of the court, in a hearing conducted pre-trial, to possess particularized guarantees of trustworthiness. In determining whether a statement possesses particularized guarantees of trustworthiness, the court shall consider the following factors:

(A) The mental and physical age and maturity of the child;

(B) Any apparent motive the child may have to falsify or distort the event, including, but not limited to, bias or coercion;

(C) The timing of the child's statement;

(D) The nature and duration of the alleged abuse;

(E) Whether the child's young age makes it unlikely that the child fabricated a statement that represents a graphic, detailed account beyond the child's knowledge and experience;

(F) Whether the statement is spontaneous or directly responsive to questions;

(G) Whether the manner in which the interview was conducted was reliable, including, but not limited to, the absence of any leading questions;

(H) Whether extrinsic evidence exists to show the defendant's opportunity to commit the act

complained of in the child's statement;

(I) The relationship of the child to the offender;

(J) Whether the equipment that was used to make the video recording was capable of making an accurate recording; and

(K) Any other factor deemed appropriate by the court;

(3) The interview was conducted by a forensic interviewer who met the following qualifications at the time the video recording was made, as determined by the court:

(A) Was employed by a child advocacy center that meets the requirements of § 9-4-213(a) or (b); provided, however, that an interview shall not be inadmissible solely because the interviewer is employed by a child advocacy center that:

(i) Is not a nonprofit corporation, if the child advocacy center is accredited by a nationally recognized accrediting agency; or

(ii) Employs an executive director who does not meet the criteria of § 9-4-213(a)(2), if the executive director is supervised by a publicly elected official;

(B) Had graduated from an accredited college or university with a bachelor's degree in a field related to social service, education, criminal justice, nursing, psychology or other similar profession;

(C) Had experience equivalent to three (3) years of fulltime professional work in one (1) or a combination of the following areas:

(i) Child protective services;

(ii) Criminal justice;

(iii) Clinical evaluation;

(iv) Counseling; or

(v) Forensic interviewing or other comparable work with children;

(D) Had completed a minimum of forty (40) hours of forensic training in interviewing traumatized children and fifteen (15) hours of continuing education annually;

(E) Had completed a minimum of eight (8) hours of interviewing under the supervision of a qualified forensic interviewer of children;

(F) Had knowledge of child development through coursework, professional training or experience;

(G) Had no criminal history as determined through a criminal records background check; and

(H) Had actively participated in peer review;

(4) The recording is both visual and oral and is recorded on film or videotape or by other similar audio-visual means;

(5) The entire interview of the child was recorded on the video recording and the video recording is unaltered and accurately reflects the interview of the child; and

(6) Every voice heard on the video recording is properly identified as determined by the court.

(c) The video recording admitted pursuant to this section shall be discoverable pursuant to the Tennessee rules of criminal procedure.

(d) The court shall make specific findings of fact, on the record, as to the basis for its ruling under this section.

(e) The court shall enter a protective order to restrict the video recording used pursuant to this section from further disclosure or dissemination. The video recording shall not become a public record in any legal proceeding. The court shall order the video recording be sealed and preserved following the conclusion of the criminal proceeding.

History.

Acts 2009, ch. 413, § 1; 2015, ch. 320, § 1.

24-7-125. Admissibility of evidence of other crimes, wrongs, or acts — Conditions for admission.

In a criminal case, evidence of other crimes, wrongs, or acts is not admissible to prove the character of any individual, including a deceased victim, the defendant, a witness, or any other third-party, in order to show action in conformity with the character trait. It may, however, be admissible for other purposes. The conditions which must be satisfied before allowing such evidence are:

(1) The court upon request must hold a hearing outside the jury's presence;

(2) The court must determine that a material issue exists other than conduct conforming with a character trait and must upon request state on the record the material issue, the ruling, and the reasons for admitting the evidence;

(3) The court must find proof of the other crime, wrong, or act to be clear and convincing; and

(4) The court must exclude the evidence if its probative value is outweighed by the danger of unfair prejudice.

History.

Acts 2014, ch. 713, § 2.

Compiler's Notes.

For the Preamble to the act concerning admissibility of certain character evidence in criminal cases, please refer to Acts 2014, ch. 713.

Acts 2014, ch. 713, § 1 provided that the act, which enacted this section, shall be known and may be cited as the "Channon Christian Act".

TITLE 29

REMEDIES AND SPECIAL PROCEEDINGS

CHAPTER 31

REMOVAL OF DISABILITY OF MINORS

SECTION.

29-31-101. Power to remove.
29-31-102. Application — Process — Appearance to resist application.
29-31-103. Defendants not required.
29-31-104. Hearing and decree — Specific purpose.
29-31-105. Scope of decree.

29-31-101. Power to remove.

(a) The chancery court of a county in which a minor resides or the chancellor in vacation may remove the disabilities of minority; and the chancery court of any county, or the chancellor of such court in vacation, may

remove the disabilities of minority of a nonresident minor of the state of Tennessee who owns, or has an interest in, any real or personal property located in the state of Tennessee, so as to enable the minor to sell and convey such real or personal property, or any interest therein, or to do any other act in respect thereof; all as fully and effectively as if the minor was eighteen (18) years of age.

(b) In all cases where a minor petitions for the removal of disabilities of minority in a county other than the county in which property is located, petition must show that no application has been previously made in the county where the property is located.

(c) The circuit court and the judge thereof shall have concurrent jurisdiction with the chancery court and chancellor to remove the disabilities of minority.

History.
Acts 1915, ch. 162, § 1; Shan., § 6106a3; mod. Code 1932, § 10370; Acts 1941, ch. 60, § 1; C. Supp. 1950, § 10370; Acts 1957, ch. 195, § 1; 1961, ch. 142, § 1; 1967, ch. 354, § 1; 1968, ch. 453, § 1; 1971, ch. 162, § 2; T.C.A. (orig. ed.), § 23-1201; modified.

29-31-102. Application — Process — Appearance to resist application.

(a) The application therefor shall be made in writing by the minor by next friend, and shall state the age of such minor and the names and places of residence of the minor's parents, and if the minor has no parents, the names and places of residence of two (2) of the minor's nearest kin, within the third degree, computed according to the civil law, and the reason on which the removal of the disability is sought.

(b) When such petition shall be filed, the clerk of the court shall issue proper process as in other cases, to make the proper parties defendant, the same to be executed and returned as in other cases.

(c) Any person so made a party or other relative or friend of the minor, may appear and resist the application.

History.
Acts 1915, ch. 162, § 2; Shan., § 6106a4; mod. Code 1932, § 10371; T.C.A. (orig. ed.), § 23-1202.

29-31-103. Defendants not required.

If such kindred unite in such application, or if the minor has no kindred within the prescribed degree, or the place of residence of such kindred is unknown to the minor or the next friend, it shall not be necessary to make any person defendant thereto; provided, that if any such minor shall have a general guardian, the minor's guardian shall be made a defendant.

History.
Acts 1915, ch. 162, § 3; Shan., § 6106a5; mod. Code 1932, § 10372; Acts 1961, ch. 219, § 1; T.C.A. (orig. ed.), § 23-1203.

29-31-104. Hearing and decree — Specific purpose.

(a) The court, or chancellor in vacation, shall examine the application and the objections thereto, if any, and may hear testimony, by depositions or by viva voce, in reference thereto, and shall make such decree thereon as may be for the best interest of the minor.

(b) If a decree is rendered removing the disability of a minor, it shall be rendered by the court having jurisdiction for a specific purpose and such purpose shall be so stated in such decree.

History.
Acts 1915, ch. 162, § 4; Shan., § 6106a6; mod. Code 1932, § 10373; 1971, ch. 71, § 1; 1980, ch. 844, § 1; T.C.A. (orig. ed.), § 23-1204.

29-31-105. Scope of decree.

The decree may be for the partial removal of the disability of the minor so as to enable the minor to do some particular act, proposed to be done, to be specified in the decree; or it may be general and empower the minor to do all acts in reference to the minor's property, making contract, suing and being sued and engaging in any profession or vocation which the minor could do if eighteen (18) years of age; and the decree shall distinctly specify to what extent the disability of the minor is removed and what character of business the minor is empowered to do, notwithstanding minority, and may impose such restrictions and qualifications as the court or chancellor may judge proper.

History.
Acts 1915, ch. 162, § 5; Shan., § 6106a7; mod. Code 1932, § 10374; Acts 1973, ch. 76, § 1; T.C.A. (orig. ed.), § 23-1205.

TITLE 33

MENTAL HEALTH AND SUBSTANCE ABUSE AND INTELLECTUAL AND DEVELOPMENTAL DISABILITIES

CHAPTER 1

GENERAL PROVISIONS

Part 1. Definitions

SECTION.
33-1-101. Title definitions.

Part 2. Policies, Values, and Principles

33-1-201. Responsibilities of department — State policy toward mental health and developmental disabilities.
33-1-202. Statement of values underlying title.
33-1-203. Principles of service.
33-1-204. Unnecessary entitlements not created — Programs subject to funding by general assembly.

PART 1

DEFINITIONS

33-1-101. Title definitions.

As used in this title, unless the context otherwise requires:

(1) "Alcohol abuse" means a condition characterized by the continuous or episodic use of alcohol resulting in social impairment, vocational impairment, psychological dependence or pathological patterns of use;

(2) "Alcohol dependence" means alcohol abuse that results in the development of tolerance or manifestations of alcohol abstinence syndrome upon cessation of use;

(3) "Available suitable accommodations" or "suitable available accommodations" means that a state-owned or operated hospital or treatment resource has the capacity, as reasonably determined by the commissioner, and the medical capability, equipment and staffing to provide an appropriate level of care, treatment and physical security to an individual in an unoccupied and unassigned bed;

(4) "Chief officer" means the person with overall authority for a public or private hospital, developmental center, treatment resource, or developmental disabilities service or facility, or the person's designee;

(5) "Child" means a person who is under eighteen (18) years of age;

(6) "Commissioner" means the commissioner of mental health and substance abuse services when the statute at issue relates to mental illness or serious emotional disturbance and means the commissioner of intellectual and developmental disabilities when the statute at issue relates to intellectual and developmental disabilities;

(7)(A) "Community mental health center" means an entity that:

(i) Provides outpatient services, including specialized outpatient services for persons of all ages with a serious mental illness, and persons who have been discharged from inpatient treatment at a hospital or treatment resource;

(ii) Provides twenty-four hour a day emergency care services;

(iii) Provides day treatment or other partial hospitalization services, or psychosocial rehabilitation services;

(iv) Provides screening for persons being considered for admission to state mental health facilities to determine the appropriateness of the admission; and

(v) Has community participation in its planning, policy development, and evaluation of services;

(B) "Community mental health center" includes for profit corporations and private entities qualified as tax exempt organizations under Internal Revenue Code, § 501(c)(3) (26 U.S.C. § 501(c)(3)), or public entities created by private act of the general assembly that, prior to July 1, 1992, were approved providers in the state under the medicaid clinic option and grantees of the department and the successor or surviving corporation of any such entity that underwent a corporate name change or corporate restructuring after July 1, 1992;

(8) "Consent" means voluntary agreement to what is reasonably well understood regardless of how the agreement is expressed;

(9) "Department" means the department of mental health and substance abuse services when the statute at issue deals with mental illness or serious emotional disturbance and means the department of intellectual and developmental disabilities when the statute at issue deals with intellectual and developmental disabilities;

(10) "Developmental center" means a department of intellectual and developmental disabilities facility or part of it that provides residential and habilitation services to persons with intellectual disabilities;

(11)(A) "Developmental disability" in a person over five (5) years of age means a condition that:

(i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(ii) Manifested before twenty-two (22) years of age;

(iii) Likely to continue indefinitely;

(iv) Results in substantial functional limitations in three (3) or more of the following major life activities:

(a) Self-care;

(b) Receptive and expressive language;

(c) Learning;

(d) Mobility;

(e) Self-direction;

(f) Capacity for independent living; or

(g) Economic self-sufficiency; and

(v) Reflects the person's need for a combination and sequence of special interdisciplinary or generic services, supports, or other assistance that is likely to continue indefinitely and need to be individually planned and coordinated;

(B) "Developmental disability" in a person up to five (5) years of age means a condition of substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting in developmental disability as defined for persons over five (5) years of age if services and supports are not provided;

(12) "Drug abuse" means a condition characterized by the continuous or episodic use of a drug or drugs resulting in social impairment, vocational impairment, psychological dependence or pathological patterns of use;

(13) "Drug dependence" means drug abuse that results in the development of tolerance or manifestations of drug abstinence syndrome upon cessation of use;

(14) "Hospital" means a public or private hospital or facility or part of a hospital or facility equipped to provide inpatient care and treatment for persons with mental illness or serious emotional disturbance;

(15) "Indigent person" means a service recipient whose resources, including property, assets, and income, are insufficient, under chapter 2, part 11 of this title, to pay for the cost of providing services and supports and who does not have a responsible relative or other legally responsible person who is able to pay for the cost of providing the services and supports;

(16)(A) "Intellectual disability" means, for the purposes of the general functions of the department as set forth in § 4-3-2701(b), substantial limitations

in functioning:

(i) As shown by significantly sub-average intellectual functioning that exists concurrently with related limitations in two (2) or more of the following adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work; and

(ii) That are manifested before eighteen (18) years of age;

(B) References to "mental retardation" in this title shall be deemed to be references to "intellectual disability";

(17) "Licensed physician" means a graduate of an accredited medical school authorized to confer upon graduates the degree of doctor of medicine (M.D.) who is duly licensed in the state, or an osteopathic physician who is a graduate of a recognized osteopathic college authorized to confer the degree of doctor of osteopathy (D.O.) and who is licensed to practice osteopathic medicine in the state;

(18) "Medical capability" means that a state-owned or operated hospital or treatment resource has the ability to treat an individual's medical needs onsite or that the individual's medical needs do not exceed the onsite capability of the state-owned or operated hospital or treatment resource to treat;

(19) "Mental illness" means a psychiatric disorder, alcohol dependence, or drug dependence, but does not include intellectual disability or other developmental disabilities;

(20) "Qualified mental health professional" means a person who is licensed in the state, if required for the profession, and who is a psychiatrist; physician with expertise in psychiatry as determined by training, education, or experience; psychologist with health service provider designation; psychological examiner or senior psychological examiner; licensed master's social worker with two (2) years of mental health experience or licensed clinical social worker; marital and family therapist; nurse with a master's degree in nursing who functions as a psychiatric nurse; professional counselor; or if the person is providing service to service recipients who are children, any of the above educational credentials plus mental health experience with children;

(21) "Responsible relative" means the parent of an unemancipated child with mental illness, serious emotional disturbance, alcohol dependence, drug dependence, or developmental disabilities who is receiving service in programs of the department or any relative who accepts financial responsibility for the care and service of a service recipient;

(22) "Serious emotional disturbance" means a condition in a child who currently or at any time during the past year has had a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet psychiatric diagnostic criteria that results in functional impairment that substantially interferes with or limits the child's role or functioning in family, school, or community activities and includes any mental disorder, regardless of whether it is of biological etiology;

(23) "Service recipient" means a person who is receiving service, has applied for service, or for whom someone has applied for or proposed service because the person has mental illness, serious emotional disturbance, or a developmental disability;

(24) "Support" means any activity or resource that enables a service recipient to participate in a service for mental illness, serious emotional disturbance, or developmental disabilities or in community life; and

(25) "Treatment resource" means any public or private facility, service, or program providing treatment or rehabilitation services for mental illness or serious emotional disturbance, including, but not limited to, detoxification centers, hospitals, community mental health centers, clinics or programs, halfway houses, and rehabilitation centers.

History.

Acts 2000, ch. 947, § 1; 2001, ch. 334, § 1; 2002, ch. 730, § 1; 2006, ch. 674, § 1; 2008, ch. 1016, § 3; 2009, ch. 531, §§ 31, 32; 2010, ch. 734, § 1; 2010, ch. 1100, §§ 25–27; 2011, ch. 158, §§ 10-12; 2012, ch. 575, §§ 1, 2.

Compiler's Notes.

Former chapter 1, §§ 33-1-101, 33-1-201 — 33-1-209, 33-1-301 — 33-1-303 (Acts 1965, ch. 38, §§ 2, 8; 1965, ch. 82, §§ 1-2, 4-7; 1965, ch. 305, § 1; 1971, ch. 247, § 1; 1972, ch. 644, §§ 1, 2; 1973, ch. 85, § 1; 1973, ch. 127, §§ 3, 4; 1973, ch. 341, §§ 1, 2, 5-7; 1974, ch. 802, §§ 3, 5-7, 16, 21; 1975, ch. 248, §§ 1, 4; 1976, ch. 806, § 1(95); 1978, ch. 533, § 2; 1978, ch. 853, § 10; 1981, ch. 98, §§ 3, 4; 1981, ch. 224, § 2; T.C.A., §§ 33-301 - 33-302, 33-104 — 33-107, 33-308; 1984, ch. 794, § 11; 1984, ch. 922, § 1; 1986, ch. 570, § 1; 1987, ch. 98, § 1; 1988, ch. 623, § 1; 1990, ch. 920, § 1; 1990, ch. 1024, §§ 17-18; 1992, ch. 991, § 12; 1994, ch. 861, §§ 1-4; 1996, ch. 993, § 1; 1997, ch. 305, § 1; 1997, ch. 534, § 1; 1999, ch. 466, § 1; 2000, ch. 947, § 6; 2000, ch. 981, § 53) was deleted and replaced in the revision of title 33 by Acts 2000, ch. 947, § 1, effective March 1, 2001.

Acts 2000, ch. 947, § 9 provided that the act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before its effective date.

For the Preamble to the act concerning the operation and funding of state government and to fund the state budget for the fiscal years beginning on July 1, 2008, and July 1, 2009, please refer to Acts 2009, ch. 531.

For the Preamble to the act regarding changing the term "mental retardation" to "intellectual disability", please refer to Acts 2010, ch. 734.

Acts 2010, ch. 734, § 1 provided that the Tennessee code commission is directed to change all references to "mental retardation", wherever such references appear in titles 33, 39 and 41, to "intellectual disability", as supplements are issued and volumes are replaced.

Acts 2010, ch. 734, § 7 provided that for purposes of each provision amended by the act, a reference to intellectual disability shall be considered to refer to mental retardation, as defined by that provision on the day before the date of enactment of the act.

Acts 2010, ch. 734, § 8 provided that nothing in the act shall be construed to alter or otherwise affect the eligibility for services or the rights or responsibilities of individuals covered by the provision on the day before the date of enactment of the act.

Acts 2010, ch. 1100, §§ 25-27 amended the definitions of "commissioner", "department" and "intellectual disability" effective January 15, 2011. Prior to January 15, 2011, the definitions of "commissioner", "department" and "intellectual disability" read as set out in the amendment notes. On and after January 15, 2011, the definitions of "commissioner", "department" and "intellectual disability" read as set out above.

Acts 2010, ch. 1100, § 27(a) purported to amend this section by substituting "Intellectual disability" for "Mental retardation" at the beginning of subdivision (A) of the former definition of "mental retardation", effective January 15, 2011. Acts 2010, ch. 734, § 1 made the same amendment to the former definition of "mental retardation"

effective April 9, 2010; therefore, the amendment by Acts 2010, ch. 1100, § 27(a) was not given effect.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health (now commissioner of mental health and substance abuse services), the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

PART 2

POLICIES, VALUES, AND PRINCIPLES

33-1-201. Responsibilities of department — State policy toward mental health and developmental disabilities.

The department serves as the state's mental health and developmental disabilities authority and is responsible for system planning, setting policy and quality standards, system monitoring and evaluation, disseminating public information and advocacy for persons of all ages who have mental illness, serious emotional disturbance, or developmental disabilities. It is the policy of the state to plan on the basis of and to promote the use of private and public service providers, without regard for funding source, to achieve outcomes and accomplishments that create opportunities for service recipients and potential service recipients to have the greatest possible control of their lives in the least restrictive environment that is appropriate for each person. The department shall plan for and promote the availability of a comprehensive array of high quality prevention, early intervention, treatment, and habilitation services and supports based on the needs and choices of service recipients and families served. The department shall include service recipients and members of service recipients' families in planning, developing, and monitoring the service systems.

History.
Acts 2000, ch. 947, § 1.

Compiler's Notes.
Former chapter 1, §§ 33-1-101, 33-1-201 — 33-1-209, 33-1-301 — 33-1-303 (Acts 1965, ch. 38, §§ 2, 8; 1965, ch. 82, §§ 1-2, 4-7; 1965, ch. 305, § 1; 1971, ch. 247, § 1; 1972, ch. 644, §§ 1, 2; 1973, ch. 85, § 1; 1973, ch. 127, §§ 3, 4; 1973, ch. 341, §§ 1, 2, 5-7; 1974, ch. 802, §§ 3, 5-7, 16, 21; 1975, ch. 248, §§ 1, 4; 1976, ch. 806, § 1(95); 1978, ch. 533, § 2; 1978, ch. 853, § 10; 1981, ch. 98, §§ 3, 4; 1981, ch. 224, § 2; T.C.A., §§ 33-301 - 33-302, 33-104 — 33-107, 33-308; 1984, ch. 794, § 11; 1984, ch. 922, § 1; 1986, ch. 570, § 1; 1987, ch. 98, § 1; 1988, ch. 623, § 1; 1990, ch. 920, § 1; 1990, ch. 1024, §§ 17-18; 1992, ch. 991, § 12; 1994, ch. 861, §§ 1-4; 1996, ch. 993, § 1; 1997, ch. 305, § 1; 1997, ch. 534, § 1; 1999, ch. 466, § 1; 2000, ch. 947, § 6; 2000, ch. 981, § 53) was deleted and replaced in the revision of title 33 by Acts 2000, ch. 947, § 1, effective March 1, 2001.

33-1-202. Statement of values underlying title.

Values upon which the law is predicated include, but are not limited to, individual rights, promotion of self-determination, respect, optimal health and safety, service recipient inclusion in the community, and service recipient life and service in typical community settings.

History.
Acts 2000, ch. 947, § 1.

33-1-203. Principles of service.

The following service principles are fundamental to carrying out the department's responsibilities:

(1) Stable service systems that provide flexibility, advocacy, effective communication, targeted outcomes, continuous evaluation, and improvement based on best practice and research;

(2) Early identification of needs and the inclusion of both prevention and early intervention services and supports;

(3) Timely response to the needs, rights and desires of those served;

(4) Treating service recipients and families with dignity and respect;

(5) Protection of service recipients from abuse, neglect, and exploitation;

(6) Accurate and responsible accountability for the use of public resources;

(7) Ongoing education and skills development of the workforce; and

(8) Cultural competence of persons providing service.

History.
Acts 2000, ch. 947, § 1.

33-1-204. Unnecessary entitlements not created — Programs subject to funding by general assembly.

(a) This title shall not create entitlement to services and supports from the state except to the extent that services and supports are necessarily attached to deprivation of liberty by placement in facilities operated by the department. Implementation of any service or support at state expense under this title is subject to the availability of funds appropriated for that purpose in the general appropriations act.

(b) While the department of intellectual and developmental disabilities is charged with the planning and development of services for persons with developmental disabilities, such services shall be subject to the availability of funding, and to approval of any waiver amendments which would be required to effectuate such new programs at such time that they are developed. The reassignment of responsibility for developmental disabilities services to the department of intellectual and developmental disabilities does not create an entitlement to services for persons with developmental disabilities. Nor does it expand or affect in any way the population of persons who are currently eligible for programs and services currently available to persons with mental retardation.

History.
Acts 2000, ch. 947, § 1; 2010, ch. 1100, § 28.

Compiler's Notes.
Former chapter 1, §§ 33-1-101, 33-1-201 — 33-1-209, 33-1-301 — 33-1-303 (Acts 1965, ch. 38, §§ 2, 8; 1965, ch. 82, §§ 1-2, 4-7; 1965, ch. 305, § 1; 1971, ch. 247, § 1; 1972, ch. 644, §§ 1, 2; 1973, ch. 85, § 1;

1973, ch. 127, §§ 3, 4; 1973, ch. 341, §§ 1, 2, 5-7; 1974, ch. 802, §§ 3, 5-7, 16, 21; 1975, ch. 248, §§ 1, 4; 1976, ch. 806, § 1(95); 1978, ch. 533, § 2; 1978, ch. 853, § 10; 1981, ch. 98, §§ 3, 4; 1981, ch. 224, § 2; T.C.A., §§ 33-301 - 33-302, 33-104 — 33-107, 33-308; 1984, ch. 794, § 11; 1984, ch. 922, § 1; 1986, ch. 570, § 1; 1987, ch. 98, § 1; 1988, ch. 623, § 1; 1990, ch. 920, § 1; 1990, ch. 1024, §§ 17-18; 1992, ch. 991, § 12; 1994, ch. 861, §§ 1-4; 1996, ch. 993, § 1; 1997, ch. 305, § 1; 1997, ch. 534, § 1; 1999, ch. 466, § 1; 2000, ch. 947, § 6; 2000, ch. 981, § 53) is deleted and replaced in the revision of title 33 by Acts 2000, ch. 947, § 1, effective March 1, 2001.

In order to effectuate the purposes of this section, funds were appropriated in Acts 2000, ch. 994.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health (now commissioner of mental health and substance abuse services), the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

CHAPTER 2

SERVICES AND FACILITIES

Part 1. Community Service System

SECTION.
33-2-101. Services and support to be community-based system.
33-2-102. Goals and purposes of mental health care system.
33-2-103. Requirements for community-based systems.
33-2-104. Core values of service system.
33-2-105. Geographic area for service systems — Designation of information sources.
33-2-106. Legislative intent — Alleviation of geographical disparities.

Part 3. Setting Service Standards

33-2-301. Basic quality standards for services and supports.
33-2-302. Regulation of compliance.

Part 4. Mental Health, Alcohol and Drug Abuse Prevention and/or Treatment, Intellectual and Developmental Disabilities, and Personal Support Services Licensure Law

33-2-401. Short title.
33-2-402. Part definitions. [Effective until January 1, 2017. See version effective on January 1, 2017.]
33-2-402. Part definitions. [Effective on January 1, 2017. See version effective until January 1, 2017.]
33-2-403. Licensure of mental health, substance abuse, and intellectual and developmental disabilities services and facilities — Exemptions. [Effective until January 1, 2017. See version effective on January 1, 2017.]
33-2-403. Licensure of mental health, substance abuse, and intellectual and developmental disabilities services and facilities — Exemptions. [Effective on January 1, 2017. See version effective until January 1, 2017.]
33-2-404. Rules for licensure — Amendment of rules.
33-2-405. Operation of unlicensed facility unlawful — Penalty.
33-2-406. Application for licensure.
33-2-407. Suspension or revocation of license — Civil penalties.
33-2-408. Sanctions against licensed entities.
33-2-409. Amount of civil penalties.
33-2-410. Service recipient protection trust fund.
33-2-411. Surveyor to notify licensee of violations.
33-2-412. Suit to enjoin services rendered without license or under suspended or revoked license.
33-2-413. Inspections of facilities.
33-2-414. Departmental assistance to applicants and to service recipients affected by license denial, suspension or revocation.
33-2-415. Provisional licenses.
33-2-416. Department to investigate reports of abuse, dereliction or deficiency in operation of facility — Private cause of action — Departmental remedies.
33-2-417. Provision of services without license — Actions by commissioner — Violations.
33-2-418. Residential facilities.
33-2-419. Standardized training and continuing education required — Classifications.
33-2-420. Dual licensing not required.
33-2-421. Providers of personal support services.

Part 7. Community Mental Health Center Cooperation Act

33-2-701. Short title.
33-2-702. Statement of policy.
33-2-703. Part definitions.
33-2-704. Cooperative agreements among community mental health centers — Review by department — Certificate of public advantage.
33-2-705. Judicial review of department decision.
33-2-706. Effect of grant or denial of certificate of public advantage.
33-2-707. Application fees.
33-2-708. Center not authorized to act as insurer.
33-2-709. Part not deemed to authorize referral to provider-owned facility in violation of law.

Part 11. Costs in State Facilities

33-2-1101. Calculation of charges for service.
33-2-1102. Determination of indigency — Periodic payments.
33-2-1103. Persons liable for charges.
33-2-1104. Nonindigent recipients.
33-2-1105. Information from liable parties — Effect of failure to provide information.
33-2-1106. Person receiving services under court order.
33-2-1107. Claims against recipients.
33-2-1108. Voluntary contribution of funds.
33-2-1109. Prohibition on maintenance at state's expense.
33-2-1110. Discrimination for inability to pay prohibited.

Part 12. Personnel and Volunteers

33-2-1201. Department employees, volunteers and applicants to submit to background check and fingerprinting.
33-2-1202. Organizations to perform background checks on employees.

Part 13. Conflict of Interest

33-2-1301. Department officers, employees and licensees to disclose interest in mental health facilities — Conflict of interest.
33-2-1302. Penalty for violation of § 33-2-1301.
33-2-1303. Contractors to disclose interest in facility.
33-2-1304. Personnel records to indicate conflict of interest as reason for relief of duties.

PART 1

COMMUNITY SERVICE SYSTEM

33-2-101. Services and support to be community-based system.

The department shall plan, coordinate, administer, monitor, and evaluate state and federally funded services and supports as a community-based system within the total system of services and supports for persons with mental illness, serious emotional disturbance, developmental disabilities, or at risk for those conditions and for their families. All functions shall be carried out in consultation and collaboration with current or former service recipients, their families, guardians or conservators, service recipient advocates, service providers, agencies, and other affected persons and organizations.

History.
Acts 2000, ch. 947, § 1.

Compiler's Notes.
Former chapter 2, §§ 33-2-101 — 33-2-108, 33-2-201 — 33-2-202, 33-2-301 — 33-2-311, 33-2-401, 33-2-501 — 33-2-513, 33-2-601 — 33-2-602, 33-2-604, 33-2-701, 33-2-901 — 33-2-909 (Acts 1965, ch. 82, § 8; 1973, ch. 341, §§ 3, 4; 1974, ch. 802, § 8; 1975, ch. 248, §§ 1, 3; 1976, ch. 806, § 1(35); 1978, ch. 617, § 2; 1978, ch. 853, §§ 1-9, 11-13; 1979, ch. 199, § 1; 1979, ch. 369, § 1; 1981, ch. 18, § 1; 1981, ch. 98, § 5; 1981, ch. 436, §§ 1, 4, 5; 1981, ch. 436, § 3; 1982, ch. 584, §§ 2, 4-12; 1983, ch. 323, §§ 25-28, 31; 33-201, T.C.A. § 33-350, 33-1801, T.C.A., §§ 33-1803 — 33-1812, T.C.A., §§ 33-1902 — 33-1911; 1985, ch. 437, § 5, 31-32; 1987, ch. 143, §§ 1, 6; 1987, ch. 248, §§ 1-3; 1987, ch. 320, § 1; 1988, ch. 586, § 1; 1988, ch. 828, §§ 3-8; 1988, ch. 875, §§ 1, 2; 1989, ch. 253, § 3; 1989, ch. 254, § 3; 1989, ch. 255, § 2; 1989, ch. 256, § 2; 1989, ch. 257, § 3; 1989, ch. 259, § 3; 1989, ch. 260, § 3; 1989, ch. 261, § 3; 1989, ch. 271, § 3; 1989, ch. 272, § 3; 1989, ch. 434, § 5; 1989, ch. 513, §§ 1, 14; 1989, ch. 559, §§ 1-4; 1989, ch. 591, § 112; 1991, ch. 459, §§ 9, 10; 1992, ch. 913, § 2; 1993, ch. 234, §§ 22-26; 1994, ch. 760, § 1; 1996, ch. 796, § 1; 1996, ch. 1074, § 1; 1998, ch. 1005, § 1-9; 2000, ch. 947, § 6); § 33-2-603 (Acts 1985, ch. 437, § 31; 1987, ch. 143, § 5), which had been previously repealed by Acts 1988, ch. 586, § 2; § 33-2-801 (Acts 1989, ch. 513, § 4), which had been previously repealed by Acts 1993, ch. 234, § 9; §§ 33-2-802 and 33-2-803 (Acts 1989, ch. 513, § 4), which were transferred to §§ 68-24-602, 68-24-603 in 1993, is deleted and replaced in the revision of title 33 by Acts 2000, ch. 947, § 1, effective March 1, 2001.

33-2-102. Goals and purposes of mental health care system.

(a) Within the limits of available resources, it is the goal of the state to develop and maintain a system of care that provides a comprehensive array of quality prevention, early intervention, treatment, habilitation and rehabilitation services and supports that are geographically available, equitably and efficiently allocated statewide, allowing people to be in their own communities in settings, based on the needs and choices of individuals and families served.

(b) The state's purposes are to:

(1) Establish and sustain a broad range and scope of flexible services and supports across the domains of residential living, working, learning, community participation, and family support, including crisis, respite and other emergency services, that help service recipients maintain respected and active positions in the community; and

(2) Promote the early identification of children with mental illness, serious emotional disturbance, developmental disabilities, and developmental delay to assure that they receive services and supports appropriate to their developmental level and changing needs.

(c) The general assembly finds as facts that the needs of persons with mental illness, serious emotional disturbance, and developmental disabilities cannot be met by the department in isolation and that those persons need to receive services and supports that are integrated, have linkages between and among other human service agencies and programs, and have mechanisms for planning, developing, coordinating, and monitoring services and supports to meet their needs.

History.
Acts 2000, ch. 947, § 1.

33-2-103. Requirements for community-based systems.

The state will accomplish its purposes through community-based systems that provide:

(1) Access to services and supports that are individualized to the capacities, needs and values of each person;

(2) Accountability of services and supports through statewide standards for monitoring, reporting, and evaluating information;

(3) At least basic quality standards for service delivery;

(4) Priorities for the use of available resources;

(5) Coordination of services and supports within the department, among other state agencies, and other public and private service providers aimed at reducing duplication in service delivery and promoting complementary services and supports among all relevant entities;

(6) Conflict resolution procedures; and

(7) Extensive involvement of service recipients, families, and advocates.

History.
Acts 2000, ch. 947, § 1.

33-2-104. Core values of service system.

The core values of the service system shall include:

(1) The system of care is person-centered and family-focused, with the needs and choices of the individual and family, as appropriate, determining the types and mix of services and supports provided, because, to make good decisions, service recipients and their families need complete information about the availability, alternatives, and costs of services and supports, how the decision-making process works, and how to participate in that process;

(2) The system of care provides individualized services and supports based on an individualized service plan that is comprehensive, coordinated, age appropriate, provides smooth transition through life stages, involves families as appropriate, and is developed by qualified professionals in consultation with service recipients and family members as appropriate;

(3) The system of care is community-based and provides for service in the least restrictive, most appropriate setting;

(4) The system of care is culturally competent with agencies, programs, services, and supports that are responsive to the cultural, racial, and ethnic differences of the populations they serve;

(5) The system of care takes into account the safety and health of service recipients, while respecting their choices and protecting their rights, including their right to be free from abuse, neglect, and exploitation; and

(6) The system of care is continuously improved based on research and best practices.

History.
Acts 2000, ch. 947, § 1.

33-2-105. Geographic area for service systems — Designation of information sources.

The department shall establish areas for planning and resource allocation. The department shall define geographically dispersed and accessible points of access to service systems and designate providers or mechanisms to provide information and referral for services and supports and for eligibility decisions.

History.
Acts 2000, ch. 947, § 1.

33-2-106. Legislative intent — Alleviation of geographical disparities.

(a) It is the intent of the general assembly that the system of care developed to reflect § 33-2-102 provides a comprehensive array of services and supports that are geographically available, equitably and efficiently allocated statewide and in each grand division of the state, that allows people to be in their own community settings, based on the needs and choices of individuals and families served. Services and supports provided to persons generally and as part of the medical assistance program, pursuant to title 71, chapter 5, shall seek to alleviate geographic service and support disparities across the state and its grand divisions. In striving to alleviate the geographic disparities, the state should seek to allocate budget improvements and other new resources in a manner that promotes equitable distribution of services and supports among the grand divisions of the state.

(b)(1) In order to implement subsection (a), the state shall strive to avoid gaps in services and endeavor to achieve a delivery system that ensures that services are available to service recipients on a substantially equitable basis, regardless of place of residence within the state. To that end, the commissioner of finance and administration shall report to the health and welfare committee of the senate and the health committee of the house of representatives, no later than January 15, 2008, and annually thereafter, on the following indicators of equity in the service delivery system:

(A) The extent to which special services and programs such as programs for assertive community treatment (PACT), crisis stabilization units, resiliency and recovery programs, etc. are available on a substantially equitable basis throughout the state;

(B) The extent to which psychiatric and medical services of the same level, intensity, and duration are available on a substantially equitable basis throughout the state; and

(C) The extent to which rates of service utilization by service recipients are substantially equitable throughout the state.

History.
Acts 2007, ch. 429, § 1; 2013, ch. 236, § 50.

PART 3

SETTING SERVICE STANDARDS

33-2-301. Basic quality standards for services and supports.

(a) The department shall set basic quality standards for services and supports to all persons served on the basis of mental illness, serious emotional disturbance, or developmental disabilities regardless of whether they are served by the department, the department's contractors, private service providers, other state or local public agencies, agencies licensed by the department, or private service providers that are not licensed under this title and regardless of whether the service recipients are in the custody of state or local government.

(b) Basic quality standards shall be the same for all service recipients regardless of where they are served and by whom they are served. Basic quality standards may vary according to the ages of the service recipients to assure appropriate service for children, adults, and the elderly.

History.
Acts 2000, ch. 947, § 1.

Compiler's Notes.
Former chapter 2, §§ 33-2-101 — 33-2-108, 33-2-201 — 33-2-202, 33-2-301 — 33-2-311, 33-2-401, 33-2-501 — 33-2-513, 33-2-601 — 33-2-602, 33-2-604, 33-2-701, 33-2-901 — 33-2-909 (Acts 1965, ch. 82, § 8; 1973, ch. 341, §§ 3, 4; 1974, ch. 802, § 8; 1975, ch. 248, §§ 1, 3; 1976, ch. 806, § 1(35); 1978, ch. 617, § 2; 1978, ch. 853, §§ 1-9, 11-13; 1979, ch. 199, § 1; 1979, ch. 369, § 1; 1981, ch. 18, § 1; 1981, ch. 98, § 5; 1981, ch. 436, §§ 1, 4, 5; 1981, ch. 436, § 3; 1982, ch. 584, §§ 2, 4-12; 1983, ch. 323, §§ 25-28, 31; 33-201, T.C.A. § 33-350, 33-1801, T.C.A., §§ 33-1803 — 33-1812, T.C.A., §§ 33-1902 — 33-1911; 1985, ch. 437, § 5, 31-32; 1987, ch. 143, §§ 1, 6; 1987, ch. 248, §§ 1-3; 1987, ch. 320, § 1; 1988, ch. 586, § 1; 1988, ch. 828, §§ 3-8; 1988, ch. 875, §§ 1, 2; 1989, ch. 253, § 3; 1989, ch. 254, § 3; 1989, ch. 255, § 2; 1989, ch. 256, § 2; 1989, ch. 257, § 3; 1989, ch. 259, § 3; 1989, ch. 260, § 3; 1989, ch. 261, § 3; 1989, ch. 271, § 3; 1989, ch. 272, § 3; 1989, ch. 434, § 5; 1989, ch. 513, §§ 1, 14; 1989, ch. 559, §§ 1-4; 1989, ch. 591, § 112; 1991, ch. 459, §§ 9, 10; 1992, ch. 913, § 2; 1993, ch. 234, §§ 22-26; 1994, ch. 760, § 1; 1996, ch. 796, § 1; 1996, ch. 1074, § 1; 1998, ch. 1005, § 1-9; 2000, ch. 947, § 6); § 33-2-603 (Acts 1985, ch. 437, § 31; 1987, ch. 143, § 5), which had been previously repealed by Acts 1988, ch. 586, § 2; § 33-2-801 (Acts 1989, ch. 513, § 4), which had been previously repealed by Acts 1993, ch. 234, § 9; §§ 33-2-802 and 33-2-803 (Acts 1989, ch. 513, § 4), which were transferred to §§ 68-24-602, 68-24-603 in 1993, is deleted and replaced in the revision of title 33 by Acts 2000, ch. 947, § 1, effective March 1, 2001.

33-2-302. Regulation of compliance.

The department shall regulate compliance with basic quality standards to the extent otherwise authorized by this title. The department may monitor compliance with basic quality standards in all settings, including those over which it does not have regulatory authority. The department may monitor by inspections conducted by other state agencies as part of their regular duties.

History.
Acts 2000, ch. 947, § 1.

PART 4

MENTAL HEALTH, ALCOHOL AND DRUG ABUSE PREVENTION AND/OR TREATMENT, INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, AND PERSONAL SUPPORT SERVICES LICENSURE LAW

33-2-401. Short title.

This part shall be known and may be cited as the "Mental Health, Alcohol and Drug Abuse Prevention and/or Treatment, Intellectual and Developmental Disabilities, and Personal Support Services Licensure Law."

History.
Acts 1978, ch. 853, § 1; T.C.A., §§ 33-1801, 33-2-501; Acts 2000, ch. 947, § 1; 2001, ch. 282, § 2; 2012, ch. 1010, § 2.

Compiler's Notes.
Former chapter 2, §§ 33-2-101 — 33-2-108, 33-2-201 — 33-2-202, 33-2-301 — 33-2-311, 33-2-401, 33-2-501 — 33-2-513, 33-2-601 — 33-2-602, 33-2-604, 33-2-701, 33-2-901 — 33-2-909 (Acts 1965, ch. 82, § 8; 1973, ch. 341, §§ 3, 4; 1974, ch. 802, § 8; 1975, ch. 248, §§ 1, 3; 1976, ch. 806, § 1(35); 1978, ch. 617, § 2; 1978, ch. 853, §§ 1-9, 11-13; 1979, ch. 199, § 1; 1979, ch. 369, § 1; 1981, ch. 18, § 1; 1981, ch. 98, § 5; 1981, ch. 436, §§ 1, 4, 5; 1981, ch. 436, § 3; 1982, ch. 584, §§ 2, 4-12; 1983, ch. 323, §§ 25-28, 31; 33-201, T.C.A. § 33-350, 33-1801, T.C.A., §§ 33-1803 — 33-1812, T.C.A., §§ 33-1902 — 33-1911; 1985, ch. 437, § 5, 31-32; 1987, ch. 143, §§ 1, 6; 1987, ch. 248, §§ 1-3; 1987, ch. 320, § 1; 1988, ch. 586, § 1; 1988, ch. 828, §§ 3-8; 1988, ch. 875, §§ 1, 2; 1989, ch. 253, § 3; 1989, ch. 254, § 3; 1989, ch. 255, § 2; 1989, ch. 256, § 2; 1989, ch. 257, § 3; 1989, ch. 259, § 3; 1989, ch. 260, § 3; 1989, ch. 261, § 3; 1989, ch. 271, § 3; 1989, ch. 272, § 3; 1989, ch. 434, § 5; 1989, ch. 513, §§ 1, 14; 1989, ch. 559, §§ 1-4; 1989, ch. 591, § 112; 1991, ch. 459, §§ 9, 10; 1992, ch. 913, § 2; 1993, ch. 234, §§ 22-26; 1994, ch. 760, § 1; 1996, ch. 796, § 1; 1996, ch. 1074, § 1; 1998, ch. 1005, § 1-9; 2000, ch. 947, § 6); § 33-2-603 (Acts 1985, ch. 437, § 31; 1987, ch. 143, § 5), which had been previously repealed by Acts 1988, ch. 586, § 2; § 33-2-801 (Acts 1989, ch. 513, § 4), which had been previously repealed by Acts 1993, ch. 234, § 9; §§ 33-2-802 and 33-2-803 (Acts 1989, ch. 513, § 4), which were transferred to §§ 68-24-602, 68-24-603 in 1993, is deleted and replaced in the revision of title 33 by Acts 2000, ch. 947, § 1, effective March 1, 2001.

33-2-402. Part definitions. [Effective until January 1, 2017. See version effective on January 1, 2017.]

As used in this part, unless the context otherwise requires:

(1) "Abuse" means the knowing infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish;

(2) "Alcohol and drug prevention and/or treatment facility" means an institution, treatment resource, group residence (boarding home, sheltered workshop, activity center), rehabilitation center, hospital, community mental health center, DUI school, counseling center, clinic, halfway house, or other entity, by these or other names, providing alcohol and drug services; provided, that a DUI school operated by a state institution of higher education shall not be considered an alcohol and drug treatment facility for purposes of this chapter; provided, further, that "alcohol and drug prevention and treatment facility" does not include any facility otherwise licensed by the department or the department of health or approved by the department of education;

(3) "Alcohol and drug services" includes evaluation, treatment, residential personal care, habilitation, rehabilitation, counseling or supervision of persons who abuse or are dependent upon alcohol or drugs, or services to persons designed to prevent alcohol or drug abuse or dependence that either receive funds from the department of health or assess fees for services provided; provided, that a DUI school operated by a state institution of higher education shall not be considered alcohol and drug services for purposes of this part;

(4) "Commissioner" means the commissioner of mental health and substance abuse services, or, when applicable, the commissioner of intellectual and developmental disabilities, the commissioner's authorized representative, or in the event of the commissioner's absence or a vacancy in the office of commissioner, the deputy commissioner of mental health and substance abuse services, or, when applicable, the deputy commissioner of intellectual and developmental disabilities;

(5) "Department" means the department of mental health and substance abuse services, or, when applicable, the department of intellectual and developmental disabilities;

(6) "Facility" means a developmental center, treatment resource, group residence, boarding home, sheltered workshop, activity center, rehabilitation center, hospital, community mental health center, counseling center, clinic, group home, halfway house or any other entity that provides a mental health, intellectual or developmental disability service or an alcohol and drug abuse prevention and/or treatment facility;

(7) "Licensee" means a proprietorship, a partnership, an association, a governmental agency, or corporation, that operates a facility or a service and has obtained a license under this part;

(8) "Misappropriation of property" means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of belongings or money without consent;

(9) "Neglect" means failure to provide goods or services necessary to avoid physical harm, mental anguish, or mental illness, which results in injury or probable risk of serious harm;

(10) "Personal support services" means nursing consultation, education services, and other personal assistance services as defined by rule, which are provided to individuals with substantial limitation in two (2) or more major life activities in either their regular or temporary residences, but does not mean direct nursing services provided in connection with an acute episode of illness or injury;

(11) "Reputable and responsible character" means that the applicant or licensee can be trusted with responsibility for persons who are particularly vulnerable to abuse, neglect, and financial or sexual

exploitation; and

(12) "Service" includes any activity to prevent, treat, or ameliorate mental illness, serious emotional disturbance, alcohol and drug use, intellectual or developmental disabilities, which includes diagnosis, evaluation, residential assistance, training, habilitation, rehabilitation, prevention, treatment, counseling, case coordination, or supervision of persons with mental illness, alcohol and drug abuse issues, serious emotional disturbances, and intellectual or developmental disabilities.

History.

Acts 1978, ch. 853, § 2; 1981, ch. 436, § 1; 1983, ch. 323, §§ 25, 26; T.C.A., § 33-1802; Acts 1987, ch. 143, § 1; 1987, ch. 248, § 3; 1988, ch. 828, §§ 3, 4; 1988, ch. 875, §§ 1, 2; 1989, ch. 513, §§ 1, 14; 1993, ch. 234, § 22; 1996, ch. 1074, § 1; T.C.A., § 33-2-502; Acts 2000, ch. 947, §§ 1, 6; 2001, ch. 282, § 1; 2003, ch. 103, § 1; 2003, ch. 242, § 2; 2009, ch. 186, §§ 46, 47; 2010, ch. 1100, §§ 24, 34, 35; 2011, ch. 158, § 14; 2012, ch. 575, §§ 1, 2; 2012, ch. 1010, § 3.

Compiler's Notes.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health (now commissioner of mental health and substance abuse services), the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

33-2-402. Part definitions. [Effective on January 1, 2017. See version effective until January 1, 2017.]

As used in this part, unless the context otherwise requires:

(1) "Abuse" means the knowing infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish;

(2) "Alcohol and drug prevention and/or treatment facility" means an institution, treatment resource, group residence (boarding home, sheltered workshop, activity center), rehabilitation center, hospital, community mental health center, nonresidential office-based opiate treatment facility, nonresidential substitution-based treatment center for opiate addiction, DUI school, counseling center, clinic, halfway house, or other entity, by these or other names, providing alcohol and drug services; provided, that a DUI school operated by a state institution of higher education shall not be considered an alcohol and drug treatment facility for purposes of this chapter; provided, further, that "alcohol and drug prevention and treatment facility" does not include any facility otherwise licensed by the department or the department of health or approved by the department of education;

(3) "Alcohol and drug services" includes evaluation, treatment, residential personal care, habilitation, rehabilitation, counseling or supervision of persons who abuse or are dependent upon alcohol or drugs, or services to persons designed to prevent alcohol or drug abuse or dependence that either receive funds from the department of health or assess fees for services provided; provided, that a DUI school operated by a state institution of higher education shall not be considered alcohol and drug services for purposes of this part;

(4) "Commissioner" means the commissioner of mental health and substance abuse services, or, when applicable, the commissioner of intellectual and developmental disabilities, the commissioner's authorized representative, or in the event of the commissioner's absence or a vacancy in the office of commissioner, the deputy commissioner of mental health and substance abuse services, or, when applicable, the deputy commissioner of intellectual and developmental disabilities;

(5) "Department" means the department of mental health and substance abuse services, or, when applicable, the department of intellectual and developmental disabilities;

(6) "Facility" means a developmental center, treatment resource, group residence, boarding home, sheltered workshop, activity center, rehabilitation center, hospital, community mental health center, counseling center, clinic, group home, halfway house or any other entity that provides a mental health, intellectual or developmental disability service or an alcohol and drug abuse prevention and/or treatment facility;

(7) "Licensee" means a proprietorship, a partnership, an association, a governmental agency, or corporation, that operates a facility or a service and has obtained a license under this part;

(8) "Misappropriation of property" means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of belongings or money without consent;

(9) "Neglect" means failure to provide goods or services necessary to avoid physical harm, mental anguish, or mental illness, which results in injury or probable risk of serious harm;

(10)(A) "Nonresidential office-based opiate treatment facility" includes, but is not limited to, standalone clinics, treatment resources, individual physical locations occupied as the professional practice of a prescriber or prescribers licensed pursuant to title 63, or other entities prescribing products containing buprenorphine, or products containing any other controlled substance designed to treat opiate addiction by preventing symptoms of withdrawal to fifty percent (50%) or more of its patients and to one hundred fifty (150) or more patients;

(B) For the purposes of subdivision (10)(A), "physical location" means real property on which is located a physical structure, whether or not that structure is attached to real property, containing one (1) or more units and includes an individual apartment, office, condominium, cooperative unit, mobile or manufactured home, or trailer, if used as a site for prescribing or dispensing products containing buprenorphine, or products containing any other controlled substance designed to treat opiate addiction by preventing symptoms of withdrawal;

(11) "Nonresidential substitution-based treatment center for opiate addiction" or "nonresidential opioid treatment program" includes, but is not limited to, stand-alone clinics offering methadone, products containing buprenorphine such as Subutex and Suboxone, or products containing any other formulation designed to treat opiate addiction by preventing symptoms of withdrawal;

(12) "Personal support services" means nursing consultation, education services, and other personal assistance services as defined by rule, which are provided to individuals with substantial limitation in two (2) or more major life activities in either their regular or temporary residences, but does not mean direct nursing services provided in connection with an acute episode of illness or injury;

(13) "Reputable and responsible character" means that the applicant or licensee can be trusted with responsibility for persons who are particularly vulnerable to abuse, neglect, and financial or sexual exploitation; and

(14) "Service" includes any activity to prevent, treat, or ameliorate mental illness, serious emotional disturbance, alcohol and drug use, intellectual or developmental disabilities, which includes diagnosis, evaluation, residential assistance, training, habilitation, rehabilitation, prevention, treatment, counseling, case coordination, or supervision of persons with mental illness, alcohol and drug abuse issues, serious emotional disturbances, and intellectual or developmental disabilities.

History.

Acts 1978, ch. 853, § 2; 1981, ch. 436, § 1; 1983, ch. 323, §§ 25, 26; T.C.A., § 33-1802; Acts 1987, ch. 143, § 1; 1987, ch. 248, § 3; 1988, ch. 828, §§ 3, 4; 1988, ch. 875, §§ 1, 2; 1989, ch. 513, §§ 1, 14; 1993, ch. 234, § 22; 1996, ch. 1074, § 1; T.C.A., § 33-2-502; Acts 2000, ch. 947, §§ 1, 6; 2001, ch. 282, § 1; 2003, ch. 103, § 1; 2003, ch. 242, § 2; 2009, ch. 186, §§ 46, 47; 2010, ch. 1100, §§ 24, 34, 35; 2011, ch. 158, § 14; 2012, ch. 575, §§ 1, 2; 2012, ch. 1010, § 3; 2016, ch. 912, §§ 1, 2.

Compiler's Notes.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health (now commissioner of mental health and substance abuse services), the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Acts 2016, ch. 912, § 5 provided that the commissioner of mental health and substance abuse services, upon consultation with the commissioner of health, is authorized to promulgate rules to implement this act in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. Medication assisted treatment guidelines, developed by nationally recognized addiction treatment organizations, such as the United States department of health and human services' substance abuse and mental health services agency, the United States department of health and human services' national institute on drug abuse, and the American Society of Addiction Medicine, shall serve as a guide to the development of the rules.

Acts 2016, ch. 912, § 6 provided that notwithstanding this act or the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, any rule promulgated to implement the provisions of this act shall be provided to the chairs of the health committee of the house of representatives and the health and welfare committee of the senate by the secretary of state, after approval by the attorney general and reporter, at the same time the text of the rule is made available to the government operations committees of the senate and the house of representatives for purposes of conducting the review required by § 4-5-226 in order for the health committee of the house of representatives and the health and welfare committee of the senate to be afforded the opportunity to comment on the rule.

33-2-403. Licensure of mental health, substance abuse, and intellectual and developmental disabilities services and facilities — Exemptions. [Effective until January 1, 2017. See version effective on January 1, 2017.]

(a) The departments have the authority to license services and facilities operated for the provision of mental health services, alcohol and drug abuse prevention or treatment, for the provision of services for intellectual and developmental disabilities, and for personal support services. The department of mental health and substance abuse services shall license services and facilities operated for persons with mental illness or serious emotional disturbance or in need of alcohol and drug abuse prevention or treatment services. Subject to subsection (c), the department of mental health and substance abuse services shall also license personal support services for the aged as well as persons with mental illness. Subject to subsection (c), services and facilities operated for persons with intellectual or developmental disabilities and personal support services for persons with intellectual or developmental disabilities shall be licensed by the department of intellectual and developmental disabilities. A personal support services agency licensed by either department may also serve individuals with physical or other disabilities. Notwithstanding any references in this part to the licensing of "facilities" or "services," only persons, proprietorships, partnerships, associations, governmental agencies, or corporations may be listed on license applications or licenses as the licensed entity.

(b) The following are exempt from licensing under this part:

(1) Private practitioners who are both:

(A) Authorized to practice by the boards of healing arts; and

(B) Only in private practice in that capacity;

(2) A person providing personal care solely to one (1) person with mental illness, serious emotional disturbance or developmental disability, or other service recipient receiving personal support services and not in a business arrangement with any other service recipient. This exception shall not apply to an individual who holds out to the public as being in the business of personal support services for compensation;

(3) An individual providing service or support only to members of the person's own family or relatives;

(4) An individual providing service or support that is not subject to licensing under any other title of the code and doing so only on a part-time basis as defined in department rules;

(5) Foster homes that accept placements only from agencies of state government or licensed child-placing agencies;

(6) Services or facilities providing employee assis-

tance programs;

(7) Services or facilities providing only employment placement;

(8) Facilities that are appropriately licensed by the department of health as a:

(A) Hospital whose primary purpose is not the provision of mental health or developmental disabilities services; or

(B) Satellite hospital, as defined by rules of the department of health, whose primary purpose is the provision of mental health or developmental disabilities services, and that the department verifies to the department of health as satisfying standards under this chapter; and

(9) Facilities that are operated by state, county, or municipal departments of education, the department of correction, the department of human services, or the department of children's services and that affirmatively state that the primary purpose of the facility is other than the provision of mental health, alcohol and drug abuse prevention and/or treatment services or intellectual or developmental disabilities services.

(c)(1) A service or facility that can demonstrate compliance with rules and standards by a current personal support services license from another state agency is considered in compliance with rules and standards under this part so that duplicate licensing is not necessary. Personal support services agencies that provide services for the aged or persons with mental illness and persons with intellectual or developmental disabilities shall not be required to obtain a license from both departments. The departments shall work together to ensure that licensure standards for personal support services agencies are appropriate across all of the populations that may be served and are consistently applied.

(2) The licensing entity shall be determined based on the larger population served by the agency as of April 10, 2015, or in the case of new applicants for licensure, the larger population anticipated to be served by the agency at the time of licensure application.

(d)(1) The department shall appoint a review panel to review periodically all exclusions and waivers granted under the licensure law and perform other duties under this part. The department's legal counsel shall advise the panel.

(2) The panel's membership shall be:

(A) The commissioner or the commissioner's designee;

(B) For the mental health panel, a representative of licensed community mental health services and a representative of licensed alcohol and drug abuse prevention and/or treatment services;

(C) For the intellectual and developmental disabilities panel, a representative of licensed intellectual disability community services and a representative of licensed developmental disability community services;

(D) For the mental health panel, a representative of a licensed residential facility for persons with mental illness or serious emotional disturbance and a representative of a licensed residential facility for alcohol and drug abuse prevention and/or treatment services;

(E) For the intellectual and developmental disabilities panel, a representative of a licensed residential facility for persons with intellectual and developmental disabilities;

(F) For the mental health panel, a representative of a licensed residential mental health facility for children and youth;

(G) Five (5) service recipient representatives; and

(H) A representative of a personal support services agency.

(3) The panel shall elect a chair and vice chair and shall report any findings directly to the commissioner.

(4) The vote of a majority binds the panel.

(5) Travel expenses for panel members shall be reimbursed. All reimbursement for travel expenses shall be in conformity with the comprehensive state travel regulations as promulgated by the commissioner of finance and administration and approved by the attorney general and reporter.

History.

Acts 1978, ch. 853, §§ 2, 3, 13; 1981, ch. 436, § 1; 1983, ch. 323, §§ 25, 26, 31; T.C.A., § 33-1802; Acts 1987, ch. 143, § 1; T.C.A., § 33-1812; Acts 1987, ch. 248, §§ 2, 3; T.C.A., § 33-1803; Acts 1988, ch. 828, §§ 3-5; 1988, ch. 875, §§ 1, 2; 1989, ch. 513, §§ 1, 14; 1989, ch. 559, § 1; 1993, ch. 234, §§ 22, 23; 1994, ch. 760, § 1; 1996, ch. 1074, § 1; T.C.A., §§ 33-2-502, 33-2-503, 33-2-512; Acts 2000, ch. 947, §§ 1, 6; 2001, ch. 282, § 3; 2002, ch. 730, § 2; 2007, ch. 304, § 1; 2010, ch. 1100, § 24; 2012, ch. 575, § 1; 2012, ch. 1010, §§ 4-6; 2015, ch. 110, §§ 1, 2.

Compiler's Notes.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health (now commissioner of mental health and substance abuse services), the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

33-2-403. Licensure of mental health, substance abuse, and intellectual and developmental disabilities services and facilities — Exemptions. [Effective on January 1, 2017. See version effective until January 1, 2017.]

(a) The departments have the authority to license services and facilities operated for the provision of mental health services, alcohol and drug abuse prevention or treatment, for the provision of services for intellectual and developmental disabilities, and for personal support services. The department of mental health and substance abuse services shall license services and facilities operated for persons with mental illness or serious emotional disturbance or in need of alcohol and drug abuse prevention or treatment services. Subject to subsection (c), the department of mental health and substance abuse services shall also license personal support services for the aged as well as

persons with mental illness. Subject to subsection (c), services and facilities operated for persons with intellectual or developmental disabilities and personal support services for persons with intellectual or developmental disabilities shall be licensed by the department of intellectual and developmental disabilities. A personal support services agency licensed by either department may also serve individuals with physical or other disabilities. Notwithstanding any references in this part to the licensing of "facilities" or "services," only persons, proprietorships, partnerships, associations, governmental agencies, or corporations may be listed on license applications or licenses as the licensed entity.

(b) The following are exempt from licensing under this part:

(1) Private practitioners who are authorized to practice by the boards of healing arts and only in private practice in that capacity. This subdivision (b)(1) shall not apply to a private practitioner, prescriber, or prescribers operating a nonresidential office-based opiate treatment facility, as defined in § 33-2-402;

(2) A person providing personal care solely to one (1) person with mental illness, serious emotional disturbance or developmental disability, or other service recipient receiving personal support services and not in a business arrangement with any other service recipient. This exception shall not apply to an individual who holds out to the public as being in the business of personal support services for compensation;

(3) An individual providing service or support only to members of the person's own family or relatives;

(4) An individual providing service or support that is not subject to licensing under any other title of the code and doing so only on a part-time basis as defined in department rules;

(5) Foster homes that accept placements only from agencies of state government or licensed child-placing agencies;

(6) Services or facilities providing employee assistance programs;

(7) Services or facilities providing only employment placement;

(8) Facilities that are appropriately licensed by the department of health as a:

(A) Hospital whose primary purpose is not the provision of mental health or developmental disabilities services; or

(B) Satellite hospital, as defined by rules of the department of health, whose primary purpose is the provision of mental health or developmental disabilities services, and that the department verifies to the department of health as satisfying standards under this chapter; and

(9) Facilities that are operated by state, county, or municipal departments of education, the department of correction, the department of human services, or the department of children's services and that affirmatively state that the primary purpose of the facility is other than the provision of mental health, alcohol and drug abuse prevention and/or treatment services or intellectual or developmental disabilities services.

(c)(1) A service or facility that can demonstrate compliance with rules and standards by a current personal support services license from another state agency is considered in compliance with rules and standards under this part so that duplicate licensing is not necessary. Personal support services agencies that provide services for the aged or persons with mental illness and persons with intellectual or developmental disabilities shall not be required to obtain a license from both departments. The departments shall work together to ensure that licensure standards for personal support services agencies are appropriate across all of the populations that may be served and are consistently applied.

(2) The licensing entity shall be determined based on the larger population served by the agency as of April 10, 2015, or in the case of new applicants for licensure, the larger population anticipated to be served by the agency at the time of licensure application.

(d)(1) The department shall appoint a review panel to review periodically all exclusions and waivers granted under the licensure law and perform other duties under this part. The department's legal counsel shall advise the panel.

(2) The panel's membership shall be:

(A) The commissioner or the commissioner's designee;

(B) For the mental health panel, a representative of licensed community mental health services and a representative of licensed alcohol and drug abuse prevention and/or treatment services;

(C) For the intellectual and developmental disabilities panel, a representative of licensed intellectual disability community services and a representative of licensed developmental disability community services;

(D) For the mental health panel, a representative of a licensed residential facility for persons with mental illness or serious emotional disturbance and a representative of a licensed residential facility for alcohol and drug abuse prevention and/or treatment services;

(E) For the intellectual and developmental disabilities panel, a representative of a licensed residential facility for persons with intellectual and developmental disabilities;

(F) For the mental health panel, a representative of a licensed residential mental health facility for children and youth;

(G) Five (5) service recipient representatives; and

(H) A representative of a personal support services agency.

(3) The panel shall elect a chair and vice chair and shall report any findings directly to the commissioner.

(4) The vote of a majority binds the panel.

(5) Travel expenses for panel members shall be reimbursed. All reimbursement for travel expenses

shall be in conformity with the comprehensive state travel regulations as promulgated by the commissioner of finance and administration and approved by the attorney general and reporter.

(e) The license holder of a nonresidential office-based opiate treatment facility shall ensure that adequate billing records are maintained, in any format, onsite at the nonresidential office-based opiate treatment facility and shall ensure that adequate billing records are maintained for all patients and for all patient visits. Billing records shall be maintained for a period of three (3) years from the date of the patient's last treatment at the nonresidential office-based opiate treatment facility. Billing records shall be made for all methods of payment. Billing records shall be made available to the department upon request. Billing records shall include, but not be limited to, the following:

(1) The amount paid for services;
(2) Method of payment;
(3) Date of the delivery of services;
(4) Date of payment; and
(5) Description of services.

(f) The license holder of a nonresidential office-based opiate treatment facility shall ensure that records of all bank deposits of cash payments for services provided at the nonresidential office-based opiate treatment facility are maintained, in any format, at the nonresidential office-based opiate treatment facility for a period of three (3) years.

(g) The license holder of a nonresidential office-based opiate treatment facility shall ensure that patient medical records are maintained, in any format, for a period of ten (10) years from the date of the patient's last treatment at the facility.

History.

Acts 1978, ch. 853, §§ 2, 3, 13; 1981, ch. 436, § 1; 1983, ch. 323, §§ 25, 26, 31; T.C.A., § 33-1802; Acts 1987, ch. 143, § 1; T.C.A., § 33-1812; Acts 1987, ch. 248, §§ 2, 3; T.C.A., § 33-1803; Acts 1988, ch. 828, §§ 3-5; 1988, ch. 875, §§ 1, 2; 1989, ch. 513, §§ 1, 14; 1989, ch. 559, § 1; 1993, ch. 234, §§ 22, 23; 1994, ch. 760, § 1; 1996, ch. 1074, § 1; T.C.A., §§ 33-2-502, 33-2-503, 33-2-512; Acts 2000, ch. 947, §§ 1, 6; 2001, ch. 282, § 3; 2002, ch. 730, § 2; 2007, ch. 304, § 1; 2010, ch. 1100, § 24; 2012, ch. 575, § 1; 2012, ch. 1010, §§ 4-6; 2015, ch. 110, §§ 1, 2; 2016, ch. 912, §§ 3, 4.

Compiler's Notes.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health (now commissioner of mental health and substance abuse services), the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Acts 2016, ch. 912, § 5 provided that the commissioner of mental health and substance abuse services, upon consultation with the commissioner of health, is authorized to promulgate rules to implement the act in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. Medication assisted treatment guidelines, developed by nationally recognized addiction treatment organizations, such as the United States department of health and human services' substance abuse and mental health services agency, the United States department of health and human services' national institute on drug abuse, and the American Society of Addiction Medicine, shall serve as a guide to the development of the rules.

Acts 2016, ch. 912, § 6 provided that notwithstanding the act or the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, any rule promulgated to implement the provisions of this act shall be provided to the chairs of the health committee of the house of representatives and the health and welfare committee of the senate by the secretary of state, after approval by the attorney general and reporter, at the same time the text of the rule is made available to the government operations committees of the senate and the house of representatives for purposes of conducting the review required by § 4-5-226 in order for the health committee of the house of representatives and the health and welfare committee of the senate to be afforded the opportunity to comment on the rule.

33-2-404. Rules for licensure — Amendment of rules.

(a) Each department shall adopt rules for licensure of services and facilities regarding adequacy of services, qualification of professional staff, and facility conditions. A department shall require for licensure satisfaction of basic quality standards set under part 3 of this chapter, as applicable, and may require higher standards. The rules shall include consideration of the adequacy of environment, life safety, treatment or habilitation services, education and training requirements of the staff, and other considerations that a department deems necessary to determine the adequacy of the provision of mental health, alcohol and drug abuse prevention and/or treatment, and intellectual and developmental disabilities services. Each department may adopt rules for the administration of the licensure program.

(b) Notwithstanding any law to the contrary, each department shall have the authority to amend its rules for licensure as needed to be consistent with the federal home-based and community-based settings final rule, published in the Federal Register at 79 FR 2947 (January 16, 2014), including the authority to differentiate licensure requirements for any entity contracted to provide medicaid-reimbursed home- and community-based services in order to allow the facility or entity to comply with the federal rule and continue to receive medicaid reimbursement for home- and community-based services. Rules adopted by the department under this subsection (b) shall be developed with input from stakeholders and promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5; provided, however, that the department shall not promulgate emergency rules under this subsection (b) as defined in § 4-5-208. Licensure survey and enforcement shall be conducted in a manner consistent with any rule issued under this subsection (b).

History.

Acts 1978, ch. 853, § 4; T.C.A., § 33-1804; Acts 1985, ch. 437, § 5; 1993, ch. 234, § 24; T.C.A., § 33-2-504; Acts 2000, ch. 947, § 1; 2012, ch. 1010, § 7; 2015, ch. 153, § 1.

33-2-405. Operation of unlicensed facility unlawful — Penalty.

(a) It is unlawful for a person, partnership, association or corporation to own or operate a service or facility that provides mental health, alcohol and drug abuse prevention and/or treatment or intellectual or developmental disability services, or personal support services

within the meaning of this title without having obtained a license as required by this part.

(b) A violation of this requirement is a Class B misdemeanor.

(c) Each day of operation without a license constitutes a separate offense.

History.

Acts 1978, ch. 853, § 5; 1981, ch. 436, § 2; T.C.A., § 33-1805; Acts 1989, ch. 591, § 112; T.C.A., § 33-2-505; Acts 2000, ch. 947, § 1; 2001, ch. 282, § 4; 2012, ch. 1010, § 8.

33-2-406. Application for licensure.

(a) A person, proprietorship, partnership, association, corporation, or any state, county or local governmental unit or any division, department, board or agency of government shall obtain a license from a department in order to lawfully establish, conduct, operate, or maintain a service or facility that provides mental health, alcohol and drug abuse prevention and/or treatment, intellectual or developmental disability, or personal support services.

(b) The applicant shall submit an application on a department's form showing that the applicant is of reputable and responsible character and able to comply with the minimum standards for a service or facility providing mental health, alcohol and drug abuse prevention and/or treatment, intellectual or developmental disability services, or personal support services. The application will also show the applicant is able to comply with the department's rules adopted under this part. The application shall contain the following additional information:

(1) The name of the applicant;

(2) The type of facility or service;

(3) The location;

(4) The name of the person or persons to be in charge; and

(5) Any other information as a department may require.

(c) The department may approve the issuance of a license upon the application without further evidence, or, in its discretion, it may conduct its own investigation.

(d)(1) Proof that a person or business has a personal or business history in any jurisdiction of:

(A) Operation of substandard services or facilities; or

(B) A felony conviction

creates a presumption that the applicant or licensee does not have reputable and responsible character.

(2) An applicant denied a license on the basis of the presumption may request a hearing for the purpose of rebutting the presumption created by this subsection (d).

(e) A license shall not be issued or renewed if the applicant, or any chief executive officer or director of the applicant, does not have reputable and responsible character.

(f) If the department determines that a license should not be granted, it shall notify the applicant. Within fifteen (15) days of notification of denial, the applicant may file a written request for review by the panel appointed under § 33-2-403(d). The review shall be at the earliest possible date, and recommendations shall be reported to the commissioner. The commissioner shall determine whether the original license denial shall remain effective and shall notify the applicant. Within fifteen (15) days of notification, the applicant may file a written request for a hearing before the department. The hearing shall be conducted under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(g) If the department determines that the applicant complies with and will in the future comply with this part and rules adopted under this title and has a reputable and responsible character, the department shall issue a license.

(h) A license is valid for up to one (1) year from the date of issuance. A license may be issued only for the premises or services named in the application, must be posted in a conspicuous place at the service or facility, and may be renewed from year to year. A license is not assignable or transferable except as permitted by § 33-2-418(b)(3). The department may charge a reasonable fee for processing the application and issuance of licenses.

History.

Acts 1978, ch. 853, §§ 2, 6; 1981, ch. 436, §§ 1, 3; 1983, ch. 323, §§ 25-27; T.C.A., § 33-1802; Acts 1987, ch. 143, § 1; T.C.A., § 33-1806; Acts 1987, ch. 248, §§ 2, 3; 1988, ch. 828, §§ 3, 4, 6, 7; 1988, ch. 875, §§ 1, 2; 1989, ch. 434, § 5; 1989, ch. 513, §§ 1, 14; 1989, ch. 559, § 2; 1991, ch. 459, §§ 9, 10; 1992, ch. 913, § 2; 1993, ch. 234, §§ 22, 25; 1996, ch. 1074, § 1; T.C.A., §§ 33-2-502, 33-2-506; Acts 2000, ch. 947, §§ 1, 6; 2001, ch. 282, § 5; 2002, ch. 730, § 3; 2012, ch. 1010, § 9.

33-2-407. Suspension or revocation of license — Civil penalties.

(a) The department may suspend or revoke a license on the following grounds:

(1) A violation of this title or rules adopted under this title;

(2) Permitting, aiding or abetting the commission of any illegal act during a licensed service or in a licensed facility;

(3) Conduct or practice found by the department to be detrimental to the welfare of the service recipients of a licensed service or facility; or

(4) Abuse, misappropriation of property or neglect.

(b) The department may impose a civil penalty on a licensee for a violation of this title or a department rule. Each day of a violation constitutes a separate violation. The department shall establish by rule a schedule designating the minimum and maximum civil penalties within the ranges set in § 33-2-409 that may be assessed under this part for violation of each statute and rule that is subject to violation. The department may exclude a statute or rule from the schedule if it determines that a civil penalty for violation of that statute or rule would not achieve the purposes of licensure. If the department has not adopted a rule designating the minimum and maximum civil penalty that may be assessed for violation of a statute or rule, the maximum civil penalty that may be imposed for violation of that statute or rule shall be the lowest figure set under the

appropriate subsection of § 33-2-409 that applies to the violation.

(c)(1) The procedure governing the suspension or revocation of a license or imposition of a civil penalty shall be as prescribed in this subsection (c).

(2) A complaint shall be filed by the department stating facts constituting a ground or grounds for the proposed action.

(3) If the department determines that a license should be suspended or revoked, a civil penalty imposed, or both, it shall so notify the licensee. Within fifteen (15) days of notification, the licensee may file a written request for review by the panel appointed under § 33-2-403(d). The review shall be at the earliest possible date, and the panel shall report its recommendations to the commissioner. The commissioner shall determine whether the original action shall remain effective and shall notify the licensee. Within fifteen (15) days of notification, the licensee may file a written request for a hearing before the department. The hearing shall be conducted under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(4) The department may determine after the hearing that the license be suspended or revoked, that a civil penalty be imposed, or that no action be taken.

(5) If the department determines that a license should be suspended, the department may also set the conditions to be met by the licensee during the period of suspension to entitle the licensee to resume operation of the service or facility.

(6) If the department determines that a license should be suspended or revoked, a civil penalty should be imposed, or both, the department shall enter an order stating the grounds for the action.

(7) The department may, after a hearing, hold a case under consideration and specify requirements to be met by a licensee to avoid either suspension, revocation, or civil penalty. In those cases, the department shall enter an order accordingly and notify the licensee by certified mail. If the licensee complies with the order and proves that fact to the satisfaction of the department, the department shall enter an order showing satisfactory compliance and dismiss the case because of compliance.

(d) If a civil penalty lawfully imposed under this part is not paid, the penalty shall be recoverable in the name of the state by the attorney general and reporter in the chancery court of Davidson County or by legal counsel for the department in the chancery court of the county in which all or part of the violation occurred.

History.

Acts 1978, ch. 853, § 7; 1981, ch. 436, § 4; T.C.A., § 33-1807; Acts 1989, ch. 559, § 3; T.C.A., § 33-2-507; Acts 2000, ch. 947, § 1; 2003, ch. 103, § 2.

33-2-408. Sanctions against licensed entities.

(a) All proceedings by the department of intellectual and developmental disabilities (DIDD) to impose sanctions against licensed entities under this title shall be conducted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The proceedings shall include notice and opportunity for a hearing before an administrative law judge who shall issue an initial order.

(b) Sanctions shall include any action by DIDD, based upon alleged deficient practices of the licensed entity, to impose financial or contractual penalties, including the following:

(1) Financial penalties shall include fines, liquidated damages or denial, withholding or delay of a payment;

(2) Imposition of moratoria on admissions when the limitations are unrelated to state budget considerations; or

(3) Actions against the entity based upon allegations that the entity is responsible for abuse, neglect, exploitation, misappropriation or mistreatment of an individual for whom the entity is responsible.

(c) Sanctions do not include any action to recoup moneys that are determined by DIDD to be unearned, according to stipulations specified in the provider agreement between DIDD and the provider.

(d) This section shall not prevent termination of any contract with the licensed entity in accordance with the provisions of that contract. In those cases the contractor shall have only the due process rights, if any, otherwise provided by law regarding termination of state contracts.

(e) All sanctions, except for financial sanctions, may be imposed immediately by DIDD. This does not prevent the provider from appealing the decision using the process as provided in the Uniform Administrative Procedures Act.

(f) These requirements shall not prevent the DIDD or the provider from pursuing alternative means of resolving issues related to sanctions while the process as provided in the Uniform Administrative Procedures Act is pending.

History.

Acts 2001, ch. 299, § 1; 2009, ch. 477, § 1; 2010, ch. 1100, § 32; 2011, ch. 158, § 15.

Compiler's Notes.

Former § 33-2-408, concerning amount of civil penalties, was transferred to § 33-2-409 by Acts 2001, ch. 299, § 1.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health (now commissioner of mental health and substance abuse services), the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

33-2-409. Amount of civil penalties.

(a) A civil penalty of not less than two hundred fifty dollars ($250) and not more than five hundred dollars ($500) may be imposed on a licensee for a violation of a statute or rule.

(b) A civil penalty of not less than five hundred dollars ($500) and not more than five thousand dollars ($5,000) may be imposed on a licensee for a second or subsequent violation of the same kind committed

within twelve (12) months of the first penalty being imposed.

History.
Acts 2000, ch. 947, § 1; T.C.A. § 33-2-408; Acts 2001, ch. 299, § 1.

Compiler's Notes.
Former § 33-2-409, concerning the service recipient protection trust fund, was transferred to § 33-2-410 by Acts 2001, ch. 299, § 1.

33-2-410. Service recipient protection trust fund.

(a) The commissioner shall establish and maintain a service recipient protection trust fund, created by the deposit of all civil penalty moneys collected under this part.

(b) The trust fund shall be maintained for the purpose of protecting the service recipients of a facility or service, whose noncompliance with the conditions of continued licensure, applicable state and federal statutes, rules, or contractual standards threatens the service recipients' care or property or the facility's or service's continued operation.

(c) Notwithstanding any law to the contrary, trust funds remaining unspent at the end of the fiscal year shall be carried over into the budget of the department for the subsequent fiscal year, and shall continue to be carried over from year to year until expended for the purposes prescribed in this section.

History.
Acts 2000, ch. 947, § 1; T.C.A. § 33-2-409; Acts 2001, ch. 299, § 1.

Compiler's Notes.
Former § 33-2-410, concerning surveyor notification to licensee of violations, was transferred to § 33-2-411 by Acts 2001, ch. 299, § 1.

33-2-411. Surveyor to notify licensee of violations.

If a licensure surveyor finds a violation of a statute or rule that may be a ground for a civil penalty, the surveyor shall advise the licensee of the finding orally before concluding the survey.

History.
Acts 2000, ch. 947, § 1; T.C.A. § 33-2-410; Acts 2001, ch. 299, § 1; 2004, ch. 565, § 1.

Compiler's Notes.
Former § 33-2-411, concerning suit to enjoin services rendered without license or under suspended or revoked license, was transferred to § 33-2-412 by Acts 2001, ch. 299, § 1.

33-2-412. Suit to enjoin services rendered without license or under suspended or revoked license.

(a) A department may sue to enjoin any person, partnership, association or corporation from establishing, conducting, managing or operating any service or facility providing mental health, alcohol and drug abuse prevention and/or treatment, intellectual or developmental disability services, or personal support services within the meaning of this part without having obtained a license or while its license has been suspended or revoked. Suit may be brought in the name of the state by the attorney general and reporter in the chancery court of Davidson County or by legal counsel for a department in the chancery court of the county in which all or part of the violations occurred.

(b) In charging any defendant in a complaint for injunction, it shall be sufficient to charge that the defendant did, upon a certain day and in a certain county, establish, conduct, manage or operate a service or facility providing mental health, alcohol and drug abuse prevention and/or treatment, intellectual or developmental disability services, or personal support services or that the defendant is about to do so without having a license, without averring any further or more particular facts concerning the case.

History.
Acts 1978, ch. 853, § 8; 1981, ch. 436, § 5; T.C.A., § 33-1808; Acts 1988, ch. 828, § 8; 1993, ch. 234, § 26; T.C.A., § 33-2-508; Acts 2000, ch. 947, § 1; T.C.A. § 33-2-411; Acts 2001, ch. 282, § 6; 2001, ch. 299, § 1; 2012, ch. 1010, § 10.

Compiler's Notes.
Former § 33-2-412, concerning inspections of facilities, was transferred to § 33-2-413 by Acts 2001, ch. 299, § 1.

33-2-413. Inspections of facilities.

(a) The department shall make at least one (1) unannounced life safety and environmental inspection of each licensed service or facility yearly. The department shall inspect for quality standards all licensees that contract with the department as part of its contract monitoring. The department shall inspect for quality standards all licensees that do not contract with the department. The department may deem a service or facility in compliance without inspection if the service or facility meets another government agency's certification or accreditation requirements provided for in rules of the department.

(b) With or without giving notice, the department may enter the premises and inspect any applicant or licensee when a complaint is filed with the department against the applicant or licensee or when the department otherwise deems inspection in the interest of service recipients. Inspection may include review of physical plant, program, activities, and applicant or licensee records.

(c) The department may charge a fee for any service or facility inspection in an amount not to exceed fifty dollars ($50.00).

(d) If the department finds noncompliance with life safety or food service standards relating to non-life threatening issues, the department shall refer the findings to the state or local agency responsible for life safety or food service inspection for re-inspection or review in accordance with life safety or food service standards. The department will accept the state or local agency's determination.

(e) The department shall, to the extent practicable, coordinate life safety inspections to avoid duplication without good cause in the same calendar year by other government agencies that apply substantially the same standards.

History.
Acts 1978, ch. 853, § 9; 1983, ch. 323, §§ 28, 29; T.C.A., § 33-1809; Acts 1989, ch. 559, § 4; T.C.A., § 33-2-509; Acts 2000, ch. 947, § 1; T.C.A. § 33-2-412; Acts 2001, ch. 299, § 1.

Compiler's Notes.
Former § 33-2-413, concerning departmental assistance to applicants and to service recipients affected by license denial, suspension or revocation, was transferred to § 33-2-414 by Acts 2001, ch. 299, § 1.

33-2-414. Departmental assistance to applicants and to service recipients affected by license denial, suspension or revocation.

The department may provide assistance to applicants for a license under this part. The department shall provide assistance in placing service recipients who are adversely affected by denial, suspension, or revocation of a license under this part.

History.
Acts 1978, ch. 853, § 11; T.C.A., §§ 33-1810; 33-2-510; Acts 2000, ch. 947, § 1; T.C.A. § 33-2-413; Acts 2001, ch. 299, § 1.

Compiler's Notes.
Former § 33-2-414, concerning provisional licenses, was transferred to § 33-2-415 by Acts 2001, ch. 299, § 1.

33-2-415. Provisional licenses.

(a) The department may grant a provisional license for up to one (1) year to a service or facility if:

(1) The service or facility is making a diligent effort to comply with standards adopted under this part;

(2) The continued operation of the service or facility will not endanger the health or safety of its service recipients;

(3) The continued operation of the service or facility is necessary because care is not otherwise reasonably available for its service recipients;

(4) The service or facility has submitted an acceptable compliance plan specifying how and when deficiencies will be corrected; and

(5) The service or facility has substantially met the commitments made in the preceding year's compliance plan, if any.

(b) Failure to meet the commitments made in the compliance plan is a ground for revocation or suspension of the license.

(c) Copies of provisional licenses and compliance plans shall be maintained in a central location and are open to public inspection.

History.
Acts 1978, ch. 853, § 12; 1979, ch. 199, § 1; 1983, ch. 323, § 30; T.C.A., §§ 33-1811, 33-2-511; Acts 2000, ch. 947, § 1; T.C.A. § 33-2-414; Acts 2001, ch. 299, § 1.

Compiler's Notes.
Former § 33-2-415, concerning requirement that department investigate reports of abuse, dereliction or deficiency in operation of facility, private cause of action, and departmental remedies, was transferred to § 33-2-416 by Acts 2001, ch. 299, § 1.

33-2-416. Department to investigate reports of abuse, dereliction or deficiency in operation of facility — Private cause of action — Departmental remedies.

(a) The department shall investigate reports of serious abuse, dereliction or deficiency in the operation of a licensed service or facility.

(b)(1) A person making any report or investigation pursuant to this part, including representatives of the department in the reasonable performance of their duties and within the scope of their authority, shall be presumed to be acting in good faith and shall be immune from any liability, civil or criminal, that might otherwise be incurred or imposed.

(2) Any such person shall have the same immunity with respect to participation in any judicial proceeding resulting from the report or investigation.

(3) Any person making a report under this part shall have a civil cause of action for appropriate compensatory and punitive damages against any person who causes a detrimental change in the employment status of the reporting party by reason of the report.

(c)(1) The commissioner shall suspend or revoke the license of any service or facility if serious abuse, dereliction or deficiency is found and not corrected in a reasonable time.

(2) The commissioner, in the commissioner's discretion, may suspend enrollment in a service or facility pending resolution of the investigation or of proceedings to suspend, revoke, or deny the license, or until the service or facility corrects any serious abuse, dereliction, or deficiency found in the course of the investigation. The commissioner may suspend enrollment in a licensed service or facility based on probable cause to believe that serious abuse, dereliction, or deficiency in the operation of the licensed service or facility has occurred or would occur without suspension of enrollment. Suspension of enrollment shall not exceed a period of one hundred twenty (120) days except that, in the discretion of the commissioner, the period may be extended for an additional period not to exceed one hundred twenty (120) days. Nothing in this part takes away from the right of the department to issue an order of summary suspension of the license pursuant to § 4-5-320(c) and (d).

History.
Acts 1978, ch. 853, § 13; 1983, ch. 323, § 31; T.C.A., § 33-1812; Acts 1987, ch. 248, § 2; 1994, ch. 760, § 1; T.C.A., § 33-2-512; Acts 2000, ch. 947, § 1; T.C.A. § 33-2-415; Acts 2001, ch. 299, § 1.

Compiler's Notes.
Former § 33-2-416, concerning the provision of services without license, actions by commissioner, and violations, was transferred to § 33-2-417 by Acts 2001, ch. 299, § 1.

33-2-417. Provision of services without license — Actions by commissioner — Violations.

(a) If a commissioner finds that a service or facility is providing mental health, alcohol and drug abuse pre-

vention and/or treatment, intellectual or developmental disability services, or personal support services without a license, the commissioner may, without prior notice, order the service or facility immediately to cease and desist from providing mental health, alcohol and drug abuse prevention and/or treatment, intellectual or developmental disability services, or personal support services. Before issuing a cease and desist order, the commissioner shall find that entering the order is in the public interest; necessary for the protection of the health, safety, or welfare of the service recipients of the service or facility; and consistent with the purposes fairly intended by this part.

(b) The order shall state the relevant findings of fact and conclusions of law that support the commissioner's finding that entering the order without prior notice is in the public interest, necessary for the protection of the service recipients of the service or facility, and consistent with this part. The order shall provide notice to the respondent of the respondent's rights and responsibilities concerning review of the order.

(c)(1) The owner of the service or facility ordered to cease and desist operation may seek review of the order before the commissioner or the commissioner's designee under this subsection (c).

(2) The owner or legal representative of the service or facility may request an informal conference before the commissioner or the commissioner's designee. The request shall be filed with the commissioner within thirty (30) days of entry of the order. The commissioner or the commissioner's designee shall convene the requested informal conference within seven (7) days of the date of receipt of the request. The conference is informal and the service or facility has the right to be represented by counsel at all stages of the informal conference.

(3) The sole issue to be determined at the informal conference is whether the service or facility was operating without a license as required by this part prior to or concurrently with the date of the entry of the order. This part and its rules control this determination. At the conference the commissioner may uphold, amend, or rescind the cease and desist order. Unless contested under subdivision (c)(4), the original or amended cease and desist order becomes a final order within seven (7) days.

(4) If the commissioner or the commissioner's designee determines, as a result of the informal conference, that the cease and desist order should be amended or should not be rescinded, the owner or legal representative of the service or facility may seek review of the order under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3. The request shall be made in writing to the commissioner within seven (7) days of receipt of written notice of the commissioner's decision. Upon receipt of the request, the commissioner shall immediately refer the matter to the department of state for initiation of contested case proceedings.

(5) If the respondent fails to request an informal conference under subdivision (c)(1), then the cease and desist order becomes a final order of the commissioner within thirty (30) days of its entry. The service or facility may obtain judicial review of this final order in the chancery court of Davidson County under the Uniform Administrative Procedures Act.

(d) It is a Class B misdemeanor to violate a cease and desist order lawfully entered by the commissioner. Each day of operation in violation of the commissioner's cease and desist order, calculated from the date of its service upon the owner or operator of the service or facility, is a separate offense.

(e) Nothing in this part precludes any person, including the department, who is aggrieved by the operation of an unlicensed service or facility from pursuing other remedies and sanctions, including those provided by §§ 33-2-405 and 33-2-412.

History.

Acts 1996, ch. 796, § 1; T.C.A., § 33-2-513; Acts 2000, ch. 947, § 1; T.C.A. § 33-2-416; Acts 2001, ch. 282, § 7; 2001, ch. 299, § 1; 2012, ch. 1010, § 11.

Compiler's Notes.

Former § 33-2-417, concerning residential facilities, was transferred to § 33-2-418 by Acts 2001, ch. 299, § 1.

33-2-418. Residential facilities.

(a) Any residential facility that houses persons with intellectual or developmental disabilities and is required by law to be licensed by the department shall not receive a license if the facility houses more than four (4) persons served and is not licensed on June 23, 2000. The department shall not license more than two (2) such residential facilities within five hundred yards (500 yds.) in any direction from other such facilities housing persons served. All set-back requirements applicable to lots where such facilities are located shall apply to such residential facilities.

(b) This section does not apply to:

(1) Housing for persons with mental illness or serious emotional disturbance;

(2) Housing for residents on property owned or leased by the state or a corporation that provides that housing if the property was recorded in the corporate or state name before January 1, 1989;

(3) Housing for service recipients when the commissioner authorizes the transfer of a license at the same site to a successor provider, if, and only if, the license holder's contract with the department is terminated, the transfer of license is necessary to sustain the quality of life of the service recipients, and the successor provider does not increase the number of service recipients at the site; or

(4) Housing for persons on a temporary or transitional basis, such as boarding facilities provided by residential schools or facilities providing services through a specialized court program addressing the needs of individuals both in court custody and dually diagnosed with an intellectual or developmental disability and mental illness.

(c) Notwithstanding any law or rule to the contrary, a residential facility or provider licensed by the department of intellectual and developmental disabilities to provide residential services to persons with intellectual

or developmental disabilities shall not be prohibited from providing residential services to the elderly or adults with physical disabilities, so long as the services are adequate to ensure the health, safety and welfare of each resident.

History.
Acts 1989, ch. 504, § 1; T.C.A., § 33-5-105; Acts 2000, ch. 947, §§ 1, 6; T.C.A. § 33-2-417; Acts 2002, ch. 730, § 4; 2009, ch. 426, § 1; 2012, ch. 1010, §§ 12-14.

33-2-419. Standardized training and continuing education required — Classifications.

(a) Any individual employed by a personal support services agency to provide personal support services must complete standardized training and continuing education under department rules.

(b) The department may create classifications for personal support services agencies specializing in a type of service or care and may require additional training and continuing education for those classifications.

History.
Acts 2001, ch. 282, § 8.

33-2-420. Dual licensing not required.

If an agency is licensed as a personal support services agency under this title, it does not have to be licensed under title 68, chapter 11, part 2, as a home care organization to provide personal support services. If an agency is licensed under title 68, chapter 11, part 2, as a home care organization, it does not have to be licensed under this title to provide personal support services.

History.
Acts 2001, ch. 282, § 9.

Compiler's Notes.
Acts 2001, ch. 299, effective May 29, 2001, added a new section designated as § 33-2-408 and renumbered existing §§ 33-2-408 through 33-2-417 as §§ 33-2-409 through 33-2-418. Accordingly, §§ 33-2-418 and 33-2-419 added by Acts 2001, ch. 282, have been renumbered as §§ 33-2-419 and 420.

33-2-421. Providers of personal support services.

(a) As used in this section, unless the context otherwise requires:

(1) "Personal support services agency" means a sole proprietorship, partnership, corporation, limited liability company, or a limited partnership that provides personal support services as defined in this part. "Personal support services agency" includes an entity that employs or subcontracts with individuals who provide personal support services to service recipients; and

(2) "Personal support services worker" means a person licensed as a personal support services agency, or an employee or an individual subcontracted by a personal support services agency who is providing personal support services pursuant to an arrangement between a service recipient and a personal support services agency.

(b) In addition to the standards and requirements for personal support services as established by rules adopted by the department, personal support services agencies shall comply with the requirements in this section.

(c) A personal support services agency shall provide to each service recipient a consumer notice before beginning service, which shall include, at a minimum, the following:

(1) The duties, responsibilities, obligations and legal liabilities of the personal support services agency, the personal support services worker, and the personal support services recipient. The description shall clearly set forth the service recipient's responsibility, if any, for:

(A) Day-to-day supervision of the personal support services workers;

(B) Assigning duties to the personal support services worker;

(C) Hiring, firing and discipline of the personal support services worker;

(D) Provision of equipment or materials for use by the personal support services worker;

(E) Performing a criminal background check on the personal support services worker;

(F) Checking the personal support services worker's references; and

(G) Ensuring credentials and appropriate licensure/certification of a personal support services worker; and

(2) A statement identifying the personal support services agency as an employer, or contractor, as applicable, of the personal support services worker along with the responsibility the personal support services agency will assume for the payment of the personal support services worker's wages, including overtime pay for hours worked in excess of forty (40) hours in a workweek, taxes, social security, workers' compensation and unemployment compensation payments.

(d) A personal support services agency shall provide a notice to each personal support services worker who is placed with a service recipient before the worker provides any service to the service recipient. The worker notice shall contain the following information:

(1) The relationship between the personal support services agency and the personal support services workers; and

(2) A description of the duties, responsibilities, obligations and legal liabilities of the personal support services agency, the service recipient, and the personal support services worker. That description shall include the following information:

(A) A statement identifying the employing or contracting personal support services agency as responsible for the payment of the personal support services worker's wages, including overtime pay for hours worked in excess of forty (40) hours in a workweek, taxes, social security, unemployment and workers' compensation insurance as pre-

scribed by state and federal law; and

(B) A statement identifying which party will be responsible for the personal support services worker's hiring, firing, discipline, day-to-day supervision, assignment of duties and provision of equipment or materials for use by the personal support services worker.

(e) The notices required under subsection (c) shall be signed by the service recipient or authorized representative and retained by the personal support services agency at its office for not less than two (2) years following termination of service.

History.
Acts 2007, ch. 408, § 1.

PART 7

COMMUNITY MENTAL HEALTH CENTER COOPERATION ACT

33-2-701. Short title.

This part shall be known and may be cited as the "Community Mental Health Center Cooperation Act of 1998."

History.
Acts 1998, ch. 1005, § 1; T.C.A., § 33-2-901; Acts 2000, ch. 947, § 1.

Compiler's Notes.
Former chapter 2, §§ 33-2-101 — 33-2-108, 33-2-201 — 33-2-202, 33-2-301 — 33-2-311, 33-2-401, 33-2-501 — 33-2-513, 33-2-601 — 33-2-602, 33-2-604, 33-2-701, 33-2-901 — 33-2-909 (Acts 1965, ch. 82, § 8; 1973, ch. 341, §§ 3, 4; 1974, ch. 802, § 8; 1975, ch. 248, §§ 1, 3; 1976, ch. 806, § 1(35); 1978, ch. 617, § 2; 1978, ch. 853, §§ 1-9, 11-13; 1979, ch. 199, § 1; 1979, ch. 369, § 1; 1981, ch. 18, § 1; 1981, ch. 98, § 5; 1981, ch. 436, §§ 1, 4, 5; 1981, ch. 436, § 3; 1982, ch. 584, §§ 2, 4-12; 1983, ch. 323, §§ 25-28, 31; 33-201, T.C.A. § 33-350, 33-1801, T.C.A., §§ 33-1803 — 33-1812, T.C.A., §§ 33-1902 — 33-1911; 1985, ch. 437, § 5, 31-32; 1987, ch. 143, §§ 1, 6; 1987, ch. 248, §§ 1-3; 1987, ch. 320, § 1; 1988, ch. 586, § 1; 1988, ch. 828, §§ 3-8; 1988, ch. 875, §§ 1, 2; 1989, ch. 253, § 3; 1989, ch. 254, § 3; 1989, ch. 255, § 2; 1989, ch. 256, § 2; 1989, ch. 257, § 3; 1989, ch. 259, § 3; 1989, ch. 260, § 3; 1989, ch. 261, § 3; 1989, ch. 271, § 3; 1989, ch. 272, § 3; 1989, ch. 434, § 5; 1989, ch. 513, §§ 1, 14; 1989, ch. 559, §§ 1-4; 1989, ch. 591, § 112; 1991, ch. 459, §§ 9, 10; 1992, ch. 913, § 2; 1993, ch. 234, §§ 22-26; 1994, ch. 760, § 1; 1996, ch. 796, § 1; 1996, ch. 1074, § 1; 1998, ch. 1005, § 1-9; 2000, ch. 947, § 6); § 33-2-603 (Acts 1985, ch. 437, § 31; 1987, ch. 143, § 5), which had been previously repealed by Acts 1988, ch. 586, § 2; § 33-2-801 (Acts 1989, ch. 513, § 4), which had been previously repealed by Acts 1993, ch. 234, § 9; §§ 33-2-802 and 33-2-803 (Acts 1989, ch. 513, § 4), which were transferred to §§ 68-24-602, 68-24-603 in 1993, is deleted and replaced in the revision of title 33 by Acts 2000, ch. 947, § 1, effective March 1, 2001.

33-2-702. Statement of policy.

It is the policy of this state to displace competition among community mental health centers with regulation to the extent set forth in this part and to actively supervise the regulation to the fullest extent required by law, in order to promote cooperation and coordination among community mental health centers in the provision of mental health services to citizens receiving the services under programs funded or administered by departments or agencies of state government, including, but not limited to, the TennCare program.

History.
Acts 1998, ch. 1005, § 2; T.C.A., § 33-2-902; Acts 2000, ch. 947, § 1; 2001, ch. 349, § 2.

33-2-703. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Community mental health center" includes any parent or corporate affiliate of a community mental health center as defined in § 33-1-101;

(2) "Cooperative agreement" means an agreement among two (2) or more community mental health centers for the offering, provision, operation, coordination, planning, funding, pricing, contracting, utilization review, or management of mental health and related services under programs funded or administered by departments or agencies of state government, including, but not limited to, the TennCare program, or the sharing, allocation, or referral of service recipients, personnel, instructional programs, support services, ancillary services, and facilities, or other services traditionally offered by community mental health centers for the programs; and

(3) "Intervenor" means any hospital, physician, allied health professional, health care provider or other person furnishing goods or services to, or in competition with, community mental health center, insurer, hospital service corporation, medical service corporation, hospital and medical services corporation, preferred provider organization, health maintenance organization, behavioral health organization, or any employer or association that directly or indirectly provides health care benefits to its employees or members.

History.
Acts 1998, ch. 1005, § 3; T.C.A., § 33-2-903; Acts 2000, ch. 947, §§ 1, 6.

33-2-704. Cooperative agreements among community mental health centers — Review by department — Certificate of public advantage.

(a) A community mental health center may negotiate and enter into cooperative agreements with other community mental health centers in the state if the likely benefits resulting from the agreements outweigh any disadvantages attributable to a reduction in competition that may result from the agreements.

(b) Parties to a cooperative agreement may apply to the department for a certificate of public advantage governing that cooperative agreement. The application shall include an executed written copy of the cooperative agreement and describe the nature and scope of the cooperation in the agreement and any consideration passing to any party under the agreement. A copy of the application and copies of all additional related materials shall be submitted to the attorney general and reporter and to the department at the same time.

(c) The department shall review the application in accordance with the standards set forth in subsection

(e) and may hold a public hearing in accordance with the rules adopted by the department. The department shall give notice of the application to interested parties by publishing a notice in the state administrative register in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. Any intervenor may intervene in the proceeding and shall have standing under the Uniform Administrative Procedures Act. The department shall grant or deny the application within sixty (60) days of the date of filing of the application, and that decision shall be in writing and set forth the basis for the decision. The department shall furnish a copy of the decision to the applicants, the attorney general and reporter, and any intervenor. Should the department determine that additional time is needed to review the application, the department, upon written notice to the applicants, the attorney general and reporter and any intervenor, may extend the time for review for a period of thirty (30) days except that, in the discretion of the commissioner, the period may be extended for an additional thirty (30) days.

(d) If the cooperative agreement primarily relates to a program funded or administered by another department or agency of state government, the department may refer the application to that other department or agency to conduct the review and render the decision required by this part.

(e) The department shall issue a certificate of public advantage for a cooperative agreement if it, or the other department or agency to which the department has referred the application pursuant to subsection (d), determines that the likely benefits resulting from the agreement outweigh any disadvantages attributable to a reduction in competition that may result from the agreement.

(f) In evaluating the potential benefits of a cooperative agreement, the department may consider whether one (1) or more of the following benefits may result from the cooperative agreement:

(1) Enhanced quality of mental health and mental health-related care provided to state citizens, especially those receiving the services under programs funded or administered by departments or agencies of state government;

(2) Preservation of community mental health facilities in geographical proximity to the communities traditionally served by those facilities;

(3) Gains in the cost-efficiency of services provided by the community mental health centers involved;

(4) Improvements in the utilization of mental health resources and equipment;

(5) Avoidance of duplication of mental health resources; and

(6) Enhanced efficiency of the administration of programs of state government to provide mental health services to citizens of this state.

(g) The department's evaluation of any disadvantages attributable to any reduction in competition likely to result from the agreement may include, but need not be limited to, the following factors:

(1) The extent of any likely adverse impact on the ability of health maintenance organizations, preferred provider organizations, managed health care organizations or other health care payers to negotiate optimal payment and service arrangements with community mental health centers, or other health care providers;

(2) The extent of any reduction in competition among physicians, allied health professionals, other health care providers, or other persons furnishing goods or services to, or in competition with, community mental health centers that is likely to result directly or indirectly from the cooperative agreement;

(3) The extent of any likely adverse impact on persons with mental illness or serious emotional disturbance in the quality, availability and price of health care services; and

(4) The availability of arrangements that are less restrictive to competition and achieve the same benefits or a more favorable balance of benefits over disadvantages attributable to any reduction in competition likely to result from the agreement.

(h) The department, or other department or agency to which the department has referred the application under subsection (d), shall consult with the attorney general and reporter regarding its evaluation of any potential reduction in competition resulting from a cooperative agreement. The attorney general and reporter may consult with the United States department of justice or the federal trade commission regarding its evaluation of any potential reduction in competition resulting from a cooperative agreement. Should the attorney general and reporter, after consultation with the department, determine that it is necessary to consult with the United States department of justice or the federal trade commission, or determines that further information is needed to review the application, the department, upon written notice to the applicant, attorney general and reporter, and any intervenor, may extend the time for approval or disapproval of an application an additional forty-five (45) days.

(i) If the department, or the other department or agency to which the department has referred the application under subsection (d), determines that the likely benefits resulting from a certified agreement no longer outweigh any disadvantages attributable to any potential reduction in competition resulting from the agreement, the department, or the other department or agency to which the department has referred the application under subsection (d), may initiate contested case proceedings to terminate the certificate of public advantage in accordance with the Uniform Administrative Procedures Act.

(j) The department shall maintain on file all cooperative agreements for which certificates of public advantage remain in effect. Any party to a cooperative agreement who terminates the agreement shall file a notice of termination.

(k) The department, or the other department or agency to which the department has referred the application under subsection (d), shall review, on at least an annual basis, each certificate of public advantage it has granted under this part. The certificate shall be

renewed if it is determined that the certificate continues to comply with the standards of subsection (e).

(*l*) Prior to making an application for a certificate of public advantage, the parties may submit an initial filing at least forty-five (45) days prior to filing the application. The initial filing shall summarize the proposed cooperative agreement, describe the affected geographic market areas and those matters described in subsections (f) and (g). The department shall review the initial filing within thirty (30) days of receipt of the filing, informing the parties of any deficiencies along with a statement of specific remedial measures as to how the deficiencies could be corrected. A review of the initial filing by the department does not constitute approval of the final application.

History.
Acts 1998, ch. 1005, § 4; T.C.A., § 33-2-904; Acts 2000, ch. 947, § 1; 2001, ch. 349, §§ 3-8.

33-2-705. Judicial review of department decision.

Any applicant or intervenor aggrieved by a decision of the department, or the other department or agency of state government to which the department has referred the application under § 33-2-704(d), in granting or denying an application, refusing to act on an application, or terminating a certificate, is entitled to judicial review of the decision in accordance with Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

History.
Acts 1998, ch. 1005, § 5; T.C.A., § 33-2-905; Acts 2000, ch. 947, § 1.

33-2-706. Effect of grant or denial of certificate of public advantage.

(a) Notwithstanding title 47, chapter 25, or any other law to the contrary, a cooperative agreement for which a certificate of public advantage has been issued is a lawful agreement. Notwithstanding title 47, chapter 25, or any other law to the contrary, if the parties to a cooperative agreement file an application for a certificate of public advantage governing the agreement with the department, the conduct of the parties in negotiating and entering into a cooperative agreement is lawful conduct. Nothing in this subsection (a) immunizes any person for conduct in negotiating and entering into a cooperative agreement for which an application for a certificate of public advantage is not filed.

(b) If the department, or the other department or agency of state government to which the department has referred the application under § 33-2-704(d), determines that the likely benefits resulting from a cooperative agreement do not outweigh any disadvantages attributable to any potential reduction in competition resulting from the agreement, the agreement is invalid and has no further force or effect.

(c) Any dispute among the parties to a cooperative agreement concerning its meaning or terms is governed by principles of contract law.

History.
Acts 1998, ch. 1005, § 6; T.C.A., § 33-2-906; Acts 2000, ch. 947, § 1; 2001, ch. 349, § 9.

Compiler's Notes.
Acts 2001, ch. 349, § 10 provided that, notwithstanding any provision of law to the contrary, any increased costs resulting from that act in fiscal year 2001-2002 shall be paid from funds in the indigent defendants' counsel fund.

33-2-707. Application fees.

The department has the authority to establish reasonable application fees to cover the actual costs of administering this part by rules adopted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The department is authorized to adopt necessary rules to implement this part in accordance with the Uniform Administrative Procedures Act.

History.
Acts 1998, ch. 1005, § 7; T.C.A., § 33-2-907; Acts 2000, ch. 947, § 1; 2003, ch. 149, § 1.

33-2-708. Center not authorized to act as insurer.

Unless otherwise permitted by law, nothing in this part shall be deemed to grant any community mental health center or group of community mental health centers pursuant to a cooperative agreement, the authority to operate as a health maintenance organization, preferred provider organization, or insurer without obtaining an appropriate license from the department of commerce and insurance.

History.
Acts 1998, ch. 1005, § 8; T.C.A., § 33-2-908; Acts 2000, ch. 947, § 1.

33-2-709. Part not deemed to authorize referral to provider-owned facility in violation of law.

Nothing in this part shall be deemed to permit any referral to a provider-owned facility otherwise prohibited by state or federal law.

History.
Acts 1998, ch. 1005, § 9; T.C.A., § 33-2-909; Acts 2000, ch. 947, § 1.

PART 11

COSTS IN STATE FACILITIES

33-2-1101. Calculation of charges for service.

(a) The commissioner, with the approval of the comptroller of the treasury and the commissioner of finance and administration, shall establish by rule a method for determination at least annually of charges for services and supports provided to service recipients in programs operated by the department, including the charges for all institutional or professional services.

(b) Charges shall be calculated using generally accepted accounting principles.

History.
Acts 1983, ch. 323, § 32; 1996, ch. 795, § 1; T.C.A., § 33-4-101; Acts 2000, ch. 947, § 1.

Compiler's Notes.
Former chapter 2, §§ 33-2-101 — 33-2-108, 33-2-201 — 33-2-202, 33-2-301 — 33-2-311, 33-2-401, 33-2-501 — 33-2-513, 33-2-601 — 33-2-602, 33-2-604, 33-2-701, 33-2-901 — 33-2-909 (Acts 1965, ch. 82, § 8; 1973, ch. 341, §§ 3, 4; 1974, ch. 802, § 8; 1975, ch. 248, §§ 1, 3; 1976, ch. 806, § 1(35); 1978, ch. 617, § 2; 1978, ch. 853, §§ 1-9, 11-13; 1979, ch. 199, § 1; 1979, ch. 369, § 1; 1981, ch. 18, § 1; 1981, ch. 98, § 5; 1981, ch. 436, §§ 1, 4, 5; 1981, ch. 436, § 3; 1982, ch. 584, §§ 2, 4-12; 1983, ch. 323, §§ 25-28, 31; 33-201, T.C.A. § 33-350, 33-1801, T.C.A., §§ 33-1803 — 33-1812, T.C.A., §§ 33-1902 — 33-1911; 1985, ch. 437, § 5, 31-32; 1987, ch. 143, §§ 1, 6; 1987, ch. 248, §§ 1-3; 1987, ch. 320, § 1; 1988, ch. 586, § 1; 1988, ch. 828, §§ 3-8; 1988, ch. 875, §§ 1, 2; 1989, ch. 253, § 3; 1989, ch. 254, § 3; 1989, ch. 255, § 2; 1989, ch. 256, § 2; 1989, ch. 257, § 3; 1989, ch. 259, § 3; 1989, ch. 260, § 3; 1989, ch. 261, § 3; 1989, ch. 271, § 3; 1989, ch. 272, § 3; 1989, ch. 434, § 5; 1989, ch. 513, §§ 1, 14; 1989, ch. 559, §§ 1-4; 1989, ch. 591, § 112; 1991, ch. 459, §§ 9, 10; 1992, ch. 913, § 2; 1993, ch. 234, §§ 22-26; 1994, ch. 760, § 1; 1996, ch. 796, § 1; 1996, ch. 1074, § 1; 1998, ch. 1005, § 1-9; 2000, ch. 947, § 6); § 33-2-603 (Acts 1985, ch. 437, § 31; 1987, ch. 143, § 5), which had been previously repealed by Acts 1988, ch. 586, § 2; § 33-2-801 (Acts 1989, ch. 513, § 4), which had been previously repealed by Acts 1993, ch. 234, § 9; §§ 33-2-802 and 33-2-803 (Acts 1989, ch. 513, § 4), which were transferred to §§ 68-24-602, 68-24-603 in 1993, is deleted and replaced in the revision of title 33 by Acts 2000, ch. 947, § 1, effective March 1, 2001.

33-2-1102. Determination of indigency — Periodic payments.

(a) The commissioner, with the approval of the comptroller and the commissioner of finance and administration, shall establish rules for determining indigence and payments to be made periodically by nonindigent recipients of service or their responsible relatives.

(b) Periodic payments by the recipient of service or the responsible relative shall be based on ability to pay as determined by factors the commissioner considers relevant.

History.
Acts 1983, ch. 323, § 32; 1996, ch. 795, § 2; T.C.A., § 33-4-102; Acts 2000, ch. 947, § 1.

33-2-1103. Persons liable for charges.

If a person is a service recipient in a program operated by the department or is the parent of an unemancipated child who is a service recipient in a program operated by the department, then the person is liable for the charges for the services and supports provided.

History.
Acts 1983, ch. 323, § 32; T.C.A. (orig. ed.), 33-4-104; Acts 1996, ch. 795, § 3; T.C.A., § 33-4-103; Acts 2000, ch. 947, § 1.

33-2-1104. Nonindigent recipients.

If a service recipient who is not indigent receives service from a program operated by the department, then the department shall at least annually establish an amount to be paid periodically by the service recipient and each responsible relative.

History.
Acts 1983, ch. 323, § 32; T.C.A. (orig. ed.), § 33-4-106; Acts 1996, ch. 795, § 4; T.C.A., § 33-4-105; Acts 2000, ch. 947, § 1.

33-2-1105. Information from liable parties — Effect of failure to provide information.

(a) The service recipient who receives services and supports, the service recipient's conservator or guardian, and persons who are legally liable for charges for services and supports shall furnish all information that the department deems necessary to determine the person's financial liability.

(b) If a person willfully refuses to provide the information or knowingly provides false information that results in an underassessment of liability, the person is liable for the total charges for services and supports provided and for the amount of the state's expenses incurred in recovering the amounts, including attorney salaries or fees.

History.
Acts 1983, ch. 323, § 32; 1996, ch. 795, § 5; T.C.A., § 33-4-107; Acts 2000, ch. 947, § 1.

33-2-1106. Person receiving services under court order.

If a service recipient obtains services and supports under a court order from a program operated by the department, the department may demand any of the service recipient's money that is in the custody of the court and credit it to the service recipient's account.

History.
Acts 1983, ch. 323, § 32; 1996, ch. 795, § 6; T.C.A., § 33-4-108; Acts 2000, ch. 947, § 1.

33-2-1107. Claims against recipients.

The state has a continuing claim against the recipient of service from a program operated by the department and the recipient's estate and against responsible relatives for any unpaid difference between what the department determines the person owes and what was paid for the service provided. If the recipient of service dies, or a responsible relative of the recipient of service dies, and the commissioner presents a claim for a sum unpaid and owing to the state on account of the recipient of service, then the claim shall be paid from the estate of the deceased person.

History.
Acts 1983, ch. 323, § 32; T.C.A. (orig. ed.), 33-4-110; Acts 1996, ch. 795, § 7; T.C.A., § 33-4-109; Acts 2000, ch. 947, § 1.

33-2-1108. Voluntary contribution of funds.

If a person who is not legally responsible to pay for a service recipient's care contributes funds voluntarily for the service recipient's care, the department may accept the funds.

History.
Acts 1983, ch. 323, § 32; 1996, ch. 795, § 8; T.C.A., § 33-4-111; Acts 2000, ch. 947, § 1.

33-2-1109. Prohibition on maintenance at state's expense.

(a) No service recipient may receive care at the expense of the state in a program operated by the department except:

(1) One who is indigent;

(2) A person subject to evaluation, diagnosis or treatment under chapter 5, part 5 of this title, or chapter 7, part 3 of this title and charged with a felony, or chapter 7, part 4 of this title;

(3) A person whose service is paid for, in part, by state or federal government and the payment is conditioned on the department's acceptance of it as full satisfaction of the person's liability; or

(4) A person whose service is paid for by the service recipient or another person or a third party and the department determines, under standards approved by the commissioner of finance and administration and the comptroller of the treasury, that the state's interests are best served by accepting payment offered as full satisfaction of the service recipient's liability.

(b) Subdivision (a)(4) does not apply to any claim for payment for which the state has a suit pending to recover payment.

History.
Acts 1983, ch. 323, § 32; 1996, ch. 795, § 9; T.C.A., § 33-4-112; Acts 2000, ch. 947, § 1; 2002, ch. 730, § 7; 2009, ch. 531, § 33.

Compiler's Notes.
For the Preamble to the act concerning the operation and funding of state government and to fund the state budget for the fiscal years beginning on July 1, 2008, and July 1, 2009, please refer to Acts 2009, ch. 531.

33-2-1110. Discrimination for inability to pay prohibited.

There shall be no discrimination in provision of services or supports based on inability to pay.

History.
Acts 1983, ch. 323, § 32; 1996, ch. 795, § 10; T.C.A., § 33-4-113; Acts 2000, ch. 947, § 1.

PART 12

PERSONNEL AND VOLUNTEERS

33-2-1201. Department employees, volunteers and applicants to submit to background check and fingerprinting.

(a) To help the department determine the suitability of a person for volunteer services or employment and verify the accuracy of information submitted in support of an application to work for the department, any person who applies to work for the department as an employee, or any volunteer, whose function would include direct contact with or direct responsibility for persons with mental illness, serious emotional disturbance, or developmental disabilities shall:

(1) Agree to the release of all investigative records about the person from any source, including federal, state and local governments; and

(2) Supply a fingerprint sample for the conduct of a criminal background investigation by the Tennessee bureau of investigation. If no disqualifying record is identified, the bureau shall send the fingerprints to the federal bureau of investigation for a national criminal history record check.

(b) The department shall pay the costs for conducting any investigation under this section.

History.
Acts 1996, ch. 993, § 1; 1997, ch. 305, § 1; 1999, ch. 466, § 1; T.C.A. § 33-1-209(a), (b); Acts 2000, ch. 947, § 1; 2004, ch. 565, § 11.

33-2-1202. Organizations to perform background checks on employees.

(a) As used in this section and § 38-6-109, "organization" means a facility or service licensed under chapter 2, part 4 of this title.

(b) Each organization shall have a criminal background check completed prior to employing any person who will be in a position that involves providing direct contact with or direct responsibility for service recipients. The persons applying for employment shall:

(1) Provide past work history containing a continuous description of activities over the past five (5) years;

(2) Identify at least three (3) individuals as personal references, one (1) of whom shall have known the applicant for at least five (5) years;

(3) Release all investigative records to the organization for examination for the purpose of verifying the accuracy of criminal violation information contained on an application to work for the organization; and

(4)(A) Supply fingerprint samples to be submitted for a criminal history records check to be conducted by the Tennessee bureau of investigation or the federal bureau of investigation; or

(B) Release information for a criminal background investigation by a state licensed private investigation company.

(c)(1) The organization shall check past work and personal references prior to employment of applicants. At a minimum the organization shall communicate directly with the most recent employer and each employer identified by the applicant as having employed the applicant for more than six (6) months in the past five (5) years. The organization shall communicate directly with at least two (2) of the personal references identified by the applicant.

(2) Subsection (b) and this subsection (c) shall not apply to organizations which contract with the division of intellectual disabilities services for residential services, day services or supported employment services and such organizations shall comply with subsection (e).

(3) The organization shall check the registry maintained by the department of health pursuant to § 68-11-1001 prior to employment of applicants or

their use as a volunteer in the organization. No individual who is listed on the registry may be hired or otherwise permitted to provide services in the organization.

(d) Any cost incurred by the Tennessee bureau of investigation, the federal bureau of investigation, or a state licensed private investigation company shall be paid by the organization requesting the investigation and information. If the background check is conducted by the Tennessee bureau of investigation or the federal bureau of investigation, the payment of the costs shall be made in the amounts established by § 38-6-103.

(e)(1) Notwithstanding subsection (b), only with respect to organizations which contract with the department of intellectual and developmental disabilities for residential services, day services or supported employment services, each such organization shall have a criminal background check completed prior to employing any person who will be in a position that involves providing direct care to a service recipient. If a current employee of such organization has a change of responsibilities that includes direct care to a service recipient, then the organization shall have a criminal background check completed prior to such change. The organization shall inform the employee that it will conduct a background check. The employee shall:

(A) Provide past work history containing a continuous description of activities over the past five (5) years;

(B) Identify at least three (3) individuals as personal references, one (1) of whom shall have known the applicant for at least five (5) years;

(C) Release all investigative records to the organization for examination for the purpose of verifying the accuracy of criminal violation information contained on an application to work for the organization; and

(D)(i) Supply fingerprint samples to be submitted for a criminal history records check to be conducted by the Tennessee bureau of investigation or the federal bureau of investigation; or

(ii) Release information for a criminal background investigation by a state licensed private investigation company.

(2) An organization which contracts with the division of intellectual disabilities services for residential services, day services or supported employment services shall check past work and personal references prior to employment of applicants. At a minimum such organization shall communicate directly with the most recent employer and each employer identified by the applicant as having employed the applicant for more than six (6) months in the past five (5) years. The organization shall communicate directly with at least two (2) of the personal references identified by the applicant. Prior to employment, the organization shall submit the information required to be provided by this subsection (e) to the entity that will conduct the criminal background check.

(3) An organization which contracts with the department of intellectual and developmental disabilities shall check the registry maintained by the department of health pursuant to § 68-11-1001 prior to employment of applicants or their use as volunteers in the organization. No individual who is listed on the registry may be hired or otherwise permitted to provide services in the organization.

(f) Notwithstanding any provision of this section to the contrary, background checks for employees of state-operated intermediate care facilities for individuals with intellectual disabilities shall fully comply with § 33-2-1201.

History.

Acts 1996, ch. 993, § 1; 1997, ch. 305, § 1; 1999, ch. 466, § 1; T.C.A., § 33-1-209(c); Acts 2000, ch. 981, § 53; 2000, ch. 947, § 1; 2010, ch. 1084, §§ 3, 4; 2011, ch. 165, §§ 1, 2; 2014, ch. 668, § 3; 2016, ch. 1044, §§ 9, 10.

Compiler's Notes.

The division of intellectual disabilities services (DIDS), referred to in this section, was replaced by the department of intellectual and developmental disabilities by Acts 2010, ch. 1100, effective January 15, 2011.

PART 13

CONFLICT OF INTEREST

33-2-1301. Department officers, employees and licensees to disclose interest in mental health facilities — Conflict of interest.

IF

(1)(A) a person is an officer or employee of the department, OR

(B) a person is an officer or employee of a licensee of the department, AND

(2)(A) the person or the person's spouse, parent, grandparent, brother, sister, or child has an ownership interest in a residential facility that is not publicly held or an ownership interest in a business that is not publicly held that owns or manages a residential facility that provides mental health or developmental disabilities services or supports, OR

(B) the person or combination of persons named in subdivision (2)(A) has an ownership interest of at least thirty-five percent (35%) in a residential facility that is publicly held that provides mental health or developmental disabilities services, OR

(C) the person or combination of persons named in subdivision (2)(A), has an ownership interest of at least thirty-five percent (35%) in a business that is publicly held that owns or manages a residential facility that provides mental health or developmental disabilities services,

THEN

(3) the person shall disclose the interest to the department or licensee, AND

(4) the person may not serve in a capacity of decision making or influence or responsibility for the direct referral or placement of persons to any residential facility that provides mental health or developmental disabilities services or supports.

History.
Acts 1996, ch. 669, § 1; T.C.A., § 33-3-112(a); Acts 2000, ch. 947, § 1.

Compiler's Notes.
Former chapter 2, §§ 33-2-101 — 33-2-108, 33-2-201 — 33-2-202, 33-2-301 — 33-2-311, 33-2-401, 33-2-501 — 33-2-513, 33-2-601 — 33-2-602, 33-2-604, 33-2-701, 33-2-901 — 33-2-909 (Acts 1965, ch. 82, § 8; 1973, ch. 341, §§ 3, 4; 1974, ch. 802, § 8; 1975, ch. 248, §§ 1, 3; 1976, ch. 806, § 1(35); 1978, ch. 617, § 2; 1978, ch. 853, §§ 1-9, 11-13; 1979, ch. 199, § 1; 1979, ch. 369, § 1; 1981, ch. 18, § 1; 1981, ch. 98, § 5; 1981, ch. 436, §§ 1, 4, 5; 1981, ch. 436, § 3; 1982, ch. 584, §§ 2, 4-12; 1983, ch. 323, §§ 25-28, 31; 33-201, T.C.A. § 33-350, 33-1801, T.C.A., §§ 33-1803 — 33-1812, T.C.A., §§ 33-1902 — 33-1911; 1985, ch. 437, § 5, 31-32; 1987, ch. 143, §§ 1, 6; 1987, ch. 248, §§ 1-3; 1987, ch. 320, § 1; 1988, ch. 586, § 1; 1988, ch. 828, §§ 3-8; 1988, ch. 875, §§ 1, 2; 1989, ch. 253, § 3; 1989, ch. 254, § 3; 1989, ch. 255, § 2; 1989, ch. 256, § 2; 1989, ch. 257, § 3; 1989, ch. 259, § 3; 1989, ch. 260, § 3; 1989, ch. 261, § 3; 1989, ch. 271, § 3; 1989, ch. 272, § 3; 1989, ch. 434, § 5; 1989, ch. 513, §§ 1, 14; 1989, ch. 559, §§ 1-4; 1989, ch. 591, § 112; 1991, ch. 459, §§ 9, 10; 1992, ch. 913, § 2; 1993, ch. 234, §§ 22-26; 1994, ch. 760, § 1; 1996, ch. 796, § 1; 1996, ch. 1074, § 1; 1998, ch. 1005, § 1-9; 2000, ch. 947, § 6); § 33-2-603 (Acts 1985, ch. 437, § 31; 1987, ch. 143, § 5), which had been previously repealed by Acts 1988, ch. 586, § 2; § 33-2-801 (Acts 1989, ch. 513, § 4), which had been previously repealed by Acts 1993, ch. 234, § 9; §§ 33-2-802 and 33-2-803 (Acts 1989, ch. 513, § 4), which were transferred to §§ 68-24-602, 68-24-603 in 1993, is deleted and replaced in the revision of title 33 by Acts 2000, ch. 947, § 1, effective March 1, 2001.

33-2-1302. Penalty for violation of § 33-2-1301.

(a) If a person violates § 33-2-1301, the commissioner shall assess a civil penalty of one thousand five hundred dollars ($1,500) per incident against the person for each violation.

(b) A penalty shall be assessed only after an informal hearing is held in the same manner as an informal hearing is held prior to the suspension of a license under § 4-5-320(d).

(c) If services or supports to a recipient of mental health or developmental disabilities services or supports have been provided in violation of § 33-2-1301, the commissioner may:

(1) Require transfer of the recipient of services or supports to another provider of services or supports as soon as is reasonably practical;

(2) Authorize the recipient of services or supports to remain with the provider of services or supports if the commissioner determines it to be in the best interests of the recipient of services or supports to remain with the provider of services or supports;

(3) Restrict the referral of other recipients of services or supports to the provider of services or supports;

(4) Exercise a combination of the preceding powers; or

(5) Impose any other appropriate sanctions in the discretion of the commissioner.

History.
Acts 1996, ch. 669, § 1; T.C.A., § 33-3-112(b); Acts 2000, ch. 947, § 1.

33-2-1303. Contractors to disclose interest in facility.

A person to whom this part applies shall disclose the information required by this part before being hired or as a part of a contract entered into with a provider of mental health or developmental disabilities services or supports. Failure to disclose the information shall subject the person to removal from the position held or the contract to cancellation or renegotiation.

History.
Acts 1996, ch. 669, § 1; T.C.A., § 33-3-112(c); Acts 2000, ch. 947, § 1.

33-2-1304. Personnel records to indicate conflict of interest as reason for relief of duties.

If a person is relieved of decision-making authority or responsibility under this part, the personnel records of the officer or employee shall state that the officer or employee was relieved of authority or responsibility solely to conform to this part.

History.
Acts 1996, ch. 669, § 1; T.C.A., § 33-3-112(d); Acts 2000, ch. 947, § 1.

CHAPTER 3

GENERAL RULES APPLICABLE TO SERVICE RECIPIENTS

Part 1. General Rights of All Service Recipients

SECTION.
33-3-101. Rights of persons under this title equal to those of other persons except as limited by this title — Records.
33-3-102. Specific rights protected.
33-3-103. Confidentiality of mental health records.
33-3-104. Persons who may consent to disclosure of confidential information.
33-3-105. Disclosure of confidential information without consent.
33-3-106. Disclosure to advocacy agency — Disclosure to organization paying for treatment — Limitations.
33-3-107. Rules relating to disclosure of confidential information.
33-3-108. Access permitted for reports of harm and granting of access in cases of abuse.
33-3-109. Release of information to family members and other designated persons — Acceptance of information from family members of service recipients.
33-3-110. Disclosure to law enforcement agencies in cases of felony acts of bodily harm or sexual abuse.
33-3-111. Records of child service recipient not available to person accused of abusing recipient — Exceptions and limitations.
33-3-112. Disclosure to service recipient of records kept and procedures for accessing records.
33-3-113. Request by recipient to have record amended.
33-3-114. Exceptions to evidentiary privilege of mental health professionals.
33-3-115. Information to be collected and reported to the federal bureau of investigation-NICS index and the department of safety by any clerk of court that maintains records of an adjudication as a mental defective or a judicial commitment to a mental institution.
33-3-116. Penalty for violation.
33-3-117. Reporting to local law enforcement by inpatient treatment facility of involuntary commitment of service recipient.
33-3-118, 33-3-119. [Reserved.]
33-3-120. Isolation and restraints prohibited — Exceptions and limitations.
33-3-121 — 33-3-124. [Reserved.]
33-3-125. Professional not to be related or to have financial interest.
33-3-126. Right to religious expression.

Part 2. Special Liability Rules

33-3-201. Liability of counselor for suicide or attempted suicide of person counseled.
33-3-202. Director of not-for-profit corporation providing service not liable for torts of recipients.
33-3-203 — 33-3-205. [Reserved.]

SECTION.
33-3-206. Duty to predict, warn or take precautions to provide protection — Liability.
33-3-207. Discharge of duty.
33-3-208. Duty of employees who transmit or record patient communications.
33-3-209. Immunity from liability where duty satisfied.
33-3-210. Reporting to local law enforcement by a qualified mental health professional or behavior analyst of an actual threat of serious bodily harm or death against an identifiable victim.
33-3-211. [Reserved.]
33-3-212. Immunity for refusal to perform act prohibited by this title.
33-3-213 — 33-3-216. [Reserved.]
33-3-217. Uniform assessment process for determining recipient's decision making capacity.
33-3-218. Decision making capacity of recipient.
33-3-219. Surrogate decision maker for medical decisions — Immunity from liability.
33-3-220. Eligibility to serve as surrogate decision maker.
33-3-221. Immunity of medical professional acting in accordance with decision of surrogate decision maker.

Part 3. Transfers of Residential Service Recipients

33-3-301. Transfer between facilities.

Part 4. Transfers from Department of Correction and Department of Children's Services

33-3-401. Mentally ill or intellectually disabled minors in youth development centers.
33-3-402. Mentally ill or intellectually disabled adult inmates.
33-3-403. Emergency residential care and treatment.
33-3-404. Transfer committees — Appointment of members.
33-3-405. Transfer committee — Chair — Vice chair — Voting — Hearings — Rights of transferees — Evidence.
33-3-406. Approval or disapproval of transfer.
33-3-407. When person to be transferred.
33-3-408. Determination of appropriateness of transfer.
33-3-409. Return of transferee from public facility.
33-3-410. Return of transferee from private facility.
33-3-411. Runaways — Custody.
33-3-412. Emergency residential care and treatment for minors in youth development centers.

Part 5. Judicial Procedures Generally

33-3-501. Patient or resident not released during pendency of proceedings — Exceptions.
33-3-502. Record of proceedings — Copy of court order with recipient's history to hospital or developmental center.
33-3-503. Costs of proceedings.
33-3-504. Physician, psychologist, or other person, as witness.
33-3-505. Use of audio visual technology in judicial proceeding.
33-3-506. Delivery of pleadings and certificates of need for care and treatment by telefax transmission.

Part 6. Judicial Procedures for Residential Treatment

33-3-601. Application of part.
33-3-602. Contents of complaint for commitment.
33-3-603. Jurisdiction and venue.
33-3-604. [Reserved.]
33-3-605. Service on defendant.
33-3-606. Time for hearing.
33-3-607. Examination of defendant — Detention and release.
33-3-608. Attorney — Notification of representation - Appointment by court.
33-3-609. Jury trial.
33-3-610. Place of hearing.
33-3-611. Transportation to hearing.
33-3-612. Evidence — Witnesses — Continuances — Presence or exclusion of defendant.
33-3-613. Conduct of hearing.
33-3-614. Names of examining professionals — Availability to defendant.
33-3-615. Testimony of professionals — Depositions or affidavits.
33-3-616. Place of detention.
33-3-617. Requisites for commitment.
33-3-618. Dismissal of proceedings — Release of defendant.
33-3-619. Commitment to involuntary care — Disclosure of information.
33-3-620. Appeals.

Part 7. Judicial Procedures for Review of Transfers

33-3-701. Commencement of proceedings.
33-3-702. Notice of complaint and hearing.
33-3-703. When hearings held — Continuances.
33-3-704. Transferee's attorney.
33-3-705. Jury trial.
33-3-706. Place of hearings — Exclusion of public.
33-3-707. Evidence — Witnesses — Continuances — Presence or exclusion of transferee.
33-3-708. Hearings informal.
33-3-709. Testimony of examining professionals — Depositions and affidavits.
33-3-710. Findings by court or jury.
33-3-711. Limitations on filing complaint.

Part 8. Habeas Corpus

33-3-801. Right to file for writ of habeas corpus.
33-3-802. Determination of mental condition of person seeking release.
33-3-803. Disposition of case.
33-3-804. Order of discharge.

Part 9. Violations of Service Recipient Rights

33-3-901. Wrongful hospitalization or admission — Instituting wrongful action — Penalties — Immunity.
33-3-902. Furnishing false information — Misdemeanor.
33-3-903. Sexual relations with service recipient.
33-3-904. Aiding or abetting escape — Inciting service recipient to violence — Supplying with dangerous or intoxicating substances.

PART 1

GENERAL RIGHTS OF ALL SERVICE RECIPIENTS

33-3-101. Rights of persons under this title equal to those of other persons except as limited by this title — Records.

(a) No person shall be deprived of liberty on the grounds that the person has or is believed to have a mental illness, a serious emotional disturbance, a developmental disability, or is in need of service for such a condition except in accordance with this title.

(b) A person with mental illness, serious emotional disturbance, or developmental disability has the same rights as all other persons except to the extent that the person's rights are curtailed in accordance with this title or other law.

(c) A person with mental illness, serious emotional disturbance, or developmental disability shall be provided services or supports, to the extent that facilities, equipment and personnel are available, in accordance with community standards.

(d) The chief officer shall keep records detailing services or supports received by each person. Records shall be preserved by the chief officer for not less than ten (10) years after termination of service. The records may be generated, maintained, or transferred in whole or in part to any recording medium that assures accurate preservation of the record. If a record is transferred from one medium to another, the source

record may be destroyed upon determination by the chief officer that the reproduced record is true and correct and will be accurately preserved. The reproduced record is deemed to be the original record.

History.
Acts 2000, ch. 947, § 1; T.C.A. § 33-4-102; Acts 2002, ch. 730, § 23.

Compiler's Notes.
Former chapter 3, §§ 33-3-101 — 33-3-112, 33-3-201 — 33-3-203, 33-3-301 — 33-3-303, 33-3-401 — 33-3-412, 33-3-501 — 504, 33-3-601 — 33-3-603, 33-3-605 — 33-3-19, 33-3-623, 33-3-701 — 33-3-711, 33-3-801, 33-3-901 — 33-3-908 (Acts 1955, ch. 187, § 1; 1965, ch. 38, §§ 4-7, 16-19, 23-26; 1974, ch. 802, §§ 17-20, 22-25, 29-32; 1975, ch. 248, §§ 1, 5-7, 11; 1976, ch. 489, §§ 1, 2; 1976, ch. 763, §§ 1, 2, 10; 1977, ch. 482, § 11; 1978, ch. 533, §§ 3-5; 1978, ch. 533, § 7; 1978, ch. 877, §§ 1, 2; 1979, ch. 366, § 15; 1980, ch. 838, § 5; 1983, ch. 323, § 4-7, 9, 12, 15, 16; T.C.A. §§ 33-303 — 33-307, 33-309 — 33-312, 33-317 — 33-320, 33-330 — 33-337, 33-345 — 33-347, 33-355, 33-360 — 33-362, 33-364 — 33-378, 33-382, 33-610, 33-1101; Acts 1984, ch. 922, §§ 2-5, 7, 16-23, 34; 1984, ch. 986, §§ 1, 2; 1985, ch. 437, §§ 6-13, 33; 1986, ch. 570, §§ 2-4; 1986, ch. 836, § 3, 5; 1987, ch. 143, §§ 2, 3, 7; 1988, ch. 828, § 1; 1989, ch. 278, §§ 30-33; 1989, ch. 513, §§ 2, 5-13; 1989, ch. 591, §§ 29-31, 113; 1992, ch. 991, § 13; 1993, ch. 66, § 44; 1993, ch. 439, § 1; 1993, ch. 356, § 4; 1994, ch. 630, §§ 1, 2; 1994, ch. 743, § 1; 1995, ch. 320, § 1; 1995, ch. 411, § 1; 1996, ch. 669, § 1; 1996, ch. 675, § 15; 1996, ch. 1079, §§ 31-47, 49-56; 2000, ch. 947, § 6); § 33-3-304 (Acts 1974, ch. 464, § 1; 1975, ch. 248, § 20; T.C.A., § 33-702), which was previously repealed by Acts 1984, ch. 922, § 33; § 33-3-604 (Acts 1983, ch. 323, § 9; T.C.A., § 33-363), which was repealed by Acts 1984, ch. 922, § 33; § 33-3-620, which was previously transferred to § 33-6-104(e) and (f) in 1984; § 33-3-621, which was previously transferred to § 33-6-104(g) in 1984; and § 33-3-622, which was previously transferred to § 33-6-104(h) in 1984, is deleted and replaced in the revision of title 33 by Acts 2000, ch. 947, § 1, effective March 1, 2001.

Former § 33-4-102 was transferred and designated as subsection (c) of this section in 2002. See the Compiler's Notes under former § 33-4-102 for the history of subsection (c) prior to its transfer.

33-3-102. Specific rights protected.

(a) No person with mental illness, serious emotional disturbance, or developmental disability hospitalized or admitted, whether voluntarily or involuntarily, or ordered to participate in nonresidential treatment or service under this title, shall, solely by reason of the hospitalization, admission, or order, be denied the right to dispose of property, execute instruments, make purchases, enter into contractual relationships, give informed consent to treatment, and vote, unless;

(1) The service recipient has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity; or

(2) The denial is authorized by state or federal statute.

(b) No person shall make decisions for a service recipient on the basis of a claim to be the service recipient's conservator, legal guardian, guardian ad litem, caregiver under title 34, chapter 6, part 3, or to be acting under a durable power of attorney for health care under title 34, chapter 6, part 2, until the person has presented written evidence of the person's status.

History.
Acts 2000, ch. 947, § 1; 2002, ch. 730, § 9; 2004, ch. 565, § 2.

Compiler's Notes.
The former last undesignated paragraph of (a) which read: "If the chief officer of a facility in which a service recipient is hospitalized or admitted is of the opinion that the service recipient is unable to exercise any of the aforementioned rights, the chief officer shall notify immediately the service recipient and the service recipient's attorney, parent, legal custodian, spouse or other nearest known adult relative of the fact, and the chief officer may file for the appointment of a conservator and shall notify those persons as to whether the chief officer intends to do so." was transferred to § 33-4-110 in 2002.

33-3-103. Confidentiality of mental health records.

All applications, certificates, records, reports, legal documents, and pleadings made and all information provided or received in connection with services applied for, provided under, or regulated under this title and directly or indirectly identifying a service recipient or former service recipient shall be kept confidential and shall not be disclosed by any person except in compliance with this part.

History.
Acts 2000, ch. 947, § 1.

33-3-104. Persons who may consent to disclosure of confidential information.

Information about a service recipient that is confidential under § 33-3-103 may be disclosed with the consent of:

(1) The service recipient who is sixteen (16) years of age or over;

(2) The conservator of the service recipient;

(3) The attorney in fact under a power of attorney who has the right to make disclosures under the power;

(4) The parent, legal guardian, or legal custodian of a service recipient who is a child;

(5) The service recipient's guardian ad litem for the purposes of the litigation in which the guardian ad litem serves;

(6) The treatment review committee for a service recipient who has been involuntarily committed;

(7) The executor, administrator or personal representative on behalf of a deceased service recipient;

(8) The caregiver under title 34, chapter 6, part 3; or

(9) An individual acting as an agent under the Tennessee Health Care Decisions Act, compiled in title 68, chapter 11, part 18 or a person's surrogate as designated under title 68, chapter 11, part 18.

History.
Acts 2000, ch. 947, § 1; 2004, ch. 565, § 3; 2013, ch. 238, § 4.

33-3-105. Disclosure of confidential information without consent.

Information that is confidential under § 33-3-103 may be disclosed without consent of the service recipient if:

(1) Disclosure is necessary to carry out duties under this title;

(2) Disclosure may be necessary to assure service or care to the service recipient by the least drastic means that are suitable to the service recipient's liberty and interests;

(3) As a court orders, after a hearing, upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make the disclosure would be contrary to public interest or to the detriment of a party to the proceedings;

(4) It is solely information as to a residential service recipient's overall medical condition without clinical details and is sought by the service recipient's family members, relatives, conservator, legal guardian, legal custodian, guardian ad litem, foster parents, or friends;

(5) A service recipient moves from one service provider to another and exchange of information is necessary for continuity of service;

(6) A custodial agent for another state agency that has legal custody of the service recipient cannot perform the agent's duties properly without the information; or

(7) Necessary for the preparation of a post-mortem examination report in accordance with § 38-7-110(e) and authorized to be obtained pursuant to § 38-7-117(b).

History.
Acts 2000, ch. 947, § 1; 2002, ch. 730, § 10; 2016, ch. 672, § 1.

33-3-106. Disclosure to advocacy agency — Disclosure to organization paying for treatment — Limitations.

(a) If the head of the federally mandated protection and advocacy agency for persons with mental illness, serious emotional disturbance, or developmental disability, or the designated representative of the agency head, requests disclosure of information protected by § 33-3-103 and specifies the personally identifiable service recipient information sought and the federally mandated function for which it is required, the information may be disclosed to the agency without consent. The disclosure of information shall be made solely for use in connection with the federally mandated function. The disclosures are subject to federal confidentiality laws, including the requirement that there be no further disclosure of the personally identifiable information by the agency without consent of the service recipient or conservator or of the parent's or legal guardian's consent in the case of a child. The service provider shall notify the service recipient, a child service recipient's parent or legal guardian, and the service recipient's conservator, if any, of the disclosure. All public and private service providers shall cooperate with the agency in responding to requests, including, but not limited to, those made under the Developmental Disabilities Assistance and Bill of Rights Act of 1975 (42 U.S.C. § 6000 et seq.); the Protection and Advocacy for Mentally Ill Individuals (PAMII) Act of 1986 (42 U.S.C. § 10801 et seq.); and the Protection and Advocacy for Individual Rights Act (29 U.S.C. § 794e).

(b) If an organization may pay for a service provider's service to a service recipient, the service provider may disclose to the organization without service recipient consent only such information about the service recipient as is reasonably necessary to obtain timely payment. Disclosures are on the condition that there be no further disclosure of the personally identifiable information by the agency without service recipient consent.

(c) If the department determines that an emergency substantially impairs a provider's capacity to provide service to its service recipients and the department appoints a receiver for service recipient information, the service recipient's information may be transferred to a new service provider without service recipient consent.

History.
Acts 2000, ch. 947, § 1; 2002, ch. 730, § 11.

Compiler's Notes.
The Developmental Disabilities Assistance and Bill of Rights Act of 1975, 42 U.S.C. § 6000 et seq., has been replaced by the Developmental Disabilities Assistance and Bill of Rights Act of 2000, compiled as 42 U.S.C. § 15001 et seq.

33-3-107. Rules relating to disclosure of confidential information.

The department may adopt rules to implement § 33-3-103 — 33-3-114, including rules on the form, content, and means of consent and disclosure, scope of permissible disclosure, and definitions of terms.

History.
Acts 2000, ch. 947, § 1.

33-3-108. Access permitted for reports of harm and granting of access in cases of abuse.

(a) Section 33-3-103 does not preclude making reports of harm or granting access to records if making reports of harm or granting access to records is expressly required by:

(1) The Child Abuse Reporting Law, compiled in title 37, chapter 1, part 4;

(2) The Child Sexual Abuse Reporting Law, compiled in title 37, chapter 1, part 6; or

(3) The Adult Protective Services Law, compiled in title 71, chapter 6.

(b)(1) The identity of a person who reports abuse, exploitation, fraud, neglect, misappropriation or mistreatment to the department is confidential and may not be disclosed without the person's consent, except as follows:

(A) As necessary to carry out the laws cited in subsection (a);

(B) To employees of the department as necessary to investigate the report;

(C) To the abuse registry;

(D) To the appropriate district attorney general;

(E) By order of a court with jurisdiction over abuse, exploitation, fraud, neglect, misappropriation or mistreatment; or

(F) By order of a court or administrative law judge in a proceeding involving sanctions or disciplinary actions against a caregiver or an entity accused of abuse, exploitation, fraud, neglect, mis-

appropriation or mistreatment, when it appears to such court or administrative law judge that the person making the report is or may be a witness to facts relevant to the proceeding.

(2) The person's identity is irrelevant to any civil proceeding and is not subject to disclosure, except in cases where a caregiver or other person is the subject of a complaint and can make a showing that the complaint was made with malice so that the caregiver or other person may pursue such remedies as may be permitted by law. The person may be subpoenaed if the department or district attorney general deems it necessary to protect the service recipient who is the subject of the report, but the fact that the person made the report may not be disclosed.

History.
T.C.A. § 33-3-104(10)(B); Acts 2000, ch. 947, § 1; 2002, ch. 730, § 12; 2011, ch. 158, § 16.

33-3-109. Release of information to family members and other designated persons — Acceptance of information from family members of service recipients.

(a) A service recipient for services under chapter 6 of this title shall be given an opportunity to approve and sign an information release that authorizes the facility or program to release certain information concerning the recipient to certain family members and other designated persons. This opportunity shall be offered when the recipient is entering inpatient or outpatient treatment at a facility, admitted in an emergency room, entering in a crisis response setting, or admitted in ongoing treatment with a community mental health care provider. This opportunity shall be offered to the recipient at the time of admission, periodically during treatment, and at discharge.

(b) The service recipient may withdraw authority to release all information previously authorized, withdraw authority to release the information to any individuals previously authorized or modify either the type of information authorized in subsection (c) or the individuals to whom the information may be provided. All such changes must be executed in writing by the service recipient or:

(1) The conservator of the service recipient;

(2) The attorney in fact under a power of attorney who has the right to make disclosures under the power;

(3) The parent, legal guardian, or legal custodian of a service recipient who is a child;

(4) The service recipient's guardian ad litem for the purposes of the litigation in which the guardian ad litem serves;

(5) The treatment review committee for a service recipient who has been involuntarily committed;

(6) The executor, administrator or personal representative on behalf of a deceased service recipient; or

(7) The caregiver under title 34, chapter 6, part 3.

(c) The information release shall provide the service recipient options for authorized disclosures to:

(1) Specified family members that discloses only location;

(2) Specified family members who are to be involved with discharge instructions and linking to other services; and

(3) Specified family who are to be involved in and supportive in the treatment process.

(d) The department shall encourage education of mental health care providers regarding accepting information from family members in the course of the treatment process.

History.
Acts 2007, ch. 356, § 1; 2008, ch. 789, § 1.

Compiler's Notes.
Former § 33-3-109 (Acts 2000, ch. 947, § 1), concerning adjudications of competence not confidential records that must be kept separate, was repealed by Acts 2002, ch. 735, § 9.

Acts 2002, ch. 730, § 13, purported to amend § 33-3-109; however, that section was repealed by Acts 2002, ch. 735, § 9.

33-3-110. Disclosure to law enforcement agencies in cases of felony acts of bodily harm or sexual abuse.

(a) Section 33-3-103 does not prohibit disclosure to a law enforcement agency that has jurisdiction over felonious acts of bodily harm or sexual offenses that appear to have been committed on the premises of a facility whose records are made confidential by § 33-3-103.

(b) If the felonious act involves a sexual offense governed by title 37, chapter 1, part 6, and title 71, chapter 6, part 1, in a locality having a sex abuse crime unit, disclosure for law enforcement investigative purposes shall be made only to that unit of the law enforcement agency. This section does not limit the requirements of disclosure of reports of harm and access to records required by title 37, chapter 1, parts 4 and 6, and title 71, chapter 6, part 1, for investigations by the department of human services.

(c) Permissible disclosure of a felonious act for the purpose of conducting a necessary investigation includes:

(1) The name of, and providing access to, witnesses or potential witnesses of the offense;

(2) The name of, and providing access to, suspects or potential suspects of the offense; and

(3) The scene of, and providing access to, where the offense occurred.

History.
Acts 2000, ch. 947, § 1.

33-3-111. Records of child service recipient not available to person accused of abusing recipient — Exceptions and limitations.

(a) In any case where a person is known to have been accused of physically or sexually abusing or neglecting a service recipient who is a child, the service recipient's record shall not be accessible to the person accused of the abuse or neglect, except if:

(1) A court orders access under § 33-3-105(3); or

(2)(A) The child's qualified mental health professional has determined in the course of the treatment or service, after consultation with the child, the child's guardian ad litem, and others on the child's behalf whom the professional deems appropriate, that the release of the child's record to the accused person would not be harmful to the child; and

(B) The accused person is the parent, legal guardian, or legal custodian of the child.

(b) If the court permits access to the child's record under subsection (a), the court shall have jurisdiction to issue any necessary orders to control access to and use of the information by the person seeking access, including the issuance of injunctive relief.

History.
Acts 2000, ch. 947, § 1.

33-3-112. Disclosure to service recipient of records kept and procedures for accessing records.

(a) Upon request by a service recipient sixteen (16) years of age or older, a service provider shall disclose to the service recipient what records the provider maintains on the service recipient and how the service recipient can obtain access to them. Upon written request by a service recipient, a service provider shall permit the service recipient, within a reasonable time, to review the service recipient's record itself or the part of it that the service recipient requests or a copy of the record or the part except to the extent that:

(1) Service recipient access to the record is expressly restricted or prohibited by another statute; or

(2) The provider is authorized to deny access under subsection (b).

(b) If a person's qualified mental health professional determines that giving the service recipient, or a person acting for the service recipient, access to part of the service recipient's record poses a substantial risk of serious harm to the health or safety of the service recipient or another person, then the qualified mental health professional may refuse access to that part of the record.

History.
Acts 2000, ch. 947, § 1.

33-3-113. Request by recipient to have record amended.

(a) If a service recipient requests amendment of the service recipient's record by revision, deletion, or addition to correct the record, the service provider shall, within ten (10) working days after receiving the request, either make the amendment to assure that service recipient's records do not contain inaccurate, irrelevant, or otherwise inappropriate information or inform the service recipient of its refusal, of the reason for the refusal, and of the procedure, if any, for further internal review of the decision.

(b) If any provider decides that it will not amend the record in accordance with the request, it shall permit the service recipient to file a concise statement of the reasons for the service recipient's disagreement.

(c) If any provider discloses any of the disputed information, it shall clearly note the disputed information and provide a copy of the statement of disagreement. If the provider wishes, it may also provide a concise statement of its reasons for not making the requested amendments.

(d) The service recipient may not personally alter the record.

History.
Acts 2000, ch. 947, § 1.

33-3-114. Exceptions to evidentiary privilege of mental health professionals.

Notwithstanding any evidentiary privilege a qualified mental health professional may have, including §§ 24-1-207, 63-11-213, 63-22-114, and 63-23-109, the qualified mental health professional may be compelled to testify in:

(1) Judicial proceedings under this title to commit a person with mental illness, serious emotional disturbance, or developmental disability to treatment if the qualified mental health professional decides that the service recipient is in need of compulsory care and treatment;

(2) In proceedings for which the qualified mental health professional was ordered by the court to examine the service recipient if the service recipient was advised that communications to the qualified mental health professional would not be privileged;

(3) Judicial proceedings under chapter 8, part 3 of this title; and

(4) Guardianship, conservatorship, and veterans' guardianship proceedings under title 34.

History.
Acts 2000, ch. 947, § 1; 2002, ch. 730, § 14.

Compiler's Notes.
Section 63-23-107, referred to in this section, was transferred to § 63-23-109 by Acts 2008, ch. 1016, § 1, effective July 1, 2008.

33-3-115. Information to be collected and reported to the federal bureau of investigation-NICS index and the department of safety by any clerk of court that maintains records of an adjudication as a mental defective or a judicial commitment to a mental institution.

(a) Any clerk of court that maintains records of an adjudication as a mental defective or a judicial commitment to a mental institution pursuant to chapter 6 or chapter 7 shall, in accordance with the procedures outlined in title 16, disclose the following information set out in subsection (b) solely for the purposes of complying with §§ 39-17-1316, 39-17-1351, 39-17-1352, 16-1-117(a)(6) and the NICS Improvement Amendments Act of 2007, Public Law 110-180.

(b) The following information shall be collected and reported to the federal bureau of investigation-NICS Index, and the department of safety, pursuant to this

subsection (b):

(1) Complete name and all aliases of the individual judicially committed or adjudicated as a mental defective, including, but not limited to, any names that the individual may have had or currently has by reason of marriage or otherwise;

(2) Case or docket number of the judicial commitment or the adjudication as a mental defective;

(3) Date judicial commitment ordered or adjudication as a mental defective was made;

(4) Private or state hospital or treatment resource to which the individual was judicially committed; and

(5) Date of birth of the individual judicially committed or adjudicated as a mental defective, if such information has been provided to the clerk.

(c) The information in subdivisions (b)(1)–(5), the confidentiality of which is protected by other statutes or regulations, shall be maintained as confidential and not subject to public inspection pursuant to such statutes or regulations, except for such use as may be necessary in the conduct of any proceedings pursuant to §§ 39-17-1316, 39-17-1353 and 39-17-1354.

(d) For purposes of this section, the following definitions shall apply:

(1) "Judicial commitment to a mental institution" means a judicially ordered involuntary admission to a private or state hospital or treatment resource in proceedings conducted pursuant to title 33, chapter 6 or title 33, chapter 7;

(2) "Adjudication as a mental defective or adjudicated as a mental defective" means:

(A) A determination by a court in this state that a person, as a result of marked subnormal intelligence, mental illness, incompetency, condition or disease:

(i) Is a danger to such person or to others; or

(ii) Lacks the ability to contract or manage such person's own affairs due to mental defect;

(B) A finding of insanity by a court in a criminal proceeding; or

(C) A finding that a person is incompetent to stand trial or is found not guilty by reason of insanity pursuant to 50a and 72b of the Uniform Code of Military Justice (10 U.S.C. §§ 850a, 876b).

History.

Acts 2009, ch. 578, § 5; 2013, ch. 300, § 7.

Compiler's Notes.

The NICS Improvement Amendments Act of 2007, Public Law 110-180, may be found as a note to 18 USCS § 922.

Former § 33-3-115 (T.C.A. § 33-3-104(10)(B); Acts 2000, ch. 947, § 1), concerning penalties for violations of §§ 33-3-103—33-3-114, was transferred to § 33-3-116 by Acts 2009, ch. 578, §§ 5 and 6, effective January 1, 2010.

33-3-116. Penalty for violation.

A violation of §§ 33-3-103—33-3-115 is a Class C misdemeanor.

History.

T.C.A. § 33-3-104(10)(B); Acts 2000, ch. 947, § 1; Acts 2009, ch. 578, § 6; T.C.A. § 33-3-115.

Compiler's Notes.

Former § 33-3-115 was transferred to this section by Acts 2009, ch. 578, §§ 5 and 6, effective January 1, 2010.

33-3-117. Reporting to local law enforcement by inpatient treatment facility of involuntary commitment of service recipient.

(a) If a service recipient is involuntarily committed to an inpatient treatment facility under this title, the inpatient treatment facility shall report the service recipient to local law enforcement as soon as practicable, but no later than the third business day following the date of such commitment, who shall report the service recipient to the federal bureau of investigation-NICS Index and the department of safety as soon as practicable, but no later than the third business day following the date of receiving such notification, for the purposes of complying with the NICS Improvement Amendments Act of 2007, Public Law 110-180, as enacted and as may be amended in the future.

(b) If an inpatient treatment facility is required to report pursuant to subsection (a), the facility shall report the following information:

(1) Complete name of the person involuntarily committed;

(2) Date involuntary commitment was ordered;

(3) Private or state hospital or treatment resource to which the individual was involuntarily committed; and

(4) Date of birth of the person involuntarily committed.

(c) The information in subdivisions (b)(1)-(4), the confidentiality of which is protected by other statutes or regulations, shall be maintained as confidential and not subject to public inspection pursuant to such statutes or regulations, except for such use as may be necessary in the conduct of any proceedings pursuant to §§ 39-17-1316, 39-17-1353 and 39-17-1354.

History.

Acts 2013, ch. 300, § 8.

Compiler's Notes.

The NICS Improvement Amendments Act of 2007, Public Law 110-180, may be found as a note to 18 USCS § 922.

33-3-118, 33-3-119. [Reserved.]

33-3-120. Isolation and restraints prohibited — Exceptions and limitations.

(a) Service recipients have the right to be free from isolation and restraints, in any form, imposed as a means of coercion, discipline, convenience or retaliation by staff. Restraints include physical and mechanical restraints and drugs used to control behavior or to

restrict freedom of movement if the drug or the dosage of the drug is not a standard treatment for the service recipient's medical or psychiatric condition. Isolation is placement of a person alone in a room from which egress is prevented. Isolation and restraint may be used only while the condition justifying its use exists.

(b) A person with mental illness or serious emotional disturbance may be isolated or restrained only in emergency situations if necessary to assure the physical safety of the person or another person nearby or to prevent significant destruction of property. If a person imposes restraints or isolation, the person shall immediately contact a professional who is permitted under department rules to authorize the isolation or restraint. If the treating physician is not the person who orders isolation or restraint, the treating physician shall be consulted as soon as possible. A professional authorized by department rules shall see and evaluate the person's condition within one (1) hour of the intervention.

(c) A person with developmental disability may be restrained only as part of an approved plan or in emergency situations if necessary to assure the physical safety of the person or another person nearby or to prevent significant destruction of property. Isolation may only be used with a person with developmental disability as part of the person's approved plan. Only psychologists, psychological examiners, senior psychological examiners, physicians, behavior analysts, masters degree social workers, and others authorized to do so under department rules may develop a plan that includes or authorizes isolation or restraint of a person with developmental disability.

(d) Staff shall remain in the physical presence of a person in restraint. Staff shall continuously observe a person in isolation or restraint for the health and well being of the person.

(e) The professional shall record the use of restraint or isolation, the reasons for its use, and the duration of its use in the person's record.

(f) All staff who may have direct contact with a person being restrained or isolated shall receive ongoing education and training in alternative methods for handling behavior and the safe use of isolation and restraint.

(g) The department shall adopt rules as to circumstances under which use of restraint and isolation are permitted. The department shall distribute the rules to all who provide services covered by this title.

(h) The department shall report annually to the statewide planning and policy council on the use of restraint and isolation in the state and its rules on the subject.

History.
Acts 2000, ch. 947, § 1; 2001, ch. 334, § 2; 2002, ch. 730, § 15; 2007, ch. 96, § 1.

33-3-121 — 33-3-124. [Reserved.]

33-3-125. Professional not to be related or to have financial interest.

A certificate of need for commitment for care and treatment as a person with mental illness, serious emotional disturbance, or developmental disability that is authorized or required to be made by a physician, psychologist, or other professional under this title is not valid for any purpose if:

(1) It is made by a professional who is a relative by blood, marriage, or adoption, or the legal guardian, conservator, or legal custodian of the person who is the subject of the petition, application or certificate; or

(2) It is made by a professional who has an ownership interest in a private facility in which the person is to be admitted.

History.
Acts 1983, ch. 323, § 16; T.C.A., §§ 33-345, 33-3-108; Acts 2000, ch. 947, § 1.

33-3-126. Right to religious expression.

A licensee or provider under this title may not discourage or preclude a service recipient from exercising the right to religious expression and shall inform each service recipient in a residential environment of this right. A licensee or provider of religious service may provide transportation for a service recipient under this section.

History.
Acts 2002, ch. 730, § 8.

PART 2

SPECIAL LIABILITY RULES

33-3-201. Liability of counselor for suicide or attempted suicide of person counseled.

(a) As used in this section, unless the context otherwise requires:

(1) "Counseling center" means any nonprofit service operated at least partially with volunteer assistance that provides counseling, assistance or guidance, either in person or by telephone, to persons with mental illness or serious emotional disturbance; and

(2) "Counselor" means any psychiatrist, psychologist, licensed psychologist with health service provider designation, certified or licensed marital and family therapist, certified or licensed professional counselor, certified or licensed social worker, or other professional trained in the field of psychiatry or psychology or any nonprofessional person acting under the guidance or supervision of the professionals.

(b) A counselor, while acting within the scope of responsibilities assigned by a counseling center, is not liable civilly or criminally for the suicide or attempted suicide of any person consulting the counselor.

History.
Acts 1978, ch. 632, §§ 1, 2; T.C.A., §§ 33-1701, 33-1702; §§ 33-17-101, 33-17-102; Acts 1984, ch. 710, § 1; 1990, ch. 760, § 3; T.C.A., §§ 33-10-101, 33-10-102; Acts 2000, ch. 947, § 1; 2002, ch. 730, § 16.

Compiler's Notes.
Former chapter 3, §§ 33-3-101 — 33-3-112, 33-3-201 — 33-3-203, 33-3-301 — 33-3-303, 33-3-401 — 33-3-412, 33-3-501 — 504, 33-3-601

— 33-3-603, 33-3-605 — 33-3-19, 33-3-623, 33-3-701 — 33-3-711, 33-3-801, 33-3-901 — 33-3-908 (Acts 1955, ch. 187, § 1; 1965, ch. 38, §§ 4-7, 16-19, 23-26; 1974, ch. 802, §§ 17-20, 22-25, 29-32; 1975, ch. 248, §§ 1, 5-7, 11; 1976, ch. 489, §§ 1, 2; 1976, ch. 763, §§ 1, 2, 10; 1977, ch. 482, § 11; 1978, ch. 533, §§ 3-5; 1978, ch. 533, § 7; 1978, ch. 877, §§ 1, 2; 1979, ch. 366, § 15; 1980, ch. 838, § 5; 1983, ch. 323, § 4-7, 9, 12, 15, 16; T.C.A. §§ 33-303 — 33-307, 33-309 — 33-312, 33-317 — 33-320, 33-330 — 33-337, 33-345 — 33-347, 33-355, 33-360 — 33-362, 33-364 — 33-378, 33-382, 33-610, 33-1101; Acts 1984, ch. 922, §§ 2-5, 7, 16-23, 34; 1984, ch. 986, §§ 1, 2; 1985, ch. 437, §§ 6-13, 33; 1986, ch. 570, §§ 2-4; 1986, ch. 836, § 3, 5; 1987, ch. 143, §§ 2, 3, 7; 1988, ch. 828, § 1; 1989, ch. 278, §§ 30-33; 1989, ch. 513, §§ 2, 5-13; 1989, ch. 591, §§ 29-31, 113; 1992, ch. 991, § 13; 1993, ch. 66, § 44; 1993, ch. 439, § 1; 1993, ch. 356, § 4; 1994, ch. 630, §§ 1, 2; 1994, ch. 743, § 1; 1995, ch. 320, § 1; 1995, ch. 411, § 1; 1996, ch. 669, § 1; 1996, ch. 675, § 15; 1996, ch. 1079, §§ 31-47, 49-56; 2000, ch. 947, § 6); § 33-3-304 (Acts 1974, ch. 464, § 1; 1975, ch. 248, § 20; T.C.A., § 33-702), which was previously repealed by Acts 1984, ch. 922, § 33; § 33-3-604 (Acts 1983, ch. 323, § 9; T.C.A., § 33-363), which was repealed by Acts 1984, ch. 922, § 33; § 33-3-620, which was previously transferred to § 33-6-104(e) and (f) in 1984; § 33-3-621, which was previously transferred to § 33-6-104(g) in 1984; and § 33-3-622, which was previously transferred to § 33-6-104(h) in 1984, is deleted and replaced in the revision of title 33 by Acts 2000, ch. 947, § 1, effective March 1, 2001.

33-3-202. Director of not-for-profit corporation providing service not liable for torts of recipients.

(a) While acting in good faith, the directors of a not for profit corporation that provides community residential services or supports for persons with mental illness, serious emotional disturbance, or developmental disability shall not be held personally liable for tortious acts committed by the corporation's service recipients.

(b) Subsection (a) does not preclude imposition of personal liability on a director who also acts as a paid officer or employee of the corporation.

History.
Acts 1979, ch. 33, § 2; T.C.A., §§ 33-17-202, 33-10-202; Acts 2000, ch. 947, § 1.

33-3-203 — 33-3-205. [Reserved.]

Compiler's Notes.
Former § 33-3-203, concerning temporary legal custody of minors, commitment, treatment and discharge, was transferred to § 37-1-175 in 2000.

33-3-206. Duty to predict, warn or take precautions to provide protection — Liability.

IF AND ONLY IF

(1) a service recipient has communicated to a qualified mental health professional or behavior analyst an actual threat of bodily harm against a clearly identified victim, AND

(2) the professional, using the reasonable skill, knowledge, and care ordinarily possessed and exercised by the professional's specialty under similar circumstances, has determined or reasonably should have determined that the service recipient has the apparent ability to commit such an act and is likely to carry out the threat unless prevented from doing so,

THEN

(3) the professional shall take reasonable care to predict, warn of, or take precautions to protect the identified victim from the service recipient's violent behavior.

History.
Acts 1989, ch. 549, § 1; T.C.A., § 33-10-302(a); Acts 2000, ch. 947, § 1; 2001, ch. 334, § 3; 2002, ch. 730, § 17.

33-3-207. Discharge of duty.

The duty imposed by § 33-3-206 may be discharged by the professional or service provider by:

(1) Informing the clearly identified victim of the threat;

(2) Having the service recipient admitted on a voluntary basis to a hospital;

(3) Taking steps to seek admission of the service recipient to a hospital or treatment resource on an involuntary basis pursuant to chapter 6 of this title; or

(4) Pursuing a course of action consistent with current professional standards that will discharge the duty.

History.
Acts 1989, ch. 549, § 1; T.C.A., § 33-10-302(b); Acts 2000, ch. 947, § 1.

33-3-208. Duty of employees who transmit or record patient communications.

IF AND ONLY IF

(1) an employee of a service provider is normally responsible for transmitting or recording communications from a service recipient to a qualified mental health professional or behavior analyst, AND

(2) the employee receives a communication from a service recipient of an actual threat of bodily harm against a clearly identified victim,

THEN

(3) the employee shall communicate the threat to the professional employed by the service provider.

History.
Acts 1989, ch. 549, § 1; T.C.A., § 33-10-303; Acts 2000, ch. 947, § 1; 2001, ch. 334, § 4; 2002, ch. 730, § 17.

33-3-209. Immunity from liability where duty satisfied.

If a professional or an employee has satisfied the person's duty under § 33-3-206, § 33-3-208, or § 33-3-210, no monetary liability and no cause of action may arise against the professional, an employee, or any service provider in whose service the duty arose for the professional or employee not predicting, warning of, or taking precautions to provide protection from violent behavior by the person with mental illness, serious emotional disturbance, or developmental disability.

History.
Acts 1989, ch. 549, § 1; T.C.A., §§ 33-10-302(a), 33-10-303; Acts 2000, ch. 947, § 1; 2013, ch. 300, § 10.

33-3-210. Reporting to local law enforcement by a qualified mental health professional or behavior analyst of an actual threat of serious bodily harm or death against an identifiable victim.

(a) If a service recipient has communicated to a qualified mental health professional or behavior analyst an actual threat of serious bodily harm or death against a reasonably identifiable victim or victims, the qualified mental health professional or behavior analyst, using the reasonable skill, knowledge, and care ordinarily possessed and exercised by the professional's specialty under similar circumstances, who has determined or reasonably should have determined that the service recipient has the apparent ability to commit such an act and is likely to carry out the threat unless prevented from doing so, shall immediately report the service recipient to local law enforcement, who shall take appropriate action based upon the information reported.

(b) If a mental health professional or behavior analyst is required to report pursuant to subsection (a), the professional or analyst shall report the following information:

(1) Complete name and all aliases of the service recipient;

(2) Name of the mental health professional or behavior analyst and the name of the private or state hospital or treatment resource from which the individual may be receiving services; and

(3) Date of birth of the service recipient.

(c) The information in subdivisions (b)(1)-(3), the confidentiality of which is protected by other statutes or regulations, shall be maintained as confidential and not subject to public inspection pursuant to such statutes or regulations, except for such use as may be necessary in the conduct of any proceedings pursuant to §§ 39-17-1316, 39-17-1353 and 39-17-1354.

History.
Acts 2013, ch. 300, § 9.

33-3-211. [Reserved.]

33-3-212. Immunity for refusal to perform act prohibited by this title.

IF

(1)(A) a person has refused to perform any act that is prohibited by or is not lawful under this title, OR

(B) a person has relinquished authority over a service recipient based on a decision by another to whom this title gives express authority to make the decision,

THEN

(2) no monetary liability and no cause of action may arise against the person or the service provider in whose service the person was acting for the conduct.

History.
Acts 2000, ch. 947, § 1.

33-3-213 — 33-3-216. [Reserved.]

33-3-217. Uniform assessment process for determining recipient's decision making capacity.

The department shall by rule prescribe a uniform assessment process by which to determine whether a service recipient lacks capacity to make decisions on issues within the meaning of § 33-3-218.

History.
Acts 2000, ch. 947, § 1.

33-3-218. Decision making capacity of recipient.

IF

(1)(A) a service recipient, due to intellectual disability or mental impairment related to a developmental disability, is unable to make an informed decision about application for admission to a developmental center under § 33-5-301, request discharge under § 33-5-303, or a routine medical, dental, or mental health treatment, OR

(B) a service recipient, due to a diagnosed mental illness or serious emotional disorder, is unable to make an informed decision about application to a hospital or inpatient treatment resource under § 33-6-201, requesting discharge under § 33-6-206, inpatient mental health treatment, release of information, or getting information, AND

(2) the incapacity is shown by the fact that the person is not able to understand the proposed procedure, its risks and benefits, or the available alternative procedures,

THEN

(3) the person "lacks capacity" under this title for decision about that matter at this time.

History.
Acts 2000, ch. 947, § 1; 2002, ch. 730, § 18; 2005, ch. 150, § 1; 2010, ch. 734, § 1.

Compiler's Notes.
For the Preamble to the act regarding changing the term "mental retardation" to "intellectual disability", please refer to Acts 2010, ch. 734.

Acts 2010, ch. 734, § 1 provided that the Tennessee code commission is directed to change all references to "mental retardation", wherever such references appear in titles 33, 39 and 41, to "intellectual disability", as supplements are issued and volumes are replaced.

Acts 2010, ch. 734, § 7 provided that for purposes of each provision amended by the act, a reference to intellectual disability shall be considered to refer to mental retardation, as defined by that provision on the day before the date of enactment of the act.

Acts 2010, ch. 734, § 8 provided that nothing in the act shall be construed to alter or otherwise affect the eligibility for services or the rights or responsibilities of individuals covered by the provision on the day before the date of enactment of the act.

33-3-219. Surrogate decision maker for medical decisions — Immunity from liability.

IF

(1)(A) an adult with developmental disability that is not based solely on a diagnosis of mental illness or serious emotional disturbance does not have a conservator, OR

(B) a child with developmental disability that is not based solely on a diagnosis of mental illness or serious emotional disturbance does not have a parent or legal guardian, AND

(2)(A) a licensed dentist determines that the person lacks capacity to make a decision about a routine dental decision, OR

(B) a licensed psychologist with health service provider designation determines that the person lacks capacity to make a decision about routine mental health treatment, OR

(C) a licensed physician determines that the person lacks capacity to make a decision about routine medical or mental health treatment, AND

(3) the physician, psychologist, or dentist uses the assessment process prescribed by rule under § 33-3-217, AND

(4) the physician, psychologist, or dentist determines that someone is eligible to serve as a surrogate decision maker for the service recipient on the matter in question under § 33-3-220, AND

(5) the service recipient does not reject the proposed surrogate for the decision in any way, AND

(6) the physician, psychologist or dentist provides the surrogate the information necessary to an informed decision,

THEN

(7) the surrogate may decide for the service recipient with respect to the matter in question, AND

(8) the surrogate who acts in good faith, reasonably and without malice in connection with the decision shall be free from all liability, civil or criminal, by reason of the decision.

History.
Acts 2000, ch. 947, § 1; 2002, ch. 730, § 19.

33-3-220. Eligibility to serve as surrogate decision maker.

IF

(1) a physician, psychologist, or dentist reasonably determines that an adult:

(A) knows about a service recipient's developmental disability and condition as it relates to the matter in question,

(B) is actively involved in the service recipient's life,

(C) is willing to make a decision for the service recipient on the matter in question,

(D) appears to be reasonably capable of making the decision and likely to make it objectively in the service recipient's interest,

(E) appears to have no conflict of interest with the service recipient, and

(F) is, in order of descending preference for service as a surrogate:

(i) the service recipient's spouse,

(ii) the service recipient's adult child,

(iii) the service recipient's parent or stepparent,

(iv) the service recipient's adult sibling,

(v) any other adult relative of the service recipient, or

(vi) any other adult,

THEN

(2) the adult is eligible to serve as a surrogate decision maker for the service recipient on the matter in question under §§ 33-3-219 — 33-3-221.

History.
Acts 2000, ch. 947, § 1; 2002, ch. 730, § 20.

33-3-221. Immunity of medical professional acting in accordance with decision of surrogate decision maker.

IF

(1) the physician, psychologist, or dentist knows of no family member, of the same or higher order of preference as the surrogate under § 33-3-220(1)(F), who objects to the surrogate's decision, AND

(2) the proposed treatment is not solely for behavior control of a service recipient,

THEN

(3) the physician, psychologist, or dentist may act on the surrogate's decision as if the service recipient had the capacity to consent and had consented personally, AND

(4) the physician, psychologist, or dentist who acts in accord with and in good faith reliance on the surrogate's decision is not subject to criminal prosecution, civil liability, or professional disciplinary action based on a subsequent finding of the invalidity of the surrogate's decision.

History.
Acts 2000, ch. 947, § 1; 2002, ch. 730, § 20.

PART 3

TRANSFERS OF RESIDENTIAL SERVICE RECIPIENTS

33-3-301. Transfer between facilities.

(a) The commissioner may authorize the transfer of a person in a facility of the department to another department facility or to a private facility under this section. The commissioner shall give due consideration to the relationship of the person to family, guardian, conservator, and friends so as to maintain relationships and encourage visitation beneficial to the person. If a person whose transfer is authorized has been admitted or committed by court order, a certified copy of the court order shall be sent to the facility to which the person is transferred.

(b)(1) If the commissioner determines that a person could more properly be cared for and treated in a facility other than the one in which the person is a service recipient and that the transfer is in the person's best interest, the commissioner may authorize the person to be transferred for an indefinite

period to another department facility. The person may be transferred to a secure facility, if, and only if, in addition, the commissioner determines that the person is substantially likely to injure the person or others if not treated in a secure facility. Notwithstanding any other provisions of this section, any transfer to a developmental center authorized under this section shall not exceed forty-five (45) days unless the transfer complies with department rules.

(2) Before a transfer is authorized, the person shall be given a physical examination by a licensed physician and a mental assessment and evaluation by a qualified professional, and complete written reports of the examination, assessment, and evaluation shall be forwarded to the commissioner by the chief officer who recommends the transfer. The reports and the chief officer's recommendation shall each include a certification that the transfer is in the person's best interests and a statement of the reasons for the conclusion.

(3) The chief officer, upon recommending transfer, shall immediately give personal notice of the recommendation by telephone or otherwise to the person's spouse, parent, adult child, legal guardian, or conservator, if any, and to the person. No person may be transferred less than twenty-four (24) hours after the notices required by this subdivision (b)(3) have been given, unless the person's spouse, parent, adult child, or legal guardian or conservator, if any, has agreed to the transfer or unless a diligent attempt by the chief officer to give notice is unsuccessful.

(4) The commissioner, upon authorizing transfer, shall immediately give to the person's spouse, parent, or adult child, legal guardian or conservator, if any, the committing court, if any, and to the service recipient written notice of the decision and a complaint form for review of transfer in the circuit court under part 7 of this chapter. The person may then be transferred immediately.

(c)(1) If the commissioner determines, upon the recommendation of the chief officer who requests a transfer, that:

(A) A person requires emergency care and treatment that cannot be provided by the transferring facility; and

(B) The transfer is in the person's best interest, the commissioner may authorize the person to be transferred immediately to another department facility. The person may be transferred to a secure facility, if, and only if, in addition, the commissioner determines that the person is substantially likely to injure such person or others if not treated in a secure facility.

(2) If the commissioner approves the emergency transfer, the commissioner shall notify the chief officers of the transferring and receiving facilities. The chief officer of the transferring facility shall then have the person transferred immediately. A bed shall remain open at the transferring facility for seventy-two (72) hours after the transfer for the readmission of the person.

(3) Within seventy-two (72) hours after the transfer, the chief officer of the receiving facility shall determine whether the transfer was appropriate. If the chief officer determines that the transfer was not appropriate, the chief officer shall return the person to the sending facility. If the chief officer determines that the transfer was appropriate, the chief officer shall immediately give the person written notice of the decision.

(4) The transfer shall not exceed thirty (30) days, after which the chief officer shall return the person to the facility from which the person came.

(5) If the chief officer of the receiving facility determines that the person requires treatment beyond the thirty-day period, the chief officer shall notify the person in writing and apply for indeterminate transfer under subsection (b). The person shall remain in the receiving facility unless the commissioner denies the application for transfer. If the commissioner denies the application, the chief officer of the receiving facility shall have the person transferred to the sending facility immediately.

(d) A person may be transferred from a state facility to a licensed private facility or from a licensed private facility to a state facility, upon proper application, approval of the sending and receiving facilities, and written notice to the committing court, if the person is committed. Once transferred, the person is lawfully admitted to the receiving facility, and the facility may retain the person under the authority of the admission or order applicable to the facility from which the person was transferred.

History.

Acts 1965, ch. 38, § 4(a); 1974, ch. 802, § 22; 1975, ch. 248, § 7; modified; Acts 1976, ch. 763, § 1; Acts 1978, ch. 533, § 4; T.C.A., § 33-309; Acts 1984, ch. 922, § 4; 2000, ch. 947, §§ 1, 6; 2009, ch. 531, § 35.

Compiler's Notes.

Former chapter 3, §§ 33-3-101 — 33-3-112, 33-3-201 — 33-3-203, 33-3-301 — 33-3-303, 33-3-401 — 33-3-412, 33-3-501 — 504, 33-3-601 — 33-3-603, 33-3-605 — 33-3-19, 33-3-623, 33-3-701 — 33-3-711, 33-3-801, 33-3-901 — 33-3-908 (Acts 1955, ch. 187, § 1; 1965, ch. 38, §§ 4-7, 16-19, 23-26; 1974, ch. 802, §§ 17-20, 22-25, 29-32; 1975, ch. 248, §§ 1, 5-7, 11; 1976, ch. 489, §§ 1, 2; 1976, ch. 763, §§ 1, 2, 10; 1977, ch. 482, § 11; 1978, ch. 533, §§ 3-5; 1978, ch. 533, § 7; 1978, ch. 877, §§ 1, 2; 1979, ch. 366, § 15; 1980, ch. 838, § 5; 1983, ch. 323, § 4-7, 9, 12, 15, 16; T.C.A. §§ 33-303 — 33-307, 33-309 — 33-312, 33-317 — 33-320, 33-330 — 33-337, 33-345 — 33-347, 33-355, 33-360 — 33-362, 33-364 — 33-378, 33-382, 33-610, 33-1101; Acts 1984, ch. 922, §§ 2-5, 7, 16-23, 34; 1984, ch. 986, §§ 1, 2; 1985, ch. 437, §§ 6-13, 33; 1986, ch. 570, §§ 2-4; 1986, ch. 836, § 3, 5; 1987, ch. 143, §§ 2, 3, 7; 1988, ch. 828, § 1; 1989, ch. 278, §§ 30-33; 1989, ch. 513, §§ 2, 5-13; 1989, ch. 591, §§ 29-31, 113; 1992, ch. 991, § 13; 1993, ch. 66, § 44; 1993, ch. 439, § 1; 1993, ch. 356, § 4; 1994, ch. 630, §§ 1, 2; 1994, ch. 743, § 1; 1995, ch. 320, § 1; 1995, ch. 411, § 1; 1996, ch. 669, § 1; 1996, ch. 675, § 15; 1996, ch. 1079, §§ 31-47, 49-56; 2000, ch. 947, § 6); § 33-3-304 (Acts 1974, ch. 464, § 1; 1975, ch. 248, § 20; T.C.A., § 33-702), which was previously repealed by Acts 1984, ch. 922, § 33; § 33-3-604 (Acts 1983, ch. 323, § 9; T.C.A., § 33-363), which was repealed by Acts 1984, ch. 922, § 33; § 33-3-620, which was previously transferred to § 33-6-104(e) and (f) in 1984; § 33-3-621, which was previously transferred to § 33-6-104(g) in 1984; and § 33-3-622, which was previously transferred to § 33-6-104(h) in 1984, is deleted and replaced in the revision of title 33 by Acts 2000, ch. 947, § 1, effective March 1, 2001.

For the Preamble to the act concerning the operation and funding of state government and to fund the state budget for the fiscal years beginning on July 1, 2008, and July 1, 2009, please refer to Acts 2009, ch. 531.

PART 4

TRANSFERS FROM DEPARTMENT OF CORRECTION AND DEPARTMENT OF CHILDREN'S SERVICES

33-3-401. Mentally ill or intellectually disabled minors in youth development centers.

(a) If the chief officer of a youth development center of the department of children's services determines, on the basis of a written report of a licensed physician or licensed psychologist designated as a health service provider, that a person in the youth development center:

(1) Has serious emotional disturbance, mental illness, or intellectual disability; and

(2) Is in need of residential care and treatment for the condition that cannot be provided by the department of children's services and that can be provided at a residential facility of the department of mental health and substance abuse services or the department of intellectual and developmental disabilities, the chief officer of the youth development center shall order the person's transfer and shall notify the person of the decision and the reasons in writing not less than twenty-four (24) hours in advance of the proposed transfer.

(b)(1) If the person does not object to the transfer within twenty-four (24) hours of notice of the proposed transfer, the person shall be transferred to the appropriate residential program of the department of mental health and substance abuse services or the department of intellectual and developmental disabilities that is designated by the commissioner of mental health and substance abuse services or the commissioner of intellectual and developmental disabilities as having available suitable accommodations. The department of children's services shall retain legal custody of the person after the person has been transferred to an appropriate residential program of the department of mental health and substance abuse services or the department of intellectual and developmental disabilities.

(2) If the person objects to the transfer within twenty-four (24) hours of notice of the proposed transfer, the chief officer of the youth development center shall convene a transfer committee not less than seven (7) nor more than fourteen (14) days thereafter, and the person shall remain in the youth development center pending the decision of the transfer committee.

History.

Acts 1984, ch. 922, § 34; 1989, ch. 278, § 30; 1989, ch. 513, § 5; 1992, ch. 991, § 13; 1996, ch. 1079, §§ 40-42; 2000, ch. 947, §§ 1, 6; 2010, ch. 734, § 1; 2010, ch. 1100, § 36; 2012, ch. 575, §§ 1, 2.

Compiler's Notes.

Former chapter 3, §§ 33-3-101 — 33-3-112, 33-3-201 — 33-3-203, 33-3-301 — 33-3-303, 33-3-401 — 33-3-412, 33-3-501 — 504, 33-3-601 — 33-3-603, 33-3-605 — 33-3-19, 33-3-623, 33-3-701 — 33-3-711, 33-3-801, 33-3-901 — 33-3-908 (Acts 1955, ch. 187, § 1; 1965, ch. 38, §§ 4-7, 16-19, 23-26; 1974, ch. 802, §§ 17-20, 22-25, 29-32; 1975, ch. 248, §§ 1, 5-7, 11; 1976, ch. 489, §§ 1, 2; 1976, ch. 763, §§ 1, 2, 10; 1977, ch. 482, § 11; 1978, ch. 533, §§ 3-5; 1978, ch. 533, § 7; 1978, ch. 877, §§ 1, 2; 1979, ch. 366, § 15; 1980, ch. 838, § 5; 1983, ch. 323, § 4-7, 9, 12, 15, 16; T.C.A. §§ 33-303 — 33-307, 33-309 — 33-312, 33-317 — 33-320, 33-330 — 33-337, 33-345 — 33-347, 33-355, 33-360 — 33-362, 33-364 — 33-378, 33-382, 33-610, 33-1101; Acts 1984, ch. 922, §§ 2-5, 7, 16-23, 34; 1984, ch. 986, §§ 1, 2; 1985, ch. 437, §§ 6-13, 33; 1986, ch. 570, §§ 2-4; 1986, ch. 836, § 3, 5; 1987, ch. 143, §§ 2, 3, 7; 1988, ch. 828, § 1; 1989, ch. 278, §§ 30-33; 1989, ch. 513, §§ 2, 5-13; 1989, ch. 591, §§ 29-31, 113; 1992, ch. 991, § 13; 1993, ch. 66, § 44; 1993, ch. 439, § 1; 1993, ch. 356, § 4; 1994, ch. 630, §§ 1, 2; 1994, ch. 743, § 1; 1995, ch. 320, § 1; 1995, ch. 411, § 1; 1996, ch. 669, § 1; 1996, ch. 675, § 15; 1996, ch. 1079, §§ 31-47, 49-56; 2000, ch. 947, § 6); § 33-3-304 (Acts 1974, ch. 464, § 1; 1975, ch. 248, § 20; T.C.A., § 33-702), which was previously repealed by Acts 1984, ch. 922, § 33; § 33-3-604 (Acts 1983, ch. 323, § 9; T.C.A., § 33-363), which was repealed by Acts 1984, ch. 922, § 33; § 33-3-620, which was previously transferred to § 33-6-104(e) and (f) in 1984; § 33-3-621, which was previously transferred to § 33-6-104(g) in 1984; and § 33-3-622, which was previously transferred to § 33-6-104(h) in 1984, is deleted and replaced in the revision of title 33 by Acts 2000, ch. 947, § 1, effective March 1, 2001.

For the Preamble to the act regarding changing the term "mental retardation" to "intellectual disability", please refer to Acts 2010, ch. 734.

Acts 2010, ch. 734, § 1 provided that the Tennessee code commission is directed to change all references to "mental retardation", wherever such references appear in titles 33, 39 and 41, to "intellectual disability", as supplements are issued and volumes are replaced.

Acts 2010, ch. 734, § 7 provided that for purposes of each provision amended by the act, a reference to intellectual disability shall be considered to refer to mental retardation, as defined by that provision on the day before the date of enactment of the act.

Acts 2010, ch. 734, § 8 provided that nothing in the act shall be construed to alter or otherwise affect the eligibility for services or the rights or responsibilities of individuals covered by the provision on the day before the date of enactment of the act.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health (now commissioner of mental health and substance abuse services), the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

33-3-402. Mentally ill or intellectually disabled adult inmates.

(a) If the director of a facility of the department of correction determines, on the basis of a written report of a licensed physician or a licensed psychologist with health service provider designation, that a person in the director's custody:

(1) Has mental illness, serious emotional disturbance, or intellectual disability; and

(2) Is in need of residential care and treatment for the condition that cannot be provided at an appropriate facility of the department of correction and that can be provided at an appropriate residential program of the department of mental health and substance abuse services or the department of intellectual and developmental disabilities, the director shall order the person's transfer and shall notify the person of the decision and the reasons in writing not less than twenty-four (24) hours in advance of the proposed transfer.

(b)(1) If the person is competent and waives in writing the right to a transfer hearing, the person shall be transferred to the custody of the commissioner at a secure facility that is designated by the commissioner as having available suitable

accommodations.

(2) If the person does not so waive the right to a hearing, the director shall convene a transfer committee not less than seven (7) nor more than fourteen (14) days thereafter, and the person shall remain in the facility of the department of correction pending the decision of the transfer committee.

History.

Acts 1984, ch. 922, § 34; 2000, ch. 947, §§ 1, 6; 2004, ch. 565, § 6; 2010, ch. 734, § 1; 2010, ch. 1100, § 37; 2012, ch. 575, § 1.

Compiler's Notes.

For the Preamble to the act regarding changing the term "mental retardation" to "intellectual disability", please refer to Acts 2010, ch. 734.

Acts 2010, ch. 734, § 1 provided that the Tennessee code commission is directed to change all references to "mental retardation", wherever such references appear in titles 33, 39 and 41, to "intellectual disability", as supplements are issued and volumes are replaced.

Acts 2010, ch. 734, § 7 provided that for purposes of each provision amended by the act, a reference to intellectual disability shall be considered to refer to mental retardation, as defined by that provision on the day before the date of enactment of the act.

Acts 2010, ch. 734, § 8 provided that nothing in the act shall be construed to alter or otherwise affect the eligibility for services or the rights or responsibilities of individuals covered by the provision on the day before the date of enactment of the act.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health (now commissioner of mental health and substance abuse services), the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

33-3-403. Emergency residential care and treatment.

(a) If the director of a facility of the department of correction determines, on the basis of a written report of a licensed physician or a licensed psychologist designated as a health service provider, that a person in the director's custody:

(1) Has mental illness or serious emotional disturbance; and

(2) Is in need of emergency residential care and treatment for the condition that cannot be provided at an appropriate facility of the department of correction and that can be provided at an appropriate residential program of the department of mental health and substance abuse services, the director shall immediately have the person transferred to the custody of the commissioner at a facility designated by the commissioner.

(b) When a person is transferred from the department of correction to the department of mental health and substance abuse services under this section, the chief officer of the receiving facility shall convene a transfer committee not less than seven (7) nor more than fourteen (14) days thereafter unless the person is returned to the department of correction before the scheduled hearing date.

History.

Acts 1984, ch. 922, § 34; 1989, ch. 278, § 33; 1996, ch. 1079, §§ 43-45; 2000, ch. 947, §§ 1, 6; 2010, ch. 1100, § 38; 2012, ch. 575, § 1.

Compiler's Notes.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health (now commissioner of mental health and substance abuse services), the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

33-3-404. Transfer committees — Appointment of members.

A transfer committee consists of five (5) persons. If the person to be transferred is in the custody of the department of children's services, the commissioner of children's services shall appoint two (2) members of the committee, neither of whom may be the transferring chief officer. If the person to be transferred is in the custody of the department of correction, the commissioner of correction shall appoint two (2) members of the committee, neither of whom may be the transferring director. The commissioner of mental health and substance abuse services or the commissioner of intellectual and developmental disabilities, as appropriate, shall appoint three (3) members to review transfers of adults and two (2) members to review transfers of children. The executive director of the state commission on children and youth or the director's designee shall be a member of a transfer committee that reviews transfers of children. The committee members shall serve at the pleasure of the appointing commissioners. The commissioners may appoint alternate committee members.

History.

Acts 1984, ch. 922, § 34; 1989, ch. 278, § 31; 1996, ch. 1079, § 47; 2000, ch. 947, § 1; 2010, ch. 1100, § 39; 2012, ch. 575, § 2.

Compiler's Notes.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health (now commissioner of mental health and substance abuse services), the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

33-3-405. Transfer committee — Chair — Vice chair — Voting — Hearings — Rights of transferees — Evidence.

(a) The committee may elect a chair and a vice chair. The committee shall act by majority vote. No member of the committee is disqualified to participate in a hearing by virtue of prior knowledge of the case. The chair may postpone the hearing for a reasonable time

upon request of the person whose transfer is proposed to permit that person to obtain counsel and witnesses. In the hearing, the committee shall receive all relevant evidence. The transferee shall be permitted to speak personally and by counsel and to present witnesses.

(b) Transfer committee proceedings under this part are not governed by the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

History.
Acts 1984, ch. 922, § 34; 2000, ch. 947, § 1.

33-3-406. Approval or disapproval of transfer.

(a) If the committee determines that the transfer meets the standards for a transfer under this part, it shall approve the transfer. The chair shall immediately give the person written notice of the committee's decision and a summary of the factual basis for the decision and a complaint form for review of the transfer in the circuit court under part 7 of this chapter.

(b) If the transfer committee determines that the transfer does not meet the standards for a transfer under this part, it shall disapprove the transfer, and if the person has already been transferred, shall order the person returned to the transferring facility. The chair shall immediately give the person written notice of the committee's decision and a summary of the factual basis for the decision.

History.
Acts 1984, ch. 922, § 34; 1989, ch. 513, § 6; 2000, ch. 947, § 1.

33-3-407. When person to be transferred.

(a) The person shall be transferred five (5) days after the receipt of the committee's notice if the person has not filed a complaint under part 7 of this chapter.

(b) The person may be transferred immediately after receipt of the notice if the person is competent and consents in writing to the transfer.

History.
Acts 1984, ch. 922, § 34; 2000, ch. 947, § 1.

33-3-408. Determination of appropriateness of transfer.

(a) Within five (5) days, excluding Saturdays, Sundays, and legal holidays, after any transfer made without objection by the transferee under § 33-3-401 or § 33-3-402, or any transfer under § 33-3-403, the chief officer of the receiving facility of the department shall determine whether the transfer was appropriate under this part. If the transfer was based on mental illness or serious emotional disturbance, the chief officer's decision shall be based on the advice of a licensed physician. If the transfer was based on intellectual disability, the chief officer's decision shall be based on the advice of a licensed physician or a licensed psychologist with health service provider designation.

(b)(1) If the chief officer determines that the transfer of a person in the custody of the department of correction was not appropriate, the chief officer shall immediately transfer the person back to the custody of the department of correction.

(2) If the chief officer of the receiving department facility determines that the transfer of a person in the custody of the department of children's services was not appropriate, the chief officer shall immediately transfer the person back to the youth development center or other appropriate program designated by the commissioner of children's services.

(3) If the chief officer determines that the transfer was appropriate, the chief officer shall immediately give the person written notice of the decision.

History.
Acts 1984, ch. 922, § 34; 1987, ch. 143, § 2; 1989, ch. 278, § 33; 1989, ch. 513, § 7; 1996, ch. 1079, §§ 48, 49; 2000, ch. 947, §§ 1, 6; 2004, ch. 565, § 7; 2010, ch. 734, § 1.

Compiler's Notes.
For the Preamble to the act regarding changing the term "mental retardation" to "intellectual disability", please refer to Acts 2010, ch. 734.

Acts 2010, ch. 734, § 1 provided that the Tennessee code commission is directed to change all references to "mental retardation", wherever such references appear in titles 33, 39 and 41, to "intellectual disability", as supplements are issued and volumes are replaced.

Acts 2010, ch. 734, § 7 provided that for purposes of each provision amended by the act, a reference to intellectual disability shall be considered to refer to mental retardation, as defined by that provision on the day before the date of enactment of the act.

Acts 2010, ch. 734, § 8 provided that nothing in the act shall be construed to alter or otherwise affect the eligibility for services or the rights or responsibilities of individuals covered by the provision on the day before the date of enactment of the act.

33-3-409. Return of transferee from public facility.

(a) If the chief officer of a receiving facility of the department or, upon approval by the commissioner, the chief officer of a private facility that operates a program for the department determines more than five (5) days, excluding Saturdays, Sundays, and legal holidays, after a person has been transferred, that a person no longer meets the standards for a transfer under this part or that residential care and treatment in the facility are no longer advisable or beneficial, the chief officer shall order the person's return to the department of correction or the department of children's services.

(b) The chief officer shall notify the person of the decision in writing not less than seventy-two (72) hours in advance of the proposed transfer. If the person does not object within seventy-two (72) hours of the notice to the proposed return, the person shall be returned to the department of correction or the department of children's services. If the person objects within seventy-two (72) hours of the notice, the chief officer shall convene a transfer committee to review the decision not less than seven (7) days nor more than fourteen (14) days thereafter. The person shall remain at the facility pending the decision of the transfer committee.

(c) If the transfer committee determines that the person no longer meets the standards for a transfer under this part or that residential care and treatment in the facility are no longer advisable or beneficial, it shall approve the transfer.

(d) The decision of a transfer committee approving or disapproving a transfer under this section is final. The judicial remedy and procedures under part 7 of this chapter do not apply to the transfer committee decision.

History.
Acts 1984, ch. 922, § 34; 1988, ch. 828, § 1; 1989, ch. 278, § 33; 1989, ch. 513, §§ 8-12; 1996, ch. 1079, § 50; 2000, ch. 947, §§ 1, 6.

33-3-410. Return of transferee from private facility.

(a) If the chief officer of a private facility that operates a program for the department determines that residential care and treatment of a transferee in the facility are no longer advisable or beneficial, the chief officer shall notify the transferee and the commissioner of the determination and of the basis for it.

(b) If the commissioner, after receipt of the notice, determines that an emergency exists and that the determination appears to be correct, the commissioner shall order the transfer immediately to a facility of the department. Within seven (7) days after the transfer, the commissioner shall have a transfer committee composed only of three (3) persons appointed by the commissioner hold a hearing to determine whether residential care and treatment of a transferee in the transferring facility are no longer advisable or beneficial. If the committee determines that the chief officer was correct, it shall approve the transfer. Otherwise, the committee shall order the person returned to the transferring facility or to another appropriate facility.

(c) If the commissioner, after receipt of the notice, determines that an emergency does not exist and that the determination appears to be correct, the commissioner shall have a transfer committee composed only of three (3) persons appointed by the commissioner hold a hearing not less than seven (7) nor more than fourteen (14) days after receipt of the notice to determine whether residential care and treatment of a transferee in the transferring facility are no longer advisable or beneficial. If the committee determines that the chief officer was correct, it shall approve the transfer. Otherwise, the committee shall disapprove the transfer. The person shall remain in the transferring facility until the committee has made its determination.

History.
Acts 1984, ch. 922, § 34; 2000, ch. 947, §§ 1, 6.

33-3-411. Runaways — Custody.

If a transferee runs away from a department facility or a program that is operated by a private contractor for the department and is taken into custody within thirty (30) days after running away, the transferee shall be returned to the custody of the commissioner at a facility designated by the commissioner. If a transferee runs away from the facility or program and is taken into custody more than thirty (30) days after running away, the department that initiated the transfer shall designate a facility or program at which the transferee shall be returned to the custody of the transferring department.

History.
Acts 1984, ch. 922, § 34; 1989, ch. 278, §§ 32, 33; 1996, ch. 1079, § 51; 2000, ch. 947, §§ 1, 6.

33-3-412. Emergency residential care and treatment for minors in youth development centers.

(a) The chief officer of a youth development center shall immediately have a person transferred to a facility of the department designated by the commissioner, if the chief officer of the youth development center of the department of children's services determines, on the basis of a written report of a licensed physician or a licensed psychologist designated as a health service provider, that the person in the youth development center:

(1) Has a serious emotional disturbance or mental illness; and

(2) Is in need of emergency residential care and treatment for the condition that cannot be provided at the youth development center and that can be provided by an appropriate residential program of the department.

(b) When a person in the custody of the department of children's services is transferred to a facility of the department under this section, the chief officer of the receiving facility shall convene a transfer committee not less than seven (7) nor more than fourteen (14) days thereafter, unless the person is returned to the youth development center or other appropriate program of the department of children's services before the scheduled hearing date.

History.
Acts 1996, ch. 1079, § 46; 2000, ch. 947, §§ 1, 6; 2010, ch. 1100, § 24.

Compiler's Notes.
Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health (now commissioner of mental health and substance abuse services), the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

PART 5

JUDICIAL PROCEDURES GENERALLY

33-3-501. Patient or resident not released during pendency of proceedings — Exceptions.

(a) Notwithstanding any other provisions of this title, no person with mental illness, serious emotional disturbance, or developmental disability with respect to whom proceedings for hospitalization or admission under a court order have been commenced, shall be released or discharged during the pendency of the proceedings, unless ordered by the court upon applica-

tion of the person with mental illness, serious emotional disturbance, or developmental disability or of the parent, legal guardian, legal custodian, conservator, spouse or adult next of kin of the person, or upon the report of the chief officer that the person with mental illness, serious emotional disturbance, or developmental disability may be discharged with safety.

(b) This provision does not limit the duties to release persons with mental illness, serious emotional disturbance, or developmental disability imposed by §§ 33-5-302, 33-5-303, and 33-6-207, and chapter 6, parts 3, 4, and 8 of this title.

History.

Acts 1965, ch. 38, § 7; 1974, ch. 802, § 23; 1978, ch. 533, § 5; 1983, ch. 323, § 12; T.C.A., § 33-310; Acts 1985, ch. 437, § 11; 1996, ch. 1079, § 52; 2000, ch. 947, § 1.

Compiler's Notes.

Former chapter 3, §§ 33-3-101 — 33-3-112, 33-3-201 — 33-3-203, 33-3-301 — 33-3-303, 33-3-401 — 33-3-412, 33-3-501 — 504, 33-3-601 — 33-3-603, 33-3-605 — 33-3-19, 33-3-623, 33-3-701 — 33-3-711, 33-3-801, 33-3-901 — 33-3-908 (Acts 1955, ch. 187, § 1; 1965, ch. 38, §§ 4-7, 16-19, 23-26; 1974, ch. 802, §§ 17-20, 22-25, 29-32; 1975, ch. 248, §§ 1, 5-7, 11; 1976, ch. 489, §§ 1, 2; 1976, ch. 763, §§ 1, 2, 10; 1977, ch. 482, § 11; 1978, ch. 533, §§ 3-5; 1978, ch. 533, § 7; 1978, ch. 877, §§ 1, 2; 1979, ch. 366, § 15; 1980, ch. 838, § 5; 1983, ch. 323, § 4-7, 9, 12, 15, 16; T.C.A. §§ 33-303 — 33-307, 33-309 — 33-312, 33-317 — 33-320, 33-330 — 33-337, 33-345 — 33-347, 33-355, 33-360 — 33-362, 33-364 — 33-378, 33-382, 33-610, 33-1101; Acts 1984, ch. 922, §§ 2-5, 7, 16-23, 34; 1984, ch. 986, §§ 1, 2; 1985, ch. 437, §§ 6-13, 33; 1986, ch. 570, §§ 2-4; 1986, ch. 836, § 3, 5; 1987, ch. 143, §§ 2, 3, 7; 1988, ch. 828, § 1; 1989, ch. 278, §§ 30-33; 1989, ch. 513, §§ 2, 5-13; 1989, ch. 591, §§ 29-31, 113; 1992, ch. 991, § 13; 1993, ch. 66, § 44; 1993, ch. 439, § 1; 1993, ch. 356, § 4; 1994, ch. 630, §§ 1, 2; 1994, ch. 743, § 1; 1995, ch. 320, § 1; 1995, ch. 411, § 1; 1996, ch. 669, § 1; 1996, ch. 675, § 15; 1996, ch. 1079, §§ 31-47, 49-56; 2000, ch. 947, § 6); § 33-3-304 (Acts 1974, ch. 464, § 1; 1975, ch. 248, § 20; T.C.A., § 33-702), which was previously repealed by Acts 1984, ch. 922, § 33; § 33-3-604 (Acts 1983, ch. 323, § 9; T.C.A., § 33-363), which was repealed by Acts 1984, ch. 922, § 33; § 33-3-620, which was previously transferred to § 33-6-104(e) and (f) in 1984; § 33-3-621, which was previously transferred to § 33-6-104(g) in 1984; and § 33-3-622, which was previously transferred to § 33-6-104(h) in 1984, is deleted and replaced in the revision of title 33 by Acts 2000, ch. 947, § 1, effective March 1, 2001.

33-3-502. Record of proceedings — Copy of court order with recipient's history to hospital or developmental center.

(a) In all judicial proceedings under this title the clerk of the court in which the proceedings are held shall keep a careful and accurate record of the proceedings.

(b)(1) Whenever, in a judicial proceeding under this title, a person has been ordered hospitalized or admitted, the clerk of the court shall immediately communicate the action of the court to the chief officer of the hospital or developmental center.

(2) A copy of the court order shall be forwarded to the hospital or developmental center, together with a personal and family history of the person with mental illness, serious emotional disturbance, or developmental disability that the clerk shall complete, and any other forms or documents required by rules of the department.

(3) The department shall furnish a supply of all necessary forms to the clerks of the various courts.

(c) The clerk may communicate to the chief officer of the hospital or developmental center the cost that shall be included in the costs and expenses of the case.

History.

Acts 1965, ch. 38, § 16; 1974, ch. 802, § 24; 1975, ch. 248, § 1; T.C.A., § 33-311; Acts 2000, ch. 947, §§ 1, 6.

33-3-503. Costs of proceedings.

(a) The reasonable costs incurred in judicial proceedings under this title shall be paid by the subject of the proceedings or the subject's estate or by the subject's responsible relatives and shall be a charge upon the estate of those liable.

(b) The reasonable costs incurred in judicial proceedings filed by the chief officer of a department facility to have a guardian or conservator appointed under title 34, shall be paid by the subject of the proceedings in conformity with that law.

(c)(1) If a subject of proceedings under this title is indigent and does not have responsible relatives able to pay the costs or if a subject of guardianship or conservatorship proceedings filed by the chief officer of a department facility is indigent under the guardianship or conservatorship law under title 34, the state shall pay the costs.

(2) For the purpose of subdivision (c)(1), the supreme court shall prescribe by rule the nature of costs for which reimbursement may be allowed, and limitations on and conditions for reimbursement of costs as it deems appropriate in the public interest, subject to this section. The rules shall also specify the form and content of applications for reimbursement of costs to be filed under this section. The administrative director of the courts shall administer this subsection (c) and rules adopted under this subsection (c), and shall audit and review all applications for reimbursement of costs. Upon finding payment to be in order, the administrative director of the courts shall process the payment from money appropriated for that purpose.

(d) In any case where the subject of the proceedings is judicially determined not to be involuntarily hospitalized, committed, or transferred, the costs may be taxed against the person who seeks hospitalization, commitment, or transfer of the subject of the proceedings.

(e) The court may require any petitioner to file an undertaking with surety to be approved by the court in an amount the court considers proper to assure the payment of costs and expenses and to save harmless the respondent by reason of costs incurred, including attorney's fees, if any, and damages suffered by the respondent as a result of the action.

(f) Witnesses subpoenaed to appear in proceedings held under this title shall be paid fees and mileage as provided by law for witnesses generally.

History.
Acts 1965, ch. 38, § 17; 1974, ch. 802, § 25; 1976, ch. 763, § 2; T.C.A., § 33-312; Acts 1984, ch. 922, § 3; 1985, ch. 437, § 12; 1993, ch. 66, § 44; 2000, ch. 947, § 1; 2001, ch. 349, § 1.

33-3-504. Physician, psychologist, or other person, as witness.

A physician, psychologist, person designated by the commissioner under § 33-6-427(b), or other professional who makes an application or conducts an examination under this title is a competent and compellable witness at any judicial proceeding conducted under it.

History.
Acts 1983, ch. 323, § 15; T.C.A., § 33-355; Acts 1993, ch. 356, § 4; 2000, ch. 947, § 1.

33-3-505. Use of audio visual technology in judicial proceeding.

(a) Any judicial proceeding under this title may be conducted by the use of audio visual technology as set out in this section.

(1) For proceedings under chapter 6, part 4 of this title, the use of audio visual technology is permissible at the court's discretion, but the court may grant any reasonable request by counsel, a party, or a guardian ad litem to conduct the proceedings in the physical presence of the court.

(2) For any other proceedings under this title, the use of audio visual technology is permissible with the agreement of all parties and at the court's discretion.

(b) Subject to the availability of suitable equipment and notwithstanding any law to the contrary, proceedings may be conducted through two-way electronic audio-video communication without the physical presence of the defendant, plaintiff, witnesses or attorneys before the court. Any such hearing must be conducted so that:

(1) The defendant, plaintiff, and judge can see and hear each other throughout the entire hearing, except for the private communications excluded under subdivision (b)(5);

(2) The judge, defendant, plaintiff and their attorneys can see and hear all witnesses while they testify orally during the hearing;

(3) The judge, defendant, plaintiff and their attorneys can hear all questions asked of witnesses during their testimony;

(4) The judge, defendant, plaintiff and their attorneys can hear all questions, statements, objections, motions and arguments of any attorney or party participating in the hearing; and

(5) The defendant and defendant's attorney and plaintiff and plaintiff's attorney can communicate privately with each other during the hearing.

History.
Acts 2004, ch. 929, § 1.

33-3-506. Delivery of pleadings and certificates of need for care and treatment by telefax transmission.

Pleadings and any certificates of need for care and treatment that must be filed in proceedings under this chapter, and chapters 5-8 of this title may be delivered to the court by telefax transmission in conformity with the Tennessee Rules of Civil Procedure.

History.
Acts 2004, ch. 929, § 1.

PART 6

JUDICIAL PROCEDURES FOR RESIDENTIAL TREATMENT

33-3-601. Application of part.

This part governs only proceedings under statutes that designate use of this part.

History.
Acts 1983, ch. 323, § 9; T.C.A., § 33-360; Acts 1987, ch. 143, § 7; 2000, ch. 947, § 1.

Compiler's Notes.
Former chapter 3, §§ 33-3-101 — 33-3-112, 33-3-201 — 33-3-203, 33-3-301 — 33-3-303, 33-3-401 — 33-3-412, 33-3-501 — 504, 33-3-601 — 33-3-603, 33-3-605 — 33-3-19, 33-3-623, 33-3-701 — 33-3-711, 33-3-801, 33-3-901 — 33-3-908 (Acts 1955, ch. 187, § 1; 1965, ch. 38, §§ 4-7, 16-19, 23-26; 1974, ch. 802, §§ 17-20, 22-25, 29-32; 1975, ch. 248, §§ 1, 5-7, 11; 1976, ch. 489, §§ 1, 2; 1976, ch. 763, §§ 1, 2, 10; 1977, ch. 482, § 11; 1978, ch. 533, §§ 3-5; 1978, ch. 533, § 7; 1978, ch. 877, §§ 1, 2; 1979, ch. 366, § 15; 1980, ch. 838, § 5; 1983, ch. 323, § 4-7, 9, 12, 15, 16; T.C.A. §§ 33-303 — 33-307, 33-309 — 33-312, 33-317 — 33-320, 33-330 — 33-337, 33-345 — 33-347, 33-355, 33-360 — 33-362, 33-364 — 33-378, 33-382, 33-610, 33-1101; Acts 1984, ch. 922, §§ 2-5, 7, 16-23, 34; 1984, ch. 986, §§ 1, 2; 1985, ch. 437, §§ 6-13, 33; 1986, ch. 570, §§ 2-4; 1986, ch. 836, § 3, 5; 1987, ch. 143, §§ 2, 3, 7; 1988, ch. 828, § 1; 1989, ch. 278, §§ 30-33; 1989, ch. 513, §§ 2, 5-13; 1989, ch. 591, §§ 29-31, 113; 1992, ch. 991, § 13; 1993, ch. 66, § 44; 1993, ch. 439, § 1; 1993, ch. 356, § 4; 1994, ch. 630, §§ 1, 2; 1994, ch. 743, § 1; 1995, ch. 320, § 1; 1995, ch. 411, § 1; 1996, ch. 669, § 1; 1996, ch. 675, § 15; 1996, ch. 1079, §§ 31-47, 49-56; 2000, ch. 947, § 6); § 33-3-304 (Acts 1974, ch. 464, § 1; 1975, ch. 248, § 20; T.C.A., § 33-702), which was previously repealed by Acts 1984, ch. 922, § 33; § 33-3-604 (Acts 1983, ch. 323, § 9; T.C.A., § 33-363), which was repealed by Acts 1984, ch. 922, § 33; § 33-3-620, which was previously transferred to § 33-6-104(e) and (f) in 1984; § 33-3-621, which was previously transferred to § 33-6-104(g) in 1984; and § 33-3-622, which was previously transferred to § 33-6-104(h) in 1984, is deleted and replaced in the revision of title 33 by Acts 2000, ch. 947, § 1, effective March 1, 2001.

33-3-602. Contents of complaint for commitment.

A complaint for commitment shall be sworn and shall show that the defendant is subject to involuntary care and treatment under the commitment statute on which the complaint is based, and shall be accompanied either by a sworn statement by the plaintiff that the defendant has refused to be examined by certifying professionals or by certificates of need as required by the commitment statute showing:

(1) That the certifying professionals have examined the defendant within three (3) days of the date of the certificate;

(2) That they are of the opinion that the defendant is subject to involuntary care and treatment under the commitment statute; and

(3) The factual foundation for their conclusions on each item of the commitment statute.

History.
Acts 1983, ch. 323, § 9; T.C.A., § 33-361; Acts 1984, ch. 922, § 16; 2000, ch. 947, § 1.

33-3-603. Jurisdiction and venue.

(a) The complaint may be filed in a county in which the defendant resides or may be found. If the defendant is in a developmental center, hospital, or treatment resource, the complaint shall be filed where the person is, and jurisdiction of the proceedings may be transferred for good cause to the court of residence. This venue requirement does not apply to complaints filed in accordance with § 33-7-301 or § 33-7-303.

(b) Except as otherwise expressly provided in this title, only the following courts have jurisdiction over the complaint:

(1) Chancery court;

(2) Circuit court;

(3) Juvenile courts in proceedings held by judges who are lawyers or by referees;

(4) Probate court in counties having a population of more than four hundred thousand (400,000) according to the 1980 federal census or any subsequent federal census; and

(5) Court of general sessions in counties having a metropolitan form of government and having a population of more than four hundred thousand (400,000) according to the 1990 federal census or any subsequent federal census; provided, that the jurisdiction conferred by this subdivision (b)(5) is conferred only for petitions concerning mandatory outpatient treatment.

History.
Acts 1983, ch. 323, § 9; T.C.A., § 33-362; Acts 1984, ch. 922, § 16; 1985, ch. 437, § 13; 1986, ch. 570, § 4; 1986, ch. 836, § 5; 1994, ch. 743, § 1; 2000, ch. 947, § 1.

Compiler's Notes.
For table of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

33-3-604. [Reserved.]

33-3-605. Service on defendant.

Upon receipt of a complaint, the clerk shall have a copy of the complaint with a notice of the time and place of the hearing, the defendant's right to counsel, and the standards for commitment that apply to the proceeding served on the defendant by personal service if the person is at liberty, or by mail, if the person is not at liberty, and shall send a copy by mail to the defendant's attorney, the chief officer of a facility in which the defendant is, and the defendant's legal guardian, legal custodian, or conservator, if any, and to the spouse, parent, or adult next of kin if there is no guardian or conservator. If mailing addresses are unknown, notice may be given by any other reasonable means.

History.
Acts 1983, ch. 323, § 9; T.C.A., § 33-364; Acts 1984, ch. 922, §§ 16, 17; 1987, ch. 143, § 3; 1996, ch. 1079, § 53; 2000, ch. 947, §§ 1, 6.

33-3-606. Time for hearing.

The hearing shall be held as soon as possible, but not more than twenty (20) days after the complaint was filed, except that the court may continue the hearing for up to ten (10) days for good cause and may continue the hearing for as long as necessary to impanel a jury if the defendant demands a jury trial.

History.
Acts 1983, ch. 323, § 9; T.C.A., § 33-365; Acts 1984, ch. 922, §§ 16, 18; 2000, ch. 947, § 1.

33-3-607. Examination of defendant — Detention and release.

If the complaint includes or is accompanied by a sworn statement by the plaintiff that the defendant has refused to be examined by certifying professionals and the court finds that probable cause exists to believe that the defendant is subject to involuntary care and treatment and has refused to be examined by a certifying professional, the court shall order a law enforcement officer to take the defendant into custody for an examination by two (2) certifying professionals who meet the requirements of the commitment statute. The defendant may be detained for the period required to complete the examinations, but not more than forty-eight (48) hours. Upon completion of the examinations, the person shall be released, and the certifying professionals shall report their findings to the court. For good cause, the court may order further examination, including independent examination, as to the mental condition of the person and may continue the hearing until the report of the examination is made to the court.

History.
Acts 1983, ch. 323, § 9; T.C.A., § 33-366; Acts 1984, ch. 922, §§ 16, 19; 2000, ch. 947, § 1.

33-3-608. Attorney — Notification of representation - Appointment by court.

The defendant's attorney shall notify the court of the representation immediately after accepting it. If the defendant does not employ an attorney, the court shall appoint an attorney to represent the defendant not less than five (5) days in advance of the hearing. An attorney representing the defendant shall not serve as guardian ad litem. If the court determines that the defendant is not able to understand the nature of the proceedings and cannot communicate with counsel in the conduct of the case, the court may appoint another person to serve as the defendant's guardian ad litem.

History.
Acts 1983, ch. 323, § 9; T.C.A., § 33-367; Acts 1984, ch. 922, §§ 16, 20; 2000, ch. 947, § 1.

33-3-609. Jury trial.

Either party may demand a jury trial on the issues.

History.
Acts 1983, ch. 323, § 9; T.C.A., § 33-368; Acts 2000, ch. 947, § 1.

33-3-610. Place of hearing.

The hearing shall be conducted in a place where the court is usually held or in a physical setting not likely to have a harmful effect on the mental condition of the defendant. No hearing shall be conducted in a jail or other custodial facility for the detention of persons charged with or convicted of criminal offenses. The court shall determine the place of the hearing and may exclude the public from the hearing on motion of the defendant if the interests of the defendant and the public would best be served by exclusion.

History.
Acts 1983, ch. 323, § 9; T.C.A., § 33-369; Acts 1984, ch. 922, § 16; 2000, ch. 947, § 1.

33-3-611. Transportation to hearing.

The chief officer of a facility in which the defendant is found shall arrange for suitable transportation of the person to the court where the hearing is to be held, except that the sheriff shall provide transportation if the defendant has been committed in connection with criminal charges.

History.
Acts 1983, ch. 323, § 9; T.C.A., § 33-370; Acts 1984, ch. 922, §§ 16, 19; 2000, ch. 947, § 1.

33-3-612. Evidence — Witnesses — Continuances — Presence or exclusion of defendant.

(a) The court shall give the defendant, the plaintiff, and all other persons to whom the clerk is required to give notice of the proceeding, an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses.

(b) The defendant shall be present at the hearing unless the defendant waives the right to be present in writing. If the defendant's attorney shows that the defendant's physical health would be endangered by being at the hearing, the court may order a continuance until the risk is terminated, and the defendant shall not be discharged during the continuance unless the hospital determines that the defendant no longer meets the commitment standards applicable in the hearing that has been continued. If the court determines that the defendant's conduct at the hearing is so violent or otherwise disruptive that it creates a serious risk of harm to the defendant or others at the hearing or so disrupts the proceedings that they cannot be conducted in a proper manner, the court may order the defendant restrained or excluded to the extent necessary to the proper conduct of the proceedings. If the defendant is not present at or is excluded from the hearing, the court shall make a written finding of fact as to why the hearing is held in defendant's absence.

History.
Acts 1983, ch. 323, § 9; T.C.A., § 33-371; Acts 1984, ch. 922, §§ 16, 21; 1996, ch. 1079, § 54; 2000, ch. 947, § 1.

33-3-613. Conduct of hearing.

The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure.

History.
Acts 1983, ch. 323, § 9; T.C.A., § 33-372; Acts 2000, ch. 947, § 1.

33-3-614. Names of examining professionals — Availability to defendant.

If the names of examining professionals who certified the person's need for care and treatment did not accompany the complaint, they shall be made available to the defendant and counsel prior to the hearing.

History.
Acts 1983, ch. 323, § 9; T.C.A., § 33-373; Acts 1984, ch. 922, § 16; 2000, ch. 947, § 1.

33-3-615. Testimony of professionals — Depositions or affidavits.

(a) The testimony of a certifying professional may be made by deposition or affidavit only with the consent of the defendant's counsel. If the testimony is given by deposition or affidavit, the court shall make a specific finding of fact that the defendant or the defendant's counsel has consented, and the defendant's right of cross-examination of the certifying professional shall be preserved.

(b) If consent is not given for testimony by deposition or affidavit, a professional who would be qualified as a certifying professional under the commitment statute may testify instead of a certifying professional if the person has examined the defendant within ten (10) days of the hearing, and the person shall testify as to each point of the commitment statute.

History.
Acts 1983, ch. 323, § 9; T.C.A., § 33-374; Acts 1984, ch. 922, §§ 16, 22; 2000, ch. 947, § 1.

33-3-616. Place of detention.

No defendant shall be detained at a jail or other custodial facility for the detention of persons charged with or convicted of criminal offenses, unless the defendant is under arrest for the commission of a crime.

History.
Acts 1983, ch. 323, § 9; T.C.A., § 33-375; Acts 1984, ch. 922, § 16; 2000, ch. 947, § 1.

33-3-617. Requisites for commitment.

IF AND ONLY IF

(1) the certificates required by law have been filed with the court showing the need for involuntary care and treatment, AND

(2) the court finds on the basis of clear, unequivocal and convincing evidence that the defendant is subject to involuntary care and treatment under the statute under which the commitment is sought,

THEN

(3) the court shall commit the person under the commitment statute on which the complaint is based.

History.
Acts 1983, ch. 323, § 9; T.C.A., § 33-376; Acts 1984, ch. 922, §§ 16, 23; 2000, ch. 947, § 1.

33-3-618. Dismissal of proceedings — Release of defendant.

(a) If the court does not commit the defendant to involuntary care and treatment, the court shall enter an order dismissing the proceedings for involuntary care and treatment.

(b) If the defendant is being held involuntarily under this title, the court shall order the immediate release of the defendant unless the defendant is in the custody of the chief officer of a facility under another law or is being held on charges of the commission of a criminal offense or of juvenile delinquency.

History.
Acts 1983, ch. 323, § 9; T.C.A., § 33-377; Acts 1984, ch. 922, §§ 16, 19; 2000, ch. 947, § 1.

33-3-619. Commitment to involuntary care — Disclosure of information.

If a commitment to involuntary care and treatment is entered, the certifying professionals shall disclose to the hospital, treatment resource, or developmental center that admits the person on its request information they have about the person, including diagnosis, past treatment, and anything else relating to the person's condition that may aid the facility in providing appropriate care and treatment.

History.
Acts 1983, ch. 323, § 9; T.C.A., § 33-378; Acts 1984, ch. 922, §§ 16, 19; 2000, ch. 947, § 1.

33-3-620. Appeals.

Appeals from proceedings for involuntary care and treatment shall be taken under the general law governing appeals.

History.
Acts 1983, ch. 323, § 9; T.C.A., §§ 33-382, 33-3-623; Acts 2000, ch. 947, § 1.

PART 7

JUDICIAL PROCEDURES FOR REVIEW OF TRANSFERS

33-3-701. Commencement of proceedings.

Judicial proceedings for the determination of whether a person may be transferred to a facility or continues to be eligible for treatment in a facility to which that person was transferred under part 3 or 4 of this chapter, may be commenced by filing a complaint in circuit court where the receiving department facility is located. The person or a parent, legal guardian, legal custodian, conservator, spouse or responsible relative of the person may initiate the review proceedings.

History.
Acts 1984, ch. 922, § 5; 1989, ch. 513, § 13; 1996, ch. 1079, § 55; 2000, ch. 947, §§ 1, 6.

Compiler's Notes.
Former chapter 3, §§ 33-3-101 — 33-3-112, 33-3-201 — 33-3-203, 33-3-301 — 33-3-303, 33-3-401 — 33-3-412, 33-3-501 — 504, 33-3-601 — 33-3-603, 33-3-605 — 33-3-19, 33-3-623, 33-3-701 — 33-3-711, 33-3-801, 33-3-901 — 33-3-908 (Acts 1955, ch. 187, § 1; 1965, ch. 38, §§ 4-7, 16-19, 23-26; 1974, ch. 802, §§ 17-20, 22-25, 29-32; 1975, ch. 248, §§ 1, 5-7, 11; 1976, ch. 489, §§ 1, 2; 1976, ch. 763, §§ 1, 2, 10; 1977, ch. 482, § 11; 1978, ch. 533, §§ 3-5; 1978, ch. 533, § 7; 1978, ch. 877, §§ 1, 2; 1979, ch. 366, § 15; 1980, ch. 838, § 5; 1983, ch. 323, § 4-7, 9, 12, 15, 16; T.C.A. §§ 33-303 — 33-307, 33-309 — 33-312, 33-317 — 33-320, 33-330 — 33-337, 33-345 — 33-347, 33-355, 33-360 — 33-362, 33-364 — 33-378, 33-382, 33-610, 33-1101; Acts 1984, ch. 922, §§ 2-5, 7, 16-23, 34; 1984, ch. 986, §§ 1, 2; 1985, ch. 437, §§ 6-13, 33; 1986, ch. 570, §§ 2-4; 1986, ch. 836, § 3, 5; 1987, ch. 143, §§ 2, 3, 7; 1988, ch. 828, § 1; 1989, ch. 278, §§ 30-33; 1989, ch. 513, §§ 2, 5-13; 1989, ch. 591, §§ 29-31, 113; 1992, ch. 991, § 13; 1993, ch. 66, § 44; 1993, ch. 439, § 1; 1993, ch. 356, § 4; 1994, ch. 630, §§ 1, 2; 1994, ch. 743, § 1; 1995, ch. 320, § 1; 1995, ch. 411, § 1; 1996, ch. 669, § 1; 1996, ch. 675, § 15; 1996, ch. 1079, §§ 31-47, 49-56; 2000, ch. 947, § 6); § 33-3-304 (Acts 1974, ch. 464, § 1; 1975, ch. 248, § 20; T.C.A., § 33-702), which was previously repealed by Acts 1984, ch. 922, § 33; § 33-3-604 (Acts 1983, ch. 323, § 9; T.C.A., § 33-363), which was repealed by Acts 1984, ch. 922, § 33; § 33-3-620, which was previously transferred to § 33-6-104(e) and (f) in 1984; § 33-3-621, which was previously transferred to § 33-6-104(g) in 1984; and § 33-3-622, which was previously transferred to § 33-6-104(h) in 1984, is deleted and replaced in the revision of title 33 by Acts 2000, ch. 947, § 1, effective March 1, 2001.

33-3-702. Notice of complaint and hearing.

Upon receipt of a complaint the clerk shall mail notice of the filing and of the time and place of the hearing to the transferee and the plaintiff and shall mail notice and a copy of the complaint to the chief officers of the transferring facility and of the receiving facility and to the transferee's spouse, parent, responsible relative, legal guardian, legal custodian, or conservator. If mailing addresses are unknown, notice may be given by any other reasonable means.

History.
Acts 1984, ch. 922, § 5; 1996, ch. 1079, § 56; 2000, ch. 947, § 1.

33-3-703. When hearings held — Continuances.

The hearing shall be held as soon as possible after the complaint was filed. At the request of counsel for the transferee, the hearing shall be continued for up to ten (10) days for preparation of the case.

History.
Acts 1984, ch. 922, § 5; 2000, ch. 947, § 1.

33-3-704. Transferee's attorney.

The transferee's attorney shall notify the court of the representation immediately after accepting it. If the transferee or others on the transferee's behalf do not employ an attorney for the transferee, the court shall appoint an attorney to represent the transferee. An

attorney representing the transferee shall not serve as guardian ad litem. If the court determines that the transferee is not able to understand the nature of the proceedings and cannot communicate with counsel in the conduct of the case, the court may appoint another person to serve as the transferee's guardian ad litem.

History.
Acts 1984, ch. 922, § 5; 2000, ch. 947, § 1.

33-3-705. Jury trial.

Either party may demand a jury trial on the issues.

History.
Acts 1984, ch. 922, § 5; 2000, ch. 947, § 1.

33-3-706. Place of hearings — Exclusion of public.

The hearing shall be conducted in a place where the court is usually held or in a physical setting not likely to have a harmful effect on the mental condition of the transferee. No hearing shall be conducted in a jail or other custodial facility for the detention of persons charged with or convicted of criminal offenses unless the transferee is being held in connection with the offenses. The court shall determine the place of the hearing and may exclude the public from the hearing on motion of the transferee if the interests of the transferee and the public would best be served by exclusion.

History.
Acts 1984, ch. 922, § 5; T.C.A. § 33-3-612; Acts 2000, ch. 947, § 1.

33-3-707. Evidence — Witnesses — Continuances — Presence or exclusion of transferee.

(a) The court shall give the plaintiff, the transferee, and all other persons to whom the clerk is required to give notice of the proceeding an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses.

(b) The transferee shall be present at the hearing unless the transferee waives the right to be present in writing. If the transferee's attorney shows that the transferee's physical health would be endangered by being at the hearing, the court may order a continuance until the risk is terminated. If the court determines that the transferee's conduct at the hearing is so violent or otherwise disruptive that it creates a serious risk of harm to the transferee or others at the hearing or so disrupts the proceedings that they cannot be conducted in a proper manner, the court may order the transferee restrained or excluded to the extent necessary to the proper conduct of the proceedings. If the transferee is not present at or is excluded from the hearing, the court shall make a written fact finding as to why the hearing is held in the transferee's absence.

History.
Acts 1984, ch. 922, § 5; 2000, ch. 947, § 1.

33-3-708. Hearings informal.

The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure.

History.
Acts 1984, ch. 922, § 5; 2000, ch. 947, § 1.

33-3-709. Testimony of examining professionals — Depositions and affidavits.

The testimony of an examining professional may be made by deposition or affidavit only with the consent of the transferee's counsel. If the testimony is given by deposition or affidavit, the court shall make a specific finding of fact that the transferee's counsel has consented, and the transferee's right of cross-examination of the examining professional shall be preserved. If consent is not given for testimony by deposition or affidavit, a professional who would be qualified as an examining professional under the commitment statute may testify instead of an examining professional, if the person has examined the transferee within ten (10) days of the hearing.

History.
Acts 1984, ch. 922, § 5; 2000, ch. 947, § 1.

33-3-710. Findings by court or jury.

If the court finds by a preponderance of the evidence under the transfer statute that the transferee is subject to transfer or continues to be eligible for care and treatment in a facility to which the person was transferred, the court shall so declare. If the court finds otherwise, the court shall order the person's transfer from the receiving facility to the transferring facility or shall order that the person not be transferred to the proposed facility. Findings of a jury with respect to the transfer criteria shall be reported by special verdict.

History.
Acts 1984, ch. 922, § 5; 2000, ch. 947, § 1.

33-3-711. Limitations on filing complaint.

No complaint under this part may be filed by or on behalf of a transferee within six (6) months after a hearing on a previous complaint under this part.

History.
Acts 1984, ch. 922, § 5; 2000, ch. 947, § 1.

PART 8

HABEAS CORPUS

33-3-801. Right to file for writ of habeas corpus.

Any person with mental illness, serious emotional disturbance, or developmental disability in a public or private residential facility for persons with mental illness, serious emotional disturbance, or developmental disability is entitled to file for a writ of habeas corpus upon petition by the person with mental illness, serious emotional disturbance, or developmental disability or a friend to any court generally empowered to issue the writ of habeas corpus in the county in which the person with mental illness, serious emotional disturbance, or developmental disability is detained.

History.
Acts 2000, ch. 947, § 1.

Compiler's Notes.
Former chapter 3, §§ 33-3-101 — 33-3-112, 33-3-201 — 33-3-203, 33-3-301 — 33-3-303, 33-3-401 — 33-3-412, 33-3-501 — 504, 33-3-601 — 33-3-603, 33-3-605 — 33-3-19, 33-3-623, 33-3-701 — 33-3-711, 33-3-801, 33-3-901 — 33-3-908 (Acts 1955, ch. 187, § 1; 1965, ch. 38, §§ 4-7, 16-19, 23-26; 1974, ch. 802, §§ 17-20, 22-25, 29-32; 1975, ch. 248, §§ 1, 5-7, 11; 1976, ch. 489, §§ 1, 2; 1976, ch. 763, §§ 1, 2, 10; 1977, ch. 482, § 11; 1978, ch. 533, §§ 3-5; 1978, ch. 533, § 7; 1978, ch. 877, §§ 1, 2; 1979, ch. 366, § 15; 1980, ch. 838, § 5; 1983, ch. 323, § 4-7, 9, 12, 15, 16; T.C.A. §§ 33-303 — 33-307, 33-309 — 33-312, 33-317 — 33-320, 33-330 — 33-337, 33-345 — 33-347, 33-355, 33-360 — 33-362, 33-364 — 33-378, 33-382, 33-610, 33-1101; Acts 1984, ch. 922, §§ 2-5, 7, 16-23, 34; 1984, ch. 986, §§ 1, 2; 1985, ch. 437, §§ 6-13, 33; 1986, ch. 570, §§ 2-4; 1986, ch. 836, § 3, 5; 1987, ch. 143, §§ 2, 3, 7; 1988, ch. 828, § 1; 1989, ch. 278, §§ 30-33; 1989, ch. 513, §§ 2, 5-13; 1989, ch. 591, §§ 29-31, 113; 1992, ch. 991, § 13; 1993, ch. 66, § 44; 1993, ch. 439, § 1; 1993, ch. 356, § 4; 1994, ch. 630, §§ 1, 2; 1994, ch. 743, § 1; 1995, ch. 320, § 1; 1995, ch. 411, § 1; 1996, ch. 669, § 1; 1996, ch. 675, § 15; 1996, ch. 1079, §§ 31-47, 49-56; 2000, ch. 947, § 6); § 33-3-304 (Acts 1974, ch. 464, § 1; 1975, ch. 248, § 20; T.C.A., § 33-702), which was was previously repealed by Acts 1984, ch. 922, § 33; § 33-3-604 (Acts 1983, ch. 323, § 9; T.C.A., § 33-363), which was repealed by Acts 1984, ch. 922, § 33; § 33-3-620, which was previously transferred to § 33-6-104(e) and (f) in 1984; § 33-3-621, which was previously transferred to § 33-6-104(g) in 1984; and § 33-3-622, which was previously transferred to § 33-6-104(h) in 1984, is deleted and replaced in the revision of title 33 by Acts 2000, ch. 947, § 1, effective March 1, 2001.

33-3-802. Determination of mental condition of person seeking release.

During any proceeding to determine whether to release a person with mental illness, serious emotional disturbance, or intellectual disability seeking release by means of a writ of habeas corpus under this part or § 33-3-101, or otherwise, the court shall also, if the issue is raised in the responsive pleading, determine whether the person seeking release presently has mental illness, serious emotional disturbance, or intellectual disability and meets the standards for involuntary commitment under chapter 6, part 5 of this title, or §§ 33-5-402 and 33-5-403.

History.
Acts 2000, ch. 947, § 1; 2002, ch. 730, § 21; 2010, ch. 734, § 1.

Compiler's Notes.
For the Preamble to the act regarding changing the term "mental retardation" to "intellectual disability", please refer to Acts 2010, ch. 734.

Acts 2010, ch. 734, § 1 provided that the Tennessee code commission is directed to change all references to "mental retardation", wherever such references appear in titles 33, 39 and 41, to "intellectual disability", as supplements are issued and volumes are replaced.

Acts 2010, ch. 734, § 7 provided that for purposes of each provision amended by the act, a reference to intellectual disability shall be considered to refer to mental retardation, as defined by that provision on the day before the date of enactment of the act.

Acts 2010, ch. 734, § 8 provided that nothing in the act shall be construed to alter or otherwise affect the eligibility for services or the rights or responsibilities of individuals covered by the provision on the day before the date of enactment of the act.

33-3-803. Disposition of case.

If the court determines that the person was not admitted or committed under the governing provisions of this title or was not afforded due process of law, but that the person has a mental illness, serious emotional disturbance, or intellectual disability and because of the condition poses a likelihood of serious harm to the person or others as determined under § 33-6-501, the court may order the person returned to the hospital or developmental center where the person was located on the date of filing the petition for not more than fifteen (15) days, exclusive of Saturdays, Sundays or holidays, if, and only if, a petition under §§ 33-5-402 and 33-5-403, or chapter 6, part 5 of this title is filed immediately and is disposed of within fifteen (15) days of the court's order, exclusive of Saturdays, Sundays or holidays, unless the case is continued on request of petitioner; otherwise the person shall be released.

History.
Acts 2000, ch. 947, § 1; 2002, ch. 730, § 22; 2010, ch. 734, § 1.

Compiler's Notes.
For the Preamble to the act regarding changing the term "mental retardation" to "intellectual disability", please refer to Acts 2010, ch. 734.

Acts 2010, ch. 734, § 1 provided that the Tennessee code commission is directed to change all references to "mental retardation", wherever such references appear in titles 33, 39 and 41, to "intellectual disability", as supplements are issued and volumes are replaced.

Acts 2010, ch. 734, § 7 provided that for purposes of each provision amended by the act, a reference to intellectual disability shall be considered to refer to mental retardation, as defined by that provision on the day before the date of enactment of the act.

Acts 2010, ch. 734, § 8 provided that nothing in the act shall be construed to alter or otherwise affect the eligibility for services or the rights or responsibilities of individuals covered by the provision on the day before the date of enactment of the act.

33-3-804. Order of discharge.

If the court ordering the discharge is not the court that ordered the commitment or admission, the court shall transmit a certified copy of the order to the court that ordered the commitment or admission. Upon receipt of the copy, the court that ordered the commitment or admission shall enter an order finding that the person has been discharged by order of the court that issued the writ of habeas corpus.

History.
Acts 2000, ch. 947, § 1.

PART 9

VIOLATIONS OF SERVICE RECIPIENT RIGHTS

33-3-901. Wrongful hospitalization or admission — Instituting wrongful action — Penalties — Immunity.

(a) A person commits a Class E felony who:

(1) Without probable cause to believe a person has developmental disability, mental illness, or serious emotional disturbance, causes or conspires with or assists a third person to cause the hospitalization or admission of the person under this title; or

(2) Causes or conspires with or assists another to cause the denial to a person of any right accorded to a person under this title.

(b) A person commits a Class E felony who:

(1) Without probable cause to believe a person has developmental disability, mental illness, or serious emotional disturbance executes a petition, application, or certificate under this title, or otherwise secures or attempts to secure the apprehension, detention, hospitalization, admission, or restraint of the person; or

(2) Knowingly makes any false certificate or application under this title.

(c) The commissioner or the chief officer of any hospital, developmental center, or treatment resource acting pursuant to this title shall be entitled to rely in good faith upon the representations made for admission by any person or any certification with respect to any person made by a professional authorized to provide certificates under this title or any court.

(d) All persons acting in good faith, reasonably and without negligence in connection with the preparation of petitions, applications, certificates or other documents or the apprehension, detention, discharge, examination, transportation or treatment of a person under this title shall be free from all liability, civil or criminal, by reason of the acts.

History.

Acts 1965, ch. 38, § 6; 1974, ch. 802, § 17; 1975, ch. 248, § 1; T.C.A., § 33-304; Acts 1984, ch. 922, § 2; 1986, ch. 570, § 2; 1989, ch. 591, § 29; T.C.A., § 33-3-102; Acts 2000, ch. 947, § 1.

Compiler's Notes.

Former chapter 3, §§ 33-3-101 — 33-3-112, 33-3-201 — 33-3-203, 33-3-301 — 33-3-303, 33-3-401 — 33-3-412, 33-3-501 — 504, 33-3-601 — 33-3-603, 33-3-605 — 33-3-19, 33-3-623, 33-3-701 — 33-3-711, 33-3-801, 33-3-901 — 33-3-908 (Acts 1955, ch. 187, § 1; 1965, ch. 38, §§ 4-7, 16-19, 23-26; 1974, ch. 802, §§ 17-20, 22-25, 29-32; 1975, ch. 248, §§ 1, 5-7, 11; 1976, ch. 489, §§ 1, 2; 1976, ch. 763, §§ 1, 2, 10; 1977, ch. 482, § 11; 1978, ch. 533, §§ 3-5; 1978, ch. 533, § 7; 1978, ch. 877, §§ 1, 2; 1979, ch. 366, § 15; 1980, ch. 838, § 5; 1983, ch. 323, § 4-7, 9, 12, 15, 16; T.C.A. §§ 33-303 — 33-307, 33-309 — 33-312, 33-317 — 33-320, 33-330 — 33-337, 33-345 — 33-347, 33-355, 33-360 — 33-362, 33-364 — 33-378, 33-382, 33-610, 33-1101; Acts 1984, ch. 922, §§ 2-5, 7, 16-23, 34; 1984, ch. 986, §§ 1, 2; 1985, ch. 437, §§ 6-13, 33; 1986, ch. 570, §§ 2-4; 1986, ch. 836, § 3, 5; 1987, ch. 143, §§ 2, 3, 7; 1988, ch. 828, § 1; 1989, ch. 278, §§ 30-33; 1989, ch. 513, §§ 2, 5-13; 1989, ch. 591, §§ 29-31, 113; 1992, ch. 991, § 13; 1993, ch. 66, § 44; 1993, ch. 439, § 1; 1993, ch. 356, § 4; 1994, ch. 630, §§ 1, 2; 1994, ch. 743, § 1; 1995, ch. 320, § 1; 1995, ch. 411, § 1; 1996, ch. 669, § 1; 1996, ch. 675, § 15; 1996, ch. 1079, §§ 31-47, 49-56; 2000, ch. 947, § 6); § 33-3-304 (Acts 1974, ch. 464, § 1; 1975, ch. 248, § 20; T.C.A., § 33-702), which was previously repealed by Acts 1984, ch. 922, § 33; § 33-3-604 (Acts 1983, ch. 323, § 9; T.C.A., § 33-363), which was repealed by Acts 1984, ch. 922, § 33; § 33-3-620, which was previously transferred to § 33-6-104(e) and (f) in 1984; § 33-3-621, which was previously transferred to § 33-6-104(g) in 1984; and § 33-3-622, which was previously transferred to § 33-6-104(h) in 1984, is deleted and replaced in the revision of title 33 by Acts 2000, ch. 947, § 1, effective March 1, 2001.

33-3-902. Furnishing false information — Misdemeanor.

It is a Class C misdemeanor for any person knowingly to furnish false information for the purpose of securing the hospitalization or admission of any person to a facility for persons with developmental disability, mental illness, or serious emotional disturbance.

History.

Acts 1965, ch. 38, § 19; 1974, ch. 802, § 18; T.C.A., § 33-305; Acts 1989, ch. 591, § 113; T.C.A., § 33-3-103; Acts 2000, ch. 947, § 1.

33-3-903. Sexual relations with service recipient.

Any employee of a service provider who has sexual intercourse with a service recipient of the service provider other than the employee's spouse or commits sexual battery on a service recipient, knowing or having reason to believe that the service recipient is a service recipient of the service provider, is subject to discharge for that conduct.

History.

Acts 1965, ch. 38, § 23; 1974, ch. 802, § 30; 1980, ch. 838, § 5; T.C.A., § 33-317; Acts 1989, ch. 591, §§ 30, 31, 113; T.C.A., § 33-3-106(e); Acts 2000, ch. 947, § 1.

33-3-904. Aiding or abetting escape — Inciting service recipient to violence — Supplying with dangerous or intoxicating substances.

(a) A person commits a Class E felony who:

(1) Counsels, causes, influences, aids or assists a service recipient with mental illness, serious emotional disturbance, or developmental disability to leave a hospital or developmental center without authority after the service recipient was admitted under court order;

(2) Harbors or conceals a service recipient with mental illness, serious emotional disturbance, or developmental disability who has left a hospital or developmental center without authority;

(3) Incites a service recipient with mental illness, serious emotional disturbance, or developmental disability, while the service recipient is admitted to a hospital or developmental center, to hurt or injure another person anywhere; or

(4) Gives or sells to a service recipient with mental illness, serious emotional disturbance, or developmental disability in a hospital or developmental center, whether on the premises of the facility or elsewhere, knowing the person to be a person with mental illness, serious emotional disturbance, or developmental disability, any firearms, intoxicating drinks, drugs, or any other harmful articles.

(b) A hospital or developmental center employee or official who receives from a person with mental illness, serious emotional disturbance, or developmental disability anything of value as a gift or for a consideration commits a Class C misdemeanor.

(c) A person, who aids or abets in the commission of any of the foregoing offenses or aids or abets in a prohibited attempt, is guilty as if the person were a principal and shall be punished as a principal.

History.
Acts 1965, ch. 38, § 23; 1974, ch. 802, § 30; 1980, ch. 838, § 5; T.C.A., § 33-317; Acts 1989, ch. 591, §§ 30, 31, 113; T.C.A., § 33-3-106(b)-(d); Acts 2000, ch. 947, § 1.

CHAPTER 4

SPECIAL RULES FOR RESIDENTIAL SERVICE RECIPIENTS

Part 1. Rights of Residential Service Recipients

SECTION.
33-4-101. Right to receive visitors — Right to communicate with family, attorney, physician, minister and courts.
33-4-102. [Transferred.]
33-4-103. Notice of admission to guardian or family.
33-4-104. Treatment for physical disorder prior to admission.
33-4-105. Written statement of release procedures and other rights.
33-4-106. Unauthorized leave from facility.
33-4-107. Commitment to private facility — Certificate by disinterested professional.
33-4-108. Certificate of need — Basis — Contents — Violation.
33-4-109. Notice to court, legal custodian and guardian or next of kin of death of patient or resident — Disposal of unclaimed property after discharge or death.
33-4-110. Inability to exercise rights — Appointment of a conservator.

Part 2. Employees as Guardians and Conservators in State Facilities

33-4-201. Designation of employee as legal guardian or conservator.
33-4-202. Qualifications of guardian, conservator or trustee.
33-4-203. Bond.
33-4-204. Duration of guardianship or conservatorship.
33-4-205. Funds received by guardian or conservator.
33-4-206. Other assets received by guardian or conservator.
33-4-207. Disposition of assets after termination of guardianship or conservatorship.
33-4-208. Annual report.
33-4-209. Designation of trustees for patients or residents — Audit.
33-4-210. Coercion of guardian, conservator or trustee — Penalty.

PART 1

RIGHTS OF RESIDENTIAL SERVICE RECIPIENTS

33-4-101. Right to receive visitors — Right to communicate with family, attorney, physician, minister and courts.

(a) A person with mental illness, serious emotional disturbance, or developmental disability is entitled to:

(1) Receive visitors during regular visiting hours; and

(2) Communicate, orally or by sending and receiving uncensored mail, with the service recipient's family, attorney, personal physician, minister, and the courts.

(b) All other incoming mail or parcels may be read or opened before being delivered to a service recipient, if the chief officer of the facility believes the action is necessary for the physical or mental health of the service recipient who is the intended recipient. Mail or other communication that is not delivered to the service recipient for whom it is intended shall be returned immediately to the sender.

(c) The chief officer may make reasonable rules regarding visitors, visiting hours, and the use of communication resources.

History.
Acts 2000, ch. 947, § 1.

Compiler's Notes.
Former chapter 4, §§ 33-4-101 — 33-4-103, 33-4-105, 33-4-107 — 33-4-109, 33-4-111 — 33-4-113 (Acts 1983, ch. 323, § 32; T.C.A., §§ 33-4-106, 33-4-107, 33-7-110; 1996, ch. 795, §§ 1-10. Former § 33-4-104 was merged with § 33-4-103 by Acts 1996, ch. 795, § 3; § 33-4-106, which was transferred to § 33-4-105 in 1996; and § 33-4-110, which was transferred to the second sentence of § 33-4-109 in 1996, is deleted and replaced in the revision of title 33 by Acts 2000, ch. 947, § 1, effective March 1, 2001.

33-4-102. [Transferred.]

Compiler's Notes.
Former § 33-4-102 (Acts 1965, ch. 38, § 5; 1974, ch. 802, § 19; 1975, ch. 248, §§ 1, 5; 1977, ch. 482, § 11; 1978, ch. 533, § 3; 1983, ch. 323, § 7; T.C.A., § 33-306; Acts 1984, ch. 922, § 3; 1985, ch. 437, §§ 6-8; 1986, ch. 570, § 3; 1989, ch. 513, § 2; 1989, ch. 591, § 113; 1993, ch. 439, § 1; 1994, ch. 630, §§ 1, 2; 1995, ch. 411, § 1; 1996, ch. 1079, §§ 31-33; T.C.A., § 33-3-104; Acts 2000, ch. 947, §§ 1, 6.), concerning the services and supports to be provided to persons with a mental illness, serious emotional disturbance, or developmental disability and related record keeping requirements, was transferred to § 33-3-101(c) in 2002.

33-4-103. Notice of admission to guardian or family.

If a person is admitted to a hospital, developmental center, or other residential service on the application of any person other than the person's parent, legal guardian, legal custodian, conservator, spouse or adult next of kin, the chief officer shall immediately notify the person's parent, legal guardian, legal custodian, conservator, spouse, or adult next of kin, if known.

History.
Acts 1965, ch. 38, § 45; T.C.A., § 33-608; Acts 1985, ch. 437, § 17; 1996, ch. 1079, § 62; T.C.A., § 33-6-107; Acts 2000, ch. 947, § 1.

33-4-104. Treatment for physical disorder prior to admission.

In considering an applicant for admission, if it appears that the person has a physical disorder that requires immediate medical care and the admitting facility cannot appropriately provide the medical care, the person shall be taken first to a physician or hospital for treatment of the medical condition. When the person has received appropriate medical attention and treatment, the person may then be transported to the appropriate facility for treatment of the person's mental illness, serious emotional disturbance, or developmental disability.

History.
Acts 1965, ch. 38, § 18; 1974, ch. 802, § 20; 1975, ch. 248, § 6; 1976, ch. 489, § 2; 1978, ch. 533, § 1; T.C.A., § 33-307; Acts 1985, ch. 437, §§ 9, 10; 1996, ch. 1079, §§ 34, 35; T.C.A., § 33-3-105(b); Acts 2000, ch. 947, § 1.

33-4-105. Written statement of release procedures and other rights.

(a) Upon admission of a person with mental illness, serious emotional disturbance, or developmental disability to a hospital, developmental center, or other

residential service, the chief officer shall provide the person a written statement outlining in simple, nontechnical language all release procedures and all other rights of persons under this title. The chief officer shall have the service recipient informed in language understood by the service recipient, including the service recipient's native language or sign language, if appropriate. The chief officer also shall provide the written statement to the person's parent, legal guardian, legal custodian, conservator, spouse or other nearest known adult relative. The chief officer shall provide reasonable means and arrangements for assisting the person in making and presenting requests for release, including petitions to the proper court.

(b) The service recipient shall sign on the line for signature to acknowledge having been informed of the service recipient's rights orally and in writing. The service recipient's signature shall be acknowledged in writing by at least one (1) disinterested witness.

History.

Acts 1965, ch. 38, § 5; 1974, ch. 802, § 19; 1975, ch. 248, §§ 1, 5; 1977, ch. 482, § 11; 1978, ch. 533, § 3; 1983, ch. 323, § 7; T.C.A., § 33-306; Acts 1984, ch. 922, § 3; 1985, ch. 437, §§ 6-8, 33; 1986, ch. 570, § 3; 1989, ch. 513, § 2; 1989, ch. 591, § 113; 1993, ch. 439, § 1; 1994, ch. 630, §§ 1, 2; 1995, ch. 411, § 1; 1996, ch. 675, § 15; 1996, ch. 1079, §§ 31-33; T.C.A., §§ 33-3-104(8), 33-3-111; Acts 2000, ch. 947, §§ 1, 6.

33-4-106. Unauthorized leave from facility.

(a) If a person admitted under court order leaves a hospital, developmental center, or other residential service without authority, the chief officer shall immediately notify the court regardless of the length of the person's absence. If the person is taken into custody, the person may be returned to the facility upon an order by the court. After thirty (30) days absence the person may be dropped from the facility's records. A return after thirty (30) days absence is a new admission. A person's absence beyond thirty (30) days does not limit the power of the court to order the person's return to a facility under this section.

(b) The committing court shall be notified of the policy regarding temporary leave, and the court shall be given an opportunity to register its objection to granting temporary leave. An objection by the court does not prohibit authorization of leave. Temporary leave is not a discharge from the facility.

History.

Acts 1965, ch. 38, § 23; 1974, ch. 802, § 30; 1980, ch. 838, § 5; T.C.A., § 33-317; Acts 1989, ch. 591, §§ 30, 31, 113; T.C.A., § 33-3-106(a)(1)-(3); Acts 2000, ch. 947, § 1; 2002, ch. 730, § 24.

33-4-107. Commitment to private facility — Certificate by disinterested professional.

(a) If a person is proposed to be committed to a private facility under this title, at least one (1) of the required certificates of need shall be from a professional who is not an employee of the private facility.

(b) For purposes of this section, employment as a faculty member by a school of medicine at a university or college associated with a hospital shall not constitute employment at a private facility.

History.

Acts 1983, ch. 323, § 16; T.C.A., § 33-346; Acts 1984, ch. 922, § 7; 1995, ch. 320, § 1; T.C.A., § 33-3-109; Acts 2000, ch. 947, § 1.

33-4-108. Certificate of need — Basis — Contents — Violation.

(a) A certificate of need for commitment for care and treatment of a person with mental illness, serious emotional disturbance, or developmental disability is not valid for any purpose unless it is based on personal observation and examination of the person made by the professional not more than three (3) days prior to the making of the certificate. The certificate shall state the facts and reasoning on which the opinions and conclusions are based.

(b) The execution of a certificate concerning the mental condition of a person by a professional who has not personally observed and examined the person is a Class E felony.

History.

Acts 1983, ch. 323, § 16; T.C.A., §§ 33-347, 33-3-110; Acts 2000, ch. 947, § 1.

33-4-109. Notice to court, legal custodian and guardian or next of kin of death of patient or resident — Disposal of unclaimed property after discharge or death.

(a) Upon the death of a person admitted to a facility under court order under this title, the chief officer of the facility shall mail written notice of the cause of death to the court that entered the order. Upon the death of a person who was admitted voluntarily, the chief officer shall notify the next of kin of the cause of death. The notice shall be mailed within ten (10) days of the death.

(b) Notice of a death shall also be given promptly to the person's next of kin and legal guardian, legal custodian, or conservator. The administrator, executor or personal representative of the deceased person, or if there is none, one (1) or more of the heirs at law or next of kin, shall be notified by registered mail of the deceased's personal property at the facility at the time of death. Notice to an administrator, executor or personal representative shall be directed to the probate court of the county in which that person is qualified to administer the estate of the deceased.

(c) Property left by the deceased person in the facility shall be disposed of pursuant to subsection (e) if, after diligent search and inquiry, none of the persons required to be notified can be found and notified or if the persons notified do not open the estate or otherwise proceed to dispose of the estate in a lawful manner.

(d) If a person is discharged and leaves personal property in the facility, the chief officer shall promptly notify the person by registered mail addressed to the person's last known address that the property has been left and is subject to sale under subsection (e) if not claimed.

(e) The chief officer shall keep the deceased or discharged person's personal property for six (6) months if it is not claimed. The chief officer shall then sell the property, with the approval of the commissioner, and deposit the proceeds in a fund, maintained under the supervision of the chief officer, for the benefit of needy service recipients.

History.
Acts 1965, ch. 38, § 25; 1974, ch. 802, § 31; 1975, ch. 248, § 1; 1983, ch. 323, §§ 5, 6; T.C.A., § 33-318; Acts 1996, ch. 1079, § 36; T.C.A., § 33-3-107; Acts 2000, ch. 947, §§ 1, 6.

33-4-110. Inability to exercise rights — Appointment of a conservator.

If the chief officer of a facility in which a service recipient is hospitalized or admitted is of the opinion that the service recipient is unable to exercise any of the rights afforded by this chapter and chapter 3 of this title, the chief officer shall notify immediately the service recipient and the service recipient's attorney, parent, legal custodian, spouse or other nearest known adult relative of the fact, and the chief officer may file for the appointment of a conservator and shall notify those persons as to whether the chief officer intends to do so.

History.
Acts 2002, ch. 730, § 9.

PART 2

EMPLOYEES AS GUARDIANS AND CONSERVATORS IN STATE FACILITIES

33-4-201. Designation of employee as legal guardian or conservator.

The commissioner shall designate an employee of the department whom courts may appoint, regardless of whether the employee resides in the same county as the ward, as legal guardian or conservator for a service recipient in a state facility under title 34, if the court determines that no other person or legally qualified organization will serve for the service recipient and that it is for the best interests of the service recipient that the person be appointed.

History.
Acts 1983, ch. 323, § 4; T.C.A., §§ 33-330, 33-3-901; Acts 2000, ch. 947, § 1.

Compiler's Notes.
Former chapter 4, §§ 33-4-101 — 33-4-103, 33-4-105, 33-4-107 — 33-4-109, 33-4-111 — 33-4-113 (Acts 1983, ch. 323, § 32; T.C.A., §§ 33-4-106, 33-4-107, 33-7-110; 1996, ch. 795, §§ 1-10. Former § 33-4-104 was merged with § 33-4-103 by Acts 1996, ch. 795, § 3; § 33-4-106, which was transferred to § 33-4-105 in 1996; and § 33-4-110, which was transferred to the second sentence of § 33-4-109 in 1996, is deleted and replaced in the revision of title 33 by Acts 2000, ch. 947, § 1, effective March 1, 2001.

33-4-202. Qualifications of guardian, conservator or trustee.

An employee appointed under this part as legal guardian, conservator, or trustee for a person shall have sufficient background to understand the person's mental illness, serious emotional disturbance, or developmental disability. Accepting an appointment may not be made a condition of employment unless the duties are a normal part of the employee's duties and there is no conflict of interest. No employee may be appointed as legal guardian, conservator, or trustee of a person who is in the facility in which the employee works.

History.
Acts 1983, ch. 323, § 4; T.C.A., §§ 33-336, 33-3-907; Acts 2000, ch. 947, § 1.

33-4-203. Bond.

If the total value of the assets that are turned over to an employee for a ward does not exceed five thousand dollars ($5,000) exclusive of the burial fund, the court shall not require a bond.

History.
Acts 1983, ch. 323, § 4; T.C.A., §§ 33-331, 33-3-902; Acts 2000, ch. 947, § 1.

33-4-204. Duration of guardianship or conservatorship.

An employee serving as legal guardian or conservator under this part may serve under these provisions only so long as the employee continues to be an employee of the department and for up to ninety (90) days after the ward leaves the state facility.

History.
Acts 1983, ch. 323, § 4; T.C.A., §§ 33-332, 33-3-903; Acts 2000, ch. 947, § 1.

33-4-205. Funds received by guardian or conservator.

All funds received by a legal guardian or conservator appointed under this part shall be handled as state funds, be accountable as all other state funds, and be audited annually by the state. All earnings on the funds shall inure to the benefit of the ward. The department shall file a copy of the annual audit with the appointing court.

History.
Acts 1983, ch. 323, § 4; T.C.A., §§ 33-333, 33-3-904(a); Acts 2000, ch. 947, § 1.

33-4-206. Other assets received by guardian or conservator.

All other assets received by a legal guardian or conservator appointed under this part shall be handled as state property, except that the legal guardian or conservator may dispose of the assets in the exercise of the appointment free of laws governing the disposition of state property and shall keep a record of the disposition of all the property and the reason for the disposition.

History.
Acts 1983, ch. 323, § 4; T.C.A., §§ 33-333, 33-3-904(b); Acts 2000, ch. 947, § 1.

33-4-207. Disposition of assets after termination of guardianship or conservatorship.

Upon termination of the guardianship or conservatorship, all assets remaining in the estate shall be paid to the ward or to the ward's legal representative.

History.
Acts 1983, ch. 323, § 4; T.C.A., §§ 33-333, 33-3-904(c); Acts 2000, ch. 947, § 1.

33-4-208. Annual report.

An employee serving as legal guardian or conservator shall file the annual report required by title 34 with the appointing court on a form approved by the commissioner.

History.
Acts 1983, ch. 323, § 4; T.C.A., §§ 33-334, 33-3-905; Acts 2000, ch. 947, § 1.

33-4-209. Designation of trustees for patients or residents — Audit.

(a) The commissioner may designate employees of the department to serve as trustees for service recipients if the terms of the trust have been approved in writing by the commissioner and the attorney general and reporter.

(b) All assets, funds, and other property held as a part of the corpus of trust and income from the trust shall be audited annually by the state.

History.
Acts 1983, ch. 323, § 4; T.C.A., §§ 33-335, 33-3-906; Acts 2000, ch. 947, § 1.

33-4-210. Coercion of guardian, conservator or trustee — Penalty.

An employee who attempts to coerce a legal guardian, conservator, or trustee serving under this part to take any particular action as legal guardian, conservator, or trustee shall be dismissed.

History.
Acts 1983, ch. 323, § 4; T.C.A, §§ 33-337; 33-3-908; Acts 2000, ch. 947, § 1.

CHAPTER 5

INTELLECTUAL AND DEVELOPMENTAL DISABILITIES SERVICES

Part 1. Service System

SECTION.
33-5-101. Application of title to persons with developmental disabilities.
33-5-102. Effective date of part.
33-5-103. Persons with developmental disability based solely on mental illness or serious emotional disturbance.
33-5-104. Developmental disabilities occurring after twenty-two years of age.
33-5-105. Factors in assessing eligibility for service and support under this chapter.
33-5-106. Application process.
33-5-107. Types of services available.
33-5-108. Determination of fiscal impact on licensees following regulatory or policy changes — Notice.
33-5-109. Study of issues relating to services provided to persons with developmental disabilities, intellectual disabilities and other disabilities.
33-5-110. Residential and day provider agencies task force.
33-5-111. Eligibility criteria for medical assistance programs and services.
33-5-112. Person on waiting list for services to be enrolled in self-determination waiver within six months of custodial parent or caregiver attaining 75 years of age.

Part 2. Family Support

33-5-201. Part definitions.
33-5-202. State policy — Principles for developing programs.
33-5-203. Primary focus.
33-5-204. Duties of contracted agency.
33-5-205. Scope of family support services.
33-5-206. Coordination of services.
33-5-207. Families of adults with disabilities — Services and resources.
33-5-208. State family support council.
33-5-209. Department to participate with council — Policies and procedures.
33-5-210. Meetings — Duties — Expenses.
33-5-211. Administration of program — Funding.
33-5-212. Provision of information gathered through family support program to DIDD.

Part 3. Residential Admission

33-5-301. Part definitions — Admission to developmental center — Emergency respite admission — Review.
33-5-302. Periodic evaluation of admitted person — Discharge.
33-5-303. Request for discharge by parent or other representative.
33-5-304. Departmental review of admission.

Part 4. Forensic Services for Persons with Intellectual Disabilities

33-5-401. Rehabilitation for persons with intellectual disability.
33-5-402. Procedure for commitment of person under this part.
33-5-403. Prerequisites to involuntary commitment.
33-5-404. Finding of need for involuntary commitment by designated psychologists.
33-5-405. Admission subject to availability of accommodation.
33-5-406. Credit on sentence for time in custody.
33-5-407. Court order as transfer.
33-5-408. Periodic evaluations.
33-5-409. Release of intellectually disabled offenders — Delivery to custody of court.
33-5-410. Discharge proceedings for criminal defendant involuntarily committed to an intellectual disability facility.

Part 5. Mandatory Community-Based Services

33-5-505. Hearing on contest of plan.

PART 1

SERVICE SYSTEM

33-5-101. Application of title to persons with developmental disabilities.

Services to persons with developmental disabilities are governed generally by this title, including chapters 1-4, 7, 8 and 9.

History.
Acts 2000, ch. 947, § 1.

Compiler's Notes.
Former chapter 5, §§ 33-5-101, 33-5-105, 33-5-201, 33-5-301 — 33-5-303, 33-5-305 — 33-5-310, 33-5-401 — 33-5-412 (Acts 1971, ch.

289, § 1; 1975, ch. 248, § 13; 1976, ch. 763, § 4; 1976, ch. 764, § 3; 1978, ch. 527, § 3; 1978, ch. 667, § 2; 1980, ch. 822, § 1; 1981, ch. 224, §§ 5, 6, 10; 1982, ch. 862, § 2; 1983, ch. 323, § 10; T.C.A., §§ 33-313, 33-501, 33-505 — 33-507, 33-510, 33-515, 33-516, 33-523, 33-524, 33-1601; Acts 1984, ch. 922, §§ 6, 8-11; 1988, ch. 828, § 2; 1989, ch. 504, § 1; 1992, ch. 981, §§ 2-13, 15; 1992, ch. 991, § 14; 1993, ch. 283, § 1; 1994, ch. 683, § 1; 1995, ch. 468, § 1; 2000, ch. 947, § 6); § 33-5-102 (Acts 1975, ch. 248, § 13; T.C.A. § 33-502), which was repealed by Acts 1993, ch. 283, § 2; § 33-5-103 (Acts 1975, ch. 248, § 13; T.C.A. § 33-503), which was repealed by Acts 1993, ch. 283, § 2; § 33-5-104 (Acts 1975, ch. 248, § 13; 1976, ch. 763, § 3; 1978, ch. 527, § 1; T.C.A. § 33-504), which was repealed by Acts 1993, ch. 283, § 2; and § 33-5-304 (Acts 1975, ch. 248, § 13; 1978, ch. 527, § 2; 1978, ch. 667, § 1; 1981, ch. 224, § 8; T.C.A., § 33-508), which was repealed by Acts 1984, ch. 922, § 33, is deleted and replaced in the revision of title 33 by Acts 2000, ch. 947, § 1, effective March 1, 2001.

33-5-102. Effective date of part.

Persons with developmental disabilities based on conditions other than an intellectual disability are eligible for direct service under this part on March 1, 2002. Persons with an intellectual disability are eligible for direct service under this part on March 1, 2001.

History.
Acts 2000, ch. 947, § 1; 2010, ch. 734, § 1.

Compiler's Notes.
For the Preamble to the act regarding changing the term "mental retardation" to "intellectual disability", please refer to Acts 2010, ch. 734.

Acts 2010, ch. 734, § 1 provided that the Tennessee code commission is directed to change all references to "mental retardation", wherever such references appear in titles 33, 39 and 41, to "intellectual disability", as supplements are issued and volumes are replaced.

Acts 2010, ch. 734, § 7 provided that for purposes of each provision amended by the act, a reference to intellectual disability shall be considered to refer to mental retardation, as defined by that provision on the day before the date of enactment of the act.

Acts 2010, ch. 734, § 8 provided that nothing in the act shall be construed to alter or otherwise affect the eligibility for services or the rights or responsibilities of individuals covered by the provision on the day before the date of enactment of the act.

33-5-103. Persons with developmental disability based solely on mental illness or serious emotional disturbance.

If a person has a developmental disability solely on the basis of having a mental illness or serious emotional disturbance, the person is not eligible to have services or supports provided for the developmental disability primarily under this chapter.

History.
Acts 2000, ch. 947, § 1.

33-5-104. Developmental disabilities occurring after twenty-two years of age.

Within the limits of available services, the department may serve persons who have conditions that would constitute a developmental disability except that the disability occurred after twenty-two (22) years of age.

History.
Acts 2000, ch. 947, § 1.

33-5-105. Factors in assessing eligibility for service and support under this chapter.

A person is eligible for service and support under this chapter on the basis of an intellectual disability only if the assessment that the person has an intellectual disability takes into account:

(1) Cultural and linguistic diversity as well as differences in communication and behavioral factors;

(2) Whether the person's limitations in adaptive skills occur in the context of community environments typical of the person's age peers and is indexed to the person's individualized needs for supports;

(3) Specific adaptive limitations often coexist with strengths in other adaptive skills or other personal capabilities; and

(4) With appropriate supports over a sustained period, the life functioning of a person with an intellectual disability will generally improve.

History.
Acts 2000, ch. 947, § 1; 2010, ch. 734, § 1.

Compiler's Notes.
For the Preamble to the act regarding changing the term "mental retardation" to "intellectual disability", please refer to Acts 2010, ch. 734.

Acts 2010, ch. 734, § 1 provided that the Tennessee code commission is directed to change all references to "mental retardation", wherever such references appear in titles 33, 39 and 41, to "intellectual disability", as supplements are issued and volumes are replaced.

Acts 2010, ch. 734, § 7 provided that for purposes of each provision amended by the act, a reference to intellectual disability shall be considered to refer to mental retardation, as defined by that provision on the day before the date of enactment of the act.

Acts 2010, ch. 734, § 8 provided that nothing in the act shall be construed to alter or otherwise affect the eligibility for services or the rights or responsibilities of individuals covered by the provision on the day before the date of enactment of the act.

33-5-106. Application process.

A person with a developmental disability, a parent or legal guardian of a child with a developmental disability, a conservator of a person with a developmental disability, the department of children's services on behalf of a person in its legal custody who has a developmental disability, or the department of human services on behalf of a person in its legal custody who has a developmental disability, referred to as the applicant, may apply to the department through its designated entities for services and supports that they provide directly or by contract. The designated entity shall inform the applicant about all options for services and supports. When services and supports appropriate for the applicant are not available, the designated entity shall notify the applicant in writing of the basis on which the decision was made, possible service options, the prospects for obtaining service, and the time estimated before the service may be available. The

applicant shall be notified periodically and in a timely manner of the status of the application. Based upon additional information, change in status may be determined by the designated entity.

History.

Acts 1975, ch. 248, § 13; 1983, ch. 323, § 10; T.C.A., § 33-501; Acts 1984, ch. 922, § 8; 1988, ch. 828, § 2; 1993, ch. 283, § 1; 1995, ch. 468, § 1; T.C.A., § 33-5-101(a); Acts 2000, ch. 947, § 1; 2002, ch. 730, § 25.

33-5-107. Types of services available.

If, and only if, no suitable alternative provider is available, the chief officer of a department facility may authorize nonresidential services and supports of the developmental center to persons with developmental disabilities. A person with a developmental disability, a parent or legal guardian of a child with a developmental disability, or the conservator of a person with a developmental disability may request nonresidential services and supports. The chief officer may, in the best interests of the person, discontinue the nonresidential services and supports of a person at any time.

History.

Acts 1975, ch. 248, § 13; 1983, ch. 323, § 10; T.C.A., § 33-501; Acts 1984, ch. 922, § 8; 1988, ch. 828, § 2; 1993, ch. 283, § 1; 1995, ch. 468, § 1; T.C.A., § 33-5-101(b)(4); Acts 2000, ch. 947, § 1.

33-5-108. Determination of fiscal impact on licensees following regulatory or policy changes — Notice.

As used in this section, "fiscal impact" means any increase, decrease, or other change in revenue, expenditures, or fiscal liability. The department of intellectual and developmental disabilities shall assess in writing the fiscal impact on licensees under chapter 2, part 4 of this title, of any change to any rule, regulation, policy or guideline relating to the staffing, physical plant or operating procedures of the licensee for rendering services pursuant to a contract, grant or agreement with the department. Unless exigent circumstances require the change to be implemented sooner, no less than thirty (30) days before the change in the rule, regulation, policy or guideline is to take effect, the department's estimate of fiscal impact shall be transmitted by the commissioner of intellectual and developmental disabilities to the finance, ways and means committee of the house of representatives, the finance, ways and means committee of the senate and the comptroller of the treasury for any appropriate review. If exigent circumstances, such as an unforeseen court order, require a change to be implemented sooner, then the department's statement describing the exigent circumstances that prevented thirty (30) days' notice shall be provided to the finance, ways and means committee of the house of representatives, the finance, ways and means committee of the senate and the comptroller of the treasury not later than five (5) days after implementing the change. In that case the department shall provide the estimate of fiscal impact to the entities above within sixty (60) days after implementing the change.

History.

Acts 2001, ch. 137, § 1; 2002, ch. 730, § 26; 2009, ch. 477, § 1; 2010, ch. 734, § 1; 2010, ch. 1100, § 41; 2016, ch. 797, § 9.

Compiler's Notes.

Acts 2001, ch. 137, § 2, provided that this section shall apply to any change to any rule, regulation, policy or guideline relating to the staffing, physical plant or operating procedures of such licensee for rendering services pursuant to a contract, grant or agreement with the division for mental retardation services (now department of developmental disabilities) occurring on and after March 1, 2001. Additionally, it is the "clear and unequivocal intent" of the general assembly that this section has retroactive application to March 1, 2001.

Acts 2009, ch. 477, § 1, directed the code commission to change all references from "division of mental retardation services" to "division of intellectual disabilities services" (now department of intellectual and developmental disabilities) and to include the changes in supplements and replacement volumes for the Tennessee Code Annotated.

For the Preamble to the act regarding changing the term "mental retardation" to "intellectual disability", please refer to Acts 2010, ch. 734.

Acts 2010, ch. 734, § 1 provided that the Tennessee code commission is directed to change all references to "mental retardation", wherever such references appear in titles 33, 39 and 41, to "intellectual disability", as supplements are issued and volumes are replaced.

Acts 2010, ch. 734, § 7 provided that for purposes of each provision amended by the act, a reference to intellectual disability shall be considered to refer to mental retardation, as defined by that provision on the day before the date of enactment of the act.

Acts 2010, ch. 734, § 8 provided that nothing in the act shall be construed to alter or otherwise affect the eligibility for services or the rights or responsibilities of individuals covered by the provision on the day before the date of enactment of the act.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health (now commissioner of mental health and substance abuse services), the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

33-5-109. Study of issues relating to services provided to persons with developmental disabilities, intellectual disabilities and other disabilities.

(a) There is created a special joint committee to study the issues relating to services provided to persons with developmental disabilities, intellectual disability and other disabilities. This study shall include, but not be limited to:

(1) A review of the different agencies in state government providing services;

(2) The structure and location of state services to persons with developmental disabilities, intellectual disability and other disabilities;

(3) The efficiency of providing services to persons with disabilities and costs associated with providing services;

(4) An evaluation of the cost of the division of intellectual disabilities services (DIDS) waiting list and the means to reduce or eliminate it; and

(5) A look at the cost structure of services in DIDS and evaluation of differences in cost.

(b) The special joint committee shall consist of:

(1) Four (4) members of the senate, to be appointed by the speaker of the senate; and

(2) Four (4) members of the house of representatives, to be appointed by the speaker of the house of representatives.

(c) All appropriate agencies of state government shall provide assistance to the special joint committee upon request of the chair.

(d) All legislative members of the special joint committee who are duly elected members of the general assembly shall remain members of the committee until the committee reports its final findings and recommendations.

(e) The special joint committee shall be convened by the member having the greatest number of years of continuous service within the general assembly, and at its first meeting shall elect from among its legislative membership a chair, vice-chair, and other officers the committee deems necessary.

(f) The special joint committee shall timely report its final findings and recommendations to the One Hundred Sixth General Assembly no later than February 1, 2010.

History.
Acts 2008, ch. 1157, §§ 1-6; 2009, ch. 477, § 1; 2010, ch. 734, § 1.

Compiler's Notes.
For the Preamble to the act regarding a study of issues relating to services provided to persons with developmental disabilities, mental retardation and other disabilities, please refer to Acts 2008, ch. 1157.

Acts 2009, ch. 477, § 1, directed the code commission to change all references from "division of mental retardation services" to "division of intellectual disabilities services" (now department of intellectual and developmental disabilities) and to include the changes in supplements and replacement volumes for the Tennessee Code Annotated.

For the Preamble to the act regarding changing the term "mental retardation" to "intellectual disability", please refer to Acts 2010, ch. 734.

Acts 2010, ch. 734, § 1 provided that the Tennessee code commission is directed to change all references to "mental retardation", wherever such references appear in titles 33, 39 and 41, to "intellectual disability", as supplements are issued and volumes are replaced.

Acts 2010, ch. 734, § 7 provided that for purposes of each provision amended by the act, a reference to intellectual disability shall be considered to refer to mental retardation, as defined by that provision on the day before the date of enactment of the act.

Acts 2010, ch. 734, § 8 provided that nothing in the act shall be construed to alter or otherwise affect the eligibility for services or the rights or responsibilities of individuals covered by the provision on the day before the date of enactment of the act.

The division of intellectual disabilities services (DIDS), referred to in this section, was replaced by the department of intellectual and developmental disabilities by Acts 2010, ch. 1100, effective January 15, 2011.

33-5-110. Residential and day provider agencies task force.

(a) The speakers of the senate and house of representatives shall jointly appoint a twenty-five-person task force to review the regulations of the residential and day provider agencies contracted by the department of intellectual and developmental disabilities (DIDD) and make initial recommendations with regard to relieving expensive and unnecessary regulations on such providers to the general assembly and governor by January 1, 2011. The task force shall subsequently make annual reports to the governor and the general assembly by January 1 of each year thereafter.

(b) Eleven (11) of the members of the task force shall be appointed from a list of persons provided by DIDD's service providers. Eight (8) members shall be appointed from DIDD, at least one (1) of whom shall be an assistant commissioner with the department. One (1) member shall be an assistant commissioner with the bureau of TennCare, and one (1) member shall be appointed from the department office of licensure. Four (4) members shall be appointed from the DIDD advisory council, or its successor body.

(c) The speakers of the senate and house of representatives shall jointly designate two (2) of the members to serve as co-chairs of the task force. One (1) co-chair shall be a DIDD service provider, and one (1) co-chair shall be a DIDD staff person.

(d) The task force created by this section shall assume the duties and responsibilities of the regulatory relief board.

(e) Members of the task force shall serve without compensation. The task force shall complete its appointed duties and make its final report to the governor and the general assembly by June 30, 2014, at which time the task force shall cease to exist.

History.
Acts 2010, ch. 808, § 1; 2010, ch. 1100, § 24; 2011, ch. 158, §§ 17, 18.

Compiler's Notes.
Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health (now commissioner of mental health and substance abuse services), the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

33-5-111. Eligibility criteria for medical assistance programs and services.

(a) Notwithstanding any state law to the contrary, eligibility criteria for medical assistance programs and services pursuant to title 71, chapter 5, for persons with intellectual or developmental disabilities shall be established by the bureau of TennCare, and set forth in the medicaid state plan, federal waivers, or in rules promulgated by the bureau of TennCare, and shall be subject to the availability of funding in each year's general appropriations act.

(b) Notwithstanding any state law to the contrary, eligibility criteria for state-funded programs and services for persons with intellectual or developmental disabilities shall be established by the department of intellectual and developmental disabilities and set forth in department rules, and shall be subject to the availability of funding in each year's general appropriations act.

History.
Acts 2011, ch. 158, § 45.

33-5-112. Person on waiting list for services to be enrolled in self-determination waiver within six months of custodial parent or caregiver attaining 75 years of age.

A person with an intellectual disability who is on the waiting list for services and whose older custodial

parent, or custodial caregiver, attains seventy-five (75) years of age shall be enrolled in the self-determination waiver or a similarly capped medical assistance waiver within six (6) months of the person's parent or caregiver attaining that age.

History.
Acts 2015, ch. 430, § 1; 2016, ch. 707, § 1.

Compiler's Notes.
For the Preamble to the act concerning the need for changes to the administration of waiting lists for persons with intellectual disabilities to receive services, see Acts 2015, ch. 430.

PART 2

FAMILY SUPPORT

33-5-201. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Council" means the state family support council appointed under § 33-5-208;

(2) "Family" means a unit that consists of either a person with a severe or developmental disability and the parent, relative, or other care giver who resides in the same household or a person with a severe or developmental disability who lives alone without such support;

(3) "Family support" means goods and services needed by families to care for their family members with a severe or developmental disability and to enjoy a quality of life comparable to other community members;

(4) "Family support program" means a coordinated system of family support services administered by the department directly or through contracts;

(5) "Severe disability" means a disability that is functionally similar to a developmental disability but occurred after the person was twenty-two (22) years of age; and

(6) "State family support council" means the council established by the department to carry out the responsibilities specified in this part.

History.
Acts 1992, ch. 981, § 3; 1994, ch. 683, § 1; T.C.A., § 33-5-402; Acts 2000, ch. 947, §§ 1, 6.

Compiler's Notes.
Former chapter 5, §§ 33-5-101, 33-5-105, 33-5-201, 33-5-301 — 33-5-303, 33-5-305 — 33-5-310, 33-5-401 — 33-5-412 (Acts 1971, ch. 289, § 1; 1975, ch. 248, § 13; 1976, ch. 763, § 4; 1976, ch. 764, § 3; 1978, ch. 527, § 3; 1978, ch. 667, § 2; 1980, ch. 822, § 1; 1981, ch. 224, §§ 5, 6, 10; 1982, ch. 862, § 2; 1983, ch. 323, § 10; T.C.A., §§ 33-313, 33-501, 33-505 — 33-507, 33-510, 33-515, 33-516, 33-523, 33-524, 33-1601; Acts 1984, ch. 922, §§ 6, 8-11; 1988, ch. 828, § 2; 1989, ch. 504, § 1; 1992, ch. 981, §§ 2-13, 15; 1992, ch. 991, § 14; 1993, ch. 283, § 1; 1994, ch. 683, § 1; 1995, ch. 468, § 1; 2000, ch. 947, § 6); § 33-5-102 (Acts 1975, ch. 248, § 13; T.C.A. § 33-502), which was repealed by Acts 1993, ch. 283, § 2; § 33-5-103 (Acts 1975, ch. 248, § 13; T.C.A. § 33-503), which was repealed by Acts 1993, ch. 283, § 2; § 33-5-104 (Acts 1975, ch. 248, § 13; 1976, ch. 763, § 3; 1978, ch. 527, § 1; T.C.A. § 33-504), which was repealed by Acts 1993, ch. 283, § 2; and § 33-5-304 (Acts 1975, ch. 248, § 13; 1978, ch. 527, § 2; 1978, ch. 667, § 1; 1981, ch. 224, § 8; T.C.A., § 33-508), which was repealed by Acts 1984, ch. 922, § 33, is deleted and replaced in the revision of title 33 by Acts 2000, ch. 947, § 1, effective March 1, 2001.

33-5-202. State policy — Principles for developing programs.

(a) The policy of the state is that persons with severe or developmental disabilities and their families be afforded supports that emphasize community living and enable them to enjoy typical lifestyles.

(b) Programs to support families shall be based on the following principles:

(1) Families and individuals with severe or developmental disabilities are best able to determine their own needs and should be empowered to make decisions concerning necessary, desirable, and appropriate services and supports;

(2) Families should receive the support necessary to care for their relatives at home;

(3) Family support is needed throughout the life span of the person who has a severe or developmental disability;

(4) Family support services should be sensitive to the unique needs, strengths, and values of the person and the family, and should be responsive to the needs of the entire family;

(5) Family support should build on existing social networks and natural sources of support in communities;

(6) Family support services should be provided in a manner that develops comprehensive, responsive, and flexible support to families as their needs evolve over time;

(7) Family support services should be provided equitably across the state and be coordinated across the numerous agencies likely to provide resources and services and support to families; and

(8) Family, individual, and community-based services and supports should be based on sharing ordinary places, developing meaningful relationships, learning things that are useful, and making choices, as well as increasing the status and enhancing the reputation of persons served.

History.
Acts 1992, ch. 981, § 2; T.C.A., § 33-5-401; Acts 2000, ch. 947, §§ 1, 6.

33-5-203. Primary focus.

The primary focus of the family support program is supporting:

(1) Families with children with severe or developmental disabilities, school age and younger;

(2) Adults with severe or developmental disabilities who choose to live with their families; and

(3) Adults with severe or developmental disabilities who are residing in the community in an unsupported setting not a state or federally funded program.

History.
Acts 1992, ch. 981, § 5; T.C.A., § 33-5-404; Acts 2000, ch. 947, § 1.

33-5-204. Duties of contracted agency.

The contracted agency shall be responsible for assisting each family for whom services and support will be

provided in assessing each family's needs and shall prepare a written plan with the person and family. The needs and preferences of the family and individual will be the basis for determining what goods and services will be made available within the resources available.

History.
Acts 1992, ch. 981, § 6; T.C.A., § 33-5-405; Acts 2000, ch. 947, § 1.

33-5-205. Scope of family support services.

The family support services included in this program include, but are not limited to, family support services coordination, information, referral, advocacy, educational materials, emergency and outreach services, and other individual and family-centered assistance services, such as:

(1) Respite care;
(2) Personal assistance services;
(3) Child care;
(4) Homemaker services;
(5) Minor home modifications and vehicular modifications;
(6) Specialized equipment and maintenance and repair;
(7) Specialized nutrition and clothing and supplies;
(8) Transportation services;
(9) Health-related costs not otherwise covered;
(10) Licensed nursing and nurses aid services; and
(11) Family counseling, training and support groups.

History.
Acts 1992, ch. 981, § 7; T.C.A., § 33-5-406; Acts 2000, ch. 947, § 1.

33-5-206. Coordination of services.

As a part of the family support program, the contracted agency shall provide service coordination for each family that includes information, coordination, and other assistance as needed by the family.

History.
Acts 1992, ch. 981, § 8; T.C.A., § 33-5-407; Acts 2000, ch. 947, § 1.

33-5-207. Families of adults with disabilities — Services and resources.

The family support program shall assist families of adults with a severe or developmental disabilities in planning and obtaining community living arrangements, employment services, and other resources needed to achieve, to the greatest extent possible, independence, productivity, and integration into the community.

History.
Acts 1992, ch. 981, § 9; T.C.A., § 33-5-408; Acts 2000, ch. 947, § 1.

33-5-208. State family support council.

The commissioner shall appoint a state family support council comprised of fifteen (15) members, of whom at least a majority shall be persons with severe or developmental disabilities or their parents or primary care givers. The council shall have one (1) representative from each development district of the state, one (1) representative of the council on developmental disabilities, one (1) representative of the Tennessee disability coalition, one (1) representative of the Tennessee community organizations, and one (1) representative of a center for independent living. The commissioner shall appoint two (2) at-large members for the department.

History.
Acts 1992, ch. 981, § 10; T.C.A., § 33-5-409; Acts 2000, ch. 947, § 1; 2002, ch. 730, § 27; 2005, ch. 27, § 1.

Compiler's Notes.
The state family support council, created by this section, terminates June 30, 2022. See §§ 4-29-112, 4-29-243.

33-5-209. Department to participate with council — Policies and procedures.

(a) The department shall adopt policies and procedures regarding the development of appropriations requested for family support.

(b) Unless the commissioner determines an exigent circumstance exists, the department shall seek input from the state family support council prior to adopting policies and procedures regarding:

(1) Program specifications:
(A) Criteria for program services;
(B) Methodology for allocating resources to families within the funds available;
(C) Eligibility determination and admissions; and
(D) Limits on benefits;
(2) Coordination of the family support program and the use of its funds equitably throughout the state, with other publicly funded programs, including medicaid;
(3) Resolution of grievances filed by families pertaining to actions of the family support program, and an appeals process;
(4) Quality assurance; and
(5) Annual evaluation of services, including consumer satisfaction.

History.
Acts 1992, ch. 981, § 11; T.C.A., § 33-5-410; Acts 2000, ch. 947, § 1; 2015, ch. 301, § 1.

33-5-210. Meetings — Duties — Expenses.

(a) The state family support council shall meet at least quarterly. The council shall participate in the development of program policies and procedures, and perform other duties as are necessary for statewide implementation of the family support program. All reimbursement for travel expenses shall be in conformity with the comprehensive state travel regulations as promulgated by the commissioner of finance and administration and approved by the attorney general and reporter.

(b)(1) Any council member who misses more than fifty percent (50%) of the scheduled meetings in a calendar year shall be removed as a member of the council.

(2) The chair of the council shall promptly notify, or cause to be notified, the appointing authority of any member who fails to satisfy the attendance requirement as prescribed in subdivision (b)(1).

History.
Acts 1992, ch. 981, § 12; T.C.A., § 33-5-411; Acts 2000, ch. 947, § 1; 2016, ch. 615, § 3.

33-5-211. Administration of program — Funding.

The department shall administer the family support services program and shall establish annual benefit levels per family served. Implementation of this part and the program and annual benefit levels, or any portion of the program or benefits levels, are contingent upon annual line item appropriation of sufficient funding for the programs and benefits.

History.
Acts 1992, ch. 981, §§ 13, 15; T.C.A., § 33-5-412; Acts 2000, ch. 947, § 1.

33-5-212. Provision of information gathered through family support program to DIDD.

In accordance with policies and procedures developed and adopted by the state family support council and the department of intellectual and developmental disabilities (DIDD), information gathered through the family support program on persons with a developmental disability, other than an intellectual disability, for whom services are needed shall be provided to DIDD on at least a quarterly basis.

History.
Acts 2006, ch. 604, § 1; 2009, ch. 477, § 1; 2010, ch. 734, § 1; 2010, ch. 1100, § 42; 2015, ch. 301, § 2.

Compiler's Notes.
Acts 2006, ch. 604, § 2 provided that the provisions of the act shall not be construed to be an appropriation of funds and no funds shall be obligated or expended pursuant to the act unless such funds are specifically appropriated by the general appropriations act.

For the Preamble to the act regarding changing the term "mental retardation" to "intellectual disability", please refer to Acts 2010, ch. 734.

Acts 2010, ch. 734, § 1 provided that the Tennessee code commission is directed to change all references to "mental retardation", wherever such references appear in titles 33, 39 and 41, to "intellectual disability", as supplements are issued and volumes are replaced.

Acts 2010, ch. 734, § 7 provided that for purposes of each provision amended by the act, a reference to intellectual disability shall be considered to refer to mental retardation, as defined by that provision on the day before the date of enactment of the act.

Acts 2010, ch. 734, § 8 provided that nothing in the act shall be construed to alter or otherwise affect the eligibility for services or the rights or responsibilities of individuals covered by the provision on the day before the date of enactment of the act.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health (now commissioner of mental health and substance abuse services), the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

PART 3

RESIDENTIAL ADMISSION

33-5-301. Part definitions — Admission to developmental center — Emergency respite admission — Review.

(a) As used in this part, unless the context otherwise requires:

(1) "Emergency respite admission" means an admission for up to forty-five (45) days authorized due to an emergency situation that results in the temporary inability of the person who has the care, custody, and control of a person with intellectual or developmental disability to provide proper care, custody, and control;

(2) "Regular voluntary admission" means an admission authorized by a statewide admission review committee for a specified period of time;

(3) "Respite admission" means an admission for up to forty-five (45) days authorized solely for the purpose of providing a respite for the person having responsibility for the care, custody, and control of a person with intellectual or developmental disability; and

(4) "Short-term training admission" means an admission authorized by a written agreement between a developmental center and an applicant that the center provide services and supports for a person with intellectual or developmental disability to learn how to perform a certain function or functions for a specified period of time, not exceeding six (6) months, at the end of which the center will discharge the person with intellectual or developmental disability to the care, custody, and control of the applicant.

(b)(1) Under department rules and pursuant to the direction of the statewide admission review committee, the chief officer or director of a center or the appointed designee of a developmental center, subject to the availability of suitable accommodations and the absence of a less restrictive alternative, may admit for diagnosis, care, training and treatment:

(A) A person with intellectual or developmental disability who applies for voluntary admission and does not lack capacity to apply under § 33-3-218;

(B) A child with intellectual or developmental disability whose parent or legal guardian applies for voluntary admission; or

(C) An adult whose conservator applies for voluntary admission.

(2) The departments of human services and children's services may apply for respite and emergency respite admission on behalf of a person with intellectual or developmental disability who is in their custody. Admissions to a developmental center under respite, emergency respite, or short-term training admission, or any combination of these, shall not exceed two hundred twenty-five (225) days within a twelve-month period from the first day of admission in any of the categories. A respite admission, emergency respite admission, short-term training admission, or combination of such admissions shall not be used to circumvent appearance

before the statewide admission review committee when regular voluntary admission is actually sought or appropriate. No regular voluntary admission shall be based on the premise that it is for a lifetime.

(c) The statewide admission review committee shall informally review a person's emergency respite admission within seven (7) days after the person is admitted. If the review is not done, then a hearing shall be held by the committee to review the propriety of the admission as in the case of regular voluntary admissions and shall make its decision within twenty-five (25) days after admission.

(d) Upon receipt of an application for admission, the developmental center shall evaluate the person with intellectual or developmental disability to assess the person's need for services and supports and the least restrictive alternative available to provide appropriate services and supports to the person. If the evaluation results in a recommendation for a regular voluntary admission and there is an available suitable accommodation, the developmental center will report its findings and recommendations to the statewide admission review committee.

(e) The department may adopt rules to implement the statewide admissions review committee and to specify its duties and membership.

History.

Acts 1975, ch. 248, § 13; 1983, ch. 323, § 10; T.C.A., § 33-501; Acts 1984, ch. 922, § 8; 1988, ch. 828, § 2; 1993, ch. 283, § 1; 1995, ch. 468, § 1; T.C.A., § 33-5-101(b); Acts 2000, ch. 947, § 1; 2012, ch. 636, §§ 1-5.

Compiler's Notes.

Former § 33-5-301 (Acts 1975, ch. 248, § 13; T.C.A., § 33-505), concerning mental health and mental retardation services, was repealed by Acts 2000, ch. 809, § 2, effective May 24, 2000. For present law, see § 33-5-106.

Former chapter 5, §§ 33-5-101, 33-5-105, 33-5-201, 33-5-301 — 33-5-303, 33-5-305 — 33-5-310, 33-5-401 — 33-5-412 (Acts 1971, ch. 289, § 1; 1975, ch. 248, § 13; 1976, ch. 763, § 4; 1976, ch. 764, § 3; 1978, ch. 527, § 3; 1978, ch. 667, § 2; 1980, ch. 822, § 1; 1981, ch. 224, §§ 5, 6, 10; 1982, ch. 862, § 2; 1983, ch. 323, § 10; T.C.A., §§ 33-313, 33-501, 33-505 — 33-507, 33-510, 33-515, 33-516, 33-523, 33-524, 33-1601; Acts 1984, ch. 922, §§ 6, 8-11; 1988, ch. 828, § 2; 1989, ch. 504, § 1; 1992, ch. 981, §§ 2-13, 15; 1992, ch. 991, § 14; 1993, ch. 283, § 1; 1994, ch. 683, § 1; 1995, ch. 468, § 1; 2000, ch. 947, § 6); § 33-5-102 (Acts 1975, ch. 248, § 13; T.C.A. § 33-502), which was repealed by Acts 1993, ch. 283, § 2; § 33-5-103 (Acts 1975, ch. 248, § 13; T.C.A. § 33-503), which was repealed by Acts 1993, ch. 283, § 2; § 33-5-104 (Acts 1975, ch. 248, § 13; 1976, ch. 763, § 3; 1978, ch. 527, § 1; T.C.A. § 33-504), which was repealed by Acts 1993, ch. 283, § 2; and § 33-5-304 (Acts 1975, ch. 248, § 13; 1978, ch. 527, § 2; 1978, ch. 667, § 1; 1981, ch. 224, § 8; T.C.A., § 33-508), which was repealed by Acts 1984, ch. 922, § 33, is deleted and replaced in the revision of title 33 by Acts 2000, ch. 947, § 1, effective March 1, 2001.

33-5-302. Periodic evaluation of admitted person — Discharge.

The chief officer or director of a center or the appointed designee:

(1) Shall cause each person admitted under § 33-5-301 or transferred under § 33-3-301 or chapter 3, part 4 of this title to be evaluated as often as necessary, but not less often than every six (6) months;

(2) Shall discharge a person admitted under § 33-5-301 when the chief officer, director or designee and the statewide admission review committee determine that the person no longer meets the standards under which the person was admitted; or

(3) May discharge a person admitted under § 33-5-301 at any time when it is in the person's best interest.

History.

Acts 2000, ch. 947, § 1; 2012, ch. 636, § 6.

Compiler's Notes.

Former § 33-5-302 (Acts 1975, ch. 248, § 13; 1981, ch. 224, § 5; T.C.A., § 33-506), concerning mental health and mental retardation services, was repealed by Acts 2000, ch. 809, § 2, effective May 24, 2000. For present law, see § 33-5-106.

Former chapter 5, §§ 33-5-101, 33-5-105, 33-5-201, 33-5-301 — 33-5-303, 33-5-305 — 33-5-310, 33-5-401 — 33-5-412 (Acts 1971, ch. 289, § 1; 1975, ch. 248, § 13; 1976, ch. 763, § 4; 1976, ch. 764, § 3; 1978, ch. 527, § 3; 1978, ch. 667, § 2; 1980, ch. 822, § 1; 1981, ch. 224, §§ 5, 6, 10; 1982, ch. 862, § 2; 1983, ch. 323, § 10; T.C.A., §§ 33-313, 33-501, 33-505 — 33-507, 33-510, 33-515, 33-516, 33-523, 33-524, 33-1601; Acts 1984, ch. 922, §§ 6, 8-11; 1988, ch. 828, § 2; 1989, ch. 504, § 1; 1992, ch. 981, §§ 2-13, 15; 1992, ch. 991, § 14; 1993, ch. 283, § 1; 1994, ch. 683, § 1; 1995, ch. 468, § 1; 2000, ch. 947, § 6); § 33-5-102 (Acts 1975, ch. 248, § 13; T.C.A. § 33-502), which was repealed by Acts 1993, ch. 283, § 2; § 33-5-103 (Acts 1975, ch. 248, § 13; T.C.A. § 33-503), which was repealed by Acts 1993, ch. 283, § 2; § 33-5-104 (Acts 1975, ch. 248, § 13; 1976, ch. 763, § 3; 1978, ch. 527, § 1; T.C.A. § 33-504), which was repealed by Acts 1993, ch. 283, § 2; and § 33-5-304 (Acts 1975, ch. 248, § 13; 1978, ch. 527, § 2; 1978, ch. 667, § 1; 1981, ch. 224, § 8; T.C.A., § 33-508), which was repealed by Acts 1984, ch. 922, § 33, is deleted and replaced in the revision of title 33 by Acts 2000, ch. 947, § 1, effective March 1, 2001.

33-5-303. Request for discharge by parent or other representative.

In the case of a person admitted under § 33-5-301, a parent or legal guardian of a child with intellectual or development disability on behalf of the child, a conservator of a person with intellectual or development disability on behalf of the person, or a person with intellectual or development disability who was admitted on the person's own application and does not lack capacity under § 33-3-218 may request discharge from a developmental center at any time by filing a request with the chief officer or director of a center or the appointed designee. If the person cannot file a written request, anyone acting on the person's behalf may file the request with the person's consent. The chief officer or director of a center or the appointed designee shall discharge the person with intellectual or development disability within twelve (12) hours after receipt of the request or at the time stated in the request, whichever is later.

History.

Acts 2000, ch. 947, § 1; 2012, ch. 636, §§ 7, 8.

Compiler's Notes.

Former § 33-5-303 (Acts 1975, ch. 248, § 13; 1981, ch. 224, § 6; T.C.A., § 33-507), concerning mental health and mental retardation services, was repealed by Acts 2000, ch. 809, § 2, effective May 24, 2000. For present law, see § 33-5-106.

Former chapter 5, §§ 33-5-101, 33-5-105, 33-5-201, 33-5-301 — 33-5-303, 33-5-305 — 33-5-310, 33-5-401 — 33-5-412 (Acts 1971, ch. 289, § 1; 1975, ch. 248, § 13; 1976, ch. 763, § 4; 1976, ch. 764, § 3; 1978, ch. 527, § 3; 1978, ch. 667, § 2; 1980, ch. 822, § 1; 1981, ch. 224, §§ 5, 6, 10; 1982, ch. 862, § 2; 1983, ch. 323, § 10; T.C.A., §§ 33-313, 33-501, 33-505 — 33-507, 33-510, 33-515, 33-516, 33-523, 33-524, 33-1601; Acts 1984, ch. 922, §§ 6, 8-11; 1988, ch. 828, § 2; 1989, ch.

504, § 1; 1992, ch. 981, §§ 2-13, 15; 1992, ch. 991, § 14; 1993, ch. 283, § 1; 1994, ch. 683, § 1; 1995, ch. 468, § 1; 2000, ch. 947, § 6); § 33-5-102 (Acts 1975, ch. 248, § 13; T.C.A. § 33-502), which was repealed by Acts 1993, ch. 283, § 2; § 33-5-103 (Acts 1975, ch. 248, § 13; T.C.A. § 33-503), which was repealed by Acts 1993, ch. 283, § 2; § 33-5-104 (Acts 1975, ch. 248, § 13; 1976, ch. 763, § 3; 1978, ch. 527, § 1; T.C.A. § 33-504), which was repealed by Acts 1993, ch. 283, § 2; and § 33-5-304 (Acts 1975, ch. 248, § 13; 1978, ch. 527, § 2; 1978, ch. 667, § 1; 1981, ch. 224, § 8; T.C.A., § 33-508), which was repealed by Acts 1984, ch. 922, § 33, is deleted and replaced in the revision of title 33 by Acts 2000, ch. 947, § 1, effective March 1, 2001.

33-5-304. Departmental review of admission.

(a)(1) The department may review the appropriateness of admission to a privately or publicly funded residential facility for persons with intellectual or developmental disabilities due to mental impairment. The department shall investigate to assess the validity of an allegation of:

(A) Deprivation of liberty without consent;

(B) Abuse, neglect, or exploitation;

(C) Placement that is inappropriate to meet the needs of a service recipient;

(D) Violation of a fiduciary relationship; or

(E) Any other violation of a right.

(2) If the department finds probable cause to believe the allegation after an investigation by inspection of records and interviews with personnel, service recipients and their families and there is no suitable remedy under chapter 2, part 4 of this title, the department may require a plan of compliance or may require independent review of admissions under this section for a period of time set by the department.

(b) Within five (5) days after a recommendation is made that a person with intellectual or developmental disability be admitted to a residential facility for which the department requires independent review under subsection (a), an independent reviewer designated by the department shall determine the appropriateness of the recommended residential service for the person on the basis of the interests and welfare of the person. The reviewer's decision shall not be influenced by any benefits flowing from the admission solely to the family, parents, guardian, or conservator of the person. The reviewer's decision shall be written and shall state the reasons for the decision.

(c) The reviewer's decision on publicly funded placements may be appealed to a designee of the commissioner by filing the appeal within seven (7) days after receipt of the decision. The designee of the commissioner shall review and decide the appeal within fourteen (14) days after receipt of the appeal. The only appeal of the reviewer's decision on privately funded placements is a request for reconsideration by the reviewer filed within fourteen (14) days after receipt of the decision, and the reviewer's decision is final administratively. If granted, reconsideration by the reviewer shall occur within five (5) working days after receipt of the request.

(d) The department shall designate persons from among its employees or by contract to serve as independent reviewers. A person designated to serve as the independent reviewer for a case shall have no conflict of interest with any party to the case and shall be trained with respect to the laws, rules, and information required to make competent decisions as an independent reviewer.

History.

Acts 2000, ch. 947, § 1; 2002, ch. 730, § 28; 2012, ch. 636, § 9.

PART 4

FORENSIC SERVICES FOR PERSONS WITH INTELLECTUAL DISABILITIES

33-5-401. Rehabilitation for persons with intellectual disability.

(a) For purposes of this part, unless the context otherwise requires, "commissioner" means the commissioner of intellectual and developmental disabilities or the commissioner's designee.

(b) The commissioner may establish programs, including community-based programs, for training, habilitating, or rehabilitating persons with intellectual disabilities under this part.

History.

Acts 1975, ch. 248, § 13; T.C.A., §§ 33-505, 33-5-301; Acts 2000, ch. 947, § 1; 2006, ch. 1008, § 1; 2010, ch. 734, § 1; 2010, ch. 1100, § 43.

Compiler's Notes.

Former chapter 5, §§ 33-5-101, 33-5-105, 33-5-201, 33-5-301 — 33-5-303, 33-5-305 — 33-5-310, 33-5-401 — 33-5-412 (Acts 1971, ch. 289, § 1; 1975, ch. 248, § 13; 1976, ch. 763, § 4; 1976, ch. 764, § 3; 1978, ch. 527, § 3; 1978, ch. 667, § 2; 1980, ch. 822, § 1; 1981, ch. 224, §§ 5, 6, 10; 1982, ch. 862, § 2; 1983, ch. 323, § 10; T.C.A., §§ 33-313, 33-501, 33-505 — 33-507, 33-510, 33-515, 33-516, 33-523, 33-524, 33-1601; Acts 1984, ch. 922, §§ 6, 8-11; 1988, ch. 828, § 2; 1989, ch. 504, § 1; 1992, ch. 981, §§ 2-13, 15; 1992, ch. 991, § 14; 1993, ch. 283, § 1; 1994, ch. 683, § 1; 1995, ch. 468, § 1; 2000, ch. 947, § 6); § 33-5-102 (Acts 1975, ch. 248, § 13; T.C.A. § 33-502), which was repealed by Acts 1993, ch. 283, § 2; § 33-5-103 (Acts 1975, ch. 248, § 13; T.C.A. § 33-503), which was repealed by Acts 1993, ch. 283, § 2; § 33-5-104 (Acts 1975, ch. 248, § 13; 1976, ch. 763, § 3; 1978, ch. 527, § 1; T.C.A. § 33-504), which was repealed by Acts 1993, ch. 283, § 2; and § 33-5-304 (Acts 1975, ch. 248, § 13; 1978, ch. 527, § 2; 1978, ch. 667, § 1; 1981, ch. 224, § 8; T.C.A., § 33-508), which was repealed by Acts 1984, ch. 922, § 33, is deleted and replaced in the revision of title 33 by Acts 2000, ch. 947, § 1, effective March 1, 2001.

For the Preamble to the act regarding changing the term "mental retardation" to "intellectual disability", please refer to Acts 2010, ch. 734.

Acts 2010, ch. 734, § 1 provided that the Tennessee code commission is directed to change all references to "mental retardation", wherever such references appear in titles 33, 39 and 41, to "intellectual disability", as supplements are issued and volumes are replaced.

Acts 2010, ch. 734, § 7 provided that for purposes of each provision amended by the act, a reference to intellectual disability shall be considered to refer to mental retardation, as defined by that provision on the day before the date of enactment of the act.

Acts 2010, ch. 734, § 8 provided that nothing in the act shall be construed to alter or otherwise affect the eligibility for services or the rights or responsibilities of individuals covered by the provision on the day before the date of enactment of the act.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health (now commissioner of mental health and substance abuse services), the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

33-5-402. Procedure for commitment of person under this part.

IF AND ONLY IF

(1)(A) a juvenile court determines in a delinquency proceeding, on the basis of an evaluation under § 37-1-128(c), that a child has an intellectual disability, OR

(B) a circuit, criminal, or general sessions court determines on the basis of an evaluation under § 33-7-301(a) that a criminal defendant is incompetent to stand trial due to an intellectual disability, OR

(C) a circuit or criminal court enters a verdict of not guilty by reason of insanity on a capital offense against a defendant with an intellectual disability,

THEN

(2) the district attorney general may file a complaint to require involuntary care and treatment of the defendant under § 33-5-403, AND

(3) only the juvenile court that has jurisdiction of the child or the circuit or criminal court before which the defendant's criminal case is pending or that would hear the case if the defendant were bound over to the grand jury has jurisdiction to hear a complaint filed under § 33-5-403.

History.

Acts 2000, ch. 947, § 1; 2010, ch. 734, § 1.

Compiler's Notes.

For the Preamble to the act regarding changing the term "mental retardation" to "intellectual disability", please refer to Acts 2010, ch. 734.

Acts 2010, ch. 734, § 1 provided that the Tennessee code commission is directed to change all references to "mental retardation", wherever such references appear in titles 33, 39 and 41, to "intellectual disability", as supplements are issued and volumes are replaced.

Acts 2010, ch. 734, § 7 provided that for purposes of each provision amended by the act, a reference to intellectual disability shall be considered to refer to mental retardation, as defined by that provision on the day before the date of enactment of the act.

Acts 2010, ch. 734, § 8 provided that nothing in the act shall be construed to alter or otherwise affect the eligibility for services or the rights or responsibilities of individuals covered by the provision on the day before the date of enactment of the act.

33-5-403. Prerequisites to involuntary commitment.

IF AND ONLY IF

(1) a person has an intellectual disability, AND

(2) the person poses a substantial likelihood of serious harm under § 33-6-501 because of the intellectual disability, AND

(3) the person needs care, training, or treatment because of the intellectual disability, AND

(4) all available less drastic alternatives to judicial commitment are unsuitable to meet the needs of the person, AND

(5) the district attorney general files a complaint to require involuntary care and treatment under § 33-5-402,

THEN

(6) the person may be judicially committed to involuntary care and treatment in the custody of the commissioner in proceedings conducted in conformity with chapter 3, part 6 of this title.

History.

Acts 2000, ch. 947, § 1; 2010, ch. 734, § 1.

Compiler's Notes.

For the Preamble to the act regarding changing the term "mental retardation" to "intellectual disability", please refer to Acts 2010, ch. 734.

Acts 2010, ch. 734, § 1 provided that the Tennessee code commission is directed to change all references to "mental retardation", wherever such references appear in titles 33, 39 and 41, to "intellectual disability", as supplements are issued and volumes are replaced.

Acts 2010, ch. 734, § 7 provided that for purposes of each provision amended by the act, a reference to intellectual disability shall be considered to refer to mental retardation, as defined by that provision on the day before the date of enactment of the act.

Acts 2010, ch. 734, § 8 provided that nothing in the act shall be construed to alter or otherwise affect the eligibility for services or the rights or responsibilities of individuals covered by the provision on the day before the date of enactment of the act.

33-5-404. Finding of need for involuntary commitment by designated psychologists.

No defendant may be judicially committed under § 33-5-403 unless the commissioner designates licensed physicians or licensed psychologists designated as health service providers who file in the commitment proceeding two (2) certificates of need for training and treatment certifying that the defendant satisfies the requirements of subdivisions § 33-5-403(1)-(4) and showing the factual foundation for the conclusions on each item.

History.

Acts 1975, ch. 248, § 13; 1976, ch. 764, § 1; 1978, ch. 527, § 3; 1978, ch. 667, § 2; 1981, ch. 449, § 2(20); 1982, ch. 862, § 13; T.C.A., § 33-510; Acts 1984, ch. 922, § 9; 1992, ch. 991, § 14; T.C.A., § 33-5-305(c); Acts 2000, ch. 947, § 1.

33-5-405. Admission subject to availability of accommodation.

A judicially committed defendant does not come into the custody of the commissioner until the commissioner determines that the state has an available suitable accommodation and designates a licensed state facility to admit the defendant.

History.

Acts 1975, ch. 248, § 13; 1976, ch. 764, § 1; 1978, ch. 527, § 3; 1978, ch. 667, § 2; 1981, ch. 449, § 2(20); 1982, ch. 862, § 13; T.C.A., § 33-510; Acts 1984, ch. 922, § 9; 1992, ch. 991, § 14; T.C.A. § 33-5-305(d); Acts 2000, ch. 947, § 1; 2002, ch. 730, § 29.

33-5-406. Credit on sentence for time in custody.

Whenever a person receives evaluation, training or treatment services under this part or part 5 of this chapter in connection with a criminal charge or conviction, wherever incarcerated, the person shall receive credit toward the satisfaction of the sentence for the time spent in the custody of the commissioner.

History.
Acts 1975, ch. 248, § 13; 1976, ch. 763, § 4; T.C.A., §§ 33-515, 33-5-306; Acts 2000, ch. 947, § 1.

33-5-407. Court order as transfer.

Without regard to its wording, any court order of commitment under this part shall be considered in law as a transfer of the person to the custody of the commissioner.

History.
Acts 1975, ch. 248, § 13; T.C.A., §§ 33-516, 33-5-307; Acts 2000, ch. 947, § 1.

33-5-408. Periodic evaluations.

(a) The commissioner shall cause each person committed under § 33-5-403 or transferred under § 33-3-301 or chapter 3, part 4 of this title, to be evaluated as often as necessary but not less often than every six (6) months.

(b) The commissioner or the commissioner's designee shall report the details of the findings of the evaluation performed under subsection (a) regarding persons with intellectual disabilities committed under § 33-5-403. The report shall include an assessment of the person's present condition and prospects for restoration to competence to stand trial, and shall be sent to the clerk of the court that ordered commitment, the person, the person's attorney, parents, spouse, legal guardian or conservator, if any, and the district attorney general.

(c) If, upon completion of the evaluation under subsection (a), the commissioner or the commissioner's designee determines that a person with an intellectual disability transferred under § 33-3-301, no longer meets the standards under which the person was admitted, the person shall be immediately discharged or transferred to the facility from which the person was transferred or to another appropriate facility of the department under § 33-3-301.

History.
Acts 1981, ch. 224, § 10; T.C.A., § 33-523; Acts 1984, ch. 922, § 10; T.C.A., § 33-5-308; Acts 2000, ch. 947, § 1; 2010, ch. 734, § 1.

Compiler's Notes.
For the Preamble to the act regarding changing the term "mental retardation" to "intellectual disability", please refer to Acts 2010, ch. 734.

Acts 2010, ch. 734, § 1 provided that the Tennessee code commission is directed to change all references to "mental retardation", wherever such references appear in titles 33, 39 and 41, to "intellectual disability", as supplements are issued and volumes are replaced.

Acts 2010, ch. 734, § 7 provided that for purposes of each provision amended by the act, a reference to intellectual disability shall be considered to refer to mental retardation, as defined by that provision on the day before the date of enactment of the act.

Acts 2010, ch. 734, § 8 provided that nothing in the act shall be construed to alter or otherwise affect the eligibility for services or the rights or responsibilities of individuals covered by the provision on the day before the date of enactment of the act.

33-5-409. Release of intellectually disabled offenders — Delivery to custody of court.

(a) When the commissioner or the commissioner's designee determines that any person committed under § 33-5-403, no longer meets the standards under which the person was committed, the decision maker shall immediately order the person's release and cause the person to be discharged except as provided in subsection (b) or § 33-5-410.

(b) When the commissioner or the commissioner's designee determines that a person who was committed under § 33-5-403 and who is charged with a crime for which the person is subject to being tried is restored to competence to stand trial, the decision maker shall give notice of that fact to the clerk of the court that ordered the person's commitment and deliver the person to the custody of the sheriff of the county from which the person was admitted, who shall transport the person back to the custody of the court.

History.
Acts 1981, ch. 224, § 11; T.C.A., §§ 33-524, 33-5-309; Acts 2000, ch. 947, § 1.

33-5-410. Discharge proceedings for criminal defendant involuntarily committed to an intellectual disability facility.

(a) Whenever an intellectual disability facility determines that a person, who has been committed under § 33-5-403 by a criminal court in connection with a capital offense or with a verdict of not guilty by reason of insanity on a capital offense, no longer meets the commitment standards under which the person was committed, it shall follow the procedures set out in this section to effect the person's release from involuntary commitment.

(b) When the intellectual disability facility determines that the person no longer meets the commitment criteria under which the person was committed, it shall notify the committing court of this fact and the reasons. The determination by the department shall create a rebuttable presumption of its correctness. The court may, within ten (10) business days, holidays excluded, of receipt of the notice, set a hearing to be held within twenty-one (21) business days, holidays excluded, of receipt of the facility's notice on whether the person continues to meet the commitment criteria under which the person was committed. The court shall send notice of the hearing to the following: the person, chief officer of the facility, the person's counsel, the person's next of kin, and the district attorney general.

(c) If the court does not set a hearing and notify the facility within fifteen (15) business days, holidays excluded, of its receipt of the facility's notice, the facility shall release the person from involuntary commitment.

(d) The hearing to determine whether the person continues to meet the commitment criteria under which the person was committed shall be held within twenty-one (21) business days, holidays excluded, of the court's receipt of notice from the facility. The person shall attend the hearing unless the person's presence is waived in writing by counsel before the hearing. If the person does not have counsel, the court shall appoint counsel to represent the person.

(e) Following the hearing, if the court finds by clear, unequivocal, and convincing evidence that the person meets the standards of § 33-5-403, it shall order the

person's return to the intellectual disability facility under the authority of the person's commitment. Otherwise, it shall order the person's release from commitment.

(f) Either party may appeal a final adjudication under this section to the court of criminal appeals.

History.

Acts 1980, ch. 822, § 1; 1982, ch. 862, § 2; T.C.A., § 33-313; Acts 1984, ch. 922, § 6; T.C.A., § 33-5-310; Acts 2000, ch. 947, § 1; 2010, ch. 714, § 1; 2010, ch. 734, § 1.

Compiler's Notes.

For the Preamble to the act regarding changing the term "mental retardation" to "intellectual disability", please refer to Acts 2010, ch. 734.

Acts 2010, ch. 734, § 1 provided that the Tennessee code commission is directed to change all references to "mental retardation", wherever such references appear in titles 33, 39 and 41, to "intellectual disability", as supplements are issued and volumes are replaced.

Acts 2010, ch. 734, § 7 provided that for purposes of each provision amended by the act, a reference to intellectual disability shall be considered to refer to mental retardation, as defined by that provision on the day before the date of enactment of the act.

Acts 2010, ch. 734, § 8 provided that nothing in the act shall be construed to alter or otherwise affect the eligibility for services or the rights or responsibilities of individuals covered by the provision on the day before the date of enactment of the act.

PART 5

MANDATORY COMMUNITY-BASED SERVICES

33-5-505. Hearing on contest of plan.

If a defendant contests a plan proposed by the department under § 33-5-501, § 33-5-502, or § 33-5-503, the court shall hold a hearing within seven (7) days of receipt of the request to determine whether the plan is programmatically appropriate and legally permissible. The court shall either approve the plan or approve the plan as modified by the department to correct deficiencies found by the court.

History.

Acts 2000, ch. 947, § 1.

CHAPTER 6

MENTAL HEALTH SERVICE

Part 1. Mental Health Service System

SECTION.
33-6-104. Community-based screening process — Prescreening agents.
33-6-108. Admissions to a state-owned or operated hospital or treatment resource.

Part 2. Voluntary Admission to Inpatient Treatment

33-6-201. Persons who may apply for voluntary admission.
33-6-202. Admission upon finding of need for hospitalization.
33-6-203. Limitations on admission of child.
33-6-204. Admissions review committee — Members — Expenses.
33-6-205. Approval of commitment.
33-6-206. Request for release.
33-6-207. Procedure for release following request.
33-6-208. Notification of parent, guardian or custodian prior to release of child.

Part 3. Persons with Severe Impairments

33-6-301. "Severe impairment" defined.
33-6-302. Detention of persons with severe impairments — Record.
33-6-303. Examination of person.
33-6-304. Detention following finding of severe impairment.
33-6-305. Extended detention after confirmation of initial finding.
33-6-306. Notice of status and rights as service recipient.
33-6-307. Request for release.
33-6-308. Release of person no longer in need of immediate care.
33-6-309. Admission of person to treatment facility beyond seventy-two hour period.
33-6-310. Monitoring of admissions to ensure service recipients' rights.
33-6-311. Service under this part not substitute for outpatient care.

Part 4. Emergency Involuntary Admission to Inpatient Treatment

33-6-401. Emergency detention.
33-6-402. Detention without warrant authorized.
33-6-403. Admission to treatment facility.
33-6-404. Certificate of need for emergency treatment and transportation.
33-6-405. [Reserved.]
33-6-406. Transportation of detainee to treatment facility.
33-6-407. Examination to determine need for hospitalization.
33-6-408. Admission of person already at treatment facility.
33-6-409. [Repealed.]
33-6-410. Admission of detainee to state facility.
33-6-411. Admission of detainee to private or local facility with contractual relationship with state.
33-6-412. Admission of detainee to other private or local facility — Payment for services.
33-6-413. Notice of admission to general sessions court — Notice of defendant's rights and status.
33-6-414. Detention for twenty-four (24) hours if judge not available.
33-6-415. Treatment not to render defendant unable to participate in probable cause hearing.
33-6-416. Order of admission — Notice to next of kin or representative.
33-6-417. Release or transfer prior to hearing.
33-6-418. Procedure for probable cause hearing.
33-6-419. Notice to court of legal representation — Appointment of counsel.
33-6-420. Waiver of hearing.
33-6-421. Filing of certificates of need.
33-6-422. Finding of probable cause — Involuntary commitment for care for up to fifteen (15) days.
33-6-423. Release of defendant if findings not made by court.
33-6-424. Release of defendant if chief officer determines certificates of need not supported by facts.
33-6-425. Detention not to be at jail or other criminal custodial facility unless defendant under arrest for crime.
33-6-426. Certification by physician required.
33-6-427. Authority of licensed psychologist or other mental health professional.

Part 5. Nonemergency Involuntary Admission to Inpatient Treatment

33-6-501. "Substantial likelihood of serious harm" defined.
33-6-502. Prerequisites to judicial commitment for involuntary care and treatment.
33-6-503. Two (2) certificates of need required — Defendants under sixteen (16) years of age.
33-6-504. Persons who may file complaint for commitment under this part.
33-6-505. Commitment to state facility.
33-6-506. Commitment to other public or private facility.
33-6-507. Commitment to contract facility — Conformance with contract.
33-6-508. Commitment to non-state facility where third-party payment has been arranged.
33-6-509. Suitable accommodations required.
33-6-510. Person eligible for care as armed forces veteran.

Part 6. Mandatory Outpatient Treatment

33-6-601. Disclosure of patient information relating to outpatient treatment.
33-6-602. Release from hospitalization subject to outpatient treatment.
33-6-603. Outpatient treatment plan.
33-6-604. Review of plan.

SECTION.
33-6-605. Discharge of patient — Notice to court of discharge subject to outpatient treatment.
33-6-606. Amendment of outpatient treatment plan.
33-6-607. Payment for outpatient services.
33-6-608. Admission to treatment facility — Outpatient care suspended — Outpatient care reinstituted following release.
33-6-609. Failure to comply with outpatient treatment plan — Action to enforce.
33-6-610. Hearing to determine compliance — Findings — Order to comply — Recommitment upon failure or inability to comply.
33-6-611. Failure to appear at hearing — Custody order — Transportation to hospital — Admission — Notice to attorney or other representative.
33-6-612. Failure to appear where no affidavit by qualified mental health professional.
33-6-613. Substitution of qualified mental health professional.
33-6-614. Findings by qualified mental health professional — Release.
33-6-615. Findings by qualified mental health professional — Recommitment — Notice to representative, next of kin and court.
33-6-616. Recommitment hearing.
33-6-617. Person eligible for discharge.
33-6-618. Rights of defendant in proceedings under this part.
33-6-619. Dismissal of proceedings pending against person recommitted under this part.
33-6-620. Termination of legally mandated outpatient care — Notice to court.
33-6-621. Reinstatement of mandatory outpatient care.
33-6-622. Hearing on reinstatement order.
33-6-623. Outpatient treatment obligation limited to six (6) months.
33-6-624. Pilot program for patients to receive assisted outpatient treatment.

Part 7. Discharge from Inpatient Treatment

33-6-701. Review of admitted persons to determine eligibility for discharge.
33-6-702. Request for current examination of mental condition — Payment.
33-6-703. Discharge of person eligible for release — Petition for review where one (1) or more physicians finds admission no longer needed.
33-6-704. Procedure for reviewing petition.
33-6-705. Discharge of person no longer meeting standards for admission.
33-6-706. Discharge of involuntarily committed person — Person no longer mentally ill or in remission — Person unlikely to cause harm — Voluntary outpatient treatment possible.
33-6-707. Persons eligible for discharge subject to mandatory outpatient treatment.
33-6-708. Discharge procedure for involuntarily committed persons.

Part 8. Sex Offenders

33-6-801. Part definitions.
33-6-802. Examination upon conviction for sex crime.
33-6-803. Certification for treatment.
33-6-804. Examination prior to release — Petition for commitment.
33-6-805. Post-plea treatment system.

Part 9. Special Provisions for Mental Health Transportation

33-6-901. Transportation of persons under part 4 or 5 of this chapter by sheriff, secondary transport agent, municipal officer or other authorized person.
33-6-902. Transportation of patient to hospital — Temporary detention.

PART 1

MENTAL HEALTH SERVICE SYSTEM

33-6-104. Community-based screening process — Prescreening agents.

(a) The department shall maintain a community-based screening process designed to provide alternatives to hospitalization, minimize length of confinement, promote speedy return to the community, and maximize each service recipient's ability to remain in a community setting.

(b) As part of the system the commissioner shall designate individuals to serve as mandatory prescreening agents. The commissioner may base designation on criteria consistent with § 33-6-427 and may set limits on an agent's authority. The commissioner may decline to designate a person who satisfies the requirements of § 33-6-427. The commissioner may remove authority as a mandatory pre-screening agent from a person without cause. Designation of a person as a mandatory prescreening agent does not vest any property right, and limitations on authority and removal of designation as a mandatory prescreening agent are not governed by the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, or by title 8, chapter 30.

(c) An agent has only the authority designated by the commissioner and, if the agent is not a physician, the authority of the agent terminates if the person no longer satisfies § 33-6-427. An agent's authority is valid in connection with hospitalization of a privately funded person at a private hospital or treatment resource only if the private hospital or treatment resource files notice of acceptance of the designated person's authority with the commissioner.

(d) When performing the duties authorized by this section an individual agent shall be considered to be a state employee pursuant to § 8-42-101(3)(D). When performing the duties authorized by this section an individual agent shall not be considered as an employee of such agent's regular employer, and the agent's regular employer, whether public or private, shall not be held liable in any damages to any person or government entity in a civil action for injury, death or loss to person or property that allegedly results from the actions of the individual agent while acting as a state employee pursuant to this section.

History.
Acts 2000, ch. 947, § 1; 2001, ch. 377, § 3; 2002, ch. 730, § 31; 2010, ch. 633, § 1.

33-6-108. Admissions to a state-owned or operated hospital or treatment resource.

Notwithstanding any other law to the contrary, all admissions or transfers to a state-owned or operated

hospital or treatment resource shall be subject to available suitable accommodations, as defined in § 33-1-101, and no admission to a state-owned or operated hospital or treatment resource shall occur until the department has designated the state-owned or operated facility as having available suitable accommodations; provided, that if there are no suitable available accommodations at the time of the determination, then the commissioner shall expeditiously find a state-owned or operated hospital or treatment resource to accommodate the person upon the availability of suitable available accommodations.

History.
Acts 2009, ch. 531, § 36.

Compiler's Notes.
For the Preamble to the act concerning the operation and funding of state government and to fund the state budget for the fiscal years beginning on July 1, 2008, and July 1, 2009, please refer to Acts 2009, ch. 531.

PART 2

VOLUNTARY ADMISSION TO INPATIENT TREATMENT

33-6-201. Persons who may apply for voluntary admission.

(a) The following persons may apply for admission to a public or private hospital or treatment resource for diagnosis, observation and treatment of a mental illness or serious emotional disturbance:

(1) A person who is sixteen (16) years of age or over and who does not lack capacity to apply under § 33-3-218;

(2) A parent, legal custodian, or legal guardian who is acting on behalf of a child;

(3) A conservator whom the appointing court has expressly granted authority to apply for the person's admission to a hospital or treatment resource for mental illness or serious emotional disturbance;

(4) A qualified mental health professional acting on the basis of the terms of the person's declaration for mental health treatment;

(5) A person's attorney in fact under a durable power of attorney for health care, under title 34, chapter 6, part 2;

(6) A caregiver under title 34, chapter 6, part 3, who is acting on behalf of a child; or

(7) An individual acting as an agent under the Tennessee Health Care Decisions Act, compiled in title 68, chapter 11, part 18 or an individual designated as a surrogate under § 68-11-1806(a).

(b) An individual's surrogate as designated under § 68-11-1806(c) may also apply for such admission provided no person may be admitted by a surrogate under this subsection (b) for more than twenty-one (21) consecutive days unless a petition has been filed pursuant to part 5 of this chapter, or unless an individual who meets any of the criteria set out in subdivisions (a)(1)-(7) of this section applies for voluntary admission subsequent to an application by a surrogate for voluntary admission under this section.

History.
Acts 2000, ch. 947, § 1; 2002, ch. 730, § 35; 2004, ch. 565, § 4; 2013, ch. 238, § 1.

Compiler's Notes.
Former chapter 6, §§ 33-6-101 — 33-6-111; 33-6-201 — 33-6-209; 33-6-301 — 33-6-306 (Acts 1957, ch. 288, §§ 1-5; impl. am. Acts 1957, ch. 127, §§ 1, 3, 4; 1963, ch. 315, §§ 1, 2; 1965, ch. 38, §§ 37-40, 43, 45, 46; 1967, ch. 44, § 1; 1967, ch. 58, § 1;1973, ch. 127, § 11; 1974, ch. 464, § 3; 1974, ch. 802, §§ 43, 45, 46, 52, 53; 1975, ch. 199, §§ 1-3; 1975, ch. 248, §§ 1, 14, 16-18; 1976, ch. 610, § 1; 1976, ch. 763, § 5; 1976, ch. 764, §§ 2, 3; 1977, ch. 165, § 1; 1977, ch. 386, § 2; 1977, ch. 449, §§ 1, 2; 1978, ch. 527, §§ 5, 6; 1980, ch. 621, § 1; 1981, ch. 224, §§ 25-27; 1981, ch. 445, § 1; 1981, ch. 449, § 2(21); 1981, ch. 536, § 1; 1982, ch. 862, § 1, 3-11; 1983, ch. 323, §§ 8, 9, 11, 13, 14, 17-22, 24; T.C.A., § 33-314, 33-325, 33-603, 33-601, 33-604, 33-606 — 33-609, 33-614 — 33-619; 33-379 — 33-381, 33-1301 — 33-1305, 33-3-620 — 33-3-622, 33-6-203 — 33-6-205; Acts 1984, ch. 922, § 8, 11-16, 23-25, 27, 28-32, 39, 40; 1985, ch. 437, §§ 14-25; 1985, ch. 478, § 37; Acts 1986, ch. 595, §§ 1, 2; 1986, ch. 836, §§ 4, 6; 1987, ch. 145, § 26; 1988, ch. 862, §§ 1-5; 1988, ch 953, § 8; 1989, ch. 99, § 1; 1989, ch. 311, §§ 1-4; 1989, ch. 513, §§ 3, 15-17; 1990, ch. 630, §§ 1, 2; 1992, ch. 893, §§ 1, 2; 1992, ch. 991, §§ 15, 16; 1993, ch. 356, §§ 1-3; 1993, ch. 376, §§ 1-4; 1994, ch. 676, § 1; 1994, ch. 779, § 1; 1996, ch. 1079, §§ 57-66; 2000, ch. 947, § 6), is deleted and replaced in the revision of title 33 by Acts 2000, ch. 947, § 1, effective March 1, 2001.

33-6-202. Admission upon finding of need for hospitalization.

Upon application, if an examination by an admitting physician determines the need for hospitalization, the chief officer of a public hospital shall admit and the chief officer of a private hospital or treatment resource may admit the person. If the service recipient is a child, the chief officer shall notify the child's parent, legal guardian or legal custodian of the admission. Admission is subject to the availability of suitable accommodations.

History.
Acts 2000, ch. 947, § 1.

33-6-203. Limitations on admission of child.

No unemancipated child may be admitted under this part for more than one (1) six-month period in any twelve-month period unless the admissions review committee approves further hospitalization.

History.
Acts 2000, ch. 947, § 1.

33-6-204. Admissions review committee — Members — Expenses.

The admissions review committee consists of four (4) persons. Two (2) members shall be appointed from the hospital or treatment resource by the chief officer and two (2) members shall be appointed from the community contiguous to the hospital or treatment resource by the chair of the state commission on children and youth. The members appointed by the chair of the state commission on children and youth shall not be employees or staff members of the hospital or treatment resource. The committee members shall be trained or experienced specifically in child mental health. Committee members shall serve voluntarily, and the hospital or treatment resource shall reimburse them for their travel and per diem living expenses.

History.
Acts 2000, ch. 947, § 1.

33-6-205. Approval of commitment.

The admissions review committee shall approve continued hospitalization by a vote of at least three (3) of its members. The committee may recommend the person's continued hospitalization for a period not to exceed six (6) months. If the committee does not approve continued hospitalization, the person shall be released, unless, prior to the committee's decision, a petition for judicial hospitalization has been filed under chapter 6, part 5 of this title.

History.
Acts 2000, ch. 947, § 1.

33-6-206. Request for release.

(a) The following persons may at any time request the service recipient's release by filing a written application with the chief officer:

(1) An adult service recipient;

(2) A service recipient's conservator;

(3) A service recipient's attorney in fact under a durable power of attorney for health care;

(4) The parent, legal custodian, or legal guardian who applied for the admission of a child;

(5) A child who is sixteen (16) years of age or over and who was admitted on the child's own application;

(6) A caregiver under title 34, chapter 6, part 3, who is acting on behalf of a child; or

(7) An individual acting as an agent under the Tennessee Health Care Decisions Act, compiled in title 68, chapter 11, part 18 or a person's surrogate as designated under title 68, chapter 11, part 18.

(b) If a competent service recipient cannot file a written request, a person acting on the service recipient's behalf may file the request with the service recipient's consent.

History.
Acts 2000, ch. 947, § 1; 2002, ch. 730, § 36; 2004, ch. 565, § 5; 2013, ch. 238, § 2.

33-6-207. Procedure for release following request.

If the chief officer receives a request for discharge under § 33-6-206 and does not admit the service recipient under chapter 6, part 4 of this title, the chief officer shall release the service recipient, if a child, within twenty-four (24) hours and, if an adult, within twelve (12) hours after receipt of the request or at the time stated in the request, whichever is later.

History.
Acts 2000, ch. 947, § 1.

33-6-208. Notification of parent, guardian or custodian prior to release of child.

The chief officer shall notify the parent, legal guardian, or legal custodian of a service recipient who is a child, before releasing the child. If the chief officer has reason to believe that the child is likely to be dependent and neglected upon release, then the chief officer shall notify the department of children's services before the release.

History.
Acts 2000, ch. 947, § 1.

PART 3

PERSONS WITH SEVERE IMPAIRMENTS

33-6-301. "Severe impairment" defined.

For purposes of this part, unless the context requires otherwise, "severe impairment" means a condition in which an adult or an emancipated child:

(1) As a result of a mental illness or serious emotional disturbance:

(A) Is in danger of serious physical harm resulting from the person's failure to provide for the person's essential human needs of health or safety; or

(B) Manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over the person's actions; and

(2) Is not receiving care that is essential for the person's health or safety.

History.
Acts 2000, ch. 947, § 1.

Compiler's Notes.
Former chapter 6, §§ 33-6-101 — 33-6-111; 33-6-201 — 33-6-209; 33-6-301 — 33-6-306 (Acts 1957, ch. 288, §§ 1-5; impl. am. Acts 1957, ch. 127, §§ 1, 3, 4; 1963, ch. 315, §§ 1, 2; 1965, ch. 38, §§ 37-40, 43, 45, 46; 1967, ch. 44, § 1; 1967, ch. 58, § 1;1973, ch. 127, § 11; 1974, ch. 464, § 3; 1974, ch. 802, §§ 43, 45, 46, 52, 53; 1975, ch. 199, §§ 1-3; 1975, ch. 248, §§ 1, 14, 16-18; 1976, ch. 610, § 1; 1976, ch. 763, § 5; 1976, ch. 764, §§ 2, 3; 1977, ch. 165, § 1; 1977, ch. 386, § 2; 1977, ch. 449, §§ 1, 2; 1978, ch. 527, §§ 5, 6; 1980, ch. 621, § 1; 1981, ch. 224, §§ 25-27; 1981, ch. 445, § 1; 1981, ch. 449, § 2(21); 1981, ch. 536, § 1; 1982, ch. 862, § 1, 3-11; 1983, ch. 323, §§ 8, 9, 11, 13, 14, 17-22, 24; T.C.A., § 33-314, 33-325, 33-603, 33-601, 33-604, 33-606 — 33-609, 33-614 — 33-619; 33-379 — 33-381, 33-1301 — 33-1305, 33-3-620 — 33-3-622, 33-6-203 — 33-6-205; Acts 1984, ch. 922, § 8, 11-16, 23-25, 27, 28-32, 39, 40; 1985, ch. 437, §§ 14-25; 1985, ch. 478, § 37; Acts 1986, ch. 595, §§ 1, 2; 1986, ch. 836, §§ 4, 6; 1987, ch. 145, § 26; 1988, ch. 862, §§ 1-5; 1988, ch 953, § 8; 1989, ch. 99, § 1; 1989, ch. 311, §§ 1-4; 1989, ch. 513, §§ 3, 15-17; 1990, ch. 630, §§ 1, 2; 1992, ch. 893, §§ 1, 2; 1992, ch. 991, §§ 15, 16; 1993, ch. 356, §§ 1-3; 1993, ch. 376, §§ 1-4; 1994, ch. 676, § 1; 1994, ch. 779, § 1; 1996, ch. 1079, §§ 57-66; 2000, ch. 947, § 6), is deleted and replaced in the revision of title 33 by Acts 2000, ch. 947, § 1, effective March 1, 2001.

33-6-302. Detention of persons with severe impairments — Record.

(a) No person shall be detained under this part except in a treatment resource that provides psychiatric services, twenty-four hour crisis services, and supervised observation beds, participates in mandatory prescreening authority under § 33-6-104, and is approved by the department for service under this part. The chief officer may detain a person alleged to:

(1) Have a mental illness or serious emotional disturbance for which immediate observation, care and treatment in the program is appropriate; and

(2) To be experiencing severe impairment that is likely to result in serious harm to the person.

(b) The chief officer shall have entered on the record the reasons why and with whom the person came to the treatment resource.

History.
Acts 2000, ch. 947, § 1.

33-6-303. Examination of person.

A physician shall examine the person as soon as practicable but at least within six (6) hours after the person arrives at the treatment resource.

History.
Acts 2000, ch. 947, § 1.

33-6-304. Detention following finding of severe impairment.

IF AND ONLY IF

(1) the physician determines that the person has a mental illness or serious emotional disturbance for which immediate observation, care and treatment in a treatment resource is appropriate, AND

(2) the physician determines that the person is experiencing "severe impairment" that is likely to result in serious harm to the person,

THEN

(3) the person may be detained for observation, care and treatment and further examination for up to twelve (12) hours from the time the person arrived at the treatment resource.

History.
Acts 2000, ch. 947, § 1.

33-6-305. Extended detention after confirmation of initial finding.

IF AND ONLY IF

(1) another physician examines the person and confirms the determination of the first examining physician under § 33-6-304 within twelve (12) hours after the time the person arrived, AND

(2) the person is admitted to an extended observation bed for observation, care, and treatment,

THEN

(3) the person may be detained under this part for up to seventy-two (72) hours from the time the person arrived at the treatment resource.

History.
Acts 2000, ch. 947, § 1; 2002, ch. 730, § 37.

33-6-306. Notice of status and rights as service recipient.

At the time of admission to an extended observation bed, the person shall be given written notice of the person's status and rights as a service recipient under this title. The notice shall contain the service recipient's name. The notice shall be provided to the same persons and in the manner as if the service recipient had been admitted under chapter 6, part 4 of this title.

History.
Acts 2000, ch. 947, § 1.

33-6-307. Request for release.

If the person or anyone acting on the person's behalf demands that the person be released and the chief officer does not detain the person in conformity with chapter 6, part 4 or 5 of this title, the chief officer shall discharge the person.

History.
Acts 2000, ch. 947, § 1.

33-6-308. Release of person no longer in need of immediate care.

If at any time it is determined that the person is no longer in need of immediate observation, care and treatment in accordance with this part and is not in need of involuntary care and treatment in a hospital, the person shall be released unless the person agrees to be admitted to a hospital or treatment resource.

History.
Acts 2000, ch. 947, § 1.

33-6-309. Admission of person to treatment facility beyond seventy-two hour period.

If at any time within the seventy-two hour period it is determined that the person continues to require immediate observation, assessment, and treatment in accordance with this part and that the requirement is likely to continue beyond the seventy-two hour period, the person shall be moved immediately to an appropriate hospital or treatment resource authorized to receive and detain persons with mental illness or serious emotional disturbance under chapter 6, part 4 of this title. The person shall be evaluated for admission and, if appropriate, shall be admitted in accordance with chapter 6, part 4 of this title, and if the person is so admitted, the fifteen-day retention period of chapter 6, part 4 of this title, shall be reduced by the number of days the person was detained under this part. Any person moved to a hospital pursuant to this section shall be moved without regard to the transfer provisions of this title. Evaluation for admission to a state-owned or operated hospital or treatment resource must conform to § 33-6-105.

History.
Acts 2000, ch. 947, § 1; 2002, ch. 730, § 38.

33-6-310. Monitoring of admissions to ensure service recipients' rights.

The department shall monitor admissions under this part to assure that they are not used in any way that violates the rights of service recipients with mental illness or serious emotional disturbance.

History.
Acts 2000, ch. 947, § 1; 2002, ch. 730, § 39.

33-6-311. Service under this part not substitute for outpatient care.

Service under this part shall not be used instead of assessment or evaluation that can be performed on an outpatient basis.

History.
Acts 2000, ch. 947, § 1.

PART 4

EMERGENCY INVOLUNTARY ADMISSION TO INPATIENT TREATMENT

33-6-401. Emergency detention.

IF AND ONLY IF

(1) a person has a mental illness or serious emotional disturbance, AND

(2) the person poses an immediate substantial likelihood of serious harm under § 33-6-501 because of the mental illness or serious emotional disturbance,

THEN

(3) the person may be detained under § 33-6-402 to obtain examination for certification of need for care and treatment.

History.
Acts 2000, ch. 947, § 1.

Compiler's Notes.
Former chapter 6, §§ 33-6-101 — 33-6-111; 33-6-201 — 33-6-209; 33-6-301 — 33-6-306 (Acts 1957, ch. 288, §§ 1-5; impl. am. Acts 1957, ch. 127, §§ 1, 3, 4; 1963, ch. 315, §§ 1, 2; 1965, ch. 38, §§ 37-40, 43, 45, 46; 1967, ch. 44, § 1; 1967, ch. 58, § 1;1973, ch. 127, § 11; 1974, ch. 464, § 3; 1974, ch. 802, §§ 43, 45, 46, 52, 53; 1975, ch. 199, §§ 1-3; 1975, ch. 248, §§ 1, 14, 16-18; 1976, ch. 610, § 1; 1976, ch. 763, § 5; 1976, ch. 764, §§ 2, 3; 1977, ch. 165, § 1; 1977, ch. 386, § 2; 1977, ch. 449, §§ 1, 2; 1978, ch. 527, §§ 5, 6; 1980, ch. 621, § 1; 1981, ch. 224, §§ 25-27; 1981, ch. 445, § 1; 1981, ch. 449, § 2(21); 1981, ch. 536, § 1; 1982, ch. 862, § 1, 3-11; 1983, ch. 323, §§ 8, 9, 11, 13, 14, 17-22, 24; T.C.A., § 33-314, 33-325, 33-603, 33-601, 33-604, 33-606 — 33-609, 33-614 — 33-619; 33-379 — 33-381, 33-1301 — 33-1305, 33-3-620 — 33-3-622, 33-6-203 — 33-6-205; Acts 1984, ch. 922, § 8, 11-16, 23-25, 27, 28-32, 39, 40; 1985, ch. 437, §§ 14-25; 1985, ch. 478, § 37; Acts 1986, ch. 595, §§ 1, 2; 1986, ch. 836, §§ 4, 6; 1987, ch. 145, § 26; 1988, ch. 862, §§ 1-5; 1988, ch 953, § 8; 1989, ch. 99, § 1; 1989, ch. 311, §§ 1-4; 1989, ch. 513, §§ 3, 15-17; 1990, ch. 630, §§ 1, 2; 1992, ch. 893, §§ 1, 2; 1992, ch. 991, §§ 15, 16; 1993, ch. 356, §§ 1-3; 1993, ch. 376, §§ 1-4; 1994, ch. 676, § 1; 1994, ch. 779, § 1; 1996, ch. 1079, §§ 57-66; 2000, ch. 947, § 6), is deleted and replaced in the revision of title 33 by Acts 2000, ch. 947, § 1, effective March 1, 2001.

33-6-402. Detention without warrant authorized.

If an officer authorized to make arrests in the state, a licensed physician, a psychologist authorized under § 33-6-427(a), or a professional designated by the commissioner under § 33-6-427(b) has reason to believe that a person is subject to detention under § 33-6-401, then the officer, physician, psychologist, or designated professional may take the person into custody without a civil order or warrant for immediate examination under § 33-6-404 for certification of need for care and treatment.

History.
Acts 2000, ch. 947, § 1.

33-6-403. Admission to treatment facility.

IF AND ONLY IF

(1) a person has a mental illness or serious emotional disturbance, AND

(2) the person poses an immediate substantial likelihood of serious harm, under § 33-6-501, because of the mental illness or serious emotional disturbance, AND

(3) the person needs care, training, or treatment because of the mental illness or serious emotional disturbance, AND

(4) all available less drastic alternatives to placement in a hospital or treatment resource are unsuitable to meet the needs of the person,

THEN

(5) the person may be admitted and detained by a hospital or treatment resource for emergency diagnosis, evaluation, and treatment under this part.

History.
Acts 2000, ch. 947, § 1.

33-6-404. Certificate of need for emergency treatment and transportation.

IF

(1)(A) a licensed physician, psychologist, or designated professional takes a person into custody under § 33-6-402, OR

(B) a person is brought to the physician, psychologist, or designated professional for examination under this section,

THEN

(2) the physician, psychologist, or designated professional shall immediately examine the person and decide whether the person is subject to admission to a hospital or treatment resource under § 33-6-403, AND

(3)(A) IF

(i) the person is not subject to admission, THEN

(ii) the physician, psychologist, or designated professional shall release the person, AND

(B) IF

(i) the person is subject to admission, THEN

(ii) the physician, psychologist, or designated professional shall complete a certificate of need for the emergency diagnosis, evaluation, and treatment showing the factual foundation for the conclusions on each item of § 33-6-403, AND

(iii) the physician, psychologist, or designated professional shall assess the person's clinical needs and need for physical restraint or vehicle security and determine the mode of transportation to the hospital in consultation with the mandatory pre-screening agent, other mental health professional familiar with the person, or a knowledgeable family member, AND

(iv) if admission is sought at a state-owned or operated hospital or treatment resource, the

physician, psychologist or designated professional shall verify that the state-owned or operated hospital or treatment resource has been contacted and has available suitable accommodations, acknowledging such verification in writing.

History.
Acts 2000, ch. 947, § 1; 2009, ch. 531, § 37.

Compiler's Notes.
For the Preamble to the act concerning the operation and funding of state government and to fund the state budget for the fiscal years beginning on July 1, 2008, and July 1, 2009, please refer to Acts 2009, ch. 531.

33-6-405. [Reserved.]

33-6-406. Transportation of detainee to treatment facility.

(a) If the person certified for admission under § 33-6-404 is not already at the facility, hospital or treatment resource at which the person is proposed to be admitted, the physician, psychologist or designated professional who completed the certificate of need under § 33-6-404 shall give the sheriff or the transportation agent designated under part 9 of this chapter the original of the certificate and turn the person over to the custody of the sheriff or transportation agent who shall transport the person to a hospital or treatment resource that has available suitable accommodations for the person for proceedings under § 33-6-407; provided, that, if admission is sought to a state-owned or operated hospital or treatment resource, the physician, psychologist or designated professional who completed the certificate of need under § 33-6-404 shall also provide to the sheriff or transportation agent a written statement verifying that the state-owned or operated hospital or treatment resource has been contacted and has available suitable accommodations, and the sheriff or transportation agent shall not be required to take custody of the person for transportation unless both the original of the certificate and the written statement are provided. Failure of the sheriff or other county transportation agent to provide both a certificate of need and the written statement to the receiving state-owned or operated hospital or treatment resource for proceedings under § 33-6-407 shall result in all costs attendant to the person's admission and treatment being assessed to the transporting county.

(b)(1) Before transportation begins, the sheriff or transportation agent shall notify the hospital or treatment resource at which the person is proposed to be admitted as to where the person is and the best estimate of anticipated time of arrival at the hospital or treatment resource.

(2) The sheriff or transportation agent shall notify the hospital or treatment resource of the anticipated time of arrival. If the sheriff or transportation agent has given notice and arrives at the hospital or treatment resource within the anticipated time of arrival, then the sheriff or transportation agent is required to remain at the hospital or treatment resource long enough for the person to be evaluated for admission under § 33-6-407, but not longer than one (1) hour and forty-five (45) minutes. After one (1) hour and forty-five (45) minutes, the person is the responsibility of the evaluating hospital or treatment resource, and the sheriff or transportation agent may leave.

(3) In counties having a population of six hundred thousand (600,000) or more according to the 1970 federal census of population or any subsequent federal census, subdivisions (b)(1) and (2) do not apply, and the sheriff or transportation agent is relieved of further transportation duties after the person has been delivered to the hospital or treatment resource, and transportation duties shall be assumed by appropriate personnel of the hospital or treatment resource.

History.
Acts 2000, ch. 947, § 1; 2002, ch. 730, § 40; 2009, ch. 531, §§ 38-40.

Compiler's Notes.
For table of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

For the Preamble to the act concerning the operation and funding of state government and to fund the state budget for the fiscal years beginning on July 1, 2008, and July 1, 2009, please refer to Acts 2009, ch. 531.

33-6-407. Examination to determine need for hospitalization.

(a) A hospital or treatment resource that receives a person transported under § 33-6-406 shall have a licensed physician examine the person to determine whether the person is subject to admission under § 33-6-403.

(b) If the person is subject to admission under § 33-6-403, the physician shall complete a certificate of need for the emergency diagnosis, evaluation, and treatment showing the factual foundation for the conclusions on each item of § 33-6-403, and the person who took the service recipient to the hospital or treatment resource may then apply for the admission for the purpose of emergency diagnosis, evaluation and treatment.

(c) If the person is not subject to admission and the sheriff or transportation agent is under a duty to remain at the hospital or treatment resource under § 33-6-406, the sheriff or transportation agent shall return the person to the county.

(d) If the person is not subject to admission and the sheriff or transportation agent is not under a duty to remain at the hospital or treatment resource under § 33-6-406, the hospital or treatment resource shall return the person to the county.

(e) A hospital, treatment resource, or health care provider shall be immune from any civil liability and shall have an affirmative defense to any criminal liability arising either from a determination relative to admission of a person to a facility or treatment resource or from the transportation of a person to and from the hospital or treatment resource.

History.
Acts 2000, ch. 947, § 1; 2009, ch. 531, § 41; 2013, ch. 32, § 1.

Compiler's Notes.
For the Preamble to the act concerning the operation and funding of state government and to fund the state budget for the fiscal years beginning on July 1, 2008, and July 1, 2009, please refer to Acts 2009, ch. 531.

33-6-408. Admission of person already at treatment facility.

If the person has been certified as subject to admission under § 33-6-403 and is already at the hospital or treatment resource at which the person is proposed to be admitted, the person who took the service recipient to the hospital or treatment resource may then apply for the admission for the purpose of emergency diagnosis, evaluation and treatment. The application shall be accompanied by the two (2) certificates of need and shall state the reasons and circumstances under which the person was taken into custody.

History.
Acts 2000, ch. 947, § 1.

Compiler's Notes.
The bracketed reference is set out to reflect the repeal of § 33-6-409 by Acts 2002, ch. 730.

33-6-409. [Repealed.]

Compiler's Notes.
Former § 33-6-409 (Acts 2000, ch. 947, § 1), concerning a person admitted with only initial certificate of need and when a second certificate is required, was repealed by Acts 2002, ch. 730, § 41, effective July 1, 2002.

33-6-410. Admission of detainee to state facility.

If the chief officer of a state hospital or treatment resource determines that the person is subject to admission under § 33-6-403 and has the required certificates of need, then the chief officer of the state facility shall admit and detain the person for emergency diagnosis, evaluation and treatment.

History.
Acts 2000, ch. 947, § 1.

33-6-411. Admission of detainee to private or local facility with contractual relationship with state.

IF

(1) the chief officer of a licensed private or local public hospital or treatment resource determines that the person is subject to admission under § 33-6-403 and has the required certificates of need, AND

(2) the facility has contracted with the state to serve persons in the region,

THEN

(3) the facility shall admit and detain the person in conformity with its obligations under its contract with the state for emergency diagnosis, evaluation and treatment.

History.
Acts 2000, ch. 947, § 1.

33-6-412. Admission of detainee to other private or local facility — Payment for services.

IF

(1) the chief officer of a licensed private or local public hospital or treatment resource determines that the person is subject to admission under § 33-6-403 and has the required certificates of need, AND

(2)(A) a parent, legal guardian, legal custodian, conservator, spouse, or an adult relative of the person, or any other person has made arrangements to pay the cost of care and treatment in a hospital, or treatment resource, OR

(B) the facility chooses to accept the person when no third person has made arrangements to pay the cost,

THEN

(3) the facility may admit and detain the person for emergency diagnosis, evaluation and treatment.

History.
Acts 2000, ch. 947, § 1.

33-6-413. Notice of admission to general sessions court — Notice of defendant's rights and status.

(a) The chief officer, upon admission of the person, shall notify the judge of the general sessions court where the hospital or treatment resource is located, by telephone or in person, and shall provide the information from the certificates of need and such other information as the court may desire, that is in the possession of the hospital or treatment resource, bearing on the condition of the person. If the general sessions court finds that there is probable cause to believe that the defendant is subject to admission to a hospital or treatment resource under § 33-6-403, the court may order the defendant admitted for not more than five (5) days from the date of the order, excluding Saturdays, Sundays and holidays, for emergency diagnosis, evaluation and treatment pending a probable cause hearing under § 33-6-422. If the court does not order the defendant admitted, the defendant shall be released.

(b) The court shall cause a notice containing the information described in this subsection (b) to be mailed to the defendant, the defendant's attorney, the chief officer of the hospital or treatment resource and the parent, legal guardian, conservator, spouse or adult next of kin of the defendant. The notice shall contain the following information:

(1) The time and place of the probable cause hearing;

(2) The defendant's rights, including, but not limited to, right to counsel, right to waive a hearing, right to confront and cross-examine witnesses, and right to be protected from compelled self-incrimination;

(3) The status of the defendant if judicially committed, including, but not limited to:

(A) The person's prohibition against purchasing a firearm under § 39-17-1316;

(B) The person's prohibition against obtaining a handgun carry permit under § 39-17-1351; and

(C) The suspension or revocation of a handgun carry permit under § 39-17-1352 once judicially committed to a hospital or treatment resource pursuant to this title;

(4) The person's right to appeal the prohibition against purchasing a firearm pursuant to § 39-17-1316; and

(5) The person's right to appeal the denial of a handgun carry permit pursuant to §§ 39-17-1352, 39-17-1353, and 39-17-1354.

History.
Acts 2000, ch. 947, § 1; 2009 ch. 578, § 7.

33-6-414. Detention for twenty-four (24) hours if judge not available.

If the judge is not available and all other provisions of this part have been complied with, the admitting facility may hold the defendant for not more than twenty-four (24) hours pending a court order under § 33-6-413, and the staff may render only necessary emergency treatment.

History.
Acts 2000, ch. 947, § 1.

33-6-415. Treatment not to render defendant unable to participate in probable cause hearing.

Pending the probable cause hearing under § 33-6-422, no treatment shall be given that will make the defendant unable to consult with counsel or to prepare a defense in proceedings for involuntary care and treatment. No psychosurgery, convulsive treatments, or insulin treatment shall be undertaken for any psychiatric disorder until an order has been entered, after the § 33-6-422 probable cause hearing in accordance with this part, requiring continued involuntary care and treatment of the defendant.

History.
Acts 2000, ch. 947, § 1.

33-6-416. Order of admission — Notice to next of kin or representative.

If the court orders the admission of the defendant for diagnosis, evaluation and treatment under § 33-6-413, the chief officer shall give notice of the order to the defendant and by mail or telephone to the parent, legal guardian, legal custodian, conservator, spouse, or adult next of kin of the defendant. The notice shall state specifically the basis for the defendant's detention and the standards for possible future commitment. The notice shall also inform the defendant of the defendant's right to counsel during the course of proceedings for involuntary care and treatment.

History.
Acts 2000, ch. 947, § 1.

33-6-417. Release or transfer prior to hearing.

If the defendant is released under § 33-6-705 or this part before the § 33-6-422 hearing, the chief officer shall notify the court that ordered the defendant's emergency diagnosis, evaluation and treatment. If the defendant is transferred to another facility before the § 33-6-422 hearing, the court shall transfer the hearing to the general sessions court of the county to which the defendant is transferred, and the hearing shall be held within five (5) days of the defendant's original detention under this part.

History.
Acts 2000, ch. 947, § 1.

33-6-418. Procedure for probable cause hearing.

Probable cause proceedings under § 33-6-422 shall be conducted in conformity with §§ 33-3-610—33-3-615.

History.
Acts 2000, ch. 947, § 1.

33-6-419. Notice to court of legal representation — Appointment of counsel.

The defendant's attorney shall notify the court of the representation immediately after accepting it. If the defendant does not employ an attorney, the court shall appoint an attorney to represent the defendant not later than two (2) days after the original detention or three (3) days before the date of the hearing, whichever is earlier. An attorney representing the defendant shall not serve as guardian ad litem. If the court determines that the defendant is not able to understand the nature of the proceedings and cannot communicate with counsel in the conduct of the case, the court may appoint another person to serve as the defendant's guardian ad litem.

History.
Acts 2000, ch. 947, § 1.

33-6-420. Waiver of hearing.

If the defendant consents in writing to a waiver of hearing, counsel may waive the hearing upon proper notice to the court.

History.
Acts 2000, ch. 947, § 1.

33-6-421. Filing of certificates of need.

The chief officer shall file with the court, by the time of the probable cause hearing, certificates of need for care and treatment from two (2) licensed physicians or one (1) licensed physician and a psychologist qualified under § 33-6-427(a), certifying that the defendant satisfies the requirements of § 33-6-502(1)-(4), and that if

involuntary treatment is not continued the defendant's condition resulting from mental illness or serious emotional disturbance is likely to deteriorate rapidly to the point that the defendant would be again admissible under § 33-6-403, and showing the factual foundation for the conclusions on each item of the certificates.

History.
Acts 2000, ch. 947, § 1; 2002, ch. 730, § 42.

33-6-422. Finding of probable cause — Involuntary commitment for care for up to fifteen (15) days.

If, after the hearing is waived or is completed and the court has completed its consideration of the evidence, including the certificates of the examining professionals, and any other information relevant to the mental condition of the defendant, the court finds probable cause to believe that the defendant is subject to care and treatment under § 33-6-502, and that if involuntary treatment is not continued the defendant's condition resulting from mental illness or serious emotional disturbance is likely to deteriorate rapidly to the point that the defendant would be again admissible under § 33-6-403, the court may order the defendant held for care and treatment pending a hearing under chapter 6, part 5 of this title, for not more than fifteen (15) days after the probable cause hearing unless a complaint is filed under chapter 6, part 5 of this title, within the fifteen (15) days.

History.
Acts 2000, ch. 947, § 1.

33-6-423. Release of defendant if findings not made by court.

The court shall order the release of the defendant from the hospital or treatment resource and terminate the proceedings under this part, if the court does not find both that:

(1) There is probable cause to believe that the defendant is subject to care and treatment under § 33-6-502; and

(2) There is probable cause to believe that if involuntary treatment is not continued, the defendant's condition resulting from mental illness or serious emotional disturbance is likely to deteriorate rapidly to the point that the defendant would be again admissible under § 33-6-403.

History.
Acts 2000, ch. 947, § 1.

33-6-424. Release of defendant if chief officer determines certificates of need not supported by facts.

If the chief officer determines that the defendant's condition does not support the filing of the certificates required by § 33-6-422, the chief officer shall release the defendant. The chief officer shall release the defendant five (5) days, excluding Saturdays, Sundays, and holidays, from the date of the general sessions court's original order to hold the defendant, unless the general sessions court has ordered the defendant's further care and treatment under § 33-6-422 or the defendant has been committed under chapter 6, part 5 of this title. The chief officer shall release the defendant not later than fifteen (15) days after the probable cause hearing unless a complaint is filed under chapter 6, part 5, within the fifteen (15) days.

History.
Acts 2000, ch. 947, § 1.

33-6-425. Detention not to be at jail or other criminal custodial facility unless defendant under arrest for crime.

No defendant shall be detained at a jail or other custodial facility for the detention of persons charged with or convicted of criminal offenses, unless the defendant is under arrest for the commission of a crime.

History.
Acts 2000, ch. 947, § 1.

33-6-426. Certification by physician required.

If a person who is not a licensed physician executes the first certificate of need in support of hospitalization under this part, then only a licensed physician may execute the second certificate of need in support of hospitalization under this part.

History.
Acts 2000, ch. 947, § 1.

33-6-427. Authority of licensed psychologist or other mental health professional.

(a) If a person is a licensed psychologist designated as a health service provider by the board of healing arts and is actively practicing as such, the person may take any action authorized and perform any duty imposed on a physician by §§ 33-6-401 — 33-6-406.

(b) The commissioner may designate a person to take any action authorized and perform any duty imposed on a physician by §§ 33-6-401 — 33-6-406 to the extent the duties are within the scope of practice of the profession in which the person is licensed or certified, if the person:

(1) Is a qualified mental health professional under § 33-1-101 or is a licensed physician assistant with a master's degree and expertise in psychiatry as determined by the department based upon training, education or experience;

(2) Is licensed or certified to practice in the state if required for the discipline; and

(3) Satisfactorily completes a training program approved and provided by the department on emergency commitment criteria and procedures.

(c) Subsection (b) does not affect any property right of an employee of the state while the person is acting in the person's capacity as employee of the state.

History.
Acts 2000, ch. 947, § 1; 2001, ch. 334, § 5; 2002, ch. 730, § 43; 2014, ch. 688, § 1.

PART 5

NONEMERGENCY INVOLUNTARY ADMISSION TO INPATIENT TREATMENT

33-6-501. "Substantial likelihood of serious harm" defined.

IF AND ONLY IF

(1)(A) a person has threatened or attempted suicide or to inflict serious bodily harm on the person, OR

(B) the person has threatened or attempted homicide or other violent behavior, OR

(C) the person has placed others in reasonable fear of violent behavior and serious physical harm to them, OR

(D) the person is unable to avoid severe impairment or injury from specific risks, AND

(2) there is a substantial likelihood that the harm will occur unless the person is placed under involuntary treatment,

THEN

(3) the person poses a "substantial likelihood of serious harm" for purposes of this title.

History.
Acts 2000, ch. 947, § 1.

Compiler's Notes.
Former chapter 6, §§ 33-6-101 — 33-6-111; 33-6-201 — 33-6-209; 33-6-301 — 33-6-306 (Acts 1957, ch. 288, §§ 1-5; impl. am. Acts 1957, ch. 127, §§ 1, 3, 4; 1963, ch. 315, §§ 1, 2; 1965, ch. 38, §§ 37-40, 43, 45, 46; 1967, ch. 44, § 1; 1967, ch. 58, § 1;1973, ch. 127, § 11; 1974, ch. 464, § 3; 1974, ch. 802, §§ 43, 45, 46, 52, 53; 1975, ch. 199, §§ 1-3; 1975, ch. 248, §§ 1, 14, 16-18; 1976, ch. 610, § 1; 1976, ch. 763, § 5; 1976, ch. 764, §§ 2, 3; 1977, ch. 165, § 1; 1977, ch. 386, § 2; 1977, ch. 449, §§ 1, 2; 1978, ch. 527, §§ 5, 6; 1980, ch. 621, § 1; 1981, ch. 224, §§ 25-27; 1981, ch. 445, § 1; 1981, ch. 449, § 2(21); 1981, ch. 536, § 1; 1982, ch. 862, § 1, 3-11; 1983, ch. 323, §§ 8, 9, 11, 13, 14, 17-22, 24; T.C.A., § 33-314, 33-325, 33-603, 33-601, 33-604, 33-606 — 33-609, 33-614 — 33-619; 33-379 — 33-381, 33-1301 — 33-1305, 33-3-620 — 33-3-622, 33-6-203 — 33-6-205; Acts 1984, ch. 922, § 8, 11-16, 23-25, 27, 28-32, 39, 40; 1985, ch. 437, §§ 14-25; 1985, ch. 478, § 37; Acts 1986, ch. 595, §§ 1, 2; 1986, ch. 836, §§ 4, 6; 1987, ch. 145, § 26; 1988, ch. 862, §§ 1-5; 1988, ch 953, § 8; 1989, ch. 99, § 1; 1989, ch. 311, §§ 1-4; 1989, ch. 513, §§ 3, 15-17; 1990, ch. 630, §§ 1, 2; 1992, ch. 893, §§ 1, 2; 1992, ch. 991, §§ 15, 16; 1993, ch. 356, §§ 1-3; 1993, ch. 376, §§ 1-4; 1994, ch. 676, § 1; 1994, ch. 779, § 1; 1996, ch. 1079, §§ 57-66; 2000, ch. 947, § 6), is deleted and replaced in the revision of title 33 by Acts 2000, ch. 947, § 1, effective March 1, 2001.

33-6-502. Prerequisites to judicial commitment for involuntary care and treatment.

IF AND ONLY IF

(1) a person has a mental illness or serious emotional disturbance, AND

(2) the person poses a substantial likelihood of serious harm because of the mental illness or serious emotional disturbance, AND

(3) the person needs care, training, or treatment because of the mental illness or serious emotional disturbance, AND

(4) all available less drastic alternatives to placement in a hospital or treatment resource are unsuitable to meet the needs of the person,

THEN

(5) the person may be judicially committed to involuntary care and treatment in a hospital or treatment resource in proceedings conducted in conformity with chapter 3, part 6 of this title.

History.
Acts 2000, ch. 947, § 1.

33-6-503. Two (2) certificates of need required — Defendants under sixteen (16) years of age.

No defendant may be judicially committed under this part, unless two (2) licensed physicians, or one (1) licensed physician and one (1) licensed psychologist qualified as provided in § 33-6-427(a), file in the commitment proceeding certificates of need for care and treatment certifying that the defendant satisfies the requirements of § 33-6-502(1)-(4) and showing the factual foundation for the conclusions on each item. No defendant who is a child under sixteen (16) years of age may be judicially committed under this part unless one (1) of the certificates is by a physician or psychologist with experience with children.

History.
Acts 2000, ch. 947, § 1; 2004, ch. 565, § 8.

33-6-504. Persons who may file complaint for commitment under this part.

The parent, legal guardian, legal custodian, conservator, spouse, or a responsible relative of the person alleged to be in need of care and treatment, a licensed physician, a licensed psychologist who meets the requirements of § 33-6-427(a), a health or public welfare officer, an officer authorized to make arrests in the state, or the chief officer of a facility that the person is in, may file a complaint to require involuntary care and treatment of a person with mental illness or serious emotional disturbance under this part.

History.
Acts 2000, ch. 947, § 1; 2004, ch. 565, § 8.

33-6-505. Commitment to state facility.

If the court commits a person under this section, the person comes into the commissioner's custody only if the state-owned or operated facility or treatment resource has available suitable accommodations; provided, that, if there are no suitable available accommodations at the time of the determination, then the commissioner shall expeditiously find a state-owned or operated hospital or treatment resource to accommodate the person upon the availability of suitable available accommodations. Prior to transporting a person for such commitment, the sheriff or other transportation agent shall determine that the receiving state-owned or operated facility or treatment resource has available suitable accommodations.

History.
Acts 2000, ch. 947, § 1; 2009, ch. 531, § 42.

Compiler's Notes.
For the Preamble to the act concerning the operation and funding of state government and to fund the state budget for the fiscal years beginning on July 1, 2008, and July 1, 2009, please refer to Acts 2009, ch. 531.

33-6-506. Commitment to other public or private facility.

If a licensed public hospital or treatment resource other than a state facility has available suitable accommodations, the court may commit the defendant to the public hospital or treatment resource.

History.
Acts 2000, ch. 947, § 1.

33-6-507. Commitment to contract facility — Conformance with contract.

If a licensed private or local public hospital or treatment resource has contracted with the department to serve defendants in the region and has available suitable accommodations, the court shall commit the defendant to the facility, and the facility shall admit and detain the defendant in conformity with its obligations under its contract with the department.

History.
Acts 2000, ch. 947, § 1.

33-6-508. Commitment to non-state facility where third-party payment has been arranged.

IF

(1)(A) a parent, legal guardian, legal custodian, conservator, spouse, or an adult relative of the defendant, or any other person has made arrangements to pay the cost of care and treatment in a licensed private hospital or treatment resources, OR

(B) the facility chooses to accept the defendant when no third person has made arrangements to pay the cost, AND

(2) placement in the facility is more appropriate to the needs of the defendant than placement in a state facility,

THEN

(3) the court may commit the defendant to the facility.

History.
Acts 2000, ch. 947, § 1.

33-6-509. Suitable accommodations required.

The chief officer of a facility to which a person is committed under this part shall not admit the person until the facility has available suitable accommodations. If a person is committed to a state facility under this part, the person does not come into the custody of the commissioner until the facility has available suitable accommodations.

History.
Acts 2000, ch. 947, § 1.

33-6-510. Person eligible for care as armed forces veteran.

If a person ordered to be hospitalized under this part is eligible for hospital care or treatment by the veterans' administration of the United States within this state, the court, upon receipt of a certificate from the veterans' administration showing that facilities are available and that the person is eligible for care or treatment there, may order the person to be placed in the custody of the agency for hospitalization within this state. With respect to those persons the appropriate provisions of § 34-5-118, being a part of the Uniform Veterans' Guardianship Law, shall apply.

History.
Acts 1965, ch. 38, § 43; T.C.A., §§ 33-606, 33-6-105; Acts 2000, ch. 947, § 1.

Compiler's Notes.
The Uniform Veterans' Guardianship Law, referred to in this section, is compiled in title 34, ch. 5.

PART 6

MANDATORY OUTPATIENT TREATMENT

33-6-601. Disclosure of patient information relating to outpatient treatment.

IF

(1) a person with mental illness or serious emotional disturbance was committed involuntarily under chapter 6, part 5 of this title, AND

(2) the hospital staff determines preliminarily that:

(A) the person will need to participate in outpatient treatment on discharge, and

(B) there is a likelihood that the discharge will be subject to the outpatient treatment obligation of this part, AND

(3) the person refuses to give consent to disclose information that is legally confidential under this title to the proposed outpatient qualified mental health professional,

THEN

(4) the hospital and qualified mental health professional may exchange information as necessary to carry out this part.

History.
Acts 1982, ch. 862, § 4; 1983, ch. 323, §§ 19, 20, 22; T.C.A., § 33-615; Acts 1984, ch. 922, §§ 24, 25; 1985, ch. 437, § 21; T.C.A., § 33-6-201(a); Acts 2000, ch. 947, § 1.

Compiler's Notes.
Former chapter 6, §§ 33-6-101 — 33-6-111; 33-6-201 — 33-6-209; 33-6-301 — 33-6-306 (Acts 1957, ch. 288, §§ 1-5; impl. am. Acts 1957, ch. 127, §§ 1, 3, 4; 1963, ch. 315, §§ 1, 2; 1965, ch. 38, §§ 37-40, 43, 45, 46; 1967, ch. 44, § 1; 1967, ch. 58, § 1;1973, ch. 127, § 11; 1974, ch. 464, § 3; 1974, ch. 802, §§ 43, 45, 46, 52, 53; 1975, ch. 199, §§ 1-3; 1975, ch. 248, §§ 1, 14, 16-18; 1976, ch. 610, § 1; 1976, ch. 763, § 5; 1976, ch. 764, §§ 2, 3; 1977, ch. 165, § 1; 1977, ch. 386, § 2; 1977, ch. 449, §§ 1, 2; 1978, ch. 527, §§ 5, 6; 1980, ch. 621, § 1; 1981, ch. 224,

§§ 25-27; 1981, ch. 445, § 1; 1981, ch. 449, § 2(21); 1981, ch. 536, § 1; 1982, ch. 862, § 1, 3-11; 1983, ch. 323, §§ 8, 9, 11, 13, 14, 17-22, 24; T.C.A., § 33-314, 33-325, 33-603, 33-601, 33-604, 33-606 — 33-609, 33-614 — 33-619; 33-379 — 33-381, 33-1301 — 33-1305, 33-3-620 — 33-3-622, 33-6-203 — 33-6-205; Acts 1984, ch. 922, § 8, 11-16, 23-25, 27, 28-32, 39, 40; 1985, ch. 437, §§ 14-25; 1985, ch. 478, § 37; Acts 1986, ch. 595, §§ 1, 2; 1986, ch. 836, §§ 4, 6; 1987, ch. 145, § 26; 1988, ch. 862, §§ 1-5; 1988, ch 953, § 8; 1989, ch. 99, § 1; 1989, ch. 311, §§ 1-4; 1989, ch. 513, §§ 3, 15-17; 1990, ch. 630, §§ 1, 2; 1992, ch. 893, §§ 1, 2; 1992, ch. 991, §§ 15, 16; 1993, ch. 356, §§ 1-3; 1993, ch. 376, §§ 1-4; 1994, ch. 676, § 1; 1994, ch. 779, § 1; 1996, ch. 1079, §§ 57-66; 2000, ch. 947, § 6), is deleted and replaced in the revision of title 33 by Acts 2000, ch. 947, § 1, effective March 1, 2001.

33-6-602. Release from hospitalization subject to outpatient treatment.

IF

(1) on the basis of a review of the person's history before and during hospitalization, the hospital staff concludes that:

(A) the person has a mental illness or serious emotional disturbance or has a mental illness or serious emotional disturbance in remission,

(B) the person's condition resulting from mental illness or serious emotional disturbance is likely to deteriorate rapidly to the point that the person will pose a likelihood of serious harm under § 33-6-501 unless treatment is continued,

(C) the person is likely to participate in outpatient treatment with a legal obligation to do so,

(D) the person is not likely to participate in outpatient treatment unless legally obligated to do so, and

(E) mandatory outpatient treatment is a suitable less drastic alternative to commitment,

THEN

(2) the person shall be eligible for discharge subject to the obligation to participate in any medically appropriate outpatient treatment, including, but not limited to, psychotherapy, medication, or day treatment, under a plan approved by the releasing facility and the outpatient qualified mental health professional.

History.

Acts 1982, ch. 862, § 4; 1983, ch. 323, §§ 19, 20, 22; T.C.A., § 33-615; Acts 1984, ch. 922, §§ 24, 25; 1985, ch. 437, § 21; T.C.A., § 33-6-201(b); Acts 2000, ch. 947, § 1.

33-6-603. Outpatient treatment plan.

(a) In developing the plan, the releasing facility and the outpatient qualified mental health professional shall consult with the service recipient; the service recipient's parents, legal custodian, or legal guardian if the service recipient is a child; and the service recipient's conservator, if any. Subject to obtaining any necessary consent before making a disclosure of patient information relating to outpatient treatment, the releasing facility and the outpatient qualified mental health professional may also consult with the service recipient's spouse or other adult family member with whom the service recipient would live concerning the outpatient treatment plan. Before approving the outpatient treatment plan, the releasing facility and the outpatient qualified mental health professional shall obtain the service recipient's consent to the plan to the extent practical and shall obtain the consent of the service recipient's parents, legal custodian, or legal guardian if the service recipient is a child.

(b) The releasing facility shall provide a clear written statement of what the service recipient shall do to stay in compliance with the plan to the service recipient; the service recipient's parents, legal custodian, or legal guardian if the service recipient is a child; the service recipient's spouse or other adult family member with whom the service recipient would live; and the service recipient's conservator. If the service recipient is a child, the statement shall specify the duties of the service recipient's parents, legal custodian, or legal guardian.

History.

Acts 1982, ch. 862, § 4; 1983, ch. 323, §§ 19, 20, 22; T.C.A., § 33-615; Acts 1984, ch. 922, §§ 24, 25; 1985, ch. 437, § 21; T.C.A., § 33-6-201; Acts 2000, ch. 947, § 1; 2010, ch. 659, § 1.

33-6-604. Review of plan.

IF

(1) the person requests judicial review of the treatment plan within forty-eight (48) hours after being advised of the person's eligibility for release under it,

THEN

(2) the hospital shall notify the court where the hospital is located that has the same jurisdiction as the committing court that the person is eligible for discharge, subject to the obligation to participate in outpatient treatment under the plan agreed to by the releasing facility and the outpatient qualified mental health professional, AND

(3) the court shall hold a hearing within seven (7) days of receipt of the request to determine whether the treatment plan is medically appropriate and legally permissible, AND

(4) the court shall either approve the plan or approve the plan as modified by the releasing facility and the outpatient qualified mental health professional to correct deficiencies found by the court.

History.

Acts 1982, ch. 862, § 4; 1983, ch. 323, §§ 19, 20, 22; T.C.A., § 33-615; Acts 1984, ch. 922, §§ 24, 25; 1985, ch. 437, § 21; T.C.A., § 33-6-201(c); Acts 2000, ch. 947, § 1.

33-6-605. Discharge of patient — Notice to court of discharge subject to outpatient treatment.

(a) IF

(1)(A) the person does not request judicial review of the discharge plan, OR

(B) the court approves an outpatient treatment plan after a hearing under § 33-6-604,

THEN

(b) IF

(1)(A) the person is subject to judicial review under § 33-6-708,

THEN

(B) the person shall be discharged in conformity with § 33-6-708, AND

(c) IF

(1)(A) the person is not subject to judicial review under § 33-6-708,

THEN

(B) the hospital shall discharge the person, AND

(2) the hospital shall notify the committing court that the person has been discharged subject to the obligation to participate in the outpatient treatment.

History.

Acts 1982, ch. 862, § 4; 1983, ch. 323, §§ 19, 20, 22; T.C.A., § 33-615; Acts 1984, ch. 922, §§ 24, 25; 1985, ch. 437, § 21; T.C.A., § 33-6-201(d); Acts 2000, ch. 947, § 1.

33-6-606. Amendment of outpatient treatment plan.

After discharge the qualified mental health professional may change the treatment plan to meet the person's treatment needs. If the qualified mental health professional changes the treatment plan, the person's obligation to participate in the treatment continues.

History.

Acts 1982, ch. 862, § 4; 1983, ch. 323, §§ 19, 20, 22; T.C.A., § 33-615; Acts 1984, ch. 922, §§ 24, 25; 1985, ch. 437, § 21; T.C.A., § 33-6-201(e); Acts 2000, ch. 947, § 1.

33-6-607. Payment for outpatient services.

If the person is indigent and is not eligible for payment for service under any other governmentally or privately funded system, the department shall provide for the outpatient services. The person is responsible for payment for the services, if:

(1) The person is not indigent; or

(2) The person is eligible for payment for services under any other governmentally or privately funded system.

History.

Acts 1982, ch. 862, § 4; 1983, ch. 323, §§ 19, 20, 22; T.C.A., § 33-615; Acts 1984, ch. 922, §§ 24, 25; 1985, ch. 437, § 21; T.C.A., § 33-6-201(f); Acts 2000, ch. 947, § 1.

33-6-608. Admission to treatment facility — Outpatient care suspended — Outpatient care reinstituted following release.

IF

(1) a person who has been discharged subject to the obligation to participate in outpatient treatment is admitted to a hospital or treatment resource before the obligation terminates,

THEN

(2) the obligation to participate in outpatient treatment is suspended, AND

(3) the obligation resumes on discharge unless it has been terminated under § 33-6-620, § 33-6-622, or § 33-6-623 or the discharge is under § 33-6-706.

History.

Acts 1982, ch. 862, § 4; 1983, ch. 323, §§ 19, 20, 22; T.C.A., § 33-615; Acts 1984, ch. 922, §§ 24, 25; 1985, ch. 437, § 21; T.C.A., § 33-6-201(g); Acts 2000, ch. 947, § 1.

33-6-609. Failure to comply with outpatient treatment plan — Action to enforce.

IF

(1) the parent, legal guardian, conservator, spouse, responsible relative, or qualified mental health professional of a service recipient who has been discharged subject to the obligation to participate in outpatient treatment, the person who initiated the commitment proceeding of the service recipient, or the chief officer of the discharging facility files an affidavit with the court that committed the service recipient or any court with jurisdiction under chapter 6, part 5, of this title in the county where the person is being treated or is staying showing that:

(A) the person is required to be participating in outpatient treatment under § 33-6-602,

(B) the person is, without good cause, out of compliance with the treatment plan, and

(C) the qualified mental health professional believes the noncompliance is not likely to be corrected voluntarily,

THEN

(2) the court shall have jurisdiction to conduct original proceedings to enforce the outpatient treatment obligation, AND

(3) the court may order the person to appear before the court at a stated time not later than five (5) business days after the order is issued to determine whether the person is required by this part to be participating in the outpatient treatment and has failed, without good cause, to participate in the treatment as required, AND

(4) the order and a copy of the affidavit shall be served immediately on the person, the qualified mental health professional, and, if the discharge was under § 33-6-708, the district attorney general for the jurisdiction in which the committing court is located.

History.

Acts 1982, ch. 862, § 5; 1983, ch. 323, § 21; T.C.A., § 33-616; Acts 1984, ch. 922, §§ 28-30; 1988, ch. 862, § 3; T.C.A., § 33-6-202; Acts 2000, ch. 947, § 1; 2002, ch. 730, § 44.

33-6-610. Hearing to determine compliance — Findings — Order to comply — Recommitment upon failure or inability to comply.

(a) If the person appears in person before the court, the court shall hold a hearing to determine whether the person is required to be participating in outpatient treatment and is, without good cause, not complying with the treatment plan.

(b) The court shall release the person, if the court determines that:

(1) The person is complying with the treatment plan; or

(2) The person is out of compliance for good cause and will be restored to compliance without further action.

(c) If the court determines that the person is out of compliance with the treatment plan without good cause and that the person can be put immediately in compliance with the treatment plan and can be expected to stay in compliance without further hospitalization, the court shall make written findings of fact and conclusions of law on the issues, order the person to comply immediately with the treatment plan, and dismiss the proceedings upon a showing that the person is in compliance.

(d)(1) The court shall make written findings of fact and conclusions of law on the issues and order the person re-committed to the hospital from which the person was released, if the court determines that the person is out of compliance with the treatment plan without good cause and that:

(A) The person cannot be put in compliance with the treatment plan immediately; or

(B) The person cannot be expected to stay in compliance without further hospitalization.

(2) The sheriff shall immediately transport the person as ordered, and the hospital shall admit the person and give notice of the recommitment to the person's attorney, legal guardian, legal custodian, conservator, and spouse or nearest adult relative, to the qualified mental health professional, to the committing court, and, if the discharge was under § 33-6-708, to the district attorney general in the committing jurisdiction.

History.
Acts 1984, ch. 922, § 29; 1988, ch. 862, § 4; 1996, ch. 1079, § 64; T.C.A., § 33-6-203; Acts 2000, ch. 947, § 1.

33-6-611. Failure to appear at hearing — Custody order — Transportation to hospital — Admission — Notice to attorney or other representative.

IF

(1) the qualified mental health professional has filed an affidavit showing that:

(A) the person with mental illness or serious emotional disturbance is required to be participating in outpatient treatment,

(B) the person is, without good cause, not complying with the treatment plan, AND

(C) the qualified mental health professional believes the noncompliance is not likely to be corrected voluntarily, AND

(2) the person does not respond to the order to appear,

THEN

(3) the court shall order the person taken into custody, AND

(4) the sheriff shall immediately transport the person to the hospital from which the person was discharged, AND

(5) the hospital shall admit the person and give notice of the temporary recommitment and that a hearing under § 33-6-610 will be held to the person's attorney, legal guardian, legal custodian, conservator, and spouse or nearest adult relative, to the qualified mental health professional, to the court that ordered the temporary recommitment of the person, and to the court where the hospital is located that has the same jurisdiction as the recommitting court.

History.
Acts 1984, ch. 922, § 28; 1985, ch. 437, §§ 22-25; 1996, ch. 1079, §§ 65, 66; T.C.A., § 33-6-204(a); Acts 2000, ch. 947, § 1.

33-6-612. Failure to appear where no affidavit by qualified mental health professional.

IF

(1) the qualified mental health professional has not filed an affidavit with the court regarding the person with mental illness or serious emotional disturbance, AND

(2) the person does not respond to the order to appear,

THEN

(3) the court shall order the person taken into custody, AND

(4) the officer who serves the order on the person shall take the person to the qualified mental health professional or the professional's appointed substitute.

History.
Acts 1984, ch. 922, § 28; 1985, ch. 437, §§ 22-25; 1996, ch. 1079, §§ 65, 66; T.C.A., § 33-6-204(b); Acts 2000, ch. 947, § 1.

33-6-613. Substitution of qualified mental health professional.

A person's qualified mental health professional shall appoint a qualified mental health professional as a substitute in the absence of the appointing professional.

History.
Acts 2000, ch. 947, § 1.

33-6-614. Findings by qualified mental health professional — Release.

(a) The qualified mental health professional shall release the person and notify the court of the basis for the release, if the qualified mental health professional determines that:

(1) The person with mental illness or serious emotional disturbance is in compliance with the treatment plan; or

(2) The person is out of compliance for good cause, is put in compliance immediately, and can be expected to stay in compliance without further hospitalization.

(b) The qualified mental health professional shall release the person and notify the court of the basis for the release, if the qualified mental health professional

determines that:

(1) The person is out of compliance with the treatment plan without good cause;

(2) The person can be put in compliance with the treatment plan immediately;

(3) The person complies immediately with the treatment plan; and

(4) The person can be expected to stay in compliance without further hospitalization.

History.
Acts 1984, ch. 922, § 28; 1985, ch. 437, §§ 22-25; 1996, ch. 1079, §§ 65, 66; T.C.A., § 33-6-204(d); Acts 2000, ch. 947, § 1.

33-6-615. Findings by qualified mental health professional — Recommitment — Notice to representative, next of kin and court.

IF

(1) the qualified mental health professional determines that:

(A) the person with mental illness or serious emotional disturbance is out of compliance with the treatment plan without good cause, and

(B)*(i)* the person cannot be put immediately in compliance with the treatment plan, or

(ii) the person cannot be expected to stay in compliance without further hospitalization, or

(iii) the person does not comply immediately with the treatment plan,

THEN

(2) the qualified mental health professional shall contact the sheriff, AND

(3) the sheriff shall immediately transport the person to the hospital from which the person was discharged, AND

(4) the hospital shall admit the person and give notice of the temporary recommitment and that a hearing under § 33-6-610 will be held to the person, the person's attorney, legal guardian, legal custodian, conservator, and spouse or nearest adult relative, to the qualified mental health professional, to the court that ordered the temporary recommitment of the person, and to the court where the hospital is located that has the same jurisdiction as the recommitting court.

History.
Acts 1984, ch. 922, § 28; 1985, ch. 437, §§ 22-25; 1996, ch. 1079, §§ 65, 66; T.C.A., § 33-6-204(e); Acts 2000, ch. 947, § 1.

33-6-616. Recommitment hearing.

The court where the hospital is located is vested with jurisdiction to hold the hearing on a person returned under § 33-6-611. The court shall schedule a hearing to be held under § 33-6-610 within five (5) business days of receipt of the notice.

History.
Acts 1984, ch. 922, § 28; 1985, ch. 437, §§ 22-25; 1996, ch. 1079, §§ 65, 66; T.C.A., § 33-6-204(f); Acts 2000, ch. 947, § 1; 2002, ch. 730, § 45.

33-6-617. Person eligible for discharge.

If the person, upon being readmitted under this part, is eligible for discharge under § 33-6-602, the person shall be discharged under § 33-6-602 notwithstanding § 33-3-501. The hospital shall give notice of the discharge to the courts that had been notified of the admission, and the judicial proceedings for recommitment shall be dismissed.

History.
Acts 1984, ch. 922, § 28; 1985, ch. 437, §§ 22-25; 1996, ch. 1079, §§ 65, 66; T.C.A., § 33-6-204(g); Acts 2000, ch. 947, § 1.

33-6-618. Rights of defendant in proceedings under this part.

In judicial proceedings under this part the person with mental illness or serious emotional disturbance has the following rights:

(1) The burden of proof to establish, as appropriate to the proceedings, that the outpatient treatment plan is proper, that the person is subject to return to the hospital, or that the plan is subject to extension, shall be by clear, unequivocal, and convincing evidence and shall be borne by the party seeking to impose the obligations;

(2) The person shall be present at the hearing unless the person waives such presence in writing. If the person's attorney shows that the person's physical health would be endangered by being at the hearing, the court may order a continuance until the risk is terminated. If the court determines that the person's conduct at the hearing is so violent or otherwise disruptive that it creates a serious risk of harm to the person or others at the hearing or so disrupts the proceedings that they cannot be conducted in a proper manner, the court may order the person restrained or excluded to the extent necessary to the proper conduct of the proceedings. If the person is not present at or is excluded from the hearing, the court shall make a written fact finding as to why the hearing is held in the person's absence; and

(3) The person's attorney shall notify the court of the representation immediately after accepting it. If the person does not employ an attorney, the court shall appoint an attorney to represent the person as soon as possible after the case is docketed. An attorney representing the person shall not serve as guardian ad litem. If the court determines that the person is not able to understand the nature of the proceedings and cannot communicate with counsel in the conduct of the case, the court may appoint another person to serve as the person's guardian ad litem.

History.
Acts 1984, ch. 922, § 31; T.C.A., § 33-6-205; Acts 2000, ch. 947, § 1.

33-6-619. Dismissal of proceedings pending against person recommitted under this part.

If a person is ordered to be rehospitalized for noncompliance with the treatment plan after a hearing under § 33-6-609, § 33-6-610 or § 33-6-611, upon readmission the person shall be held under the authority of the original court order of commitment entered in the proceedings under chapter 6, part 5 of this title, and any other pending proceedings under chapter 6, part 4 or 5 of this title shall be dismissed.

History.
Acts 1984, ch. 922, § 32; T.C.A., § 33-6-206; Acts 2000, ch. 947, § 1.

33-6-620. Termination of legally mandated outpatient care — Notice to court.

IF

(1) at any time the qualified mental health professional determines that:

(A) the person with mental illness or serious emotional disturbance is likely to participate in outpatient treatment without being legally obligated to do so, or

(B) the person no longer needs treatment for the mental illness or serious emotional disturbance,

THEN

(2) the qualified mental health professional shall terminate the treatment obligation, AND

(3) the qualified mental health professional shall notify the committing court and the hospital that discharged the person.

History.
Acts 1982, ch. 862, § 6; T.C.A., §§ 33-617, 33-6-203; Acts 1984, ch. 922, § 26; T.C.A., § 33-6-207(a); Acts 2000, ch. 947, § 1.

33-6-621. Reinstatement of mandatory outpatient care.

IF

(1) during the sixth month after discharge or after the last renewal the qualified mental health professional determines that:

(A) the person has a mental illness or serious emotional disturbance or has a mental illness or serious emotional disburbance in remission, AND

(B) the person's condition resulting from mental illness or serious emotional disturbance is likely to deteriorate rapidly to the point that the person will pose a likelihood of serious harm under § 33-6-501 unless treatment is continued, AND

(C) the person is not likely to participate in outpatient treatment unless legally obligated to do so, AND

(D) mandatory outpatient treatment is a suitable less drastic alternative to commitment,

THEN

(2) the obligation to participate in outpatient treatment is renewed for six (6) months, AND

(3) the qualified mental health professional shall notify the person, the person's attorney, the hospital that discharged the person, and the committing court of the decision and of the basis for it and of the person's right to request a hearing in the committing court.

History.
Acts 1982, ch. 862, § 6; T.C.A., §§ 33-617, 33-6-203; Acts 1984, ch. 922, § 26; T.C.A., § 33-6-207(b); Acts 2000, ch. 947, § 1.

33-6-622. Hearing on reinstatement order.

(a) If the person files a written request for a hearing with the committing court, within thirty (30) days after receipt of notice the committing court shall hold a hearing to review the decision of the qualified mental health professional. IF AND ONLY IF the court determines that:

(1) The person has a mental illness or serious emotional disturbance or has a mental illness or serious emotional disturbance in remission,

(2) The person's condition resulting from mental illness or serious emotional disturbance is likely to deteriorate rapidly to the point that the person will pose a likelihood of serious harm under § 33-6-501 unless treatment is continued,

(3) The person is not likely to participate in outpatient treatment unless legally obligated to do so, AND

(4) Mandatory outpatient treatment is a suitable less drastic alternative to commitment,

THEN

(5) the obligation to participate in outpatient treatment is renewed for six (6) months.

(b)(1) IF, after a hearing, the court does not determine the obligation to participate in outpatient treatment to be renewed,

(2) THEN the person is discharged from the outpatient treatment obligation.

History.
Acts 1982, ch. 862, § 4; 1983, ch. 323, §§ 19, 20, 22; T.C.A., § 33-615; Acts 1984, ch. 922, §§ 24, 25; 1985, ch. 437, § 21; T.C.A., § 33-6-201(c); Acts 2000, ch. 947, § 1.

33-6-623. Outpatient treatment obligation limited to six (6) months.

IF

(1) a person with mental illness or serious emotional disturbance is discharged subject to an outpatient treatment obligation under § 33-6-602, AND

(2) the qualified mental health professional has not terminated the outpatient treatment obligation under § 33-6-620,

THEN

(3) the person's obligation to participate in outpatient treatment terminates six (6) months after the discharge or the last renewal of the obligation.

History.
Acts 1982, ch. 862, § 4; 1983, ch. 323, §§ 19, 20, 22; T.C.A., § 33-615; Acts 1984, ch. 922, §§ 24, 25; 1985, ch. 437, § 21; T.C.A., § 33-6-201(d); Acts 2000, ch. 947, § 1.

33-6-624. Pilot program for patients to receive assisted outpatient treatment.

(a)(1) There shall be created a pilot project in Knox County, Tennessee, which shall expire on June 30, 2015, for a maximum of ten (10) patients at any given time to receive assisted outpatient treatment.

(2) In addition to any authorized action under § 33-6-502, a court of competent jurisdiction may order a proposed patient to receive assisted outpatient treatment upon finding that the conditions of § 33-6-502(1)-(3) have been met.

(b) Before ordering an outpatient treatment plan pursuant to this part, the court shall comply with subsections (c)-(f).

(c)(1) A proposed outpatient treatment plan, developed pursuant to this section by a physician or a professional designated under § 33-6-427(a) or (b) who has examined the proposed patient no more than ten (10) days prior to the entering of an order pursuant to this part, shall be presented to the court in writing. The plan shall include all services the examining physician or a professional designated under § 33-6-427(a) or (b) recommends that the proposed patient receive, and for each such recommended service, identify an appropriate community-based provider that has agreed to provide it.

(2) lf the proposed outpatient treatment plan includes alcohol or substance abuse counseling and treatment, it may include a provision requiring relevant testing for either alcohol or illegal substances; provided, that the clinical basis of the physician or a professional designated under § 33-6-427(a) or (b) for recommending such plan provides sufficient facts for the court to find:

(A) That such person has a history of alcohol or substance abuse that is clinically related to the mental illness; and

(B) That such testing is necessary to prevent a relapse or deterioration which would be likely to result in serious harm to the person or others.

(3) The examining physician or a professional designated under § 33-6-427(a) or (b) shall:

(A) Provide an opportunity to actively participate in the development of the treatment plan to the proposed patient, the treating physician or a professional designated under § 33-6-427(a) or (b), if any, and, upon the request of the proposed patient, any other individual significant to the proposed patient; and

(B) Make reasonable efforts to gather information that may be relevant in the development of the treatment plan from the proposed patient's family or significant others.

(d) At all stages of a proceeding commenced under this section, the proposed patient shall have the right to be represented by counsel. If neither the patient nor others provide counsel, the court shall appoint counsel for the proposed patient. Upon request of the proposed patient, the court shall order an independent examination by a physician or a professional designated under § 33-6-427(a) or (b) only when retained by the proposed patient.

(e)(1) Upon receipt of a petition for which assisted outpatient treatment may be an option, the court shall fix the date for a hearing. Such date shall be no later than ten (10) days from the date such petition is received by the court excluding Saturdays, Sundays, and holidays. Adjournments shall be permitted only for good cause shown. In granting adjournments, the court shall consider the need for further examination of the proposed patient and the potential need to provide assisted outpatient treatment expeditiously. The court shall cause the proposed patient, any other person to whom notice is due under this chapter, the petitioner, the physician or a professional designated under § 33-6-427(a) or (b) whose affirmation or affidavit accompanied the petition, and such other persons as the court may determine to be advised of such date. Upon such date, or upon such other date to which the proceeding may be adjourned, the court shall hear testimony and, if it is deemed advisable and the proposed patient is available, examine the proposed patient in or out of court. If the proposed patient does not appear at the hearing, and appropriate attempts to elicit the attendance of the proposed patient have failed, the court may conduct the hearing in the proposed patient's absence. In such case, the court shall set forth the factual basis for such determination.

(2) If the affidavit or affirmation of the physician or a professional designated under § 33-6-427(a) or (b) accompanying the petition indicates that the proposed patient has not submitted to an examination in the ten (10) days prior to the filing of the petition, the court may request the proposed patient to submit to an examination by a physician or a professional designated under § 33-6-427(a) or (b) appointed by the court. If the proposed patient does not consent and the court finds reasonable cause to believe that the allegations in the petition are true, the court may order law enforcement officers to take the proposed patient into custody in accordance with § 33-6-618 and transport the patient to a hospital for examination by a physician or a professional designated under § 33-6-427(a) or (b). Transportation will be conducted in accordance with parts 4 and 9 of this chapter. The subject may be detained for the period required to complete the examination, but not more than forty-eight (48) hours. The physician or a professional designated under § 33-6-427(a) or (b) whose affirmation or affidavit accompanied the petition may perform such examination of the proposed patient if the physician or a professional designated under § 33-6-427(a) or (b) is privileged or otherwise authorized by such hospital to do so. If such examination is performed by another physician or a professional designated under § 33-6-427(a) or (b), the examining physician or a professional designated under § 33-6-427(a) or (b) may consult with the

physician or a professional designated under § 33-6-427(a) or (b) whose affirmation or affidavit accompanied the petition as to whether the subject meets the criteria for assisted outpatient treatment. Upon completion of the examination, the subject shall be released and the examining physician or a professional designated under § 33-6-427(a) or (b) shall report the findings of the examination to the court. The court shall not hold a hearing on the petition unless and until the examining physician or a professional designated under § 33-6-427(a) or (b) submits to the court:

(A) An affidavit or affirmation stating that the physician or a professional designated under § 33-6-427(a) or (b) concurs that the proposed patient meets the criteria for assisted outpatient treatment; and

(B) A proposed assisted outpatient treatment plan for the proposed patient, developed by the examining physician or a professional designated under § 33-6-427(a) or (b), and conforming to the requirements of subsection (c).

(3) The court shall not order assisted outpatient treatment unless an examining physician or a professional designated under § 33-6-427(a) or (b) who has personally examined the proposed patient no more than ten (10) days before the filing of the petition and recommends assisted outpatient treatment, testifies at the hearing. Such physician or a professional designated under § 33-6-427(a) or (b) shall testify to:

(A) The facts and clinical determinations that support the allegations that the proposed patient meets each of the criteria for assisted outpatient treatment; and

(B) The proposed assisted outpatient treatment plan, the rationale for each component of such plan, and whether each such component is the least restrictive available alternative to serve the clinical needs of the proposed patient; and

(C) A history of medication compliance.

(4) The proposed patient shall be afforded an opportunity to present evidence, to call witnesses on the patient's behalf, and to cross-examine adverse witnesses.

(5) Unless the proposed patient requests a public hearing, the hearing shall be confidential and a report of the proceedings shall not be released to the public or press.

(f)(1) If after hearing all relevant evidence, the court does not find by clear and convincing evidence that the proposed patient meets the criteria for assisted outpatient treatment, the court shall not order outpatient treatment under this section and shall order inpatient care and treatment under § 33-6-502 or make other dispositions as authorized by law.

(2) If after hearing all relevant evidence, the court finds by clear and convincing evidence that the proposed patient meets the criteria for assisted outpatient treatment, the court may order the proposed patient to receive assisted outpatient treatment for an initial period not to exceed six (6) months. In fashioning the order, the court shall specifically make findings by clear and convincing evidence that the ordered treatment is the least restrictive treatment appropriate and feasible for the proposed patient, and that community resources and a willing treatment provider are available to support such treatment. The order shall state an assisted outpatient treatment plan, which shall include all categories of assisted outpatient treatment that the proposed patient is to receive, but shall not include any such category that has not been recommended in both the proposed written treatment plan and the testimony provided to the court.

(3) If after hearing all relevant evidence, the court finds by clear and convincing evidence that the proposed patient meets the criteria for assisted outpatient treatment and that the treatment recommended by the examining physician or a professional designated under § 33-6-427(a) or (b) is in whole or in part appropriate, but the court does not find by clear and convincing evidence that community resources and a willing treatment provider are available to provide such treatment, the court shall state such findings of fact on the record and deny assisted outpatient treatment without prejudice and may order such other treatment or commitment as authorized by law.

(4) The petitioner shall cause a copy of any court order issued pursuant to this section to be served personally, or by mail, facsimile or electronic means, upon the assisted outpatient and all service providers identified in the treatment plan.

(g) In addition to any other right or remedy available by law with respect to the order for assisted outpatient treatment, either party to the order may apply to the court, on notice to the other party and all others entitled to notice, to stay, vacate, or modify the order.

(h) The treatment provider may modify the treatment plan according to the treatment needs of the assisted outpatient and provide notice to the court and petitioner.

(i) Within thirty (30) days prior to the expiration of an order for assisted outpatient treatment, the original applicant, if the petitioner retains the status of an authorized petitioner pursuant to this chapter, or, in the absence of a timely petition by the original petitioner, any other person authorized to petition pursuant to this chapter, may apply to the court to order continued assisted outpatient treatment and the court may order continued assisted outpatient treatment for a period not to exceed six (6) months from the expiration date of the current order if the court finds by clear and convincing evidence that the assisted outpatient treatment continues to meet the criteria in this part. If the court's disposition of such petition does not occur prior to the expiration date of the current order, the current order shall remain in effect for up to an additional thirty (30) days without further action of the court. If the court's disposition of such petition does not occur within thirty (30) days after the expiration date of the current order, the order for assisted outpatient treatment shall terminate. The procedures for obtain-

ing any order pursuant to this subsection (i) shall be in accordance with this section.

(j) Section 33-6-607 shall apply to the costs incurred for services ordered under this section.

(k) An assisted outpatient's substantial failure to comply with the order of the court shall constitute reason for a physician or a professional designated under § 33-6-427(a) or (b) to determine whether the assisted outpatient is subject to emergency detention under § 33-6-401, and shall give rise to the authority under § 33-6-402 for such physician or a professional designated under § 33-6-427(a) or (b) to take custody of the assisted outpatient. Failure to comply with an order of assisted outpatient treatment shall not be grounds for a finding of contempt of court or for non-emergency involuntary detention under this title. Nothing in this section precludes the use of detention by law enforcement officers under § 33-6-402.

(*l*) The commissioner of mental health and substance abuse services is authorized to promulgate rules to implement this section in accordance with the Uniform Administration Procedures Act, compiled in title 4, chapter 5.

History.
Acts 2012, ch. 575, § 2; 2012, ch. 1060, § 1; 2014, ch. 1000, § 1.

PART 7

DISCHARGE FROM INPATIENT TREATMENT

33-6-701. Review of admitted persons to determine eligibility for discharge.

The chief officer of a public or private hospital shall, as often as practicable, but not less often than every six (6) months, examine or cause to be examined each person admitted under this title for treatment of mental illness or serious emotional disturbance. If the chief officer determines on the basis of the examination that the person is eligible for discharge under § 33-6-602, § 33-6-705 or § 33-6-706, and that the discharge is not subject to judicial review under § 33-6-708, the chief officer shall order the immediate release of the person and shall notify the person upon whose application the person was admitted and, if the person was involuntarily hospitalized, the court that ordered the hospitalization.

History.
Acts 1965, ch. 38, § 46; 1974, ch. 464, § 3; 1975, ch. 248, §§ 1, 18; 1982, ch. 862, §§ 9, 10; T.C.A., § 33-609; Acts 1996, ch. 1079, § 63; T.C.A., § 33-6-108(d); Acts 2000, ch. 947, § 1.

Compiler's Notes.
Former chapter 6, §§ 33-6-101 — 33-6-111; 33-6-201 — 33-6-209; 33-6-301 — 33-6-306 (Acts 1957, ch. 288, §§ 1-5; impl. am. Acts 1957, ch. 127, §§ 1, 3, 4; 1963, ch. 315, §§ 1, 2; 1965, ch. 38, §§ 37-40, 43, 45, 46; 1967, ch. 44, § 1; 1967, ch. 58, § 1;1973, ch. 127, § 11; 1974, ch. 464, § 3; 1974, ch. 802, §§ 43, 45, 46, 52, 53; 1975, ch. 199, §§ 1-3; 1975, ch. 248, §§ 1, 14, 16-18; 1976, ch. 610, § 1; 1976, ch. 763, § 5; 1976, ch. 764, §§ 2, 3; 1977, ch. 165, § 1; 1977, ch. 386, § 2; 1977, ch. 449, §§ 1, 2; 1978, ch. 527, §§ 5, 6; 1980, ch. 621, § 1; 1981, ch. 224, §§ 25-27; 1981, ch. 445, § 1; 1981, ch. 449, § 2(21); 1981, ch. 536, § 1; 1982, ch. 862, § 1, 3-11; 1983, ch. 323, §§ 8, 9, 11, 13, 14, 17-22, 24; T.C.A., § 33-314, 33-325, 33-603, 33-601, 33-604, 33-606 — 33-609, 33-614 — 33-619; 33-379 — 33-381, 33-1301 — 33-1305, 33-3-620 — 33-3-622, 33-6-203 — 33-6-205; Acts 1984, ch. 922, § 8, 11-16, 23-25, 27, 28-32, 39, 40; 1985, ch. 437, §§ 14-25; 1985, ch. 478, § 37; Acts 1986, ch. 595, §§ 1, 2; 1986, ch. 836, §§ 4, 6; 1987, ch. 145, § 26; 1988, ch. 862, §§ 1-5; 1988, ch 953, § 8; 1989, ch. 99, § 1; 1989, ch. 311, §§ 1-4; 1989, ch. 513, §§ 3, 15-17; 1990, ch. 630, §§ 1, 2; 1992, ch. 893, §§ 1, 2; 1992, ch. 991, §§ 15, 16; 1993, ch. 356, §§ 1-3; 1993, ch. 376, §§ 1-4; 1994, ch. 676, § 1; 1994, ch. 779, § 1; 1996, ch. 1079, §§ 57-66; 2000, ch. 947, § 6), is deleted and replaced in the revision of title 33 by Acts 2000, ch. 947, § 1, effective March 1, 2001.

33-6-702. Request for current examination of mental condition — Payment.

Any person hospitalized under a court order obtained under chapter 6, part 5 of this title, or the person's attorney, parent, legal guardian, legal custodian, conservator, spouse or adult next of kin, shall be entitled, upon the expiration of ninety (90) days following the order and not more frequently than every six (6) months thereafter, to request, in writing, the chief officer of the hospital in which the person is hospitalized to have a current examination of the person's mental condition made by one (1) or more physicians. If the request is timely, it shall be granted. The person shall be entitled at the person's own expense to have a licensed physician not connected with the hospital to participate in the examination. If the person is indigent, is in a department facility, and makes a written request for examination, with the approval of the commissioner, the department shall assist the person in obtaining a licensed physician to participate in the examination in the person's behalf. A physician so obtained by the indigent person shall be compensated for services out of unobligated funds of the department in an amount the department determines to be fair and reasonable.

History.
Acts 1965, ch. 38, § 46; 1974, ch. 464, § 3; 1975, ch. 248, §§ 1, 18; 1982, ch. 862, §§ 9, 10; T.C.A., § 33-609; Acts 1996, ch. 1079, § 63; T.C.A., § 33-6-108(b)(1); Acts 2000, ch. 947, § 1.

33-6-703. Discharge of person eligible for release — Petition for review where one (1) or more physicians finds admission no longer needed.

If, after considering the reports of the physicians and other relevant information, the chief officer determines that the person is eligible for discharge under § 33-6-602, § 33-6-705 or § 33-6-706 and that the discharge is not subject to judicial review under § 33-6-708, the chief officer shall order the immediate release of the person and notify the committing court. If one (1) or more of the physicians participating in the examination reports that the person no longer meets the standards under which the person was admitted, the person may petition the court that ordered the hospitalization for an order directing the person's release. The person shall be apprised of the results of the examination reports and shall be furnished true copies of them, which shall accompany the person's petition.

History.
Acts 1965, ch. 38, § 46; 1974, ch. 464, § 3; 1975, ch. 248, §§ 1, 18; 1982, ch. 862, §§ 9, 10; T.C.A., § 33-609; Acts 1996, ch. 1079, § 63; T.C.A., § 33-6-108(b)(2); Acts 2000, ch. 947, § 1.

33-6-704. Procedure for reviewing petition.

(a) In considering the petition, the court shall consider the testimony of the physicians who participated in the examination of the person and their reports accompanying the petition. After considering the testimony and reports, the court shall either:

(1) Reject the petition and order the continued hospitalization of the person; or

(2) Order the immediate release of the person.

(b) Any physician participating in the examination shall be a competent and compellable witness at any judicial proceeding held under this title.

History.
Acts 1965, ch. 38, § 46; 1974, ch. 464, § 3; 1975, ch. 248, §§ 1, 18; 1982, ch. 862, §§ 9, 10; T.C.A., § 33-609; Acts 1996, ch. 1079, § 63; T.C.A., § 33-6-108(c); Acts 2000, ch. 947, §§ 1, 6.

33-6-705. Discharge of person no longer meeting standards for admission.

IF

(1) a person was admitted to a hospital for treatment of mental illness or serious emotional disturbance under any provision of this title other than chapter 6, part 5 of this title, AND

(2) the person no longer meets the standards under which the admission took place, AND

(3) the person's detention is not otherwise authorized under the part under which the person was admitted,

THEN

(4) the person shall be discharged.

History.
Acts 1982, ch. 862, § 3; 1983, ch. 323, §§ 18, 19; T.C.A., § 33-614; Acts 1985, ch. 437, § 18; T.C.A., § 33-6-109(a); Acts 2000, ch. 947, § 1.

33-6-706. Discharge of involuntarily committed person — Person no longer mentally ill or in remission — Person unlikely to cause harm — Voluntary outpatient treatment possible.

IF

(1) a person was committed involuntarily under chapter 6, part 5 of this title, AND

(2)(A) the person does not have a mental illness or serious emotional disturbance, OR

(B)(i) the person has a mental illness or serious emotional disturbance or has a mental illness or serious emotional disturbance in remission, AND

(ii) the person does not pose a likelihood of serious harm under § 33-6-501, OR

(C)(i) the person would pose a likelihood of serious harm under § 33-6-501 unless treatment is continued, AND

(ii) voluntary outpatient treatment is a suitable less drastic alternative to commitment because the person is likely to participate in outpatient treatment without being legally obligated to do so,

THEN

(3) IF

(A) the person is not subject to judicial review under § 33-6-708,

THEN

(B) the person shall be discharged, AND

(4) IF

(A) the person is subject to judicial review under § 33-6-708,

THEN

(B) the person shall be discharged in conformity with § 33-6-708.

History.
Acts 1982, ch. 862, § 3; 1983, ch. 323, §§ 18, 19; T.C.A., § 33-614; Acts 1985, ch. 437, § 18; T.C.A., § 33-6-109(b); Acts 2000, ch. 947, § 1.

33-6-707. Persons eligible for discharge subject to mandatory outpatient treatment.

IF

(1) a person was committed involuntarily under chapter 6, part 5 of this title, AND

(2) the person has a mental illness or serious emotional disturbance or has a mental illness or serious emotional disturbance in remission, AND

(3) the person would pose a likelihood of serious harm under § 33-6-501 unless treatment continues, AND

(4) voluntary outpatient treatment is not a suitable less drastic alternative to commitment because the person is not likely to participate in outpatient treatment without being legally obligated to do so,

THEN

(5) the person is eligible for discharge only under § 33-6-602.

History.
Acts 1982, ch. 862, § 3; 1983, ch. 323, §§ 18, 19; T.C.A., § 33-614; Acts 1985, ch. 437, § 18; T.C.A., § 33-6-109(c); Acts 2000, ch. 947, § 1.

33-6-708. Discharge procedure for involuntarily committed persons.

(a) If a person is committed involuntarily by a criminal or juvenile court under chapter 6, part 5 of this title and the court determines at the time of commitment that, due to the nature of the person's criminal conduct that created a serious risk of physical harm to other persons, the person should not be discharged from the commitment without proceedings under this section to review eligibility for discharge under §§ 33-6-602, 33-6-705 and 33-6-706, the hospital shall proceed under this section to effect discharge from the commitment.

(b) Any person who was committed involuntarily on the basis of mental illness between April 23, 1980, and July 1, 1982, and who was subject to the discharge procedures of former § 33-313 during that period is subject to discharge only under the procedures of subdivisions (c)(1)-(5).

(c)(1) When the chief officer determines that the person is eligible for discharge under § 33-6-602,

§ 33-6-705 or § 33-6-706, the chief officer shall notify the committing court of that conclusion, of the basis for it, and, if discharge is under § 33-6-602, of the outpatient treatment plan approved by the releasing facility and the qualified mental health professional for the person. The determination by the chief officer shall create a rebuttable presumption of its correctness. The clerk shall send a copy of that complete notice and plan to the person's counsel and to the district attorney general for the jurisdiction in which the committing court is located. The court may, on its own motion or that of the district attorney general, order a hearing to be held within twenty-one (21) days of the receipt of the chief officer's notice. The court shall send notice of the hearing to the person, the chief officer, the person's counsel, the person's next of kin, and the district attorney general.

(2) If the court does not set a hearing and notify the chief officer within fifteen (15) days of its receipt of the chief officer's notice, the chief officer shall release the person from involuntary commitment under § 33-6-602, § 33-6-705 or § 33-6-706, as appropriate.

(3) If the court sets a hearing, the hearing shall be held within twenty-one (21) days of the court's receipt of notice from the chief officer. The person shall attend the hearing, unless the person's presence is waived in writing by counsel before the hearing. If the person does not have counsel, the court shall appoint counsel to represent the person throughout the proceedings and any appeal. The person's counsel shall advocate for the least drastic alternative to commitment, unless directed otherwise by the person. Compensation of appointed counsel for the person shall be pursuant to Tennessee Rules of the Supreme Court, Rule 15.

(4) Following the hearing, if the court finds by clear, unequivocal, and convincing evidence that the person is not eligible for discharge under § 33-6-602, § 33-6-705 or § 33-6-706, it shall order the person's return to the hospital under the original commitment. If the court finds otherwise, it shall order the person's release from involuntary commitment in accordance with the recommendations of the chief officer.

(5) The district attorney general on behalf of the state or the person may file a notice of appeal of a final adjudication under this section to the court of criminal appeals.

History.

Acts 1982, ch. 862, § 1; T.C.A., § 33-314; Acts 1985, ch. 437, §§ 19, 20; 1986, ch. 836, § 6; 1988, ch. 862, §§ 1, 2, 5; T.C.A., § 33-6-110; Acts 2000, ch. 947, § 1.

Compiler's Notes.

Former T.C.A. § 33-313 is now compiled as part of § 33-5-410.

PART 8

SEX OFFENDERS

33-6-801. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Sex crime" means any offense involving the unlawful sexual abuse, molestation, fondling, or carnal knowledge of a child of fourteen (14) years of age or under or incest, a crime against nature, assault with intent to commit rape or rape; and

(2) "Sex offender" means any person who has been convicted of a crime involving the unlawful sexual abuse, molestation, fondling, or carnal knowledge of a child of fourteen (14) years of age or under or any person convicted of incest, a crime against nature, assault with intent to commit rape or rape.

History.

Acts 1957, ch. 288, § 1; 1963, ch. 315, §§ 1, 2; 1975, ch. 248, § 1; 1977, ch. 449, §§ 1, 2; 1981, ch. 224, § 25; T.C.A., §§ 33-1301, 33-6-301; Acts 2000, ch. 947, §§ 1, 6.

Compiler's Notes.

Former chapter 6, §§ 33-6-101 — 33-6-111; 33-6-201 — 33-6-209; 33-6-301 — 33-6-306 (Acts 1957, ch. 288, §§ 1-5; impl. am. Acts 1957, ch. 127, §§ 1, 3, 4; 1963, ch. 315, §§ 1, 2; 1965, ch. 38, §§ 37-40, 43, 45, 46; 1967, ch. 44, § 1; 1967, ch. 58, § 1;1973, ch. 127, § 11; 1974, ch. 464, § 3; 1974, ch. 802, §§ 43, 45, 46, 52, 53; 1975, ch. 199, §§ 1-3; 1975, ch. 248, §§ 1, 14, 16-18; 1976, ch. 610, § 1; 1976, ch. 763, § 5; 1976, ch. 764, §§ 2, 3; 1977, ch. 165, § 1; 1977, ch. 386, § 2; 1977, ch. 449, §§ 1, 2; 1978, ch. 527, §§ 5, 6; 1980, ch. 621, § 1; 1981, ch. 224, §§ 25-27; 1981, ch. 445, § 1; 1981, ch. 449, § 2(21); 1981, ch. 536, § 1; 1982, ch. 862, § 1, 3-11; 1983, ch. 323, §§ 8, 9, 11, 13, 14, 17-22, 24; T.C.A., § 33-314, 33-325, 33-603, 33-601, 33-604, 33-606 — 33-609, 33-614 — 33-619; 33-379 — 33-381, 33-1301 — 33-1305, 33-3-620 — 33-3-622, 33-6-203 — 33-6-205; Acts 1984, ch. 922, § 8, 11-16, 23-25, 27, 28-32, 39, 40; 1985, ch. 437, §§ 14-25; 1985, ch. 478, § 37; Acts 1986, ch. 595, §§ 1, 2; 1986, ch. 836, §§ 4, 6; 1987, ch. 145, § 26; 1988, ch. 862, §§ 1-5; 1988, ch 953, § 8; 1989, ch. 99, § 1; 1989, ch. 311, §§ 1-4; 1989, ch. 513, §§ 3, 15-17; 1990, ch. 630, §§ 1, 2; 1992, ch. 893, §§ 1, 2; 1992, ch. 991, §§ 15, 16; 1993, ch. 356, §§ 1-3; 1993, ch. 376, §§ 1-4; 1994, ch. 676, § 1; 1994, ch. 779, § 1; 1996, ch. 1079, §§ 57-66; 2000, ch. 947, § 6), is deleted and replaced in the revision of title 33 by Acts 2000, ch. 947, § 1, effective March 1, 2001.

33-6-802. Examination upon conviction for sex crime.

Any person convicted of a sex crime shall be examined thoroughly by a psychiatrist, licensed psychologist, licensed psychological examiner, licensed senior psychological examiner, clinical nurse specialist in psychiatry, licensed professional counselor, or licensed clinical social worker from the department of correction as soon as practicable after admittance to the penal facility. A community mental health center may provide the examination when the service is specifically contracted for and funded by the department of mental

health and substance abuse services or the department of correction.

History.
Acts 1957, ch. 288, § 3; 1974, ch. 802, § 52; 1975, ch. 248, § 1; 1981, ch. 224, § 26; T.C.A., § 33-1303; Acts 1986, ch. 595, § 1; 1989, ch. 311, § 1; T.C.A., § 33-6-303; Acts 2000, ch. 947, §§ 1, 6; 2001, ch. 334, § 6; 2002, ch. 730, § 46; 2010, ch. 1100, § 45; 2012, ch. 575, § 1.

Compiler's Notes.
Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health (now commissioner of mental health and substance abuse services), the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

33-6-803. Certification for treatment.

If, as a result of the examination provided for in § 33-6-802, it is found that the convicted person is capable of being successfully treated, this fact shall be certified by the examining official or officials to the commissioner of correction, together with the suggested treatment, whereupon, the commissioner of correction shall provide the treatment.

History.
Acts 1957, ch. 288, § 4; 1975, ch. 248, § 1; T.C.A., § 33-1304; Acts 1989, ch. 311, § 2; T.C.A., § 33-6-304; Acts 2000, ch. 947, § 1.

33-6-804. Examination prior to release — Petition for commitment.

(a) Not more than one (1) year nor less than six (6) months prior to the non-parole release of any person convicted of a sex crime, an examination of the person shall be made by a psychiatrist, licensed psychologist, licensed senior psychological examiner, licensed psychological examiner, clinical nurse specialist in psychiatry, licensed professional counselor, or licensed clinical social worker from the department of correction.

(b) The examiner shall determine whether the person has a mental illness and, because of that illness, poses a likelihood of serious harm under § 33-6-501, and is in need of care and treatment in a mental hospital or treatment resource, as defined in § 33-1-101.

(c) If the examiner determines that the person has a mental illness or serious emotional disturbance and poses a likelihood of serious harm because of the illness, the director of the correctional facility shall, before the time for the release of the person, petition where the facility is located for judicial commitment under chapter 6, part 5, of this title to a hospital or treatment resource designated by the commissioner.

History.
Acts 1957, ch. 288, § 5; 1974, ch. 802, § 53; 1975, ch. 248, § 1; 1977, ch. 386, § 2; 1981, ch. 224, § 27; 1983, ch. 323, § 24; T.C.A., § 33-1305; Acts 1986, ch. 595, § 2; 1989, ch. 311, §§ 3, 4; T.C.A., § 33-6-305; Acts 2000, ch. 947, § 1; 2001, ch. 334, § 7; 2002, ch. 730, § 47.

33-6-805. Post-plea treatment system.

(a) The department of mental health and substance abuse services, in cooperation with the department of correction, the department of human services and the district attorneys general conference, shall develop a post-plea treatment system for sexual offenders, victims, and their families, modeled after systems that are operating in some local communities around the country. The system shall provide for a standard fee for treatment services and shall provide for the development of a certification process for service providers to assure sexual abuse treatment expertise by the service providers. The certification should encompass a combination of professional education and licensure with specialized knowledge in this field. The treatment system shall be designed within a conceptual framework that includes, but is not limited to, the following:

(1) Limiting offender eligibility to first-offender, intra-family abuse, absence of violence or threat of violence, sexual abuse of short duration, absence of drug or alcohol addiction, and abuse that has resulted in no significant trauma to the child victim;

(2) The sentence and probation established for program participants shall be a definite sentence; and

(3) As a requirement for participation in the treatment program, the offender shall plead guilty to the commission of the appropriate sexual offense and agree to abide by all requirements of the probation agreement or sentence alternative.

(b) The probation agreement or sentence alternative shall require that the offender pay for the victim's medical and psychological treatment, as needed, and for the offender's treatment in the treatment program, based upon the offender's financial ability to pay.

History.
Acts 1985, ch. 478, § 37; 1987, ch. 145, § 26; 1988, ch. 953, § 8; T.C.A., § 33-6-306; Acts 2000, ch. 947, §§ 1, 6; 2010, ch. 1100, § 45; 2012, ch. 575, § 1.

Compiler's Notes.
Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health (now commissioner of mental health and substance abuse services), the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of

the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

PART 9

SPECIAL PROVISIONS FOR MENTAL HEALTH TRANSPORTATION

33-6-901. Transportation of persons under part 4 or 5 of this chapter by sheriff, secondary transport agent, municipal officer or other authorized person.

(a)(1) The sheriff in a county in which a person with mental illness or serious emotional disturbance is to be transported under part 4 or 5 of this chapter, shall transport the person except for persons who are transported by:

(A) A secondary transportation agent under this section;

(B) A municipal law enforcement agency that meets the requirements for a secondary transportation agent under this section and is designated by the sheriff;

(C) A person authorized under other provisions of this title; or

(D) One or more friends, neighbors, other mental health professionals familiar with the person, relatives of the person, or a member of the clergy.

(2) The sheriff may designate a secondary transportation agent or agents for the county for persons with mental illness or serious emotional disturbance whom a physician or mandatory prescreening authority has evaluated and determined do not require physical restraint or vehicle security. A secondary transportation agent shall be available twenty-four (24) hours per day, provide adequately for the safety and security of the person to be transported, and provide appropriate medical conditions for transporting persons for involuntary hospitalization. The sheriff shall take into account in designating a secondary transportation agent or a municipal law enforcement agency both its funding and the characteristics of the persons who will be transported. The sheriff shall consult with the county mayor before designating a secondary transportation agent. A secondary transportation agent has the same duties and authority under this chapter in the detention or transportation of those persons as the sheriff. The designation of a transportation agent other than the sheriff is a discretionary function under § 29-20-205. If a mandatory prescreening agent, physician, or licensed psychologist with health service provider designation, who is acting under § 33-6-404(3)(B), determines that the person does not require physical restraint or vehicle security, then any person identified in subdivision (a)(1)(D) may, instead of the sheriff, transport the person at the transporter's expense.

(3)(A) If a physician, psychologist, or designated professional, operating under § 33-6-404(3)(B)(iii), determines to a reasonable degree of professional certainty that the person subject to transportation under this part does not require physical restraint or vehicle security and does not pose a reasonable risk of danger to the person's self or others, then the sheriff may permit one (1) or more persons designated under this section, other than the sheriff or secondary transportation agent, to transport the person; provided, that the person or persons provide proof of current automobile insurance. Before a person is transported, the sheriff or other transportation agent designated under subdivision (a)(1) or (a)(2) shall give the notice required by § 33-6-406(b), along with the name or names of the person or persons who will actually transport the person subject to admission to a hospital or treatment resource. The person or persons designated to transport under this section must comply with the requirements of § 33-6-406(b)(2) and § 33-6-407(c), and must provide the original of the certificate completed under § 33-6-404(3)(B)(ii) to the hospital or treatment resource.

(B) When making this determination, the physician, psychologist or designated professional operating under § 33-6-404(3)(B)(iii) shall be immune from any civil liability and shall have an affirmative defense to any criminal liability arising from that protected activity.

(C) When making this determination, if the physician, psychologist or designated professional operating under § 33-6-404(3)(B)(iii) is an agent of a hospital, health care facility, or community mental health center, that hospital, health care facility, or community mental health center shall be immune from any civil liability and shall have an affirmative defense to any criminal liability arising from this agent's protected activity and from the transportation of the person to and from the facility.

(b) When a sheriff or secondary transportation agent is required to transport a person to a hospital or treatment resource for screening, evaluation, diagnosis or hospitalization, the county in which the person is initially transported by the sheriff or secondary transportation agent is responsible for the remainder of such person's transportation requirements. The initial transporting county is responsible for the continuing transportation of the person even if the person is assessed, diagnosed, screened or evaluated in a second county before being admitted to a facility, hospital or treatment resource in a third county. If the person is transported to a hospital or treatment resource by the sheriff or secondary transportation agent of a county other than the initial transporting county, the sheriff or secondary transportation agent actually providing transportation may bill the initial transporting county for transportation costs.

(c) The department shall provide training on mental health crisis management for transportation agents and the sheriffs' personnel.

(d) It is the policy of this state that people with mental illness who are determined to be a danger to themselves and in need of physical restraint or vehicular security shall be transported by the sheriff or secondary transportation agents designated by the

sheriff. People with a mental illness who do not present themselves as a danger to themselves or are not in need of physical restraint or vehicular security may be transported by one (1) or more friends, neighbors, other mental health professionals familiar with the person, relatives of the person or a member of the clergy; provided, that these persons are willing and able to provide such transport.

History.

Acts 2000, ch. 947, § 1; 2003, ch. 90, § 2; 2003, ch. 210, § 1; 2009, ch. 468, §§ 1, 2; 2011, ch. 45, § 1; 2013, ch. 32, § 2.

Compiler's Notes.

Former chapter 6, §§ 33-6-101 — 33-6-111; 33-6-201 — 33-6-209; 33-6-301 — 33-6-306 (Acts 1957, ch. 288, §§ 1-5; impl. am. Acts 1957, ch. 127, §§ 1, 3, 4; 1963, ch. 315, §§ 1, 2; 1965, ch. 38, §§ 37-40, 43, 45, 46; 1967, ch. 44, § 1; 1967, ch. 58, § 1;1973, ch. 127, § 11; 1974, ch. 464, § 3; 1974, ch. 802, §§ 43, 45, 46, 52, 53; 1975, ch. 199, §§ 1-3; 1975, ch. 248, §§ 1, 14, 16-18; 1976, ch. 610, § 1; 1976, ch. 763, § 5; 1976, ch. 764, §§ 2, 3; 1977, ch. 165, § 1; 1977, ch. 386, § 2; 1977, ch. 449, §§ 1, 2; 1978, ch. 527, §§ 5, 6; 1980, ch. 621, § 1; 1981, ch. 224, §§ 25-27; 1981, ch. 445, § 1; 1981, ch. 449, § 2(21); 1981, ch. 536, § 1; 1982, ch. 862, § 1, 3-11; 1983, ch. 323, §§ 8, 9, 11, 13, 14, 17-22, 24; T.C.A., § 33-314, 33-325, 33-603, 33-601, 33-604, 33-606 — 33-609, 33-614 — 33-619; 33-379 — 33-381, 33-1301 — 33-1305, 33-3-620 — 33-3-622, 33-6-203 — 33-6-205; Acts 1984, ch. 922, § 8, 11-16, 23-25, 27, 28-32, 39, 40; 1985, ch. 437, §§ 14-25; 1985, ch. 478, § 37; Acts 1986, ch. 595, §§ 1, 2; 1986, ch. 836, §§ 4, 6; 1987, ch. 145, § 26; 1988, ch. 862, §§ 1-5; 1988, ch 953, § 8; 1989, ch. 99, § 1; 1989, ch. 311, §§ 1-4; 1989, ch. 513, §§ 3, 15-17; 1990, ch. 630, §§ 1, 2; 1992, ch. 893, §§ 1, 2; 1992, ch. 991, §§ 15, 16; 1993, ch. 356, §§ 1-3; 1993, ch. 376, §§ 1-4; 1994, ch. 676, § 1; 1994, ch. 779, § 1; 1996, ch. 1079, §§ 57-66; 2000, ch. 947, § 6), is deleted and replaced in the revision of title 33 by Acts 2000, ch. 947, § 1, effective March 1, 2001.

Acts 2003, ch. 90, § 2, directed the code commission to change all references from "county executive" to "county mayor" and to include all the changes in supplements and replacement volumes for the Tennessee Code Annotated.

For the Preamble to the act regarding transportation of people with a mental illness, please refer to Acts 2009, ch. 468.

33-6-902. Transportation of patient to hospital — Temporary detention.

(a) Whenever a person is about to be admitted to a hospital or treatment resource under chapter 6, part 5 of this title, the court shall arrange for the transportation of the person to the hospital. Whenever practicable, the person to be hospitalized shall be permitted to be accompanied by one (1) or more friends or relatives, who shall travel at their own expense. Any reputable and trustworthy relative or friend of the person who will assume responsibility for the person's safe deliverance may be allowed to transport the person to the hospital if the relative or friend will do so at the transporter's own expense.

(b) Pending removal to a hospital, a person with mental illness or serious emotional disturbance taken into custody or ordered to be hospitalized under chapter 6, part 5 of this title, may be detained in the person's home or in some suitable facility under such reasonable conditions as the court may order, but the person shall not be detained in a non-medical facility used for the detention of persons charged with or convicted of criminal offenses. Reasonable measures necessary to assure proper care of a person temporarily detained under this section, including provision for medical care, shall be taken.

History.

Acts 1965, ch. 38, § 44; 1967, ch. 58, § 1; 1983, ch. 323, § 17; T.C.A., §§ 33-607, 33-6-106; Acts 2000, ch. 947, § 1; 2002, ch. 730, § 48.

CHAPTER 8

SPECIAL PROVISIONS FOR CHILDREN

Part 1. Services to Children Generally

SECTION.
33-8-101. Applicability of title to children.
33-8-102. Responsibilities of department with regard to children.
33-8-103. Children as priority population.
33-8-104. Emancipated children — Rights and responsibilities under this title.
33-8-105. Interagency plans for transition to adult services.
33-8-106. Interagency agreements — Cooperation of service providers with department.

Part 2. Special Provisions for Mental Health Services to Children

33-8-201. Child with alcohol or drug dependence or developmental disability.
33-8-202. Rights of child sixteen (16) years of age or older.
33-8-203. Parents, custodians and guardians to participate in child's outpatient treatment plan.

Part 3. Special Medical Procedure Rules

33-8-301. Electroconvulsive therapy upon child prohibited except under this part.
33-8-302. Electroconvulsive therapy — When authorized for child with mania or severe depression.
33-8-303. Electroconvulsive therapy — When authorized for child over fourteen (14) years of age.
33-8-304. Electroconvulsive therapy — When authorized for child in state custody.
33-8-305. Electroconvulsive therapy upon child — Court approval or finding of emergency required.
33-8-306. Electroconvulsive therapy — Commitment proceedings pending.
33-8-307. Electroconvulsive therapy — Hearing in juvenile court.
33-8-308. Electroconvulsive therapy upon child — Independent psychiatric evaluation required.
33-8-309. Electroconvulsive therapy — Petition to court.
33-8-310. Counsel required for hearing.
33-8-311. Conduct of hearing.
33-8-312. Hearing costs.
33-8-313. Appeal.
33-8-314. Report on use of convulsive therapies.
33-8-315. Lobotomies upon children prohibited.
33-8-316. Child's rights not to be waived.

PART 1

SERVICES TO CHILDREN GENERALLY

33-8-101. Applicability of title to children.

(a) Services for children who have serious emotional disturbance, mental illness, or developmental disabilities are governed by all of this title. The general assembly finds that supporting families in their role as primary care givers for their children is more humane, efficient, and cost effective than placing children in state custody to obtain necessary services or otherwise placing children in settings outside their homes.

(b) For children covered by this title, the following service principles are fundamental to carrying out the responsibilities of service providers and advocates:

(1) Families and children are most responsible for determining their needs and should be included appropriately in planning and providing service and

support;

(2) Families should receive the support they need to care for their children at home;

(3) Service providers and advocates should enable families and children to make good decisions concerning necessary, desirable, and appropriate services;

(4) Service providers should coordinate services among agencies likely to provide services and supports to children and families;

(5) Service providers and advocates should participate in development of interagency agreements under § 33-1-308 to assure consideration of the needs and problems of children and families; and

(6) Service providers should achieve smooth transitions in services and supports as children grow through various stages of development and become vested in making decisions for themselves, including the transition into adulthood.

History.
Acts 2000, ch. 947, § 1.

Compiler's Notes.
Prior to the deletion and replacement of chapter 8 in the revision of title 33, by Acts 2000, ch. 947, § 1, effective March 1, 2001, former chapter 8, parts 1-5, were transferred to title 68, ch. 24, parts 1-5, respectively, in 1993. See the Compiler's Notes under § 68-24-101.

33-8-102. Responsibilities of department with regard to children.

The department in coordination with the council on children's mental health care shall promote effective advocacy for services and supports for all children with serious emotional disturbance, mental illness, or developmental disabilities. The department's responsibilities for children shall include, but not be limited to:

(1) Promoting collaboration among care givers and service providers and equitable involvement of care givers in service plan development;

(2) Case finding after the department has adopted rules regarding service and support to children;

(3) Determining eligibility;

(4) Providing basic service standards;

(5) Facilitating the interdepartmental planning process for children through the statewide and regional planning and policy councils;

(6) Initiating meetings or other processes to develop local interagency agreements as needs and problems are identified by service providers, advocates, or families;

(7) Assisting children and their families to gain access to the system of services and supports;

(8) Defining and listing an array of services and supports; and

(9) Assisting youth who have been in the public system of care with transition to adult services.

History.
Acts 2000, ch. 947, § 1; 2008, ch. 1062, § 5.

Compiler's Notes.
For the Preamble to the act regarding to the mental health needs of Tennessee's children and youth, please refer to Acts 2008, ch. 1062.

33-8-103. Children as priority population.

Children with serious emotional disturbances are a priority population for the department's mental health services and supports. Children with developmental disabilities are a priority population for the department's developmental disabilities services and supports. The department shall set the array of services and supports for these priority populations annually in its plan. The state will fund and the department will maintain the array of services and supports for persons in this priority population. Consistent with applicable eligibility requirements, the state may provide the funding for the services through the medicaid program or any waiver granted under the medicaid program, specifically including TennCare, other public funds, or private funds.

History.
Acts 2000, ch. 947, § 1.

33-8-104. Emancipated children — Rights and responsibilities under this title.

Children who are emancipated by marriage, court order, or in any other way recognized by law in the state have all the rights and responsibilities of adults under this title, except to the extent those rights are restricted by court order. The parent of an emancipated child shall be treated as the parent of an adult under all provisions of this title that give parents rights or responsibilities with respect to the child.

History.
Acts 2000, ch. 947, § 1.

33-8-105. Interagency plans for transition to adult services.

Mental health and developmental disabilities service providers shall prepare interagency plans to assure that persons seventeen (17) years of age in state custody who will continue to need services and supports in adulthood can make a smooth transition to adult services. The plan should take into account the requirements of other state and federal laws with respect to service. If necessary to avoid delays in service during the transition into adult services, plans shall be prepared before the persons become seventeen (17) years of age.

History.
Acts 2000, ch. 947, § 1.

33-8-106. Interagency agreements — Cooperation of service providers with department.

Service providers shall inform the department and the council on children's mental health care of needs or problems of children and families that may be addressed by local interagency agreements with the goals set in § 33-1-308 for state interagency agreements. Service providers shall participate in processes initiated by the department and the council on children's

mental health care or others to address the needs or problems.

History.
Acts 2000, ch. 947, § 1; 2008, ch. 1062, § 6.

Compiler's Notes.
For the Preamble to the act regarding to the mental health needs of Tennessee's children and youth, please refer to Acts 2008, ch. 1062.

PART 2

SPECIAL PROVISIONS FOR MENTAL HEALTH SERVICES TO CHILDREN

33-8-201. Child with alcohol or drug dependence or developmental disability.

A child who has alcohol dependence, drug dependence, or developmental disability may only receive mental health service or support from the mental health service division if the condition is concurrent with another serious emotional disturbance or mental illness.

History.
Acts 2000, ch. 947, § 1.

Compiler's Notes.
Prior to the deletion and replacement of chapter 8 in the revision of title 33, by Acts 2000, ch. 947, § 1, effective March 1, 2001, former chapter 8, parts 1-5, were transferred to title 68, ch. 24, parts 1-5, respectively, in 1993. See the Compiler's Notes under § 68-24-101.

33-8-202. Rights of child sixteen (16) years of age or older.

(a) If a child with serious emotional disturbance or mental illness is sixteen (16) years of age or older, the child has the same rights as an adult with respect to outpatient and inpatient mental health treatment, medication decisions, confidential information, and participation in conflict resolution procedures under this title except as provided in part 3 of this chapter, or as otherwise expressly provided in this title. If the child's parent, legal guardian, legal custodian, or treating professional believes that the child's decision to terminate treatment, other than a request for discharge under chapter 6, part 2 of this title, will have severe adverse effects on the child, the conflict resolution procedures under chapter 2, part 6 of this title shall be used.

(b) An outpatient facility or professional may provide treatment and rehabilitation without obtaining the consent of the child's parent, legal guardian, or legal custodian.

History.
Acts 2000, ch. 947, § 1.

33-8-203. Parents, custodians and guardians to participate in child's outpatient treatment plan.

Parents, legal custodians, and legal guardians shall participate in mandatory outpatient treatment discharge planning and do what is necessary to carry out the child's plan.

History.
Acts 2000, ch. 947, § 1.

PART 3

SPECIAL MEDICAL PROCEDURE RULES

33-8-301. Electroconvulsive therapy upon child prohibited except under this part.

No person or facility may administer electroconvulsive therapy or other convulsive therapy to a child except as authorized under this part under §§ 33-8-302 and 33-8-303 or under §§ 33-8-305—33-8-313.

History.
Acts 1976, ch. 489, § 1; 1978, ch. 877, §§ 1, 2; T.C.A., §§ 33-320, 33-3-201(a); Acts 2000, ch. 947, §§ 1, 6.

Compiler's Notes.
Prior to the deletion and replacement of chapter 8 in the revision of title 33, by Acts 2000, ch. 947, § 1, effective March 1, 2001, former chapter 8, parts 1-5, were transferred to title 68, ch. 24, parts 1-5, respectively, in 1993. See the Compiler's Notes under § 68-24-101.

33-8-302. Electroconvulsive therapy — When authorized for child with mania or severe depression.

IF AND ONLY IF

(1) a child has mania or severe depression, AND

(2)(A) all other accepted methods of therapy have been exhausted, OR

(B) electroconvulsive or other convulsive therapy is necessary to save the child's life due to potential suicide, or to prevent irreparable injury resulting from conditions such as starvation, dehydration, or physical exhaustion bordering on serious collapse to the extent the conditions are life threatening, AND

(3) the service provider to perform the therapy has convened a multi-disciplinary review team of at least five (5) persons, at least one (1) of whom is independent of the service provider, AND

(4) the multi-disciplinary review team has approved the electroconvulsive or other convulsive therapy, AND

(5) an American Board of Psychiatry and Neurology certified psychiatrist, who is child and adolescent certified, approves the therapy,

THEN

(6) the approved convulsive therapy may be necessary for the child for purposes of this part.

History.
Acts 2000, ch. 947, § 1.

33-8-303. Electroconvulsive therapy — When authorized for child over fourteen (14) years of age.

IF AND ONLY IF

(1) a child is fourteen (14) years of age or older,

AND

(2) the approved convulsive therapy may be necessary for the child as determined under § 33-8-302, AND

(3) a second American Board of Psychiatry and Neurology certified psychiatrist approves the procedure, AND

(4) the child does not object to the electroconvulsive or other convulsive therapy after being informed of the proposed therapy and alternatives, AND

(5) at least one (1) parent who has custody of the child or the child's legal guardian consents, AND

(6) no parent objects to the therapy,

THEN

(7) the child may be treated with the approved convulsive therapy under authority of this section.

History.
Acts 2000, ch. 947, § 1.

33-8-304. Electroconvulsive therapy — When authorized for child in state custody.

If a child is in state custody and a convulsive therapy may be necessary for the child as determined under § 33-8-302, the therapy shall not be performed unless the commissioner of children's services obtains authority under §§ 33-8-305 — 33-8-313. A child in state custody may not be provided convulsive therapy under § 33-8-309.

History.
Acts 2000, ch. 947, § 1.

33-8-305. Electroconvulsive therapy upon child — Court approval or finding of emergency required.

(a) No mental health professional, hospital, treatment resource, or other person or facility may administer electroconvulsive therapy or other form of convulsive therapy to any person under eighteen (18) years of age under this section and §§ 33-8-306 — 33-8-313, except:

(1) Upon prior written authorization by a court based upon a hearing at which it is shown that the approved convulsive therapy may be necessary for the child as determined under § 33-8-302 and is necessary in light of all evidence presented at the hearing; or

(2) Emergency treatment under § 33-8-309.

(b) In all cases under this section and §§ 33-8-306 — 33-8-313, the court shall appoint for the child a guardian ad litem who is not the child's attorney.

History.
Acts 1976, ch. 489, § 1; 1978, ch. 877, §§ 1, 2; T.C.A., §§ 33-320, 33-3-201(a); Acts 2000, ch. 947, §§ 1, 6.

33-8-306. Electroconvulsive therapy — Commitment proceedings pending.

If proceedings for the child's commitment under chapter 6, part 5 of this title are pending, the hearing to determine the necessity of administering convulsive therapy may be held only after adequate written notice has been given to the child, the child's legal guardian, and the child's attorney informing them of the nature of the therapy sought and the facts upon which the claim is based that the therapy is necessary for the child's health or safety. The hearing may either be consolidated with the hearing for the child's commitment under chapter 6, part 5 of this title, or may be convened at another time.

History.
Acts 1976, ch. 489, § 1; 1978, ch. 877, §§ 1, 2; T.C.A., §§ 33-320, 33-3-201(b); Acts 2000, ch. 947, §§ 1, 6.

33-8-307. Electroconvulsive therapy — Hearing in juvenile court.

If no proceedings for the child's commitment under chapter 6, part 5 of this title are pending, the hearing to determine the necessity of administering electroconvulsive or other convulsive therapy shall be convened in the juvenile court where the child resides, was committed to state custody, or may be found upon petition of the child, the child's parent, the legal guardian, a mental health professional, hospital, or treatment resource seeking authorization to administer the therapy. The petition shall be verified and shall state the nature of the therapy for which authorization is sought, and the facts upon which the petitioner relies to support the claim that the therapy is necessary for the child's health or safety. The court shall, upon receipt of the petition, appoint counsel to defend against the petition, and the petition shall be served personally upon both the child and the child's attorney.

History.
Acts 1976, ch. 489, § 1; 1978, ch. 877, §§ 1, 2; T.C.A., §§ 33-320, 33-3-201(c); Acts 2000, ch. 947, §§ 1, 6.

33-8-308. Electroconvulsive therapy upon child — Independent psychiatric evaluation required.

Whenever authorization is sought for the administration to a child of electroconvulsive or other convulsive therapy, the court shall appoint an independent psychiatrist who shall receive reimbursement in an amount fixed by the court. No electroconvulsive or other convulsive therapy may be authorized for a child except upon the testimony of an independent psychiatrist, who is child and adolescent certified by the American Board of Psychiatry and Neurology, that the psychiatrist has examined the child and is of the opinion that the therapy is necessary for the child's health or safety.

History.
Acts 1976, ch. 489, § 1; 1978, ch. 877, §§ 1, 2; T.C.A., §§ 33-320, 33-3-201(d); Acts 2000, ch. 947, §§ 1, 6.

33-8-309. Electroconvulsive therapy — Petition to court.

(a) Electroconvulsive or other convulsive therapy may be initiated prior to a court hearing under §§ 33-8-305 — 33-8-313, if the petitioner files a petition with the court having jurisdiction of the child's commitment

under chapter 6, part 5 of this title, if the proceeding is pending, or otherwise files a petition in the juvenile court where the child resides, was committed to state custody, or may be found.

(b) The petition shall be verified by the mental health professional, hospital or treatment resource seeking authorization to administer the therapy and shall state the nature of the therapy for which authorization is sought, and the facts upon which the petitioner relies to support the claim that it has been determined under § 33-8-302 that the convulsive therapy may be necessary for the child.

(c)(1) Attached to the petition shall be an affidavit from a child psychiatrist, who shall be child and adolescent certified by the American Board of Psychiatry and Neurology, stating that:

(A) It has been determined under § 33-8-302 that the convulsive therapy may be necessary for the child; and

(B) There is insufficient time to complete the procedure provided by §§ 33-8-305—33-8-313, and therefore treatment prior to a court hearing is necessary.

(2) The affidavit shall provide the specific factual, medical and clinical basis supporting the requirements of this section.

(d) The child psychiatrist shall personally examine the child within twenty-four (24) hours of the filing of the petition.

(e) The child psychiatrist shall not be in a professional practice or association with the attending physician, nor have any direct financial interest in any private hospital or treatment resource in which the child is to be detained or receive therapy.

(f) If the petition and affidavit have been filed in conformity with this section, electroconvulsive or other convulsive therapy may be initiated. Electroconvulsive or other convulsive therapy shall be discontinued immediately when any of the conditions required under §§ 33-8-302(1) and (2) and 33-8- 303(1) that justified the therapy are no longer true.

History.
Acts 1976, ch. 489, § 1; 1978, ch. 877, §§ 1, 2; T.C.A., §§ 33-320, 33-3-201(g)(1), (2); Acts 2000, ch. 947, §§ 1, 6.

33-8-310. Counsel required for hearing.

(a) The court hearing upon a petition under §§ 33-8-305 — 33-8-313 shall be held within seven (7) calendar days of the filing of the petition. Upon the filing of the petition, the court shall appoint counsel to represent the child at the hearings, unless the child already has an attorney due to a pending commitment under chapter 6, part 5 of this title. The petition shall be served personally upon both the child and the child's attorney.

(b) The child's attorney shall not in any case be a person who has previously advised the parties seeking authorization to administer electroconvulsive therapy or other convulsive therapy, nor shall the attorney be a person who has previously advised the child's parents, the parent's business, the child's legal guardian, or the legal guardian's business.

(c) The court-appointed independent psychiatrist or the child psychiatrist whose affidavit accompanied a petition filed under § 33-8-309 shall be a witness at the hearing. The child psychiatrist's testimony may be used in place of a court-appointed independent psychiatrist. The psychiatrist's testimony shall not be regarded as conclusive, and the court shall consider any other evidence, including other expert testimony, offered in opposition to the authorization of the therapy.

History.
Acts 1976, ch. 489, § 1; 1978, ch. 877, §§ 1, 2; T.C.A., §§ 33-320, 33-3-201(d), (g)(3); Acts 2000, ch. 947, §§ 1, 6.

33-8-311. Conduct of hearing.

(a) At the hearing the court shall determine:

(1) If therapy was administered under § 33-8-309, whether retrospectively all of the standards for initiating therapy under § 33-8-309 prior to a court hearing were fully complied with, and if not, which standards were not met; and

(2) Whether prospectively electroconvulsive or other convulsive therapy is necessary for the child's health or safety.

(b) Nothing in §§ 33-8-305 — 33-8-313 shall be construed to modify or alter §§ 33-8-315 or 33-8-316.

History.
Acts 1976, ch. 489, § 1; 1978, ch. 877, §§ 1, 2; T.C.A., §§ 33-320, 33-3-201(g)(4), (5); Acts 2000, ch. 947, §§ 1, 6.

33-8-312. Hearing costs.

Under §§ 33-8-305 — 33-8-313, if the child is indigent and is not in the custody of the department of children's services, the department shall reimburse the attorney for the petitioner, the attorney and the guardian ad litem appointed by the court for the child, and the psychiatrist who testifies at the hearing, whether the board-certified child psychiatrist under § 33-8-309 or the court-appointed independent psychiatrist under § 33-8-308, in an amount fixed by the court. The department shall pay all court costs under §§ 33-8-305 — 33-8-313 if the child is indigent and is not in the custody of the department of children's services.

History.
Acts 1976, ch. 489, § 1; 1978, ch. 877, §§ 1, 2; T.C.A., §§ 33-320, 33-3-201(i); Acts 2000, ch. 947, §§ 1, 6; 2010, ch. 1100, § 24.

Compiler's Notes.
Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health (now commissioner of mental health and substance abuse services), the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

33-8-313. Appeal.

Any decision of the court under §§ 33-8-305 — 33-8-313 shall be reviewable de novo upon expedited appeal to the circuit court, and the decision of the court from

which an appeal is taken shall be stayed pending disposition of the appeal in circuit court.

History.
Acts 1976, ch. 489, § 1; 1978, ch. 877, §§ 1, 2; T.C.A., §§ 33-320, 33-3-201(e); Acts 2000, ch. 947, §§ 1, 6.

33-8-314. Report on use of convulsive therapies.

The department shall report annually to the statewide planning and policy council on the use of electroconvulsive and other convulsive therapies.

History.
Acts 2000, ch. 947, § 1.

33-8-315. Lobotomies upon children prohibited.

Lobotomies for intervention or alteration of a mental, emotional or behavioral disorder shall not be performed on children, and the courts of this state are prohibited from ordering or authorizing the performance of the procedure upon any child.

History.
Acts 1976, ch. 489, § 1; 1978, ch. 877, §§ 1, 2; T.C.A., §§ 33-320, 33-3-201(f); Acts 2000, ch. 947, §§ 1, 6.

33-8-316. Child's rights not to be waived.

A child may not waive any right created by this part, nor may the right be waived by any other person acting on the child's behalf.

History.
Acts 1976, ch. 489, § 1; 1978, ch. 877, §§ 1, 2; T.C.A., §§ 33-320, 33-3-201(h); Acts 2000, ch. 947, §§ 1, 6.

CHAPTER 10

COMPREHENSIVE ALCOHOL AND DRUG TREATMENT ACT OF 1973

Part 5. Comprehensive Alcohol, Tobacco and Other Drug Prevention Program Act

SECTION.
33-10-501. Short title.
33-10-502. Part definitions.
33-10-503. Creation of the comprehensive alcohol, tobacco and other drug prevention program grant.
33-10-504. Grants for tools to aid youth in resisting pressure to use alcohol, tobacco and drugs.
33-10-505. Duties of commissioner.
33-10-506. Authority.

PART 5

COMPREHENSIVE ALCOHOL, TOBACCO AND OTHER DRUG PREVENTION PROGRAM ACT

33-10-501. Short title.

This part shall be known and may be cited as the "Comprehensive Alcohol, Tobacco and Other Drug Prevention Program Act."

History.
Acts 2005, ch. 484, § 2; 2009, ch. 186, § 40; T.C.A. § 68-1-601.

33-10-502. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Commissioner" means the commissioner of mental health and substance abuse services; and

(2) "Department" means the department of mental health and substance abuse services.

History.
Acts 2005, ch. 484, § 3; 2009, ch. 186, § 41; T.C.A. § 68-1-602; Acts 2010, ch. 1100, § 24; 2012, ch. 575, §§ 1, 2.

Compiler's Notes.
Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health (now commissioner of mental health and substance abuse services), the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

33-10-503. Creation of the comprehensive alcohol, tobacco and other drug prevention program grant.

There is created, within the department, the comprehensive alcohol, tobacco and other drug prevention program grant.

History.
Acts 2005, ch. 484, § 4; 2009, ch. 186, § 42; T.C.A. § 68-1-603; Acts 2010, ch. 1100, § 24.

Compiler's Notes.
Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health (now commissioner of mental health and substance abuse services), the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

33-10-504. Grants for tools to aid youth in resisting pressure to use alcohol, tobacco and drugs.

(a) Subject to the availability of funding in the general appropriations act, grants shall be provided in such amounts as determined by the commissioner to organizations that have or that develop a resistance training/social skills program to provide the necessary tools to the youth of this state, to aid them in successfully resisting peer and media pressures to use alcohol, tobacco and other drugs and to understand the physical and social changes taking place in their lives.

(b) In order to qualify for a grant, the components of a program offered by an organization must, at a mini-

mum, have:

(1) An in-service training that provides staff and volunteers with an overview of the program and suggests ways to incorporate the prevention message into any other programs offered by the organization;

(2) A skills development program for boys and girls six (6) to nine (9) years of age. The program focus on this age group shall be on self-awareness, decision-making and interpersonal skills, while communicating age-appropriate information about alcohol, tobacco and other drugs;

(3) A resistance skills program for youth nine (9) to twelve (12) years of age that focuses on ways to identify and resist peer, social and media pressures to use alcohol, tobacco and other drugs;

(4) A social skills program for adolescents thirteen (13) to fifteen (15) years of age, that teaches resistance skills, stresses reduction techniques, communication skills, assertiveness training and life planning and that provides accurate information about alcohol, tobacco and other drug use;

(5) A program for parents that emphasizes communication skills and factual information about alcohol, tobacco and other drug use; and

(6) A plan that implements community service projects in which youth and adults work as a team, the end result of which enhances the self-esteem of the participating youth and gives them a sense of accomplishment and a sense of belonging to the community.

(c) If the program of an organization provides some, but not all, of these components, then, in the discretion of the commissioner, the organization may qualify for a percentage of the grant that equates to the percentage of the components the organization offers.

History.
Acts 2005, ch. 484, § 5; 2009, ch. 186, § 43; T.C.A. § 68-1-604.

33-10-505. Duties of commissioner.

The commissioner shall develop:

(1) The criteria for determining how available funds for grants shall be disbursed to qualifying organizations; and

(2) The application and appeals process for issuing the grants.

History.
Acts 2005, ch. 484, § 6; 2009, ch. 186, § 44; T.C.A. § 68-1-605.

33-10-506. Authority.

The commissioner is authorized to take any necessary action, subject to this title, in order to effectuate the purposes of this part.

History.
Acts 2005, ch. 484, § 6; 2009, ch. 186, § 45; T.C.A. § 68-1-606.

TITLE 34

GUARDIANSHIP

CHAPTER 1

GUARDIANSHIPS AND CONSERVATORSHIPS GENERALLY

SECTION.

34-1-101. Chapter 1-3 definitions.
34-1-102. Parents as joint and equal natural guardians of minors — Custody of minors — Support of minors over eighteen (18) years of age in high school — Property of minor — Incapacity of parents — Divorce — Commitment of guardianship to county — Guardianship instrument.
34-1-103. Duties of department of children's services when no natural guardian, or child abandoned.
34-1-104. Letters of guardianship or conservatorship — Disposition of funds of minor under $20,000 — Discharge of paying entities — Order of distribution — Distribution of funds.
34-1-105. Bond.
34-1-106. Petition for appointment of fiduciary.
34-1-107. Guardian ad litem.
34-1-108. Hearings on petitions — Notice.
34-1-109. When fiduciary's appointment becomes effective — Evidence of appointment — Liability — Fiduciary oath.
34-1-110. Management of property — Inventory — Filing — Failure to file or appear — Revocation of authority.
34-1-111. Accounting with court — Failure to account.
34-1-112. Compensation to fiduciary.
34-1-113. Payments by fiduciary.
34-1-114. Charging of costs of proceedings.
34-1-115. Investments — Management plan — Court approval — Waiver.
34-1-116. Sale of property.
34-1-117. Resignation of fiduciary — Transfer of fiduciary relationship.
34-1-118. Persons receiving property — Receipt for property — Filing.
34-1-119. Standby fiduciary.
34-1-120. When people may be appointed fiduciary — Eligible persons.
34-1-121. Powers of court — Additional actions — Waiver of requirements — Compromise.
34-1-122. Distributions to persons other than minor — Gift program.
34-1-123. Summons to appear for abuse, mismanagement or failure to perform — Removal — Submission of matter to district attorney general's office.
34-1-124. No fiduciary appointed — Expunction of record.
34-1-125. Attorney ad litem.
34-1-126. Finding of disablement and need of assistance prerequisite for appointment of fiduciary.
34-1-127. Least restrictive alternative to be imposed.
34-1-128. Duties of court clerk — Records — Index — Deadlines — Notices and summons.
34-1-129. Letters of conservatorship or guardianship — Limited.
34-1-130. Forms or instructions — Inventory, receipts and expenditures.
34-1-131. Examination of annual accounting — Report to judge.
34-1-132. Appointment of emergency guardian or conservator.
34-1-133. Expedited limited healthcare fiduciary.

34-1-101. Chapter 1-3 definitions.

As used in this chapter and chapters 2 and 3 of this title, unless the context otherwise requires:

(1) "Adversary counsel" means a private lawyer hired by a respondent to represent the respondent's interest in any action under this chapter and chapters 2 and 3 of this title;

(2) "Attorney ad litem" means an attorney appointed by the court to act as counsel for the respondent;

(3) "Closest relative" or "closest relatives" means the person or persons who are in the level of intestate heirs nearest to the respondent under the Tennessee laws of intestate succession. If there are two (2) or more closest relatives, all such persons shall be treated equally;

(4)(A) "Conservator" or "co-conservators" means a person or persons or an entity appointed by the court to exercise the decision-making rights and duties of the person with a disability in one or more areas in which the person lacks capacity as determined and required by the orders of the court;

(B) "Conservatorship" is a proceeding in which a court removes the decision-making powers and duties, in whole or in part, in a least restrictive manner, from a person with a disability who lacks capacity to make decisions in one or more important areas and places responsibility for one or more of those decisions in a conservator or co-conservators;

(5) "Corporate surety" means a corporation admitted to do business in the state and licensed under title 56, chapter 2;

(6) "Court" means any court having jurisdiction to hear matters concerning guardians or conservators;

(7) "Fiduciary" means a guardian, coguardian, conservator or co-conservator;

(8) "Financial institution" means a bank as defined by § 45-2-107, a savings and loan association as defined by § 45-3-104, a credit union subject to title 45, chapter 4, or a nonprofit general welfare corporation as defined in § 45-2-105;

(9) "Guardian" or "coguardian" means a person or persons appointed by the court to provide partial or full supervision, protection and assistance of the person or property, or both, of a minor;

(10) "Guardian ad litem" means a person meeting the qualifications set forth in § 34-1-107(c) appointed by the court to investigate the allegations in a petition, perform the duties set forth in § 34-1-107(d) and report to the court with recommendations as to the best interests of the respondent;

(11) "Minor" means any person who has not attained eighteen (18) years of age and who has not otherwise been emancipated;

(12) "Person" means any individual, nonhuman entity or governmental agency;

(13) "Person with a disability" means any person eighteen (18) years of age or older determined by the court to be in need of partial or full supervision, protection, and assistance by reason of mental illness, physical illness or injury, developmental disability, or other mental or physical incapacity;

(14) "Physician" means a medical doctor or doctor of osteopathic medicine who is licensed to practice medicine in the state of Tennessee;

(15) "Property management plan" means the plan submitted by the fiduciary for the investment and management of the property of a minor or person with a disability;

(16) "Psychologist" means a psychologist who is licensed to practice in the state of Tennessee; and

(17) "Respondent" means a person who is a minor or is alleged to be a person with a disability for whom a fiduciary is being sought.

History.

Acts 1992, ch. 794, § 2; 1994, ch. 901, § 4; 1996, ch. 811, § 1; T.C.A. § 34-11-101; Acts 2010, ch. 831, § 1; 2013, ch. 435, §§ 2-6.

Compiler's Notes.

Former ch. 1, §§ 34-1-101 — 34-1-107 (Acts 1859-1860, ch. 99, §§ 1, 2; 1899, ch. 177, § 1; Shan., §§ 4256, 4257, 5868a1; Acts 1923, ch. 41, §§ 1-3; 1927, ch. 79, § 1; mod. Code 1932, §§ 8463-8466, 8472, 8473, 10070; 1951, ch. 23, § 1; 1951, ch. 148, § 1 (Williams, § 8476); 1955, ch. 137, § 1; 1957, ch. 102, § 1, 1959, ch. 147, § 1; 1961, ch. 337, §§ 1, 2; 1963, ch. 48, § 1; 1972, ch. 612, § 3; impl. am. Acts 1975, ch. 219, § 1; Acts 1976, ch. 675, § 1; 1978, ch. 523, §§ 1, 2; 1978, ch. 662, § 1; T.C.A. (orig. ed.), §§ 34-101 — 34-103, 34-105, 34-106, 34-108, 34-109; Acts 1984, ch. 668, § 1; 1985, ch. 140, § 30; 1991, ch. 181, § 1), concerning general provisions for guardians, was repealed by Acts 1992, ch. 794, § 1, effective January 1, 1993.

Acts 2013, ch. 435, § 48 provided that the act, which amended this section, shall apply to actions commenced on or after July 1, 2013.

Acts 1992, ch. 794, § 52 provided that for each existing guardian or conservator, the provisions of this chapter shall be effective for any act required to be done by the fiduciary and due on or after January 1, 1993; and that each existing limited guardian shall become a guardian or conservator as the case may be, with limited powers on January 1, 1993.

34-1-102. Parents as joint and equal natural guardians of minors — Custody of minors — Support of minors over eighteen (18) years of age in high school — Property of minor — Incapacity of parents — Divorce — Commitment of guardianship to county — Guardianship instrument.

(a) Parents are the joint natural guardians of their minor children, and are equally and jointly charged with their care, nurture, welfare, education and support and also with the care, management and expenditure of their estates. Each parent has equal powers, rights and duties with respect to the custody of each of their minor children and the control of the services and earnings of each minor child; provided, that so much of the net income of each minor child as may be necessary may be expended by a parent (without the necessity of court authorization) for the child's care, maintenance and education. Funds of a minor held by a guardian shall not be expended to relieve or minimize the obligation of the parent or parents to support the minor.

(b) Parents shall continue to be responsible for the support of each child for whom they are responsible after the child reaches eighteen (18) years of age if the child is in high school. The duty of support shall continue until the child graduates from high school or the class of which the child is a member when the child attains eighteen (18) years of age graduates, whichever occurs first.

(c) If either parent dies or is incapable of acting, the guardianship of each minor child shall devolve upon the other parent.

(d) If the parents of a minor child are divorced, the court may award the guardianship of the property of the minor child to the parent who, in the court's judgment, would best serve the welfare of the minor child and the child's estate. The parent appointed guardian of the child's estate may, but does not have to be, the parent with legal custody. The appointment of a parent as legal guardian does not affect the custodial decree of the divorce court except in those situations in which the guardianship of the minor or legal custody is committed to the department of children's services, in which case the order of the court having jurisdiction of the guardian proceedings or custodial proceedings under title 37 shall control.

History.
Acts 1992, ch. 794, § 3; 1996, ch. 1079, § 67; T.C.A. § 34-11-102.

34-1-103. Duties of department of children's services when no natural guardian, or child abandoned.

(a) When there is no natural guardian of a minor or when a minor has been abandoned and if the minor requires service from the department of children's services, the duly authorized agent of the commissioner of children's services of the county in which the minor resides may act as the custodian of the person of the minor with the powers as enumerated in § 37-1-140, until a guardian is appointed.

(b) The guardianship of the minor may be committed to the duly authorized agent of the commissioner by an instrument in writing signed:

(1) If both parents are then living, by the parents of the child or, if either parent of the child is dead, by the surviving parent;

(2) If either one (1) of the parents has abandoned or neglected to provide for the minor for a period of six (6) months, by the other parent; or

(3) If the minor is born out of wedlock, by the mother of such minor.

(c) The guardianship shall be in accordance with this section and the instrument shall be upon the terms, time and conditions agreed upon by the parties.

(d) The instrument shall be:

(1) Signed;

(2) Acknowledged before a notary public or county clerk; and

(3) Recorded in the office of the county clerk in the county where the instrument is executed, where the minor is residing, or where the county office of the department of children's services is located.

History.
Acts 1992, ch. 794, § 4; 1996, ch. 1079, §§ 67, 68; T.C.A. § 34-11-103.

34-1-104. Letters of guardianship or conservatorship — Disposition of funds of minor under $20,000 — Discharge of paying entities — Order of distribution — Distribution of funds.

(a) Except as provided in subsections (b) and (c), no person shall undertake the administration of the estate of a minor or person with a disability until the person has been issued letters of guardianship or letters of conservatorship; provided, that no guardian or conservator shall be appointed if the property of the minor or person with a disability is deposited with the clerk of the court subject to distribution on order of the court. The letters of conservatorship shall either:

(1) Recite the specific powers to be exercised by the conservator and the specific powers retained by the person with a disability; or

(2) Have attached to them the order or orders of the court specifying the powers to be exercised by the conservator and the powers retained by the person with a disability.

(b) If the total property of a minor or person with a disability does not exceed the sum of twenty thousand dollars ($20,000) and the court determines it is in the best interest of the minor or person with a disability, the court may order any person holding property belonging to the minor or person with a disability to deliver all or any part of the money or property, without the necessity of the appointment of a fiduciary, to the natural guardian or guardians of the minor or to the person with whom the minor or person with a disability resides or to the person with a disability. Notwithstanding any law to the contrary, if the guardians of the minor are the parents of the minor and are divorced or legally separated from each other, the court may order that the funds be delivered, all or in part, to either of the parents if the court finds that such order would best serve the welfare of the minor. The receipt by any of these persons of the money or property discharges the paying entity from further liability. To bring the matter before the court, any person may petition the court for an order of distribution. The petition shall set forth the information required by § 34-2-104 and § 34-3-104, except the petition shall request distribution according to this section instead of the appointment of a fiduciary. The court may appoint a guardian ad litem to assist it in determining the best interest of the minor or person with a disability.

(c) In any judicial proceeding in which any fund or part of the fund is decreed to belong to a minor or person with a disability, or in which there is a recovery

in favor of a minor or person with a disability, the court trying the case may retain the fund or recovery or part of the fund or recovery to be disbursed by the clerk and master or clerk of the court for the support, maintenance or education of the minor or person with a disability under the orders of the court; provided, that the fund or part of the fund or the amount of the recovery does not exceed the sum of twenty thousand dollars ($20,000) and the minor is without a legal guardian; and provided further, that the court, in its discretion, may direct the fund to be paid to the natural guardian of the minor or the other person having the care and custody of the minor or person with a disability to be applied for the support, maintenance or education of the minor or person with a disability, subject to such terms and conditions as the court may impose.

History.
Acts 1992, ch. 794, § 5; 1994, ch. 855, § 1; T.C.A. § 34-11-104; Acts 2008, ch. 958, § 1; 2008, ch. 1204, § 1; 2013, ch. 435, §§ 7, 46.

Compiler's Notes.
Acts 2013, ch. 435, § 48 provided that the act, which amended this section, shall apply to actions commenced on or after July 1, 2013.

34-1-105. Bond.

(a)(1) Except as otherwise provided in subsection (b), bond shall be required of the fiduciary in an amount equal to the sum of the fair market value of all personal property and the amount of the anticipated income from all property, including the real property, for one (1) year. If the surety for the bond is posted by a corporate surety, the amount of the surety shall equal the amount of the bond. If the surety for the bond is posted by pledging property, the value of the unencumbered property posted shall be equal to one hundred fifty percent (150%) of the bond.

(2) If the property pledged to secure the bond is personal property, the property shall be delivered to the clerk for safekeeping. If the property pledged to secure the bond is real property, notice of the pledge shall be recorded in the register's office of the county in which the real property is located.

(3) The bond shall be renewed annually by the fiduciary. The court may adjust the amount of required bond to reflect changes in the value of the property of the minor or person with a disability. The surety's liability under the bond shall not be cumulative and shall not exceed the amount of the bond in force at the time of default.

(b) In the discretion of the court, bond may be excused if the court makes a finding, which finding shall be stated in the order, that the requirement of bond would be unjust or inappropriate in that case and that one (1) of the following exists:

(1) The fiduciary is a financial institution excused from the requirement of bond under § 45-2-1005;

(2) The total fair market value of the minor's non-real estate property or the person with a disability's non-real estate property does not exceed the sum of ten thousand dollars ($10,000) and the court finds the benefit to the ward by saving the expense outweighs the risks incident to the absence of a bond;

(3) The document naming the suggested or preferred fiduciary excuses the fiduciary from posting bond;

(4) The property of the minor or person with a disability is placed with a financial institution and the fiduciary and the financial institution enter into a written agreement, filed with the court, in which the financial institution agrees it will not permit the fiduciary to withdraw the principal without court approval;

(5) The property of the minor or person with a disability is deposited with the clerk and master or clerk of the court; or

(6) The fiduciary is appointed fiduciary over the person of the minor or person with a disability but has not also been appointed as fiduciary over the person's estate.

History.
Acts 1992, ch. 794, § 6; T.C.A. § 34-11-105; 2013, ch. 435, §§ 38, 46.

Compiler's Notes.
Acts 2013, ch. 435, § 48 provided that the act, which amended this section, shall apply to actions commenced on or after July 1, 2013.

34-1-106. Petition for appointment of fiduciary.

(a) The petition for the appointment of a fiduciary shall be served in accordance with the Tennessee Rules of Civil Procedure. The guardian ad litem appointed may serve the petition on the respondent.

(b) Notice by certified mail with return receipt requested shall be given by the clerk of the court to the closest relative or relatives of the respondent required to be named in the petition and to the person, if any, having care or custody of the respondent, institution, or residential provider with whom the respondent is living.

History.
Acts 1992, ch. 794, § 7; 1994, ch. 855, § 2; T.C.A. § 34-11-106; Acts 2007, ch. 8, § 7; 2013, ch. 435, § 8.

Compiler's Notes.
Acts 2013, ch. 435, § 48 provided that the act, which amended this section, shall apply to actions commenced on or after July 1, 2013.

34-1-107. Guardian ad litem.

(a)(1) The court may appoint a guardian ad litem in any proceeding and, except as provided in this section, shall appoint a guardian ad litem on filing of a petition for appointment of a fiduciary. If the respondent is represented by counsel who has made an appearance for the respondent, the court may appoint or continue the services of a guardian ad litem or may waive appointment or terminate the services of a guardian ad litem in the best interests of the respondent.

(2) The court may waive the appointment of a guardian ad litem if the petitioner or at least one (1) of the petitioners for the appointment is:

(A) A parent of the minor for whom a guardian is sought;

(B) A minor who has attained fourteen (14) years of age; or

(C) An adult respondent.

(3) The court may waive the appointment of a guardian ad litem if the court determines the waiver is in the best interests of the minor or person with a disability.

(b) If the guardian ad litem is to be appointed, the appointment shall be made no later than ten (10) days from the date the petition for the appointment of the fiduciary was filed.

(c) The person appointed guardian ad litem shall be a lawyer licensed to practice in the state of Tennessee. If there are insufficient lawyers within the court's jurisdiction for the appointment of a lawyer as guardian ad litem, the court may appoint a nonlawyer.

(d)(1) The guardian ad litem owes a duty to the court to impartially investigate the facts and make a report and recommendations to the court. The guardian ad litem serves as an agent of the court, and is not an advocate for the respondent or any other party.

(2) In each proceeding, the guardian ad litem shall:

(A) Verify that the respondent and each other person required to be served or notified was served or notified;

(B) Consult with the respondent in person as soon as possible after appointment;

(C) If possible, explain in language understandable to the respondent the:

(i) Substance of the petition;

(ii) Nature of the proceedings;

(iii) Respondent's right to protest the petition;

(iv) Identity of the proposed fiduciary; and

(v) Respondent's rights as set forth in § 34-3-106; and

(D) Make a report and recommendations to the court concerning the issues of:

(i) Whether a fiduciary should be appointed for the respondent;

(ii) If a fiduciary should be appointed, whether the proposed fiduciary is the appropriate person to be appointed; and

(iii) Any other matters as directed by the court.

(3) In a proceeding for the appointment of a conservator, the guardian ad litem shall investigate the physical and mental capabilities of the respondent. The guardian ad litem's investigation shall include:

(A) An in-person interview with the respondent; and

(B) A review of the sworn report required by § 34-3-105 to verify that the sworn statement contains:

(i) A detailed description of the respondent's physical or mental conditions or both that may render the respondent a person with a disability; and

(ii) A detailed description of how the respondent's physical or mental conditions or both may impair the respondent's ability to function normally.

(4) In a proceeding seeking the appointment of a fiduciary to manage the respondent's property, the guardian ad litem shall investigate the:

(A) Nature and extent of the respondent's property; and

(B) Financial capabilities and integrity of the proposed fiduciary. In evaluating the financial capabilities of the proposed fiduciary, the guardian ad litem may take such actions as directed by the court and as the guardian ad litem deems necessary, which may include but are not limited to:

(i) Obtaining and reviewing the proposed fiduciary's credit report;

(ii) Inquiring into whether and to what extent the proposed fiduciary has previous experience in managing assets of the same or similar type and value as the respondent's assets;

(iii) Inquiring into how the proposed fiduciary plans to manage the respondent's assets;

(iv) Inquiring into whether the proposed fiduciary has previously borrowed funds from the respondent or received any financial assistance or benefits from the respondent; and

(v) Interview any persons with knowledge and review any documents pertinent to the financial capabilities and integrity of the proposed fiduciary.

(e) The order appointing the guardian ad litem shall authorize the guardian ad litem access to records of the respondent in any financial institution and to review medical records, and permit the guardian ad litem to discuss the respondent's physical and mental conditions with any physician, psychologist or other health care provider who may have pertinent information.

(f) The guardian ad litem shall make a written report to the court at least three (3) days prior to the date set for hearing the matter, which time period may be waived in the judge's discretion. The written report shall provide the court with the results of the guardian ad litem's investigation. The guardian ad litem's report shall specifically state whether:

(1)(A) The respondent wants to contest:

(i) The need for a fiduciary;

(ii) Merely the person to be the fiduciary; or

(iii) Neither;

(B) If the respondent wants to contest any portion of the proceeding and the guardian ad litem's opinion is that there should be a fiduciary appointed, the guardian ad litem shall identify the adversary counsel or indicate there is none and request the appointment of an attorney ad litem;

(2) A fiduciary should be appointed and, if so, whether:

(A) The proposed fiduciary should be appointed; or

(B) Someone else, identified by the guardian ad litem, should be appointed;

(3) The proposed property management plan should be adopted and, if not, what changes should be considered.

(4) The respondent will attend the hearing and, if, in the opinion of the guardian ad litem, it is not in the respondent's best interest to attend, why.

(g) Unless the court orders otherwise, the guardian ad litem has no continuing duty once an order has been entered disposing of the petition that caused the guardian ad litem's appointment.

(h) When investigating financial records of a respondent, the guardian ad litem shall be the customer within the meaning set forth in title 45, chapter 10, known as the Financial Records Privacy Act.

History.
Acts 1992, ch. 794, § 8; T.C.A. § 34-11-107; Acts 2004, ch. 771, § 1; 2007, ch. 26, § 1; 2013, ch. 435, §§ 9-13, 46.

Compiler's Notes.
Acts 2013, ch. 435, § 48 provided that the act, which amended this section, shall apply to actions commenced on or after July 1, 2013.

34-1-108. Hearings on petitions — Notice.

(a) Except as provided in subsection (b), the hearing on a petition shall be held not less than seven (7) nor more than sixty (60) days from the date of service on the respondent or the date the guardian ad litem was appointed, whichever is later. The hearing date may be extended on motion showing good cause.

(b) If the petition alleges the minor or person with a disability is faced with a life threatening situation, the court may schedule the hearing in less than seven (7) days from the date of service on the respondent; provided, that actual notice of the hearing is given to the closest relative and the respondent.

(c)(1) In a proceeding for the appointment of a conservator, a notice of the hearing shall be served on the respondent and any person, institution or residential provider having care or custody of the respondent by the guardian ad litem or as otherwise authorized under the Tennessee Rules of Civil Procedure. The notice of hearing shall be substantially in the following form:

IN THE _____ COURT OF _____,
TENNESSEE
AT _____
IN THE MATTER OF

_____ No. _____
Respondent

NOTICE OF HEARING

TO: _____
SERVICE ADDRESS _____
_____

You are notified that a petition has been filed, a copy of which is attached, in which it is alleged that you are incapable of caring for yourself or disabled from managing your property, or both. The petition seeks the appointment of a conservator for your person or property, or both. The court, being satisfied that there is good cause for the exercise of jurisdiction as to the matters alleged in the petition, has set a hearing on _____ at _____ o'clock in the offices or the courtroom of the Honorable _____, judge of this court.

The court has appointed a guardian ad litem to investigate these matters and make a report to the court. The guardian ad litem is charged with asserting your best interests and making recommendations, consistent with law, as to what action should be taken in your best interests. The name, address and telephone number of the guardian ad litem is:

_____
_____
_____
_____

A list of your rights in connection with the above described hearing is attached or printed on the reverse side of this notice.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the court at my office on _____.

_____
Clerk and Master or Clerk

(2) The notice shall contain on the reverse side or on an attached sheet those rights set out in § 34-3-106.

(3) The notice shall also be served upon the closest relative or relatives of the respondent, as such persons are described in title 31, chapter 2, but not including the petitioner, and upon the person or institution, if any, having care and custody of the respondent or with whom the respondent is living. Service by mail, sent to the last known address of such persons or institution, shall be sufficient for purposes of this subdivision (c)(3).

History.
Acts 1992, ch. 794, § 9; T.C.A. 34-11-108; 2013, ch. 435, §§ 14, 15, 46.

Compiler's Notes.
Acts 2013, ch. 435, § 48 provided that the act, which amended this section, shall apply to actions commenced on or after July 1, 2013.

34-1-109. When fiduciary's appointment becomes effective — Evidence of appointment — Liability — Fiduciary oath.

(a) On the entry of an order appointing the fiduciary, the administration of the oath as provided in subsection (b) and the posting of any required bond, the fiduciary's appointment becomes effective. The only effective evidence of appointment shall be duly issued letters of guardianship or conservatorship. Except for violations of § 39-14-101, the fiduciary shall have no liability for any act done pursuant to the order appointing the fiduciary between the date of the entry of the order and the date of the vacation of the order if the order is set aside on appeal.

(b) Before delivering the letters of guardianship or conservatorship, the clerk shall administer to the fiduciary an oath for the faithful performance of the fiduciary's duties. If the fiduciary is a fiduciary of the minor's or person with a disability's property, the fiduciary's faithful performance oath shall include a promise to timely file each required inventory and accounting and to spend the assets of the minor or person with a disability only as approved by the court. If there is more than one (1) fiduciary and any of the

fiduciaries is not a resident of the county in which the court supervising the proceedings is located, the oath of the non-resident fiduciary may be sworn or affirmed in the presence of a notary public and the acknowledgment of the fiduciary's oath, when certified by the notary public, shall be presented to the appropriate clerk. At least one (1) fiduciary's oath shall be taken by the clerk.

(c) The social security number of the respondent shall be given to the duly appointed fiduciary and used in any other manner approved by the court. The court may release the social security number to a third party upon good cause shown and upon conditions that the court may deem appropriate.

History.

Acts 1992, ch. 794, § 10; 1994, ch. 855, § 3; T.C.A. § 34-11-109; Acts 2004, ch. 866, § 11; 2007, ch. 26, § 2; 2013, ch. 435, §§ 34, 46.

Compiler's Notes.

Acts 2013, ch. 435, § 48 provided that the act, which amended this section, shall apply to actions commenced on or after July 1, 2013.

34-1-110. Management of property — Inventory — Filing — Failure to file or appear — Revocation of authority.

(a) If the fiduciary is to manage the property of the minor or person with a disability, within sixty (60) days after appointment, the fiduciary shall file a sworn inventory containing a list of the property of the minor or person with a disability, together with the approximate fair market value of each property and a list of the source, amount and frequency of each item of income, pension, social security benefit or other revenue. If the required information was included in the petition but not separately stated as an inventory, the inventory shall repeat the information provided in the petition and add any later discovered property or income sources.

(b) Unless the court has approved an extension of time for filing the inventory, if the fiduciary fails to file the inventory within the required time, the clerk shall promptly notify the fiduciary and the fiduciary's attorney of record. If after notice the inventory has not been filed thirty (30) days thereafter, the clerk shall cite the fiduciary to appear on a date certain and render the inventory. Upon failure to appear as cited, the fiduciary shall be summoned to appear before the court and show cause why the fiduciary should not be held in contempt.

(c) Unless the court has authorized an extension of time to file the inventory, if a fiduciary who has been summoned does not respond within thirty (30) days of the date the summons was received by the fiduciary, the court may enter an order revoking the fiduciary's authority and appointing a substitute fiduciary.

History.

Acts 1992, ch. 794, § 11; T.C.A. § 34-11-110; Acts 2013, ch. 435, § 46.

Compiler's Notes.

Acts 2013, ch. 435, § 48 provided that the act, which amended this section, shall apply to actions commenced on or after July 1, 2013.

34-1-111. Accounting with court — Failure to account.

(a) Except as provided in subsection (i), within thirty (30) days after the six-month anniversary of the fiduciary's date of appointment, the fiduciary shall file a sworn accounting with the court.

(b) Except as provided in subsection (i), within sixty (60) days after each anniversary of the accounting required in subsection (a) or any other end of an accounting period selected by the fiduciary after the subsection (a) accounting, the fiduciary shall file a sworn accounting with the court. To select an accounting period end other than the end of the month during which the fiduciary was appointed, the fiduciary shall file a statement with the clerk advising of the accounting period selected. The accounting period shall not exceed twelve (12) months.

(c) For good cause, the court may extend the time for filing the accounting.

(d)(1) The accounting shall itemize the receipts and the expenditures made during the period covered by the accounting. The same or similar items may be reported collectively. The accounting shall also detail the property held by the fiduciary at the end of the accounting period. To support the financial information reported, the fiduciary shall submit with the accounting:

(A) Each bank statement, brokerage statement or other document reporting any financial information;

(B) In connection with any accounting, to support the financial information reported, the fiduciary shall submit with the accounting the original of each cancelled check written on the account unless:

(i) The fiduciary is a bank to which § 45-2-1002(c) would apply or a savings and loan association or credit union to which § 45-2-1002(c) would apply if the savings and loan association or credit union were a bank, in which case the fiduciary shall comply with § 45-2-1002(c); or

(ii) The fiduciary account is maintained in a "financial institution" as defined in § 34-1-101, that does not return the cancelled checks but provides a printed statement showing the date the check cleared, the payee and the amount, in which case the fiduciary shall submit a printed statement from the financial institution.

(C) A copy of any United States and Tennessee income tax returns filed on behalf of the minor or person with a disability. If no United States or Tennessee income tax return is due, the fiduciary shall include a statement in the accounting that no such return is due and shall set forth the gross income of the minor or person with a disability, and include information from the Internal Revenue Code or Tennessee Code Annotated evidencing the availability of the claimed exemption; and

(D) If the bond is secured by a corporate surety, a statement from the corporate surety that the bond is in force for the next annual period. The

surety's liability under the bond shall not be cumulative and shall not exceed the sum of the bond in force at the time of default.

(2) The accounting shall contain a statement concerning the physical or mental condition of the person with a disability, which statement shall demonstrate to the court the need, or lack of need, for the continuation of the fiduciary's services.

(e) When the accounting has been confirmed, the clerk of the court shall return the original documentation required in subsection (c) to the fiduciary.

(f) Unless the court has approved an extension of time for filing the accounting, if the fiduciary fails to file the accounting within the required time, the clerk shall promptly notify the fiduciary and the fiduciary's attorney of record. If after notice the accounting has not been filed thirty (30) days thereafter, the clerk shall cite the fiduciary to appear on a date certain and render the accounting. Upon failure to appear as cited, the fiduciary shall be summoned to appear before the court and show cause why the fiduciary should not be held in contempt.

(g) Unless the court has authorized an extension of time to file the accounting, if a fiduciary who has been summoned does not respond within thirty (30) days of the date the summons was received by the fiduciary, the court may enter an order revoking the fiduciary's authority and appointing a substitute fiduciary.

(h) On the failure of the fiduciary to account, the fiduciary may be charged with the value of the assets at the beginning of the year. The amount shall accrue interest at the prejudgment rate and compound annually until a proper accounting is made and approved. On the issuance of a show cause order and the failure of the fiduciary to appear and explain, the court shall allow the entry of judgment against the fiduciary and the fiduciary's surety for the amount unaccounted for, plus interest. The fiduciary's surety shall be given adequate notice and may appear and make defense.

(i) Financial accountings may be excused in the discretion of the court, if the court makes a finding based on the evidence presented at a hearing that waiver of the accountings would be appropriate, would be in the best interest of the minor or person with a disability and that one (1) of the following exists:

(1) The fiduciary holds no property of the minor or person with a disability and receives only fixed periodic payments, including, but not limited to, social security, veterans benefits or workers' compensation benefits, and the order appointing the fiduciary authorizes the fiduciary to apply the entire periodic payment to the needs of the minor or person with a disability. The fiduciary holds no property of the minor or person with a disability if the property of the minor or person with a disability is:

(A) Deposited with the clerk and master or clerk of the court;

(B) Placed with a financial institution and the fiduciary and the financial institution enter into a written agreement, filed with the court, in which the financial institution agrees it will not permit the fiduciary to withdraw the principal without court approval; or

(2) The cost of the accounting would exceed twenty-five percent (25%) of the income produced by the property held by the fiduciary.

(3) Subdivision (d)(2) requiring a report regarding the physical or mental condition of the person with a disability may not be waived or excused.

(j) This section does not apply to accountings filed pursuant to § 34-5-111, relating to veterans' guardians. The provisions of this section related to financial accountings do not apply to fiduciaries who do not have authority over the property of the person with a disability.

History.

Acts 1992, ch. 794, § 12; 1994, ch. 855, §§ 4, 5, 16; 1998, ch. 762, § 3; T.C.A. § 34-11-111; Acts 2013, ch. 435, §§ 16-20, 46.

Compiler's Notes.

Acts 2013, ch. 435, § 48 provided that the act, which amended this section, shall apply to actions commenced on or after July 1, 2013.

34-1-112. Compensation to fiduciary.

(a) The fiduciary may receive reasonable compensation for services rendered. The court shall set the actual compensation to be paid, taking into account:

(1) The complexity of the property of the minor or person with a disability;

(2) The amount of time the fiduciary spent in performing fiduciary duties;

(3) Whether the fiduciary had to take time away from the fiduciary's normal occupation;

(4) Whether the services provided the minor or person with a disability are those the fiduciary should normally have provided had there been no need for a fiduciary, and

(5) Such other matters as the court deems appropriate.

(b) No person, other than a person performing temporary fiduciary services while a proceeding is pending, who has not been appointed by the court to serve as a fiduciary shall receive any compensation for fiduciary services; however, this does not preclude payment for the necessary care of the minor or person with a disability.

(c) No compensation to the fiduciary shall be paid without prior court approval.

History.

Acts 1992, ch. 794, § 13; T.C.A. § 34-11-112; Acts 2013, ch. 435, § 46.

Compiler's Notes.

Acts 2013, ch. 435, § 48 provided that the act, which amended this section, shall apply to actions commenced on or after July 1, 2013.

34-1-113. Payments by fiduciary.

(a) The fiduciary is entitled to pay from the property of the minor or person with a disability the costs of any required medical examination, the guardian ad litem fee, bond premium, court costs, attorney fees, fees for income tax preparation and court accountings, investment management fees, taxes or governmental charges for which the minor or person with a disability is

obligated and such other expenses as the court determines are necessary for the fiduciary. The fiduciary shall not pay any attorney fee, guardian ad litem fee, fees for income tax preparation and court accountings or investment management fees until the amount of those fees is approved by the court.

(b) Either prior to or after payment, the court may approve payments by the fiduciary from the property of the minor or person with a disability that are reasonable considering all relevant factors, are incurred by the fiduciary in good faith on behalf of the minor or person with a disability, and are intended to benefit or protect the minor or person with a disability or such person's property, whether or not an actual benefit or protection is ultimately in fact attained. Such requests and/or payments shall be reviewed by the court pursuant to fiduciary standards.

(c) All other expenses, including those that do not comply with the requirements of subsection (b), may be approved by the court, either prior to or after payment, upon a determination that they are reasonable and:

(1) They protected or benefited the minor or person with a disability or such person's property; or

(2) That their payment is in the best interest of the minor or person with a disability.

(d) For purposes of subsection (a), attorney fees shall include fees for preparing fiduciary fee applications and other related filings that are required to be submitted to the court including petitions to secure approval or reimbursement for any expenses paid by the fiduciary that meet the requirements of this section, provided that the amount of those fees is determined by the court to be reasonable in view of the services rendered.

(e) Notwithstanding any law to the contrary, the duty of the fiduciary appointed under this title shall not cease at the death of the person with a disability, but shall continue for the sole purpose of making reasonable and proper funeral arrangements for the disposition of the remains of the person with a disability, at death. Upon the death of the person with a disability, the fiduciary shall be allowed credits in the accounting for all reasonable expenses of the person with a disability's funeral. If the estate of the person with a disability has assets in an amount less than five thousand dollars ($5,000), the fiduciary may utilize this entire amount for payment of funeral expenses and will be given credit for the same in the final accounting.

History.

Acts 1992, ch. 794, § 14; 1994, ch. 855, § 6; 1997, ch. 319, § 1; T.C.A. § 34-11-113; Acts 2013, ch. 435, §§ 35, 46.

Compiler's Notes.

Acts 1997, ch. 319, § 2, provides that the amendment by that act shall apply to all appropriate expenditures incurred for the benefit of a minor or disabled person relative to guardianships created before, on or after May 29, 1997.

Acts 2013, ch. 435, § 48 provided that the act, which amended this section, shall apply to actions commenced on or after July 1, 2013.

34-1-114. Charging of costs of proceedings.

(a) The costs of the proceedings, which are the court costs, the guardian ad litem fee and expenses incurred by the guardian ad litem in conducting the required investigations, the required medical examination costs, and the attorney's fee for the petitioner, may, in the court's discretion, be charged against the property of the respondent to the extent the respondent's property exceeds the supplemental security income eligibility limit, or to the petitioner or any other party, or partially to any one or more of them as determined in the court's discretion. In exercising its discretion to charge some or all of the costs against the respondent's property, the fact a conservator is appointed or would have been appointed but for an event beyond the petitioner's control is to be given special consideration. The guardian ad litem fee and the attorney's fee for the petitioner shall be established by the court. If a fiduciary is cited for failure to file an inventory or accounting, the costs incurred in citing the fiduciary, in the discretion of the court, may be charged to and collected from the cited fiduciary.

(b) If the principal purpose for bringing the petition is to benefit the petitioner and there would otherwise be little, if any, need for the appointment of a fiduciary, the costs of the proceedings may be assessed against the petitioner, in the discretion of the court.

History.

Acts 1992, ch. 794, § 15; 1994, ch. 855, § 7; 1997, ch. 407, § 4; T.C.A. § 34-11-114; Acts 2012, ch. 917, § 1; 2013, ch. 435, § 21.

Compiler's Notes.

Acts 2013, ch. 435, § 48 provided that the act, which amended this section, shall apply to actions commenced on or after July 1, 2013.

34-1-115. Investments — Management plan — Court approval — Waiver.

(a) A fiduciary is limited in its investments to the investments permitted by title 35, chapter 3. All funds held by a fiduciary shall be invested within forty-five (45) days of receipt of the funds unless otherwise allowed by the court.

(b) Except as provided in subsection (d), at the hearing for the appointment of a fiduciary, the proposed fiduciary shall present an outline of the proposed property management plan for the respondent's property. If the proposed property management plan cannot be presented at the appointment hearing, the fiduciary shall submit the proposed property management plan to the court for approval before any property is invested. The purpose of the property management plan is to advise the court of the general type of property in which the respondent's property will be invested so the court will be assured the fiduciary will be making approved investments. The plan need not detail the individual asset or assets. For example, if the fiduciary plans to invest in certificates of deposit, the plan need only make that statement. It is not necessary to identify the individual institution or institutions whose certificates will be purchased.

(c) Except as provided in subsections (d) and (f), each fiduciary shall request court approval to change the nature of the fiduciary's investment or investments. Compliance with the preceding sentence does not require court approval to change the same type of investment from one institution to another. For example,

changing a certificate of deposit from one institution to another does not require court approval. Changing from one type of investment to another does require court approval. For example, changing from a certificate of deposit to traded stock would require court approval. If the fiduciary's property management plan describes proposed changes the fiduciary would make in response to economic and market conditions, the court may grant advance approval to make changes as described in the plan.

(d) If the fiduciary is a financial institution, it shall not be required to seek court approval to change any investment.

(e)(1) Notwithstanding any law to the contrary, no property management plan shall be required for the property of a minor or person with a disability if such property does not exceed twenty-five thousand dollars ($25,000) in value, unless, on the motion of any interested party, including the guardian ad litem, the court finds such plan would be in the best interest of such minor or person with a disability.

(2) If no plan is filed pursuant to subdivision (e)(1), the fiduciary's first accounting and all subsequent accountings shall state how the funds of the estate are invested and how the fiduciary proposes that the funds will be invested for the coming year.

(f)(1) A fiduciary may petition the court to waive the requirement to request court approval to change the nature of any investment described in the property management plan as required by subsection (c). The waiver shall be within the court's sole discretion, and the court may revoke the waiver at any time. In deciding upon the waiver, the court may consider the fiduciary's history as a conservator, the length of conservatorship, the number of years the fiduciary has acted as a conservator, and any other factors that the court deems proper. The court may require the conservator to obtain professional advice or assistance regarding the investment of excess funds.

(2) The court may approve the waiver request at a hearing for which all of the respondent's heirs at law or beneficiaries had notice and an opportunity to be heard regarding the proposed waiver and change of the nature of the fiduciary's investments.

(3) If a waiver is approved by the court, the waiver shall be reduced to a written order. The fiduciary shall at all times maintain a minimum balance of funds sufficient to cover anticipated costs of care of the respondent for a minimum of three (3) years.

(4) If a waiver is approved by the court, the fiduciary shall provide, in the accounting report required by § 34-1-111(b), a detailed outline of the investments made on behalf of the respondent and the current status of those investments. The purpose of the report is to assure the court that:

(A) The fiduciary maintains the minimum balance prescribed by the court;

(B) The fiduciary is responsibly investing the respondent's assets within the categories of investments approved in § 35-3-102;

(C) The investment strategy demonstrates reasonable diversification to limit the risk of loss in vested funds;

(D) There are no investments that would expose the respondent to any additional liability other than the possible depletion or loss of funds invested; and

(E) The fiduciary keeps the court informed as to any changes in investments.

History.

Acts 1992, ch. 794, § 16; 1994, ch. 855, § 8; 1996, ch. 880, § 2; T.C.A. § 34-11-115; Acts 2013, ch. 435, § 46; 2016, ch. 640, §§ 1, 2.

Compiler's Notes.

Acts 2013, ch. 435, § 48 provided that the act, which amended this section, shall apply to actions commenced on or after July 1, 2013.

34-1-116. Sale of property.

(a) Except as provided in subsections (b) and (d), no property of a minor or person with a disability may be sold without prior approval of the court that appointed the fiduciary.

(b) Unless the fiduciary is holding tangible property for the benefit of a minor or person with a disability pursuant to the terms of a will, trust or other written document, the fiduciary has the authority to sell each item of tangible property with a fair market value of less than one thousand dollars ($1,000) or a motor vehicle without specific court approval.

(c) No fiduciary, relative of a fiduciary, employee of a fiduciary, guardian ad litem or attorney for any party shall be a purchaser of property of the minor or person with a disability without court approval.

(d) This section shall not apply to any fiduciary who is not required to file a property management plan or who has had its investment plans approved as part of its property management plan.

(e) When the fiduciary seeks court approval for the sale of property, a copy of the pleading requesting approval of the sale shall be sent to the minor or person with a disability by certified mail with return receipt requested. Although not required, the court may appoint a guardian ad litem.

History.

Acts 1992, ch. 794, § 17; 1994, ch. 855, § 9; T.C.A. § 34-11-116; Acts 2013, ch. 435, § 46.

Compiler's Notes.

Acts 2013, ch. 435, § 48 provided that the act, which amended this section, shall apply to actions commenced on or after July 1, 2013.

34-1-117. Resignation of fiduciary — Transfer of fiduciary relationship.

(a) A fiduciary may resign by submitting a written request to the court. If the court approves and the fiduciary submits a final accounting that is approved, the resignation of the fiduciary shall be effective on the date set by the court.

(b) For minors, the court shall permit the transfer of the fiduciary relationship to another county, state or country if the court finds that either:

(1) The minor and the serving Tennessee fiduciary have both moved to another county, state or country

and the serving Tennessee fiduciary has been appointed the fiduciary in the other county, state or country; or

(2) Only the minor has moved to another county, state or country and a fiduciary other than the serving Tennessee fiduciary has been appointed the fiduciary in the other county, state or country.

(c) For minors, the procedure to seek the transfer of the fiduciary relationship jurisdiction to a court other than the Tennessee court currently supervising the fiduciary relationship shall be the following:

(1) The fiduciary, who may be the serving Tennessee fiduciary or the fiduciary appointed in the other jurisdiction, shall file a sworn petition in the Tennessee court currently supervising the fiduciary relationship. The petition shall contain the following:

(A) A brief statement of the reason or reasons for the removal of the minor from the county of the Tennessee court currently supervising the fiduciary relationship;

(B) A certified copy of the document evidencing the appointment of a fiduciary for the minor in the new jurisdiction that is the place of actual residence of the minor;

(C) An accounting of the minor's property up to the date of the filing of the petition. If the petitioning fiduciary is not the serving Tennessee fiduciary, the court may require the serving Tennessee fiduciary to submit the accounting;

(D) A prayer for the removal of the fiduciary proceedings to the new jurisdiction; and

(E) If appropriate, a prayer for the removal of the minor's property to the new jurisdiction;

(2) Upon the hearing of the petition, the petitioning fiduciary shall provide the court with the following:

(A) Satisfactory evidence that the minor and, if applicable, the serving Tennessee fiduciary have moved from the county of the Tennessee court currently supervising the fiduciary relationship and are actually residing in the new jurisdiction;

(B) An accounting of the minor's property up to the date of the hearing. If the petitioning fiduciary is not the serving Tennessee fiduciary, the court may require the serving Tennessee fiduciary to submit the accounting;

(C) A certified copy of the order of the court appointing the fiduciary in the new jurisdiction; and

(D) A copy of the bond given by the fiduciary in the new jurisdiction with a certificate of the clerk of the court that the bond was signed;

(3) If upon the hearing the court is satisfied with the sufficiency of the evidence presented and the court determines that it is in the best interests of the minor the court shall:

(A) Order the removal of the fiduciary proceedings and, if applicable, the minor's property to the jurisdiction of the actual residence of the minor; and

(B) Discharge the Tennessee fiduciary and the fiduciary's surety on the bond in the Tennessee proceedings; and

(4) Upon the granting of the order, the court shall transfer to the appropriate court in the new jurisdiction a copy of the accounting of the serving Tennessee fiduciary and all records pertaining to the fiduciary relationship.

(d) For a disabled adult person, the court shall permit the transfer of the fiduciary relationship to another county, if the court finds that either:

(1) The disabled adult person and the serving Tennessee fiduciary have both moved to another county, and the serving Tennessee fiduciary has been appointed the fiduciary in the other county; or

(2) Only the disabled adult person has moved to another county, and a fiduciary other than the serving Tennessee fiduciary has been appointed the fiduciary in the other county.

(e) For a disabled adult person, the procedure to seek the transfer of the fiduciary relationship jurisdiction to a court in another county other than the Tennessee court currently supervising the fiduciary relationship shall be the following:

(1) The fiduciary, who may be the serving Tennessee fiduciary or the fiduciary appointed in the other county, shall file a sworn petition in the Tennessee court currently supervising the fiduciary relationship. The petition shall contain the following:

(A) A brief statement of the reason or reasons for the removal of the person with a disability from the county of the Tennessee court currently supervising the fiduciary relationship;

(B) A certified copy of the document evidencing the appointment of a fiduciary for the person with a disability in the new jurisdiction that is the place of actual residence of the minor or person with a disability;

(C) An accounting of the disabled adult person's property up to the date of the filing of the petition. If the petitioning fiduciary is not the serving Tennessee fiduciary, the court may require the serving Tennessee fiduciary to submit the accounting;

(D) A prayer for the removal of the fiduciary proceedings to the new jurisdiction; and

(E) If appropriate, a prayer for the removal of the disabled adult person's property to the new jurisdiction;

(2) Upon the hearing of the petition, the petitioning fiduciary shall provide the court with the following:

(A) Satisfactory evidence that the disabled adult person and, if applicable, the serving Tennessee fiduciary have moved from the county of the Tennessee court currently supervising the fiduciary relationship and are actually residing in the new jurisdiction;

(B) An accounting of the person with a disability's property up to the date of the hearing. If the petitioning fiduciary is not the serving Tennessee fiduciary, the court may require the serving Tennessee fiduciary to submit the accounting;

(C) A certified copy of the order of the court appointing the fiduciary in the new jurisdiction;

and

(D) A copy of the bond given by the fiduciary in the new jurisdiction with a certificate of the clerk of the court that the bond was signed;

(3) If upon the hearing the court is satisfied with the sufficiency of the evidence presented and the court determines it is in the best interests of the person with a disability, the court shall:

(A) Order the removal of the fiduciary proceedings and, if applicable, the adult person with a disability's property to the jurisdiction of the actual residence of the adult person with a disability; and

(B) Discharge the Tennessee fiduciary and the fiduciary's surety on the bond in the Tennessee proceedings; and

(4) Upon the granting of the order, the court shall transfer to the appropriate court in the new jurisdiction a copy of the accounting of the serving Tennessee fiduciary and all records pertaining to the fiduciary relationship.

(f) Other issues relating to subject matter jurisdiction of conservatorships, guardianships and protective proceedings shall be governed by chapter 14 of this title.

History.
Acts 1992, ch. 794, § 18; 1994, ch. 855, § 10; T.C.A. § 34-11-117; Acts 2010, ch. 817, § 2; 2013, ch. 435, §§ 39, 46.

Compiler's Notes.
Acts 2013, ch. 435, § 48 provided that the act, which amended this section, shall apply to actions commenced on or after July 1, 2013.

34-1-118. Persons receiving property — Receipt for property — Filing.

Whenever a fiduciary distributes property of a minor or person with a disability, the person receiving the property of the minor or person with a disability from the fiduciary shall sign a receipt for the property, which receipt shall be filed with the fiduciary's next accounting.

History.
Acts 1992, ch. 794, § 19; T.C.A. § 34-11-118; Acts 2013, ch. 435, § 46.

Compiler's Notes.
Acts 2013, ch. 435, § 48 provided that the act, which amended this section, shall apply to actions commenced on or after July 1, 2013.

34-1-119. Standby fiduciary.

(a) At the request of the petitioner, the fiduciary, or on the court's own motion, a standby fiduciary may be appointed by the court to take the place of the fiduciary on a temporary or, if necessary, on a permanent basis. The standby fiduciary shall have the same powers, rights and obligations as the fiduciary.

(b) When it is necessary for the standby fiduciary to function, the regular fiduciary shall notify the court or other interested party of the need for the services of the standby fiduciary and the anticipated duration of the need for the services. On receipt of the notice, the court shall enter an order authorizing the standby fiduciary to function in the place of the fiduciary. The order shall state the duration of the standby fiduciary's authority and shall suspend the authority of the fiduciary. If the fiduciary is bonded, the standby fiduciary must also be bonded in the same amount as the fiduciary. Under no circumstance can the fiduciary and standby fiduciary be simultaneously empowered to act.

(c) Although there is no current need for the services of a fiduciary:

(1) The custodial parent or parents or the person designated by the custodial parent or parents of a minor child or children may petition in accordance with chapter 2 of this title; or

(2) Any adult may petition for the adult in accordance with chapter 3 of this title for the appointment of a standby fiduciary. The standby fiduciary authorized by this subsection (c) may be appointed without the necessity of the appointment of a fiduciary. The court shall respond to the petition as though it were a petition for the appointment of a currently active fiduciary so that all questions concerning the appropriateness of the proposed fiduciary or the property management plan are resolved at the hearing on the petition, which action will minimize delay in activating the standby fiduciary when necessary. If appointed, the court shall define in the order of appointment the circumstances under which the standby fiduciary shall become an active fiduciary and the actions that the standby fiduciary shall take to notify the court of the need for the standby fiduciary to become active. If the court determines there is a need for an active fiduciary, the court shall issue an order authorizing the standby fiduciary to function which order shall contain such other authority or restriction, consistent with this chapter, and chapters 2 and 3 of this title, as the court determines is in the best interest of the minor or person with a disability. In considering a petition for the appointment of a standby fiduciary, the court shall try to minimize the costs to the petitioner to the extent the court determines it is in the best interest of the minor or the person with a potential disability.

History.
Acts 1992, ch. 794, § 20; 1997, ch. 407, § 5; T.C.A. § 34-11-119; Acts 2013, ch. 435, §§ 22, 46.

Compiler's Notes.
Acts 2013, ch. 435, § 48 provided that the act, which amended this section, shall apply to actions commenced on or after July 1, 2013.

34-1-120. When people may be appointed fiduciary — Eligible persons.

No personal representative of an estate, any part of which is distributable to a minor, except a parent, grandparent, sibling of the minor or person named by the testator to be guardian, shall be appointed the fiduciary for the minor until the personal representative has first settled its accounts as personal representative. No personal representative of an estate, any part of which is distributable to a person with a disability, except a parent, spouse, child, grandchild, grandparent or sibling of the person with a disability,

shall be appointed the fiduciary for the person with a disability until the personal representative has first settled its accounts as personal representative.

History.
Acts 1992, ch. 794, § 21; 1994, ch. 855, § 11; 1997, ch. 407, § 6; 1999, ch. 491, § 7; T.C.A. § 34-11-120; Acts 2013, ch. 435, § 46.

Compiler's Notes.
Acts 2013, ch. 435, § 48 provided that the act, which amended this section, shall apply to actions commenced on or after July 1, 2013.

34-1-121. Powers of court — Additional actions — Waiver of requirements — Compromise.

(a) The court has broad discretion to require additional actions not specified in this chapter, and chapters 2 and 3 of this title as the court deems in the best interests of the minor or person with a disability and the property of the minor or the person with a disability. The court also has discretion to waive requirements specified in this chapter, and chapters 2 and 3 of this title if the court finds it is in the best interests of the minor or person with a disability to waive such requirements, particularly in those instances where strict compliance would be too costly or place an undue burden on the fiduciary or the minor or the person with a disability.

(b) In any action, claim, or suit in which a minor or person with a disability is a party or in any case of personal injury to a minor or person with a disability caused by the alleged wrongful act of another, the court in which the action, claim, or suit is pending, or the court supervising the fiduciary relationship if a fiduciary has been appointed, has the power to approve and confirm a compromise of the matters in controversy on behalf of the minor or person with a disability. If the court deems the compromise to be in the best interest of the minor or person with a disability, any order or decree approving and confirming the compromise shall be binding on the minor or person with a disability.

History.
Acts 1992, ch. 794, § 22; 1994, ch. 855, § 12; 2000, ch. 610, § 1; T.C.A. § 34-11-121; Acts 2013, ch. 435, §§ 40, 46.

Compiler's Notes.
Acts 2013, ch. 435, § 48 provided that the act, which amended this section, shall apply to actions commenced on or after July 1, 2013.

34-1-122. Distributions to persons other than minor — Gift program.

In considering expenditures of income or principal of the property of the minor or person with a disability, the court may authorize distributions to persons other than the minor or person with a disability if the court determines the expenditures are in the best interests of the minor or person with a disability. In making its decision, the court may consider whatever information the court deems relevant to its decision, keeping in mind its primary responsibility is for the care and maintenance of the minor or person with a disability and the person's property. No gift program shall be authorized unless there is evidence the person with a disability established a gift program prior to becoming a person with a disability or, even though the person with a disability had not established a gift program, a gift program would reduce the person with a disability's tax liability and would not jeopardize the person with a disability's care and long-term well-being.

History.
Acts 1992, ch. 794, § 23; T.C.A. § 34-11-122; Acts 2013, ch. 435, §§ 41, 46.

Compiler's Notes.
Acts 2013, ch. 435, § 48 provided that the act, which amended this section, shall apply to actions commenced on or after July 1, 2013.

34-1-123. Summons to appear for abuse, mismanagement or failure to perform — Removal — Submission of matter to district attorney general's office.

The court in its discretion may summon a fiduciary to appear before the court and may, if cause be shown, remove the fiduciary for any abuse, mismanagement, neglect or failure to perform the duties of fiduciary as set forth in this chapter, and chapters 2 and 3 of this title. If the court determines title 39, chapter 14, may apply to any fiduciary, the court in its discretion may submit the matter to the district attorney general's office.

History.
Acts 1992, ch. 794, § 24; T.C.A. § 34-11-123.

34-1-124. No fiduciary appointed — Expunction of record.

If an action for the appointment of a fiduciary is brought but no fiduciary is appointed, the court may for good cause enter an order permitting expunction of the record.

History.
Acts 1992, ch. 794, § 25; T.C.A. § 34-1-124.

34-1-125. Attorney ad litem.

(a) The court shall appoint an attorney ad litem to represent the respondent on the respondent's request, upon the recommendation of the guardian ad litem or if it appears to the court to be necessary to protect the rights or interests of the respondent. The attorney ad litem shall be an advocate for the respondent in resisting the requested relief.

(b) The cost of the attorney ad litem shall be charged against the assets of the respondent.

History.
Acts 1992, ch. 794, § 26; T.C.A. § 34-11-125.

34-1-126. Finding of disablement and need of assistance prerequisite for appointment of fiduciary.

The court must find by clear and convincing evidence that the respondent is fully or partially disabled and that the respondent is in need of assistance from the court before a fiduciary can be appointed.

History.
Acts 1992, ch. 794, § 27; T.C.A. § 34-11-126.

34-1-127. Least restrictive alternative to be imposed.

The court has an affirmative duty to ascertain and impose the least restrictive alternatives upon the person with a disability that are consistent with adequate protection of the person with a disability and the property of the person with a disability.

History.
Acts 1992, ch. 794, § 28; T.C.A. § 34-11-127; Acts 2013, ch. 435, §§ 42, 46.

Compiler's Notes.
Acts 2013, ch. 435, § 48 provided that the act, which amended this section, shall apply to actions commenced on or after July 1, 2013.

34-1-128. Duties of court clerk — Records — Index — Deadlines — Notices and summons.

The clerk shall maintain on all guardianship and conservatorship cases the same type docket books, files, minute books, and other records as in all other cases. In addition, the clerk shall maintain an appropriate index or tickler so that reporting deadlines established in §§ 34-1-110 and 34-1-111 and the like are easily ascertainable. The clerk shall issue the notices and summons described in §§ 34-1-110 and 34-1-111 to each delinquent fiduciary.

History.
Acts 1992, ch. 794, § 29; T.C.A. § 34-11-128.

34-1-129. Letters of conservatorship or guardianship — Limited.

Upon the entry of the order appointing a fiduciary and the submission of a bond consistent with the order, the clerk shall issue letters of conservatorship or letters of guardianship. The letters of conservatorship or guardianship shall either:

(1) Recite the specific powers removed from the minor or person with a disability and transferred to the fiduciary; or

(2) Have attached to them the order or orders of the court specifying the powers removed from the minor or person with a disability and transferred to the fiduciary. If the fiduciary has been granted less than full authority over the person and property of the minor or person with a disability in the order of appointment, the clerk shall mark the letters prominently with the term "LIMITED".

History.
Acts 1992, ch. 794, § 30; T.C.A. § 34-11-129; Acts 2013, ch. 435, § 23.

Compiler's Notes.
Acts 2013, ch. 435, § 48 provided that the act, which amended this section, shall apply to actions commenced on or after July 1, 2013.

34-1-130. Forms or instructions — Inventory, receipts and expenditures.

The clerk may prescribe forms or instructions as to the manner in which a fiduciary may render its inventory, receipts, and expenditures.

History.
Acts 1992, ch. 794, § 31; T.C.A. § 34-11-130.

34-1-131. Examination of annual accounting — Report to judge.

The clerk shall examine the annual accounting of the fiduciary and make a report on the accounting to the judge.

History.
Acts 1992, ch. 794, § 32; T.C.A. § 34-11-131.

34-1-132. Appointment of emergency guardian or conservator.

(a) If the court finds that compliance with the procedures of this title will likely result in substantial harm to the respondent's health, safety, or welfare, and that no other person, including an agent acting under the Health Care Decision Act, compiled in title 68, chapter 11, part 18, or a person acting under the Durable Powers of Attorney for Healthcare Act, compiled in chapter 6, part 2 of this title or a living will pursuant to title 32, chapter 11, appears to have authority to act, willingness to act, and is acting in the best interests of the respondent in the circumstances, then the court, on petition by a person interested in the respondent's welfare, may appoint an emergency guardian or conservator whose authority may not exceed sixty (60) days and who may exercise only the powers specified in the order. Immediately upon receipt of the petition for an emergency guardianship or conservatorship, the court shall appoint an attorney ad litem to represent the respondent in the proceeding. Except as otherwise provided in subsection (b), reasonable notice of the time and place of a hearing on the petition shall be given to the respondent and any other person as the court directs.

(b) An emergency guardian or conservator may be appointed without notice to the respondent and the attorney ad litem only if the court finds upon a sworn petition that the respondent will be substantially harmed before a hearing on the appointment can be held. If the court appoints an emergency guardian or conservator without notice to the respondent, the respondent shall be given notice of the appointment within forty-eight (48) hours after the appointment. The court shall hold a hearing on the appropriateness of the appointment within five (5) days after the appointment.

(c) Appointment of an emergency guardian or conservator, with or without notice, is not a determination of the respondent's incapacity.

(d) The court may remove an emergency guardian or conservator at any time. The court may appoint a guardian ad litem to investigate the circumstances. An emergency guardian or conservator shall make any report the court requires. In other respects, the provisions of this title concerning guardians or conservators apply to an emergency guardian or conservator.

(e) The time periods set forth above in this section are mandatory and not directory. Failure to comply with those provisions shall void any emergency appointment and remove the authority previously granted to an emergency fiduciary.

History.
Acts 2013, ch. 435, § 24.

Compiler's Notes.
Acts 2013, ch. 435, § 48 provided that the act, which enacted this section, shall apply to actions commenced on or after July 1, 2013.

34-1-133. Expedited limited healthcare fiduciary.

(a) If the respondent is under hospitalization in a hospital as those terms are defined in title 68, chapter 11, part 2, and no other person, including an agent acting under the Healthcare Decision Act, compiled in title 68, chapter 11, part 8, a person acting under the Durable Powers of Attorney for Healthcare Act, compiled in chapter 6, part 2 of this title, or a living will under title 32, chapter 11, part 1 appears to have the authority and willingness to act and is acting in the best interest of the respondent, the court on petition of a person interested in the respondent's welfare may appoint an expedited limited healthcare fiduciary whose authority is for the limited purpose of consenting to discharge, transfer, and admission and consenting to any financial arrangements or medical care necessary to affect such discharge, transfer or admission to another healthcare facility and whose authority may not exceed sixty (60) days. Immediately upon the receipt of the petition for an expedited limited healthcare fiduciary, the court shall appoint an attorney ad litem to represent the respondent in the proceeding. In expediting the appointment of an expedited limited healthcare fiduciary, the court may vary the time periods for hearings including but not limited to the minimum number of days before a hearing under § 34-1-108 or the number of days before appointment of a guardian ad litem under § 34-1-107 or other time periods, but shall not vary requirements as necessary to determine the respondent is in need of a fiduciary.

(b) The court shall hold a hearing on the appropriateness of the appointment within five (5) days of the appointment.

(c) Appointment of an expedited limited healthcare fiduciary is not a determination of the respondent's incapacity.

(d) The court may remove an expedited limited healthcare fiduciary at any time.

(e) The time periods set forth in this section are mandatory and not directory. Failure to comply with those provisions shall void any expedited appointment and remove the authority previously granted to the expedited limited healthcare fiduciary.

History.
Acts 2013, ch. 435, § 47.

Compiler's Notes.
Acts 2013, ch. 435, § 48 provided that the act, which enacted this section, shall apply to actions commenced on or after July 1, 2013.

CHAPTER 2

GUARDIANSHIP GENERALLY

SECTION.
34-2-101. Actions for appointment of guardian — Where brought.
34-2-102. Petition for appointment of guardian — Who may file.
34-2-103. Priority of persons to be considered.
34-2-104. Petition for appointment — Sworn — Contents.
34-2-105. Where guardian needed — Court order.
34-2-106. Minor attaining eighteen (18) years of age — Termination or continuation of guardianship.

34-2-101. Actions for appointment of guardian — Where brought.

(a) Actions for the appointment of only a guardian of the person may be brought in the juvenile court in the county in which there is venue. Actions for the appointment of a guardian of the person or property or both may be brought in a court exercising probate jurisdiction or any other court of record in the county in which there is venue.

(b) An action for the appointment of a guardian may be brought in the county of residence of the minor, the county of residence of the minor's parents or, if the minor's parents are living apart, the county of residence of the custodial parent.

History.
Acts 1992, ch. 794, § 34; T.C.A. § 34-12-101.

Compiler's Notes.
Former §§ 34-2-101 — 34-2-115, 34-2-201 — 34-2-206 (Code 1858, § 2489 (deriv. Acts 1847-1848, ch. 115), § 2491 (deriv Acts 1823, ch. 2, § 1), § 2492 (deriv. Acts 1762, ch. 5, § 2), § 2493 (deriv. Acts 1762, ch. 5, § 5), § 2494 (deriv. Acts 1762, ch. 5, § 5; 1847-1848, ch. 167), § 2495 (deriv. Acts 1845-1846, ch. 14, §§ 1, 3; 1845-1846, ch. 190), § 2496 (deriv. Acts 1845-1846, ch. 190), §§ 2497, 2498 (deriv. Acts 1845-1846, ch. 14, §§ 2, 4); §§ 2499-2501 (deriv. Acts 1841-1842, ch. 117, §§ 1, 3), §§ 2502-2504 (deriv. Acts 1831, ch. 29, §§ 1, 2, 4); Acts 1859-1860, ch. 90, §§ 4-6; Shan., §§ 4250, 4252-4255, § 4258-4270; mod. Code 1932, §§ 8467-8471, 8474-8488; Acts 1951, ch. 148, §§ 1, 2 (Williams, §§ 8476, 8476.1); 1953, ch. 156, § 1; Acts 1972, ch. 612, § 4; T.C.A. (orig. ed.), §§ 34-301 — 34-306; impl. am. Acts 1975, ch. 219, § 1; Acts 1982, ch. 853, § 4; T.C.A. (orig. ed.), §§ 34-201 — 34-216; Acts 1987, ch. 322, § 21; 1989, ch. 591, § 113; 1991, ch. 181, § 3., concerning guardians generally and testamentary guardians, were repealed by Acts 1992, ch. 794, § 33, effective January 1, 1993.

Acts 1992, ch. 794, § 51 provided that nothing in this chapter shall be construed to authorize a corporation, partnership, association, or other business entity to be appointed as a fiduciary unless such corporation, partnership, association or other business entity is otherwise authorized by law to exercise such authority.

Acts 1992, ch. 794, § 52 provided that for each existing guardian or conservator, this chapter shall be effective for any act required to be done by the fiduciary and due on or after January 1, 1993; and that each existing limited guardian shall become a guardian or conservator as the case may be, with limited powers on January 1, 1993.

34-2-102. Petition for appointment of guardian — Who may file.

A petition for the appointment of a guardian may be filed by any person having knowledge of the circumstances necessitating the appointment of a guardian.

History.
Acts 1992, ch. 794, § 35; T.C.A. § 34-12-102.

34-2-103. Priority of persons to be considered.

Subject to the court's determination of what is in the best interests of the minor, the court shall consider the following persons in the order listed for appointment of the guardian:

(1) The parent or parents of the minor;

(2) The person or persons designated by the parent or parents in a will or other written document;

(3) Adult siblings of the minor;

(4) Closest relative or relatives of the minor; and

(5) Other person or persons.

History.
Acts 1992, ch. 794, § 36; T.C.A. § 34-12-103.

34-2-104. Petition for appointment — Sworn — Contents.

The petition for the appointment of a guardian, which shall be sworn, should contain the following:

(1) The name, date of birth, residence and mailing address of the minor;

(2) The name, age, residence and mailing address and relationship of the petitioner;

(3) The name, age, mailing address and relationship of the proposed guardian and, if the proposed guardian is other than the petitioner, a statement signed by the proposed guardian acknowledging awareness of the petition and willingness to serve;

(4) The name, mailing address and relationship of the closest relative or relatives of the minor and the name and mailing address of the present custodian of the minor who should be notified of the proceedings. If the respondent has no then living parent or sibling, the petition shall so state and more remote relatives are not to be listed;

(5) An explanation of the reason for seeking appointment of a guardian; and

(6) If the petition requests the guardian manage the property of the respondent, the petition also shall contain:

(A) If the financial information about the minor is known to the petitioner:

(i) A list of the property of the minor together with the approximate fair market value of each item. The petitioner shall state whether the property listed is all of the minor's property;

(ii) A list of the source, amount and frequency of each item of income, pension, social security benefit or other revenue received by the minor;

(iii) A list of the usual monthly expenses of the minor. The petitioner shall include an explanation of how these expenditures were met prior to the filing of the petition; and

(iv) A description of the proposed plan for the management of the minor's property if a guardian is appointed; or

(B) If the financial information about the minor is unknown to the petitioner, a request that the court enter an order authorizing the petitioner to investigate the respondent's property.

History.
Acts 1992, ch. 794, § 37; T.C.A. § 34-12-104; Acts 2003, ch. 35, § 1.

34-2-105. Where guardian needed — Court order.

If the court determines a guardian is needed, the court shall enter an order which shall:

(1) Name the guardian or guardians;

(2) If the guardian is to manage the property of the minor, then:

(A) Set the amount of the guardian's bond unless waived as authorized in § 34-1-105;

(B) Set forth the nature and frequency of each approved expenditure and prohibit the guardian from making other expenditures without court approval;

(C) Set forth the approved management of the minor's property; and

(D) Prohibit the sale of any property except as permitted by § 34-1-116 without court approval or as permitted in the property management plan approved by such order; and

(3) State any other authority or direction as the court determines is appropriate to properly care for the person and property of the minor.

History.
Acts 1992, ch. 794, § 38; T.C.A. § 34-12-105.

34-2-106. Minor attaining eighteen (18) years of age — Termination or continuation of guardianship.

(a) Except as provided in subsection (c), when the minor for whom a guardian of the person is serving reaches the age of eighteen (18) years of age, the guardianship of the person of the minor shall terminate.

(b)(1) When the minor for whom a guardian of the estate of the minor is serving reaches eighteen (18) years of age, the guardianship shall terminate.

(2) Any interested person, including, but not limited to, the guardian of the estate of the minor, may, not more than ninety (90) days before the minor reaches eighteen (18) years of age and not later than the filing of the preliminary final accounting, petition the court to continue the guardianship for a period of time not to extend beyond the person's twenty-fifth birthday. A copy of the petition shall be served on the minor or it must be shown that the minor has actual notice of the filing of the petition.

(3) The burden of demonstrating why the guardianship of the estate of such person should continue shall be on the person seeking the continuation of the guardianship. In determining whether to terminate the guardianship, the court shall consider whether the termination is in the best interest of the person, and the court shall consider the ability of the person to wisely manage and control the property irrespective of whether special needs exist. If the court so finds, the court shall continue the guardianship for a

longer period of time not to extend beyond the person's twenty-fifth birthday. The court may permit either the payment of a portion of the estate or the establishment of a distribution schedule upon request of any party. If the court does not continue the guardianship, in the discretion of the court the minor may receive attorneys' fees from the person petitioning the court for continuation of the guardianship.

(4) Within sixty (60) days after the guardianship of the estate of the person terminates, the guardian shall file a preliminary final accounting with the court, which shall account for all assets, receipts and disbursements from the date of the last accounting until the date the guardianship of the estate terminates, and shall detail the amount of the final distribution to close the guardianship of the estate of the person. If no objections have been filed to the clerk's report on the preliminary final accounting within thirty (30) days from the date the clerk's report is filed, the guardian shall distribute the remaining assets. The receipts and final cancelled checks evidencing the final distribution shall be filed with the court by the guardian. When the evidence of the final distribution is filed with the court, and on order of the court, the guardianship proceeding for the estate of the person shall be closed. A final accounting may not be waived by the minor for whom the guardian of an estate is serving regardless of the age of the minor.

(c) If a minor for whom a guardian of the person or estate is serving has previously been determined to be a disabled person, when the minor reaches eighteen (18) years of age, the guardian shall automatically continue as conservator. If the guardian is the department of children's services, this subsection (c) shall not apply.

History.
Acts 1992, ch. 794, § 39; 1994, ch. 855, § 13; 1996, ch. 1015, § 1; 1996, ch. 1079, § 67; T.C.A. § 34-12-106.

Compiler's Notes.
Acts 1996, ch. 1079, § 184 provided: "Any provision of this act, or the application thereof, which is inconsistent with federal law, rule or regulation shall be deemed to be construed as being consistent with federal law, rule or regulation."

CHAPTER 6

POWER OF ATTORNEY

Part 3. Power of Attorney for Care of a Minor Child Act

SECTION.
34-6-301. Short title.
34-6-302. Delegation of authority — "Parent" defined.
34-6-303. Execution of instrument providing for power of attorney — Affidavit detailing hardship — Procedure when one parent has legal custody.
34-6-304. Authority of caregiver — Enrollment in local education agency — Restitution to school district for fraudulent enrollment.
34-6-305. Revocation of power of attorney.
34-6-306. Termination of power of attorney.
34-6-307. Contravening decision by parent.
34-6-308. Liability for reliance on power of attorney.
34-6-309. Residence change.
34-6-310. No obligation to inquire or investigate.

Part 4. Health Care Decisions for Unemancipated Minor Children

34-6-401. Part definitions.
34-6-402. Health care decisions for unemancipated minors — From whom obtained — Persons standing in loco parentis — Affidavit.
34-6-403. Scope of power of person standing in loco parentis to make health care decisions — Limitations.
34-6-404. Effect of in loco parentis standing.
34-6-405. Immunity from liability for person standing in loco parentis.
34-6-406. Immunity from liability for health care providers relying on authorization affidavit — Authorization affidavit does not confer dependency.

PART 3

POWER OF ATTORNEY FOR CARE OF A MINOR CHILD ACT

34-6-301. Short title.

This part shall be known and may be cited as the "Power of Attorney for Care of a Minor Child Act."

History.
Acts 2003, ch. 71, § 1.

34-6-302. Delegation of authority — "Parent" defined.

(a)(1) A parent or parents of a minor child may delegate to any adult person residing in this state temporary care-giving authority regarding the minor child when hardship prevents the parent or parents from caring for the child. This authority may be delegated without the approval of a court by executing in writing a power of attorney for care of a minor child on a form provided by the department of children's services. Hardships may include but are not limited to:

(A) The serious illness or incarceration of a parent or legal guardian;

(B) The physical or mental condition of the parent or legal guardian or the child is such that care and supervision of the child cannot be provided; or

(C) The loss or uninhabitability of the child's home as the result of a natural disaster.

(2) A local education agency (LEA) is not required to enroll a student with a power of attorney stating a hardship other than one (1) of the three (3) specifically stated in subdivisions (a)(1)(A)-(C). The LEA may, however, enroll a student with a properly executed power of attorney for other hardships on a case by case basis.

(b) The power of attorney for care of the minor child shall be signed by the parent and acknowledged before a notary public or two (2) witnesses who shall sign and date their signatures concurrently and in each other's presence.

(c) For purposes of this part the term "parent" includes a legal guardian or legal custodian of the minor child.

History.
Acts 2003, ch. 71, § 1; 2004, ch. 521, § 1; 2014, ch. 696, § 1.

34-6-303. Execution of instrument providing for power of attorney — Affidavit detailing hardship — Procedure when one parent has legal custody.

The instrument providing for the power of attorney shall be executed by both parents, if both parents are living and have legal custody of the minor child and shall state with specificity the details of the hardship preventing the parent from caring for the child. If only one (1) parent has legal custody of the minor child, then such parent shall execute the instrument. The other parent must consent in writing to the appointment in the instrument or the executing parent shall explain in the instrument why the consent cannot be obtained. If both parents do not execute the affidavit, then the executing parent shall send by certified mail, return receipt requested, to the other parent at the last known address, a copy of the instrument and a notice of § 34-6-305.

History.
Acts 2003, ch. 71, § 1.

34-6-304. Authority of caregiver — Enrollment in local education agency — Restitution to school district for fraudulent enrollment.

(a)(1) Through the power of attorney for care of a minor child, the parent may authorize the caregiver to perform the following functions without limitation:

(A) Enroll the child in school and extracurricular activities;

(B) Obtain medical, dental and mental health treatment for the child; and

(C) Provide for the child's food, lodging, housing, recreation and travel.

(2) Nothing contained in this section shall be construed to limit the power of the parent to grant additional powers to the caregiver.

(b) The caregiver shall have the right to enroll the minor child in the local education agency serving the area where the caregiver resides. The local education agency shall allow a caregiver with a properly executed power of attorney for care of a minor child to enroll the minor child but, prior to enrollment, may require documentation of the minor child's residence with a caregiver or documentation or other verification of the validity of the stated hardship. Except where limited by federal law, the caregiver shall be assigned the rights, duties and responsibilities that would otherwise be assigned to the parent, legal guardian or legal custodian pursuant to title 49.

(c) Further, any adult accepting the power of attorney, as well as the parent, guardian, or other legal custodian, who enrolls a student in a school system while fraudulently representing the child's current residence or the parent's hardship or circumstances for issuing the power of attorney, is liable for restitution to the school district for an amount equal to the per pupil expenditure for the district in which the student is fraudulently enrolled. Restitution shall be cumulative for each year the child has been fraudulently enrolled in the system. Such restitution shall be payable to the school district and, when litigation is necessary to recover the restitution, the adult accepting the power of attorney, parent, guardian or other legal custodian shall be liable for the costs and fees, including attorney's fees, of the school district. Such an action for restitution shall be brought by or on behalf of the district in the circuit or chancery court in which the district is located within one (1) year of the date the fraudulent misrepresentation was discovered.

History.
Acts 2003, ch. 71, § 1.

34-6-305. Revocation of power of attorney.

The power of attorney does not provide legal custody to the caregiver; provided, however, that, if at any time the parent or legal guardian disagrees with the decision of the caregiver or chooses to make any healthcare or educational decisions for the minor child, the parent must revoke the power of attorney and provide the health care provider and local education agency either written documentation of the revocation or a court order appointing a legal guardian or legal custodian.

History.
Acts 2003, ch. 71, § 1.

34-6-306. Termination of power of attorney.

The power of attorney for care of a minor child may be terminated by an instrument in writing signed by either parent with legal custody. The power of attorney for care of a minor child may also be terminated by any order of a court of competent jurisdiction that appoints a legal guardian or legal custodian.

History.
Acts 2003, ch. 71, § 1.

34-6-307. Contravening decision by parent.

The decision of a caregiver to consent to or to refuse medical, dental, or mental health care for a minor child shall be superseded by any contravening decision of the parent having legal custody of the minor child; provided, however, that the decision of the parent does not jeopardize the life, health, or safety of the minor child. If at any time the parent or legal guardian disagrees with the decision of the caregiver or chooses to make any healthcare decisions for the minor child, then the parent must revoke the power of attorney for care of a minor child and provide the health care provider written documentation of the revocation.

History.
Acts 2003, ch. 71, § 1.

34-6-308. Liability for reliance on power of attorney.

No person, school official, or health care provider who acts in good faith reliance on a power of attorney for

care of a minor child to enroll the child in school or to provide medical, dental, or mental health care, without actual knowledge of facts contrary to those authorized, is subject to criminal liability or to civil liability to any person, or is subject to professional disciplinary action, for that reliance. This section shall apply even if medical, dental, or mental health care is provided to a minor child or the child is enrolled in a school in contravention of the wishes of the parent with legal custody of the minor child, as long as the person, school official, or health care provider has been provided a copy of an appropriately executed power of attorney for care of a minor child, and has not been provided written documentation that the parent has revoked the power of attorney for care of a minor child.

History.
Acts 2003, ch. 71, § 1.

34-6-309. Residence change.

If the minor child ceases to reside with the caregiver, then the caregiver shall notify any person, school, or health care provider that has been provided the power of attorney for care of a minor child.

History.
Acts 2003, ch. 71, § 1.

34-6-310. No obligation to inquire or investigate.

A person who relies on the power of attorney for care of a minor child has no obligation to make any further inquiry or investigation. Nothing in this part shall relieve any individual from liability for violations of other provisions of law.

History.
Acts 2003, ch. 71, § 1.

PART 4

HEALTH CARE DECISIONS FOR UNEMANCIPATED MINOR CHILDREN

34-6-401. Part definitions.

As used in this part:

(1) "Health care" has the same meaning as defined in § 68-11-1802 of the Tennessee Health Care Decisions Act, compiled in title 68, chapter 11, part 18;

(2) "Health care decisions" has the same meaning as defined in § 68-11-1802 of the Tennessee Health Care Decisions Act;

(3) "Health care institution" has the same meaning as defined in § 68-11-1802 of the Tennessee Health Care Decisions Act;

(4) "Health care provider" has the same meaning as defined in § 68-11-1802 of the Tennessee Health Care Decisions Act;

(5) "In loco parentis" means "in the place of a parent" and refers to the legal responsibility taken by a person or organization to assume some of the functions and responsibilities of a parent or legal guardian; and

(6) "Reasonably available" has the same meaning as defined in § 68-11-1802 of the Tennessee Health Care Decisions Act.

History.
Acts 2014, ch. 696, § 2.

34-6-402. Health care decisions for unemancipated minors — From whom obtained — Persons standing in loco parentis — Affidavit.

(a)(1) Health care decisions for an unemancipated minor child may be obtained from persons with authority to consent, including the appointed guardian or legal custodian, or the individual to whom the minor's custodial parent or legal guardian has given a signed authorization to make health care decisions through a military power of attorney or a limited power of attorney for the care of such minor child.

(2)(A) When an individual listed in subdivision (a)(1) is not reasonably available, the following persons may stand in loco parentis for purposes of making health care decisions for an unemancipated minor in order of priority:

(i) Noncustodial parent;

(ii) Grandparent;

(iii) Adult sibling;

(iv) Stepparent; or

(v) Another adult family member.

(B) The treating health care provider, an employee of the treating health care provider, an operator or employee of a health care institution, and an employee of an operator of a health care institution shall not stand in loco parentis.

(C) A person standing in loco parentis shall sign an in loco parentis affidavit under penalty of perjury stating that the person has taken responsibility for the health care of the minor child.

(D) The affidavit shall expire sixty (60) days from the date of execution, and may be extended an additional sixty (60) days.

(b) The decision of a person standing in loco parentis to make health care decisions for an unemancipated minor shall be superseded by a prior or subsequent, timely given, contravening decision of the minor's custodial parent, legal custodian, or legal guardian.

History.
Acts 2014, ch. 696, § 2.

34-6-403. Scope of power of person standing in loco parentis to make health care decisions — Limitations.

(a)(1) The parent, legal guardian, or legal custodian may, but is not required to, convey in loco parentis standing to another adult if there is no order of any court in effect from any jurisdiction, including an order of protection, custody order, or parenting plan, that would prohibit the parent, legal guardian, legal custodian or the person acting in loco parentis from exercising that power. A person shall not stand in loco parentis or make health care decisions for an un-

emancipated minor if there is an order by any court in effect from any jurisdiction that would prohibit the person from doing so, including an order of protection, custody order, or parenting plan, or in the circumstances described in § 33-3-111.

(2) A person standing in loco parentis may make health care decisions for a person who is an unemancipated minor to undergo or receive health care which are not prohibited by law and which are under the supervision of and suggested, recommended, prescribed, or directed by a health care provider licensed to practice in this state.

(3) A person standing in loco parentis may also exercise existing parental rights to obtain medical records and information.

(b) Notwithstanding any other provision of this part, a person standing in loco parentis may not consent on behalf of an unemancipated minor to:

(1) Withholding or withdrawing life sustaining procedures;

(2) Abortion;

(3) Sterilization;

(4) Psychosurgery;

(5) Admission to a mental health facility for a period longer than the durational limits permitted in § 33-3-606; or

(6) Mental health treatment for a minor sixteen (16) years of age or older, pursuant to § 33-8-202.

History.
Acts 2014, ch. 696, § 2.

34-6-404. Effect of in loco parentis standing.

In loco parentis standing:

(1) Does not affect the rights and responsibilities of an unemancipated minor's parents or legal guardian or legal custodian regarding the care, custody, and control of the minor;

(2) Does not affect the rights of an unemancipated minor to make health care decisions in accordance with existing law; and

(3) Does not grant legal custody of the minor or authority to consent to the marriage or adoption of the minor.

History.
Acts 2014, ch. 696, § 2.

34-6-405. Immunity from liability for person standing in loco parentis.

Except for acts of willful misconduct or gross negligence, a person standing in loco parentis who makes health care decisions for an unemancipated minor shall not be liable for damages arising from providing consent to such health care.

History.
Acts 2014, ch. 696, § 2.

34-6-406. Immunity from liability for health care providers relying on authorization affidavit — Authorization affidavit does not confer dependency.

(a) A health care provider who has no actual knowledge of facts contrary to those stated in an authorization affidavit and who relies on a written instrument that is consistent with the requirements of this part and provides health care to an unemancipated minor shall not incur civil liability, criminal culpability, or professional disciplinary action for treating an unemancipated minor without legal consent if a reasonable health care provider would have relied on the written instrument under the same or similar circumstances. Nothing in this part requires a physician, dentist, mental health professional, or other health care provider to rely on a written instrument or to accept health care decisions from a person standing in loco parentis.

(b) An authorization affidavit does not confer dependency for health care coverage or insurance purposes.

History.
Acts 2014, ch. 696, § 2.

TITLE 36

DOMESTIC RELATIONS

CHAPTER.
1. Adoption.
   Part 1. General Provisions
   Part 2. Interstate Compact on Adoption and Medical Assistance
   Part 3. Adoption Contact Veto Registry
2. Parentage.
   Part 1. Paternity Proceedings [Repealed]
   Part 2. Legitimation [Repealed]
   Part 3. Parentage and Legitimation
   Part 4. Parentage of Children Born of Donated Embryo Transfer
3. Marriage.
   Part 1. License
   Part 2. Pre-Marital Medical Examination [Repealed]
   Part 3. Ceremony
   Part 4. Breach of Marriage Contract
   Part 5. Property Rights of Spouses
   Part 6. Domestic Abuse
   Part 7. Alienation of Affections
4. Divorce and Annulment.
5. Alimony and Child Support.
   Part 1. General Provisions
   Part 2. Uniform Reciprocal Enforcement of Support Act [Repealed]
   Part 3. Intercounty Enforcement of Support [Repealed]
   Part 4. Expedited Process for Support
   Part 5. Assignment of Income for Support
   Part 6. Income Withholding to Enforce Support Orders [Repealed]
   Part 7. Enforcement Through License Denial, Revocation and Restriction

CHAPTER.
Part 8. Child Support Enforcement Powers of Department
Part 9. Overdue Support
Part 10. Appeals
Part 11. Employment Records
Part 12. Assistance by Other States
Part 13. Social Security Number Records
Part 14 — 19. [Reserved]
Part 20. Uniform Interstate Family Support Act—Short Title
Part 21. Uniform Interstate Family Support Act — General Provisions
Part 22. Uniform Interstate Family Support Act — Jurisdiction
Part 23. Uniform Interstate Family Support Act — Civil Provisions of General Application
Part 24. Uniform Interstate Family Support Act — Establishment of Support Order or Determination of Parentage
Part 25. Uniform Interstate Family Support Act — Enforcement of Order Without Registration
Part 26. Uniform Interstate Family Support Act — Registration, Enforcement, and Modification of Support Order
Subpart A. Registration for Enforcement of Support Order
Subpart B. Contest of Validity or Enforcement
Subpart C. Registration and Modification of Child Support Order of Another State
Subpart D. Registration and Modification of Foreign Child Support Order
Part 27. Support Proceeding under Convention
Part 28. Uniform Interstate Family Support Act — Interstate Rendition
Part 29. Uniform Interstate Family Support Act — Miscellaneous Provisions
Part 30. Intercounty Enforcement and Modification
Part 31. Enforcement Without Transfer of Jurisdiction
6. Child Custody and Visitation.
Part 1. General Custody Provisions
Part 2. Uniform Child Custody Jurisdiction and Enforcement Act
Part 3. Visitation
Part 4. Parenting Plans
Part 5. Parent Visitation
Part 6. Uniform Child Abduction Prevention Act
7. Uniform Deployed Parents Custody and Visitation Act.
Part 1. General Provisions
Part 2. Temporary custody agreements
Part 3. Court proceedings to obtain temporary custody order
Part 4. Termination of order
Part 5. Applicability and construction

CHAPTER 1

ADOPTION

Part 1. General Provisions

SECTION.
36-1-101. Purpose of part — Construction.
36-1-102. Part definitions.
36-1-103. Prior adoptions and terminations of parental rights involving minors and prior adoptions of adults ratified.
36-1-104. Withholding of material information concerning the status of the parents or guardian of a child subject to surrender, termination of parental rights or adoption—Misdemeanor.
36-1-105. Violation of criminal provisions of part by state employee — Dismissal.
36-1-106. Readoption.
36-1-107. Persons to whom this part is applicable.
36-1-108. Entities authorized to place children for adoption — Advisory and agency capacity authorized — Injunction to stop illegal payments.
36-1-109. Illegal payments in connection with placement of child — Penalty.
36-1-110. Parent under eighteen years of age — Surrender.
36-1-111. Pre-surrender request for home study or preliminary home study — Surrender of child — Consent for adoption by parent — Effect of Surrender — Form of surrender — Waiver of interest — Interpreter for non-English speaking parents.
36-1-112. Revocation of surrender and parental consent — Form.
36-1-113. Termination of parental rights.
36-1-114. Venue.
36-1-115. Persons eligible to file adoption petition — Residence requirements — Preference for foster parents.
36-1-116. Pre-petition home study — Information from surrender court — Contents of petition — Effect of filing — Order of preference.
36-1-117. Parties to proceedings — Termination of rights of putative father — Consent of parent or guardian — Service of process.
36-1-118. Dismissal of adoption proceedings and guardianship orders — Revocation of surrender by court — Notice — Disposition of child.
36-1-119. Final order of adoption — When entered.
36-1-120. Final order of adoption — Contents — Report of foreign birth.
36-1-121. Effect of adoption on relationship.
36-1-122. Binding effect of adoption.
36-1-123. Biological parents illegally obtaining custody of a child — Custodial interference — Survival of existing restraining order.
36-1-124. Contested terminations of parental rights and adoptions — Appeals — Expedited schedule.
36-1-125. Confidentiality of records — Penalties for unauthorized disclosure — Protected orders.
36-1-126. Record kept under seal — Confidential records — Access to certain records — Preservation of records.
36-1-127. Availability of records to adopted persons and certain other persons for adoptions finalized or attempted prior to certain dates.
36-1-128. Contact veto registry — Persons eligible to have names entered.
36-1-129. Procedures for filing contact veto or giving consent.
36-1-130. Access to records — Search of registry — Restrictions on contact.
36-1-131. Search of sealed adoption record, sealed record or post-adoption records — Opportunity to veto contact.
36-1-132. Violation of contact veto a misdemeanor — Injunction and damages — Attorney's Fees — Using information to injure persons whose names were obtained.
36-1-133. Release of nonidentifying information concerning biological or legal family.
36-1-134. Transmission of information between affected parties — Access to records of deceased or disabled persons — Updating of information to allow contact.
36-1-135. Updated medical information in records — Searches for persons affected.
36-1-136. Notification made as part of search, contact or identifying requests.
36-1-137. Inability of department to verify adoptive status of relationships — Waiting period to request further searches — Limitations on searches.
36-1-138. Court orders for the release of information from adoption and sealed records.
36-1-139. Penalty for providing false information related to information requests.
36-1-140. Immunity for actions in good faith by department personnel and immunity of certain other persons.
36-1-141. Fees for searches, registration of contact vetoes, and copies — Promulgation of rules — Forms.
36-1-142. Voluntary delivery of infant to facility, revocation of voluntary delivery, and termination of parental rights.
36-1-143. Post-adoption services to support permanency in adoption.
36-1-144. Categories of information to be provided to adoptive family.

Part 2. Interstate Compact on Adoption and Medical Assistance

36-1-201. Terms of compact.
36-1-202. Amount of assistance.
36-1-203. Documentation of eligibility.
36-1-204. Applicability of part.
36-1-205. Violations — Penalties.

SECTION.
36-1-206. Construction — Compliance with federal laws.

Part 3. Adoption Contact Veto Registry

36-1-301. Advance notice system.
36-1-302. "Advance notice period" defined.
36-1-303. Persons entitled to file a request for advance notice.
36-1-304. Advance notice registry.
36-1-305. Promulgation of necessary rules and regulations.

PART 1

GENERAL PROVISIONS

36-1-101. Purpose of part — Construction.

(a) The primary purpose of this part is to provide means and procedures for the adoption of children and adults that recognize and effectuate to the greatest extent possible the rights and interests of persons affected by adoption, especially those of the adopted persons, which are specifically protected by the constitutions of the United States and the state of Tennessee and to those ends seek to ensure, to the greatest extent possible, that:

(1) Children are removed from the homes of their parents or guardians only when that becomes the only alternative that is consistent with the best interest of the child;

(2) Children are placed only with those persons who have been determined to be capable of providing proper care and a loving home for an adopted child;

(3) The rights of children to be raised in loving homes that are capable of providing proper care for adopted children and that the best interests of children in the adoptive process are protected;

(4) The adoptive process protects the rights of all persons who are affected by that process and who should be entitled to notice of the proceedings for the adoption of a child;

(5) The adoption proceedings are held in an expeditious manner to enable the child to achieve permanency, consistent with the child's best interests, at the earliest possible date; and

(6) The adopted child is protected in the child's adoptive relationship from any interference by any person who may have some legal claim after the child has become properly adjusted to the child's adoptive home.

(b) The secondary purpose of this part is to:

(1) Protect parents and guardians of children from decisions concerning the relinquishment of their parental or guardian's rights to their children or wards that might be made as a result of undue influence or fraud;

(2) Protect adoptive parents from assuming the care and responsibility for a child about whose physical, mental, emotional, and hereditary background they are unaware;

(3) Protect the adoptive parents from the later disturbance of their parental relationship with their child by the or prior legal parents of the child who may have some legal claim due to the failure to protect their legal rights; and

(4) Provide adoption promotion and support services and activities designed to encourage early permanency and adoptions, when adoptions promote the best interests of children, including such activities as pre-adoptive and post-adoptive services and activities designed to expedite the adoption process.

(c) The purpose of this part shall also be to favor the rights of adopted persons or other persons for whom any closed records are maintained and their families to obtain information concerning the lives of those persons and to permit them to obtain information about themselves from the adoption records, sealed records, sealed adoption records, or post-adoption records to which they are entitled, but also to recognize the rights of parents and adopted persons not to be contacted by the persons who obtain such information, except in compliance with this part.

(d) In all cases, when the best interests of the child and those of the adults are in conflict, such conflict shall always be resolved to favor the rights and the best interests of the child, which interests are hereby recognized as constitutionally protected and, to that end, this part shall be liberally construed.

History.
Acts 1951, ch. 202, § 1 (Williams, § 9572.15); T.C.A. (orig. ed.), § 36-101; Acts 1995, ch. 532, § 1; 1996, ch. 1054, §§ 1, 2; 1998, ch. 1097, § 1.

36-1-102. Part definitions.

As used in this part, unless the context otherwise requires:

(1)(A) For purposes of terminating the parental or guardian rights of a parent or parents or a guardian or guardians of a child to that child in order to make that child available for adoption, "abandonment" means that:

(i) For a period of four (4) consecutive months immediately preceding the filing of a proceeding or pleading to terminate the parental rights of the parent or parents or the guardian or guardians of the child who is the subject of the petition for termination of parental rights or adoption, that the parent or parents or the guardian or guardians either have willfully failed to visit or have willfully failed to support or have willfully failed to make reasonable payments toward the support of the child;

(ii) The child has been removed from the home of the parent or parents or the guardian or guardians as the result of a petition filed in the juvenile court in which the child was found to be a dependent and neglected child, as defined in § 37-1-102, and the child was placed in the custody of the department or a licensed child-placing agency, that the juvenile court found, or the court where the termination of parental rights petition is filed finds, that the department or a licensed child-placing agency made reasonable efforts to prevent removal of the child or that the circumstances of the child's situation prevented reasonable efforts from being made prior to the child's removal; and for a period of four (4) months following the removal, the department or agency has made reasonable efforts

to assist the parent or parents or the guardian or guardians to establish a suitable home for the child, but that the parent or parents or the guardian or guardians have made no reasonable efforts to provide a suitable home and have demonstrated a lack of concern for the child to such a degree that it appears unlikely that they will be able to provide a suitable home for the child at an early date. The efforts of the department or agency to assist a parent or guardian in establishing a suitable home for the child may be found to be reasonable if such efforts exceed the efforts of the parent or guardian toward the same goal, when the parent or guardian is aware that the child is in the custody of the department;

(iii) A biological or legal father has either willfully failed to visit or willfully failed to make reasonable payments toward the support of the child's mother during the four (4) months immediately preceding the birth of the child; provided, that in no instance shall a final order terminating the parental rights of a parent as determined pursuant to this subdivision (1)(A)(iii) be entered until at least thirty (30) days have elapsed since the date of the child's birth;

(iv) A parent or guardian is incarcerated at the time of the institution of an action or proceeding to declare a child to be an abandoned child, or the parent or guardian has been incarcerated during all or part of the four (4) months immediately preceding the institution of such action or proceeding, and either has willfully failed to visit or has willfully failed to support or has willfully failed to make reasonable payments toward the support of the child for four (4) consecutive months immediately preceding such parent's or guardian's incarceration, or the parent or guardian has engaged in conduct prior to incarceration that exhibits a wanton disregard for the welfare of the child. If the four-month period immediately preceding the institution of the action or the four-month period immediately preceding such parent's incarceration is interrupted by a period or periods of incarceration, and there are not four (4) consecutive months without incarceration immediately preceding either event, a four-month period shall be created by aggregating the shorter periods of nonincarceration beginning with the most recent period of nonincarceration prior to commencement of the action and moving back in time. Periods of incarceration of less than seven (7) days duration shall be counted as periods of nonincarceration. Periods of incarceration not discovered by the petitioner and concealed, denied, or forgotten by the parent shall also be counted as periods of nonincarceration. A finding that the parent has abandoned the child for a defined period in excess of four (4) months that would necessarily include the four (4) months of nonincarceration immediately prior to the institution of the action, but which does not precisely define the relevant four-month period, shall be sufficient to establish abandonment; or

(v) The child, as a newborn infant aged seventy-two (72) hours or less, was voluntarily left at a facility by such infant's mother pursuant to § 68-11-255; and, for a period of thirty (30) days after the date of voluntary delivery, the mother failed to visit or seek contact with the infant; and, for a period of thirty (30) days after notice was given under § 36-1-142(e), and no less than ninety (90) days cumulatively, the mother failed to seek contact with the infant through the department or to revoke her voluntary delivery of the infant;

(B) For purposes of this subdivision (1), "token support" means that the support, under the circumstances of the individual case, is insignificant given the parent's means;

(C) For purposes of this subdivision (1), "token visitation" means that the visitation, under the circumstances of the individual case, constitutes nothing more than perfunctory visitation or visitation of such an infrequent nature or of such short duration as to merely establish minimal or insubstantial contact with the child;

(D) For purposes of this subdivision (1), "willfully failed to support" or "willfully failed to make reasonable payments toward such child's support" means the willful failure, for a period of four (4) consecutive months, to provide monetary support or the willful failure to provide more than token payments toward the support of the child;

(E) For purposes of this subdivision (1), "willfully failed to visit" means the willful failure, for a period of four (4) consecutive months, to visit or engage in more than token visitation;

(F) Abandonment may not be repented of by resuming visitation or support subsequent to the filing of any petition seeking to terminate parental or guardianship rights or seeking the adoption of a child;

(G) "Abandonment" and "abandonment of an infant" do not have any other definition except that which is set forth in this section, it being the intent of the general assembly to establish the only grounds for abandonment by statutory definition. Specifically, it shall not be required that a parent be shown to have evinced a settled purpose to forego all parental rights and responsibilities in order for a determination of abandonment to be made. Decisions of any court to the contrary are hereby legislatively overruled; and

(H) Every parent who is eighteen (18) years of age or older is presumed to have knowledge of a parent's legal obligation to support such parent's child or children;

(2) "Abandonment of an infant" means, for purposes of terminating parental or guardian rights, "abandonment" of a child under one (1) year of age;

(3) "Adopted person" means:

(A) Any person who is or has been adopted under this part or under the laws of any state,

territory, or foreign country; and

(B) For purposes of the processing and handling of, and access to, any adoption records, sealed adoption records, sealed records, post-adoption records, or adoption assistance records pursuant to this part, "adopted person" also includes a person for whom any of those records is maintained by the court, other persons or entities or persons authorized to conduct a surrender or revocation of surrender pursuant to this part, or which records are maintained by the department, a licensed or chartered child-placing agency, a licensed clinical social worker, or the department of health or other information source, whether an adoption petition was ever filed, whether an adoption order was ever entered, whether the adoption was ever dismissed, whether the adoption was ever finalized, or whether the adoption was attempted or was otherwise never completed due to the abandonment of any necessary activity related to the completion of the adoption;

(4) "Adoption" means the social and legal process of establishing by court order, other than by paternity or legitimation proceedings or by voluntary acknowledgment of paternity, the legal relationship of parent and child;

(5) "Adoption assistance" means the federal or state programs that exist to provide financial assistance to adoptive parents to enable them to provide a permanent home to a special needs child as defined by the department;

(6) "Adoption record" means:

(A)(i) The records, reports, or other documents maintained in any medium by the judge or clerk of the court, or by any other person pursuant to this part who is authorized to witness the execution of surrenders or revocations of surrenders, which records, reports, or documents relate to an adoption petition, a surrender or parental consent, a revocation of a surrender or parental consent, or which reasonably relate to other information concerning the adoption of a person, and which information in such records, reports, or documents exists during the pendency of an adoption or a termination of parental rights proceeding, or which records, reports, or documents exist subsequent to the conclusion of those proceedings, even if no order of adoption or order of dismissal is entered, but which records, reports or documents exist prior to those records, reports, or documents becoming a part of a sealed record or a sealed adoption record pursuant to § 36-1-126; or

(ii) The records, reports, or documents maintained in any medium by the department's social services division, or by a licensed or chartered child-placing agency or licensed clinical social worker, and which records, reports, or documents contain any social, medical, legal, or other information concerning an adopted person, a person who has been placed for adoption or a person for whom adoptive placement activities are currently occurring, and which information in such records, reports, or documents exists during the pendency of an adoption or termination of parental rights proceeding, or which exists subsequent to the conclusion of those proceedings, even if no order of adoption or dismissal of an adoption has been entered, but which records, reports, or documents exist prior to those records, reports, or documents becoming sealed records or sealed adoption records pursuant to § 36-1-126;

(B) The adoption record is confidential and is not subject to disclosure by the court, by a licensed child-placing agency, by a licensed clinical social worker or by any other person or entity, except as otherwise permitted by this part; however, prior to the record's becoming a sealed record or a sealed adoption record pursuant to § 36-1-126, the adoption record may be disclosed as may be necessary for purposes directly related to the placement, care, treatment, protection, or supervision by the legal custodian, legal guardian, conservator, or other legally authorized caretaker of the person who is the subject of the adoption proceeding, or as may be necessary for the purposes directly related to legal proceedings involving the person who is subject to the jurisdiction of a court in an adoption proceeding or other legal proceeding related to an adoption, including terminations of parental rights, or as may otherwise be necessary for use in any child or adult protective services proceedings concerning the person about whom the record is maintained pursuant to titles 37 and 71;

(C) The adoption record shall not, for purposes of release of the records pursuant to §§ 36-1-127 — 36-1-141, be construed to permit access, without a court order pursuant to § 36-1-138, to home studies or preliminary home studies or any information obtained by the department, a licensed or chartered child-placing agency, a licensed clinical social worker, or other family counseling service, a physician, a psychologist, or member of the clergy, an attorney or other person in connection with a home study or preliminary home study as part of an adoption or surrender or parental consent proceeding or as part of the evaluation of prospective adoptive parents, other than those studies that are expressly included in a report to the court by such entities or persons. Information relating to the counseling of a biological mother regarding crisis pregnancy counseling shall not be included in the adoption record for purposes of release pursuant to this part without a court order pursuant to § 36-1-138;

(7) "Adoptive parent or parents" means the person or persons who have been made the legal parents of a child by the entry of an order of adoption under this part or under of the laws of any state, territory or foreign country;

(8) "Adult" means any person who is eighteen (18) years of age or older. An adult may be adopted as provided in this part;

(9) "Aggravated circumstances" means abandonment, abandonment of an infant, aggravated assault, aggravated kidnapping, especially aggravated kidnapping, aggravated child abuse and neglect, aggravated sexual exploitation of a minor, especially aggravated sexual exploitation of a minor, aggravated rape, rape, rape of a child, incest, or severe child abuse, as defined at § 37-1-102;

(10) "Biological parents" means the woman and man who physically or genetically conceived the child who is the subject of the adoption or termination proceedings or who conceived the child who has made a request for information pursuant to this part;

(11) "Biological relative" means:

(A) For adopted persons for whom any adoption records, sealed adoption records, sealed records, or post-adoption records are maintained: the biological parents or child of an adopted person or person for whom any adoption record, sealed record, sealed adoption record or post-adoption record is maintained, the brothers or sisters of the whole or half blood, the blood grandparents of any degree, the blood aunts or uncles, or the blood cousins of the first degree, of such persons; and

(B) For persons about whom any background information is sought as part of the surrender or parental consent process: the biological parents of the child, the brothers or sisters of the whole or half blood, the blood grandparents of any degree, or the blood aunts or uncles;

(12) "Chartered child-placing agency" means an agency that had received a charter from the state of Tennessee through legislative action or by incorporation for the operation of an entity or a program of any type that engaged in the placement of children for foster care or residential care as part of a plan or program for which those children were or could have been made available for adoptive placement and that may have, at sometime during its existence, become subject to any licensing requirements by the department or its predecessors;

(13) "Child" or "children" means any person or persons under eighteen (18) years of age;

(14) "Child caring agency" means any agency authorized by law to care for children outside their own homes for twenty-four (24) hours per day;

(15) "Consent" means:

(A) The written authorization to relinquish a child for adoption, which is given by an agency such as the department or a public child care agency of another state or country or licensed child-placing agency of this or another state, which agency has the authority, by court order or by surrender or by operation of law or by any combination of these, to place a child for adoption and to give permission for the adoption of that child by other persons;

(B) The written permission of a parent pursuant to § 36-1-117(f) to permit the adoption of that parent's child by that parent's relative or by the parent's spouse who is the child's stepparent;

(C) The process as described in § 36-1-117(g) by which a parent co-signs an adoption petition, with the prospective adoptive parents, for the purpose of agreeing to make the child available for adoption by the co-petitioning prospective adoptive parents, and that permits the court to enter an order of guardianship to give the adoptive parents custody and supervision of the child pending the completion or dismissal of the adoption proceedings or pending revocation of the consent by the parent. This process shall be called a "parental consent";

(D) The permission of a child fourteen (14) years of age or older given to the court, in chambers, before the entry of an order of adoption of such child;

(E) The permission of a guardian ad litem for a disabled child or an adult permitting the adoption of those persons pursuant to the procedures of § 36-1-117(i) and (j);

(F) The sworn, written permission of an adult person filed with the court where the adoption petition is filed that seeks the adoption of the adult; or

(G) The agreement for contact by the parties to the post-adoption records search procedures that may be required in §§ 36-1-127 — 36-1-141;

(16)(A) "Court" means the chancery or circuit court; provided, that "court" includes the juvenile court for purposes of the authority to accept the surrender or revocation of surrenders of a child and to issue any orders of reference, orders of guardianship, or other orders resulting from a surrender or revocation that it accepts and for purposes of authorizing the termination of parental rights pursuant to § 36-1-113; title 37, chapter 1, part 1; and title 37, chapter 2, part 4;

(B) All appeals of any orders relative to the juvenile court's actions in taking a surrender or revocation or in terminating parental rights shall be made to the court of appeals as provided by law; or

(C) A juvenile court magistrate, appointed by the juvenile court judge pursuant to title 37, shall have authority to take a surrender of a child and to take a revocation of such surrender;

(17) "Court report" means the report to the adoption or surrender court in response to an order of reference that describes to the court the status of the child and the prospective adoptive parents or the persons to whom the child is surrendered. Such a report may be preliminary, supplementary, or final in nature. The court report shall not include the home study or preliminary home study, but instead shall include a summary of such study;

(18) "Department" means the department of children's services or any of its divisions or units;

(19) "Eligible person" means, for purposes of §§ 36-1-125 — 36-1-141, a person who is verified by the department as being in the class of individuals who is permitted by this part to receive access to records;

(20) "Final court report" means a written document completed by the department or a licensed child-placing agency or licensed clinical social worker

after submission of any prior court reports in response to the court's order of reference. It gives information concerning the status of the child in the home of the prospective adoptive parents and gives a full explanation to the court of the suitability of the prospective adoptive parent or parents to adopt the child who is the subject of the adoption petition. The final court report is designed to bring the status of the proposed adoptive home and the child up to date immediately prior to finalization of the adoption and should be the last report the court receives before finalization of the adoption by entry of an order of adoption;

(21) "Financially able" means that the petitioners for adoption of a child are able, by use of any and all income and economic resources of the petitioners, including, but not limited to, assistance from public or private sources, to ensure that any physical, emotional, or special needs of the child are met;

(22) "Foster care" has the meaning given to that term in § 37-1-102; provided, that no plan or permanency plan, as defined in § 37-2-402, shall be required in the case of foster care provided by or in any agency, institution or home in connection with an adoption of a child, so long as a petition for the adoption of that child by an individual or individuals to whom care of that child has been given is filed in a court of competent jurisdiction within six (6) months of the time that child first comes into the care of the agency, institution or home;

(23) "Foster parent" has the meaning given to that term in § 37-1-102;

(24)(A) "Guardian" or "guardians" or "co-guardian" or "co-guardians" means a person or persons or an entity, other than the parent of a child, appointed by a court or defined by law specifically as "guardian" or "co-guardian" or "conservator" to provide supervision, protection for and care for the person or property, or both, of a child or adult;

(B) "Guardian" or "co-guardian" also means a person or entity appointed as guardian or guardians as the result of a surrender, parental consent, or termination of parental rights;

(C) The rights of the individual guardian or co-guardian or conservator of the person of a minor child or of an adult must be terminated by a surrender or court action before an order of adoption can be entered; provided, that an individual or individuals who receives or receive guardianship pursuant to a surrender, parental consent, or termination of parental rights pursuant to this part or title 37 need not give consent to the adoption when that individual is the petitioner in an adoption;

(D) When the department, a licensed child-placing agency, or a child-caring agency is the guardian of the child, its rights must be terminated by court action or it must provide consent as defined in subdivision (15)(A) before an adoption can be ordered;

(25)(A) "Guardianship" or "co-guardianship" means, for purposes of subdivision (24), a person or entity having the status of being a guardian or co-guardian who or which is responsible for the provision of supervision, protection, and assistance to the person of a child under this part or under other law of this or any other jurisdiction;

(B) Guardianship as a result of a surrender, consent, or termination of parental rights pursuant to this part or title 37 or the law of any other jurisdiction may be "complete" or "partial";

(C)(i) A person or entity has "complete" guardianship for the purpose of permitting a court to order an adoption when all necessary parental or guardianship rights have been terminated by surrender, by consent, by waiver of interest, or by involuntary termination of parental rights proceedings by a court or otherwise, and the court or courts with jurisdiction to do so enters an order or orders granting guardianship status to the person or entity;

(ii) Complete guardianship pursuant to a surrender or consent under this part or pursuant to the termination of the rights of a parent or guardian of a child under this part or under title 37, and pursuant to the entry of an order of guardianship as provided in this part, shall entitle the person or entity to the right to care for the child as provided under § 37-1-140 or as otherwise provided by the court order, and shall permit the entity to place the child for adoption and to consent to the adoption, or shall permit the individual to be granted an adoption of the child, and shall authorize the court to proceed with and grant an adoption, without further termination of parental or guardian rights;

(D)(i) A person or entity has "partial guardianship" when a surrender or consent has been received from at least one (1), but not all, parents or guardians of the child, or when a court-ordered termination of parental or guardianship rights has been obtained against at least one (1), but not all, parents or guardians of the child, and the court has entered an order granting guardianship of the child to the petitioning person or entity, and the remaining parent or guardian of the child has not executed a surrender or consent or the child's parental or guardianship rights have not been terminated by waiver of interest pursuant to this part, court order, or otherwise;

(ii) Partial guardianship obtained pursuant to a surrender or consent or pursuant to an order terminating less than all parental rights, and an order of partial guardianship pursuant to this part or pursuant to title 37 shall entitle the person or entity to provide care, supervision, and protection of the child pursuant to § 37-1-140, or to the extent permitted by the court order granting partial guardianship, but it shall not be effective to allow full consent to an adoption by an entity without termination by surrender or court order or otherwise of the remaining parental or guardianship rights of other parents or guardians, and shall not authorize the court to grant an adoption to an individual until all

remaining parental or guardianship rights have been surrendered, terminated, or otherwise ended; provided, that the department or licensed child-placing entity may place a child for adoption with prospective adoptive parents and may consent to the adoption of the child by those prospective adoptive parents when the department or the licensed child-placing agency has partial guardianship, and the prospective adoptive parents then shall be required to obtain complete guardianship of the child by surrender, termination of parental rights, waiver of interest, or parental consent to effect the adoption of the child;

(26) "Home study" means the product of a preparation process in which individuals or families are assessed by themselves and the department or licensed child-placing agency, or a licensed clinical social worker as to their suitability for adoption and their desires with regard to the child they wish to adopt. The home study shall conform to the requirements set forth in the rules of the department and it becomes a written document that is used in the decision to approve or deny a particular home for adoptive placement. The home study may be the basis on which the court report recommends approval or denial to the court of the family as adoptive parents. A court report based upon any home study conducted by a licensed child-placing agency, licensed clinical social worker or the department that has been completed or updated within one (1) year prior to the date of the surrender or order of reference shall be accepted by the court for purposes of §§ 36-1-111 and 36-1-116. The home study shall be confidential, and at the conclusion of the adoption proceeding shall be forwarded to the department to be kept under seal pursuant to § 36-1-126, and shall be subject to disclosure only upon order entered pursuant to § 36-1-138;

(27) "Interstate Compact on the Placement of Children (ICPC)" means §§ 37-4-201 — 37-4-207 relating to the placement of a child between states for the purposes of foster care or adoption. The ICPC is administered in Tennessee by the department through its state office in Nashville;

(28)(A) "Legal parent" means:

(i) The biological mother of a child;

(ii) A man who is or has been married to the biological mother of the child if the child was born during the marriage or within three hundred (300) days after the marriage was terminated for any reason, or if the child was born after a decree of separation was entered by a court;

(iii) A man who attempted to marry the biological mother of the child before the child's birth by a marriage apparently in compliance with the law, even if the marriage is declared invalid, if the child was born during the attempted marriage or within three hundred (300) days after the termination of the attempted marriage for any reason;

(iv) A man who has been adjudicated to be the legal father of the child by any court or administrative body of this state or any other state or territory or foreign country or who has signed, pursuant to §§ 24-7-113, 68-3-203(g), 68-3-302 68-3-305(b), an unrevoked and sworn acknowledgment of paternity under Tennessee law, or who has signed such a sworn acknowledgment pursuant to the law of any other state, territory, or foreign country; or

(v) An adoptive parent of a child or adult;

(B) A man shall not be a legal parent of a child based solely on blood, genetic, or DNA testing determining that he is the biological parent of the child without either a court order or voluntary acknowledgement of paternity pursuant to § 24-7-113. Such test may provide a basis for an order establishing paternity by a court of competent jurisdiction, pursuant to the requirements of § 24-7-112;

(C) If the presumption of paternity set out in subdivisions (28)(A)(ii)-(iv) is rebutted as described in § 36-2-304, the man shall no longer be a legal parent for purposes of this chapter and no further notice or termination of parental rights shall be required as to this person;

(29) "Legal relative" means the person who is included in the class of persons set forth in the definition of "biological relative" or "legal parent", and who, at the time a request for search services or information is made pursuant to §§ 36-1-127 — 36-1-131 and 36-1-133 — 36-1-138, is related to the adopted person by any legal relationship established by law, court order, or by marriage, but specifically includes, in addition, a step-parent or the spouse of any legal relative;

(30)(A) "Legal representative" means:

(i) The conservator, guardian, legal custodian, or other person or entity with legal authority to make decisions for an individual with a disability or an attorney-in-fact, an attorney at law representing a person for purposes of obtaining information pursuant to this part, or the legally appointed administrator, executor, or other legally appointed representative of a person's estate; or

(ii) Any person acting under any durable power of attorney for health care purposes or any person appointed to represent a person and acting pursuant to a living will;

(B) For purposes of subdivision (30)(A), "disability" means that the individual is a minor pursuant to any state, territorial, or federal law, or the law of any foreign country, or that the individual has been determined by any such laws to be in need of a person or entity to care for the individual due to that individual's physical or mental incapacity or infirmity;

(31) "Licensed child-placing agency" means any agency operating under a license to place children for adoption issued by the department, or operating under a license from any governmental authority

from any other state or territory or the District of Columbia, or any agency that operates under the authority of another country with the right to make placement of children for adoption and that has, in the department's sole determination, been authorized to place children for adoption in this state;

(32) "Licensed clinical social worker" means an individual who holds a license as an independent practitioner from the board of social worker certification and licensure pursuant to title 63, chapter 23, and, in addition, is licensed by the department to provide adoption placement services;

(33) "Lineal ancestor" means any degree of grandparent or great-grandparent, either by birth or adoption;

(34) "Lineal descendant" means a person who descended directly from another person who is the biological or adoptive ancestor of such person, such as the daughter of the daughter's mother or granddaughter of the granddaughter's grandmother;

(35) "Order of reference" means the order from the court where the surrender is executed or filed or where the adoption petition is filed that directs the department or a licensed child-placing agency or licensed clinical social worker to conduct a home study or preliminary home study or to complete a report of the status of the child who is or may be the subject of an adoption proceeding, and that seeks information as to the suitability of the prospective adoptive parents to adopt a child;

(36) "Parent" or "parents" means any biological, legal, adoptive parent or parents or, for purposes of §§ 36-1-127 — 36-1-141, stepparents;

(37) "Parental consent" means the consent described in subdivision (15)(C);

(38) "Parental rights" means the legally recognized rights and responsibilities to act as a parent, to care for, to name, and to claim custodial rights with respect to a child;

(39) "Physical custody" means physical possession and care of a child. "Physical custody" may be constructive, as when a child is placed by agreement or court order with an agency, or purely physical, as when any family, including a formal or informal foster family, has possession and care of a child, so long as such possession was not secured through a criminal act. An agency and a family may have physical custody of the same child at the same time;

(40) "Post-adoption record" means:

(A) The record maintained in any medium by the department, separately from the sealed record or sealed adoption record and subsequent to the sealing of an adoption record or that is maintained about any sealed record or sealed adoption record. The post-adoption record contains information, including, but not limited to, adopted persons or the legal or biological relatives of adopted persons, or about persons for whom sealed records or sealed adoption records are maintained, or about persons who are seeking information about adopted persons, or persons on whom a sealed record or sealed adoption record is maintained. The post-adoption record contains information concerning, but not limited to, the contact veto registry established by this part, the written inquiries from persons requesting access to records, the search efforts of the department pursuant to the requirements of the contact veto process, the response to those search efforts by those persons sought, information that has been requested to be transmitted from or on behalf of any person entitled to access to records pursuant to this part, any updated medical information gathered pursuant to this part, court orders related to the opening of any sealed adoption records or sealed records, and personal identifying information concerning any persons subject to this part;

(B) The limited record maintained by the licensed or chartered child-placing agency or a licensed clinical social worker pursuant to § 36-1-126(b)(2), that indicates the child's date of birth, the date the agency received the child for placement, from whom the child was received and such person's last known address, with whom the child was placed and such person's or entity's last known address, and the court in which the adoption proceeding was filed and the date the adoption order was entered or the adoption petition dismissed; and

(C) This record is confidential and shall be opened only as provided in this part;

(41)(A) "Preliminary home study" means an initial home study conducted prior to or, in limited situations, immediately after, the placement of a child with prospective adoptive parents who have not previously been subject to a home study that was conducted or updated not less than six (6) months prior to the date a surrender is sought to be executed to the prospective adoptive parents or prior to the date of the filing of the adoption petition;

(B) The preliminary home study is designed to obtain an early and temporary initial assessment of the basic ability of prospective adoptive parents to provide adequate care for a child who is proposed to be adopted by those prospective adoptive parents, and is utilized only for the purpose of approval of surrenders or for purposes of responding to an order of reference pursuant to § 36-1-116(e)(2), or for purposes of entering a guardianship order under § 36-1-116(f)(3);

(C) The preliminary home study shall consist of a minimum of two (2) visits with the prospective adoptive parents, at least one (1) of which shall be in the home of the prospective adoptive parents, and the study shall support the conclusion that no apparent reason exists why the prospective adoptive parents would not be fit parents for the child who is the subject of the adoption. To be valid for use as the basis for a court report in connection with a surrender or a parental consent, the preliminary home study must have been completed or updated within thirty (30) days prior to the date the surrender is accepted or the parental consent is

executed or confirmed or the guardianship order is entered. The home study shall be confidential, and, at the conclusion of the adoption proceeding, shall be forwarded to the department to be kept under seal pursuant to § 36-1-126, and shall be subject to disclosure only upon order entered pursuant to § 36-1-138;

(42) "Prospective adoptive parents" means a non-agency person or persons who are seeking to adopt a child and who have made application with a licensed child-placing agency or licensed clinical social worker or the department for approval, or who have been previously approved, to receive a child for adoption, or who have received or who expect to receive a surrender of a child, or who have filed a petition for termination or for adoption;

(43) "Putative father" means a biological or alleged biological father of a child who, at the time of the filing of a petition to terminate the parental rights of such person or, if no such petition is filed, at the time of the filing of a petition to adopt a child, meets at least one (1) of the criteria set out in § 36-1-117(c) and is not a legal parent;

(44) "Related" means grandparents or any degree of great-grandparents, aunts or uncles, or any degree of great-aunts or great-uncles, or step-parent, or cousins of the first degree or any siblings of the whole or half degree or any spouse of the above listed relatives;

(45)(A) "Sealed adoption record" means:

(i) The adoption record as it exists subsequent to its transmittal to the department, or subsequent to its sealing by the court, pursuant to the requirements of § 36-1-126; or

(ii) The limited record maintained by the licensed or chartered child-placing agency or a licensed clinical social worker pursuant to § 36-1-126(b)(2);

(B) This record is confidential and shall be opened only as provided in this part;

(C) The sealed adoption record shall not, for purposes of release of the records pursuant to §§ 36-1-127 — 36-1-141, be construed to permit access, without a court order pursuant to § 36-1-138, to home studies or preliminary home studies or any information obtained by the department, a licensed or chartered child-placing agency, a licensed clinical social worker, or other family counseling service, a physician, a psychologist, or member of the clergy, an attorney or other person in connection with a home study or preliminary home study as part of an adoption or surrender or parental consent proceeding or as part of the evaluation of prospective adoptive parents, other than those studies that are expressly included in a report to the court by such entities or persons. Information relating to the counseling of a biological mother regarding crisis pregnancy counseling shall not be included in the adoption record for purposes of release pursuant to this part without a court order pursuant to § 36-1-138;

(46)(A) "Sealed record" means:

(i) Any records, reports, or documents that are maintained at any time by a court, a court clerk, a licensed or chartered child-placing agency, licensed clinical social worker, the department, the department of health, or any other information source concerning the foster care or agency care placement, or placement for adoption, of a person by any branch of the Tennessee children's home society authorized by Public Chapter 113 (1919); or

(ii) Any records, reports, or documents maintained by a judge, a court clerk, the department, a licensed or chartered child-placing agency, a licensed clinical social worker, the department of health, or any other information source that consist of adoption records or information about an adoption proceeding or a termination of parental rights proceeding about an adopted person, or that contain information about a person who was placed for adoption but for whom no adoption order was entered or for whom an adoption proceeding was dismissed or for whom an adoption was not otherwise completed, or that contain information concerning persons in the care of any person or agency, and which records have otherwise been treated and maintained by those persons or entities under prior law, practice, policy, or custom as confidential, nonpublic adoption records, sealed adoption records, or post-adoption records of the person, or that may be otherwise currently treated and maintained by those persons or entities as confidential, nonpublic adoption records, sealed adoption records or post-adoption records of the person; or

(iii) The limited record maintained by the licensed or chartered child-placing agency or a licensed clinical social worker pursuant to § 36-1-126(b)(2);

(B) This record is confidential and shall be opened only as provided in this part;

(C) The sealed record shall not, for purposes of release of the records pursuant to §§ 36-1-127 — 36-1-141, be construed to permit access, without a court order pursuant to § 36-1-138, to home studies or preliminary home studies or any information obtained by the department, a licensed or chartered child-placing agency, a licensed clinical social worker, or other family counseling service, a physician, a psychologist, or member of the clergy, an attorney or other person in connection with a home study or preliminary home study as part of an adoption or surrender or parental consent proceeding or as part of the evaluation of prospective adoptive parents, other than those studies that are expressly included in a report to the court by such entities or persons. Information relating to the counseling of a biological mother regarding crisis pregnancy counseling shall not be included in the adoption record for purposes of release pursuant to this part without a court order pursuant to § 36-1-138;

(47) "Sibling" means anyone having a sibling relationship;

(48) "Sibling relationship" means the biological or legal relationship between persons who have a common biological or legal parent;

(49) "Surrender" means a document executed under § 36-1-111, or under the laws of another state or territory or country, by the parent or guardian of a child, by which that parent or guardian relinquishes all parental or guardianship rights of that parent or guardian to a child, to another person or public child care agency or licensed child-placing agency for the purposes of making that child available for adoption; and

(50)(A) "Surrogate birth" means:

(i) The union of the wife's egg and the husband's sperm, which are then placed in another woman, who carries the fetus to term and who, pursuant to a contract, then relinquishes all parental rights to the child to the biological parents pursuant to the terms of the contract; or

(ii) The insemination of a woman by the sperm of a man under a contract by which the parties state their intent that the woman who carries the fetus shall relinquish the child to the biological father and the biological father's wife to parent;

(B) No surrender pursuant to this part is necessary to terminate any parental rights of the woman who carried the child to term under the circumstances described in this subdivision (48) and no adoption of the child by the biological parent or parents is necessary;

(C) Nothing in this subdivision (48) shall be construed to expressly authorize the surrogate birth process in Tennessee unless otherwise approved by the courts or the general assembly.

History.

Acts 1951, ch. 202, §§ 2, 40 (Williams, §§ 9572.16, 9572.52); 1961, ch. 227, § 1; 1972, ch. 612, § 7; 1972, ch. 624, § 1; impl. am. Acts 1975, ch. 219, § 1; 1976, ch. 394, § 1; modified; Acts 1978, ch. 704, § 1; 1983, ch. 435, § 7; T.C.A. (orig. ed.), § 36-102; Acts 1990, ch. 988, § 1; 1993, ch. 124, §§ 5, 6; § 36-1-102; Acts 1995, ch. 532, § 1; 1996, ch. 1054, §§ 3-15, 104; 1996, ch. 1079, § 69; 1998, ch. 1097, §§ 2, 3; 2000, ch. 981, § 51; 2001, ch. 388, § 4; 2002, ch. 630, § 1; 2003, ch. 231, §§ 1-4; 2009, ch. 235, § 1; 2009, ch. 411, §§ 1-3; 2010, ch. 760, §§ 1, 2; 2010, ch. 887, § 2; 2010, ch. 888, § 1; 2010, ch. 924, § 1; 2016, ch. 636, §§ 2, 4; 2016, ch. 716, § 2; 2016, ch. 919, §§ 1, 2.

Compiler's Notes.

Acts 2009, ch. 235, § 1 directed the code commission to revise appropriate references from "child support referees" and "juvenile referees" to "child support magistrates" and "juvenile magistrates" in the code as supplements are published and volumes are replaced.

Acts 2009, ch. 411, § 12 provided that the act, which amended §§ 36-1-102, 36-1-108, 37-1-102, 37-2-402 and added new § 37-1-183, shall apply to conduct covered by the provisions of the act that occurs on or after July 1, 2009. The eighteen (18) month time period set out in § 37-1-102(b)(12)(J) shall not commence until July 1, 2009.

36-1-103. Prior adoptions and terminations of parental rights involving minors and prior adoptions of adults ratified.

(a) All proceedings for the adoption of children in the courts of this state, including any proceedings that terminated parental or guardianship rights, are hereby validated and confirmed and the orders and judgments entered therein prior to January 1, 1996, are declared to be binding upon all parties to the proceedings and such parties' privies and all other persons, until such orders or judgments shall be vacated as provided by law; provided, that this section does not apply to adoption proceedings or terminations of parental rights proceedings actually pending on January 1, 1996, in which the validity of a prior adoption or termination of parental rights proceeding is at issue.

(b) Adoptions and terminations of parental rights pending on January 1, 1996, and surrenders and consents executed prior to January 1, 1996, shall be governed by prior existing law.

(c) All adoptions of persons who are adults as of January 1, 1996, that were completed before January 1, 1996, in the courts of this state, pursuant to the then-existing provisions of this part, are hereby in all things ratified and confirmed.

(d) Notwithstanding any law to the contrary, surrenders taken and adoptions filed on or after January 1, 1996, and before October 1, 1996, which complied with the prior adoption law that was in effect on December 31, 1995, are in all things ratified and confirmed and shall be valid and lawful; provided, that this section does not apply to adoption proceedings or terminations of parental rights proceedings actually pending on January 1, 1996, in which the validity of a prior adoption or termination of parental rights proceeding is at issue. It is the intent of the general assembly to prevent any declaration of invalidity of any surrenders or adoptions taken or filed on or after January 1, 1996, and before October 1, 1996, for failure to properly comply with the provisions of Chapter 532 of the Public Acts of 1995, which took effect on January 1, 1996, and which amended prior adoption law and procedures. This section is remedial legislation and shall have retrospective effect in order to promote the public welfare and to preserve the permanency of adoptive placements for children.

History.

Acts 1965, ch. 152, § 1; T.C.A., § 36-138; Acts 1978, ch. 704, § 2; T.C.A., § 36-139; § 36-1-138; Acts 1995, ch. 532, § 1; 1996, ch. 1054, § 105.

Compiler's Notes.

Former § 36-1-103, concerning persons to whom part is applicable, was transferred to § 36-1-107, effective January 1, 1996.

36-1-104. Withholding of material information concerning the status of the parents or guardian of a child subject to surrender, termination of parental rights or adoption— Misdemeanor.

Any person who, upon request by any party to an adoption or the party's agent or attorney, a licensed child-placing agency or licensed clinical social worker, the department, or the court, knowingly and willfully withholds any information related to the child who is the subject of a surrender, a termination of parental rights, or an adoption proceeding, or who knowingly

and willfully withholds any material information concerning the identity, status, or whereabouts of the child's a parent or parents or a guardian or guardians, or who knowingly and willfully gives false information concerning the child or the identity, status, or whereabouts of the child's parent or parents or guardian or guardians commits a Class A misdemeanor. Nothing herein shall be construed to require any person or agency to disclose any information, the confidentiality or privilege of which is protected by any state or federal law or regulation.

History.
Acts 1995, ch. 532, § 1; 1996, ch. 1054, § 16.

Compiler's Notes.
Former § 36-1-104, concerning venue, was transferred to § 36-1-114.

36-1-105. Violation of criminal provisions of part by state employee — Dismissal.

Any employee of the state of Tennessee who is convicted of the violation of any of the criminal provisions of this part shall be instantly dismissed from the state service and shall never again be eligible for employment in state service.

History.
Acts 1995, ch. 532, § 1.

Compiler's Notes.
Former § 36-1-105, concerning petition for adoption, was transferred to § 36-1-115.

36-1-106. Readoption.

(a) Any minor child who was previously adopted under the laws of any jurisdiction may be subsequently readopted in accordance with this part.

(b) With respect to a child sought to be adopted a second time or subsequent time by new adoptive parents, all provisions in this part relating to the biological parents or legal parents or guardians shall apply to the prior adoptive parents, except that in no case of readoption shall a biological or legal parent or guardian whose rights were previously terminated before the child was initially adopted and whose rights were not subsequently restored be made a party to the new adoption proceeding, nor shall such person's surrender, parental consent, or waiver of interest be necessary. The prior adoptive parents whose rights have not been previously terminated and any other persons who otherwise would be entitled to notice pursuant to this part subsequent to the previous adoption of the child shall be the only necessary parties to the new termination or adoption proceedings and only their surrenders or parental consent, or the termination of their rights, shall be necessary.

(c)(1) With respect to a child sought to be readopted under the laws of this state who has been previously adopted pursuant to the laws of a foreign country, the circuit and chancery courts are specifically authorized to enter new orders of adoption as they may be required for purposes of compliance with any requirements of the government of the United States for children who were adopted in foreign countries. In such instances, if an adoption was conducted in accordance with the laws of the foreign jurisdiction, no further termination of parental rights of the child's parents or guardians need be made, no home study need be conducted, no court report need be made and no time period for which an adoption petition must be on file before a final adoption order is entered shall be required. Further, no consultation of the putative father registry maintained by the department shall be required, and the affidavits otherwise required by § 36-1-120(b)(1) and (2) need not be filed, if the attorney, social worker, or child-placing agency, as the case may be, that provided professional services in the underlying foreign adoption, does not maintain an office in the United States.

(2)(A) When a Tennessee resident adopts a child in a foreign country in accordance with the laws of the foreign country and such adoption is recognized as full and final by the United States government, such resident may file, with a petition, a copy of the decree, order or certificate of adoption that evidences finalization of the adoption in the foreign country, together with a certified translation of the decree, order or certificate of adoption, if it is not in English, and proof of full and final adoption from the United States government, with the clerk of the chancery or circuit court of any county in this state having jurisdiction over the person or persons filing such documents.

(B) The court shall assign a docket number and file and enter the documents referenced in subdivision (c)(2)(A) with an order recognizing such foreign adoption without the necessity of a hearing. Such order, along with the final decree, order or certificate from the foreign country, shall have the same force and effect as if a final order of readoption were granted in accordance with this part.

(C) When the order referenced in subdivision (c)(2)(B) is filed and entered, the adoptive parents may request a report of foreign birth pursuant to § 68-3-310 by submitting an application for report of foreign birth.

(D) Individuals obtaining a report of foreign birth under subdivision (c)(2)(C) are exempt from the disclosure of fees requirements of § 36-1-116(b)(16).

History.
Acts 1951, ch. 202, § 31 (Williams, § 9572.45); T.C.A. (orig. ed.), § 36-137; Acts 1978, ch. 704, § 2; T.C.A. (orig. ed.), § 36-138; § 36-1-137; Acts 1995, ch. 532, § 1; 1996, ch. 1054, § 17; 2003, ch. 231, § 5; 2005, ch. 137, § 1.

Compiler's Notes.
Former § 36-1-106 (Acts 1951, ch. 202, § 15 (Williams, § 9572.29); 1959, ch. 223, § 2; impl. am. Acts 1975, ch. 219, § 1; T.C.A. (orig. ed.),

§ 36-106; Acts 1986, ch. 767, § 6), concerning disclosure of adoption records, was repealed by Acts 1995, ch. 532, § 1.

36-1-107. Persons to whom this part is applicable.

(a) Any person, irrespective of place of birth, citizenship, or place of residence, may be adopted or readopted in accordance with this part.

(b) A single person may file a petition for the adoption of a child.

(c) An adult may be adopted.

History.

Acts 1951, ch. 202, § 3 (Williams, § 9572.17); T.C.A. (orig. ed.), § 36-103; § 36-1-103; Acts 1995, ch. 532, § 1.

Compiler's Notes.

Former § 36-1-107 (Acts 1951, ch. 202, § 14 (Williams, § 9572.28); T.C.A. (orig. ed.), § 36-107), concerning name of child used in adoption proceedings, was repealed by Acts 1995, ch. 532, § 1.

36-1-108. Entities authorized to place children for adoption — Advisory and agency capacity authorized — Injunction to stop illegal payments.

(a)(1) No person, corporation, agency, or other entity, except the department or a licensed child-placing agency or licensed clinical social worker, as defined in § 36-1-102, shall engage in the placement of children for adoption; provided, that this section shall not be construed to prohibit any person from advising parents of a child or prospective adoptive parents of the availability of adoption, or from acting as an agent or attorney for the parents of a child or prospective adoptive parents in making necessary arrangements for adoption so long as no remuneration, fees, contributions, or things of value are given to or received from any person or entity for such service other than usual and customary legal and medical fees in connection with the birth of the child or other pregnancy-related expenses, or for counseling for the parents and/or the child, and for the legal proceedings related to the adoption.

(2) Only a licensed child placing agency, as defined in § 36-1-102, a licensed clinical social worker, as defined in § 36-1-102, prospective adoptive parents, or a lawyer who is subject to the Tennessee supreme court rules regarding lawyer advertising may advertise for the placement of children for adoption in this state. In order to advertise for the placement of children for adoption in Tennessee, out-of-state licensed child placing agencies, licensed clinical social workers or lawyers must:

(A) Be authorized to do business in this state under respective licensing laws; and

(B) Maintain a physical office within this state or incur expenses involved in the transportation of a licensing consultant to the closest physical office of the agency, social worker or lawyer.

(3) Any advertisement in this state for the placement of children for adoption in another state by an agency or individual not licensed or authorized to do such business in this state shall clearly state that the agency or individual is not licensed or authorized to do such business in this state.

(b) "Placement of a child or children for adoption" means, for purposes of this section and § 36-1-109 and for licensing purposes in title 37, chapter 5, part 5, and for § 37-5-507, that a person, corporation, agency, or other entity is employed, contracted, or engaged, in any manner for any remuneration, fee, contribution, or thing of value, of any type by, or on behalf of, any person:

(1) In the selection of prospective adoptive parents for a child by determining the relative qualifications of prospective adoptive parents in a decision by that person, corporation, agency, or other entity to place any child or children, including specifically, but not limited to, the preparation of home studies, preliminary home studies, court reports for surrenders or adoptions, or the provision of supervision of a child in an adoptive home as part of the adoptive process; or

(2)(A) In the business of arranging services or assistance directed primarily, and not as an incidental part of its primary business, toward bringing to or placing with prospective adoptive parents a child or children for the purpose of foster care leading to adoption or as an adoptive placement for a child or children, including, but not limited to, advertising for such services, accepting clients for a fee, or providing any placing services for a fee.

(B) Nothing in subdivision (b)(2)(A) shall include the provision of reasonable and necessary legal services related to the adoption proceedings, or medical or counseling services for the child or the parent in connection with the child's birth or in connection with the parent's decision to relinquish the child for adoption or for counseling services for the prospective adoptive parents.

(c)(1) Any court of competent jurisdiction, upon the filing of a sworn complaint by the department or by a licensed child-placing agency, or by any person aggrieved, may temporarily enjoin or restrain any person, corporation, agency, or other entity from engaging or attempting to engage in placing children for adoption in violation or in threatened violation of this part or title 71, chapter 3, part 5, and upon final hearing, if the court determines that there has been a violation, or threatened violation, thereof, the injunction shall be made permanent.

(2) If the court finds that any person, corporation, agency, or other entity has engaged in the illegal placement of children for adoption, that person, corporation, agency, or other entity shall be liable for all the costs of the legal proceedings and for all attorney fees for private persons or private agencies who brought the action, or for the cost of attorney and staff time for the department, involved in the proceeding.

(d)(1) In order to allow the prospective adoptive parents to have information available to them to permit informed choices regarding the employment of persons or entities involved in the placement of children, or in counseling, or in the provision of legal services, the department shall collect the information

concerning fees or other costs charged by licensed child-placing agencies, licensed clinical social workers, attorneys, and counseling services that are disclosed in accordance with §§ 36-1-111(k)(4)(A), 36-1-116(b)(16) and 36-1-120(b).

(2) This information shall be used by the department to develop an informational database in order for the department to provide, upon request of prospective adoptive parents or other interested persons, information concerning fees charged for home studies, placement services, counseling and legal fees. Such information shall be made available by the department in written form to any person so requesting. No employee of the department shall make any recommendation regarding or comment upon any information concerning such attorney, licensed child-placing agency or licensed clinical social worker.

(3) The department is specifically authorized to promulgate rules pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to regulate fees charged by licensed child-placing agencies and licensed clinical social workers or their practices, if it determines that the practices of those licensed child-placing agencies or licensed clinical social workers demonstrate that the fees charged are excessive or that any of the agency's practices are deceptive or misleading; provided, that such rules regarding fees shall take into account the use of any sliding fee by an agency or licensed clinical social worker that or who uses a sliding fee procedure to permit prospective adoptive parents of varying income levels to utilize the services of such agencies or persons.

(4) The department shall promulgate rules pursuant to the Uniform Administrative Procedures Act to require that all licensed child-placing agencies and licensed clinical social workers provide written disclosures to all prospective adoptive parents of any fees or other charges for each service performed by the agency or person, and file an annual report with the department that states the fees and charges for those services, and to require them to inform the department in writing thirty (30) days in advance of any proposed changes to the fees or charges for those services.

(5) The department is specifically authorized to disclose to prospective adoptive parents or other interested persons any fees charged by any licensed child-placing agency, licensed clinical social worker, attorney or counseling service or counselor for all legal and counseling services provided by that licensed child-placing agency, licensed clinical social worker, attorney or counseling service or counselor.

History.

Acts 1951, ch. 202, § 36 (Williams, § 9572.50); impl. am. Acts 1975, ch. 219, § 1; T.C.A. (orig. ed.), § 36-135; Acts 1986, ch. 767, § 9; T.C.A., § 36-1-134; Acts 1995, ch. 532, § 1; 1996, ch. 1054, §§ 18, 127; 2000, ch. 981, § 54; 2009, ch. 411, § 4; 2009, ch. 519, §§ 1, 2.

Compiler's Notes.

Former § 36-1-108, concerning parties to proceedings, consent of parent or guardian, and service of process, was transferred to § 36-1-117.

Acts 2009, ch. 411, § 12 provided that the act, which amended §§ 36-1-102, 36-1-108, 37-1-102, 37-2-402 and added new § 37-1-183, shall apply to conduct covered by the provisions of the act that occurs on or after July 1, 2009. The eighteen (18) month time period set out in § 37-1-102(b)(12)(J) shall not commence until July 1, 2009.

36-1-109. Illegal payments in connection with placement of child — Penalty.

(a) It is unlawful for any person, corporation, agency, or other entity other than the department or a licensed child-placing agency or licensed clinical social worker, as defined in § 36-1-102, that is subject to regulation by the department to:

(1)(A) Charge or receive from or on behalf of any person or persons legally adopting or accepting a child for adoption any remuneration, fee, contribution, or thing of value whatsoever for rendering any service described in § 36-1-108 in connection with the placement of such child for adoption or in connection with the placement of such child for foster care or adoption with one other than the child's parent or parents other than that now or hereafter allowed by law;

(B)(i) This section shall not be construed to prohibit the payment by any interested person of reasonable charges or fees for hospital or medical services for the birth of the child, or for medical care and other reasonable birth-related expenses for the mother and/or child incident thereto, for reasonable counseling fees for the parents or prospective adoptive parents and/or child, for reasonable legal services or the reasonable costs of legal proceedings related to the adoption of any child or for reasonable, actual expenses for housing, food, maternity clothing, child's clothing, utilities or transportation for a reasonable period not to exceed ninety (90) days prior to or forty-five (45) days after the birth or surrender or parental consent to the adoption of the child, unless a court with jurisdiction for the surrender or adoption of a child, based upon detailed affidavits of a birth mother and the prospective adoptive parents and such other evidence as the court may require, specifically approves in a written order, based upon a motion filed by the prospective adoptive parents for that purpose, any expenses specifically allowed in this subdivision (a)(1)(B) for a period prior to or after the periods noted above.

(ii) Such expenses must be incurred directly in connection with the maternity, birth, and/or placement of the child for adoption, or for legal services or for costs of legal proceedings directly related to the adoption of the child, or for counseling for a period of up to one (1) year for the parent who surrenders the child or consents to the adoption of the child;

(iii) The payment for such expenses may only be for expenses or costs actually incurred during the periods permitted in subdivisions (a)(1)(B)(i) and (ii). This shall not be construed to prohibit the actual payment or receipt of payment for such expenses or costs after those periods that

were actually incurred during those periods.

(2) Sell or surrender a child to another person for money or anything of value; and it is unlawful for any person to receive such minor child for such payment of money or thing of value; provided, that nothing herein shall be construed as prohibiting any person who is contemplating adopting a child not yet born or surrendered or for whom a parental consent may be given from payment of the expenses set forth in subdivision (a)(1)(B);

(3) Having the rights and duties of a parent or guardian with respect to the care and custody of a minor child, assign or transfer such parental or guardianship rights for the purpose of, incidental to, or otherwise connected with, selling or offering to sell such rights and duties for money or anything of value; or

(4) Assist in the commission of any acts prohibited in subdivision (a)(1), (a)(2), or (a)(3).

(b) A violation of this section is a Class C felony.

(c) Any adoption completed before March 27, 1978, shall not be affected by this section.

History.

Acts 1978, ch. 704, § 2; T.C.A., § 36-136; Acts 1992, ch. 1019, § 1; T.C.A., § 36-1-135; Acts 1995, ch. 532, § 1; 1996, ch. 1054, § 19; 2003, ch. 231, § 6.

Compiler's Notes.

Former § 36-1-109, concerning parents under eighteen, was transferred to § 36-1-110.

36-1-110. Parent under eighteen years of age — Surrender.

(a) A parent who has not reached eighteen (18) years of age shall have the legal capacity to surrender a child or otherwise give parental consent to adoption or execute a waiver of interest and to release such parent's rights to a child, and shall be as fully bound thereby as if the parent had attained eighteen (18) years of age.

(b) The court shall have the authority to appoint a guardian ad litem for the minor parent of a child who may be surrendered or for whom a parental consent or waiver of interest is given if deemed necessary to advise and assist the minor parent with respect to surrender, parental consent, waiver, or termination of the minor parent's parental rights.

History.

Acts 1951, ch. 202, § 8 (Williams, § 9572.22); T.C.A. (orig. ed.), § 36-109; § 36-1-109; Acts 1995, ch. 532, § 1; 1996, ch. 1054, § 20.

Compiler's Notes.

Former § 36-1-110, concerning abandonment, was transferred to § 36-1-113.

36-1-111. Pre-surrender request for home study or preliminary home study — Surrender of child — Consent for adoption by parent — Effect of Surrender — Form of surrender — Waiver of interest — Interpreter for non-English speaking parents.

(a)(1) Prior to receiving a surrender by a parent of a child or prior to the execution of a parental consent by a parent in a petition for adoption, the prospective adoptive parents shall request a licensed child-placing agency, a licensed clinical social worker, or, if indigent under federal poverty guidelines, the department, to conduct a home study or preliminary home study for use in the surrender, or parental consent proceeding, or in the adoption.

(2) A court report based upon the home study or preliminary home study must be available to the court or, when using a Tennessee surrender form, to the persons under subsection (h), (i), or (j), and, before the surrender to prospective adoptive parents is executed, the court report must be reviewed by the court or persons under those subsections in any surrender proceeding in which the surrender is not made to the department or a licensed child-placing agency. When a parental consent is executed, the court report based upon the home study or preliminary home study must be filed with the adoption petition, and must be reviewed by the court before the entry of an order of guardianship giving the prospective adoptive parents guardianship of the child.

(3) All court reports submitted under this subsection (a) shall be confidential and shall not be open to inspection by any person except by order of the court entered on the minute book. The court shall, however, disclose to prospective adoptive parents any adverse court reports or information contained therein, but shall protect the identities of any person reporting child abuse or neglect in accordance with law.

(b) All surrenders must be made in chambers before a judge of the chancery, circuit, or juvenile court except as provided herein, and the court shall advise the person or persons surrendering the child of the right of revocation of the surrender and time for the revocation and the procedure for such revocation.

(c) A surrender or parental consent may be made or given to any prospective adoptive parent who has attained eighteen (18) years of age, the department, or a licensed child-placing agency in accordance with the provisions of this section.

(d)(1) No surrender or any parental consent shall be valid that does not meet the requirements of subdivision (a)(2).

(2) No surrender or parental consent shall be valid that is made prior to the birth of a child, except a surrender executed in accordance with subsection (h).

(3) No surrender or parental consent shall be valid that is made within three (3) calendar days subsequent to the date of the child's birth, such period to begin on the day following the child's birth; provided, that the court may, for good cause shown, which is entered in an order in the minute book of the court, waive this waiting period.

(4) No surrender or parental consent shall be valid if the surrendering or consenting party states a desire to receive legal or social counseling under subdivisions (k)(2)(E) and (F) until certification of satisfaction or withdrawal of such request is received

by the court as provided in subsection (*l*).

(5) Unless the surrender or parental consent is made to the physical custodian or unless the exceptions of subdivision (d)(6) otherwise apply, no surrender or parental consent shall be sufficient to make a child available for adoption in any situation where any other person or persons, the department, a licensed child-placing agency, or other child-caring agency in this state or any state, territory, or foreign country is exercising the right to physical custody of the child under a current court order at the time the surrender is sought to be executed or when a parental consent is executed, or when those persons or entities have any currently valid statutory authorization for custody of the child.

(6) No surrender shall be valid unless the person or persons or entity to whom or to which the child is surrendered or parental consent is given:

(A) Has, at a minimum, physical custody of the child;

(B) Will receive physical custody of the child from the surrendering parent or guardian within five (5) days of the surrender, as evidenced by the affidavit of the person or persons receiving the surrender and by affidavit of the surrendering or consenting parent or guardian or court order;

(C) Has the right to receive physical custody of the child upon the child's release from a health care facility as evidenced by an affidavit of the person or persons or entities receiving the child and by the affidavit of the surrendering or consenting parent or guardian or court order; or

(D) Has a sworn, written statement from the person, the department, the licensed child-placing agency, or child-caring agency that has physical custody pursuant to subdivision (d)(5), which waives the rights pursuant to that subdivision (d)(5).

(e) The surrender form shall incorporate a provision stating to the surrendering parent or guardian the beginning and ending period for revocation of the surrender and the procedures for revoking the surrender, and shall include a place in which the date of the expiration of the revocation period shall be inserted.

(f) The commissioner, or the commissioner's authorized representatives, or a licensed child-placing agency, through its authorized representatives, may accept the surrender of a child and they shall be vested with guardianship or partial guardianship of the child in accordance with the provisions of this section and § 36-1-102; provided, that the department or any licensed child-placing agency may refuse to accept the surrender of any child.

(g) In any surrender proceeding, the court or other person authorized herein to conduct a surrender proceeding, and when a parental consent is executed in the adoption petition, the court shall require that the person or persons surrendering the child for adoption or the person or persons giving consent and the person or persons accepting the child through the surrender or receiving parental consent to satisfactorily prove their identities before the surrender is executed or the parental consent is accepted. No surrender or parental consent may be executed in any form in which the identities of the person or persons executing the surrender or parental consent or the person or persons or agencies receiving the surrender or the identity of the child whose name is known are left blank or in any form in which those persons, the child, or agencies are given pseudonyms on the form or in the petition at the time of the execution of the surrender or parental consent.

(h) In cases where the person executing the surrender resides in another state or territory of the United States, the surrender may be made in accordance with the laws of such state or territory or may be made before the judge or chancellor of any court of record or before the clerk of any court of record of such state or territory and such surrender shall be valid for use in adoptions in this state.

(i) In cases where the surrendering person using the Tennessee form of surrender or the form provided by applicable law resides or is temporarily in a foreign country, the surrender may be made before any officer of the United States armed forces authorized to administer oaths, or before any officer of the United States foreign service authorized to administer oaths. A citizen of a foreign country may, in accordance with the law of the foreign country, execute a surrender of a child that states that all parental rights of that person are being terminated or relinquished by the execution of the document or that the child is being given to an agency or other person for the purposes of adoption.

(j) In cases where the person executing surrender is incarcerated in a state or federal penitentiary, the surrender may be executed before the warden or deputy warden of the penitentiary or a notary public.

(k)(1)(A) Notwithstanding any other provisions of this part, in obtaining any medical or social background information, contact veto information or other information required as part of the surrender or parental consent process pursuant to this part, the court, or, at its direction, its court officers or its clerks, or other persons authorized to accept a surrender or parental consent pursuant to this part, may accept notarized statements attached to each of the forms promulgated by the department that verify that the informant of the required information has previously reviewed the form or, if unable to read, has had the contents of the form explained to the person, and that the person has accurately supplied the information on the form and the person's responses have not been subject to duress by any person.

(B)(i) The court, or other persons authorized by this part to accept surrenders, shall personally, however, verify under oath by the surrendering or consenting person who has provided the information in a surrender or parental consent process pursuant to this part, that the parent or guardian agrees with the information provided in the forms required pursuant to this part, and the notarized statement shall have a section for the court, or other persons authorized by this

part to accept surrenders, to ratify that this verification has occurred by providing a space for the signature of the judge or chancellor accepting the surrender or parental consent or other person authorized by this part to accept a surrender, and the date on which this was done.

(ii) The notarized statements must be attached to the surrender or parental consent and maintained with the surrender or parental consent form by the court or the court clerk, or person authorized by this part to accept surrenders, and transmitted to the department as otherwise required by this part.

(C)(i) In all other respects, the court, or other persons authorized by this part to accept surrenders, must witness the actual act of surrender, or must confirm the parental consent, by verifying directly with the parent or guardian the parent's or guardian's understanding and willingness to terminate parental rights and, by witnessing the parent's or guardian's signature on the surrender form, or by questioning the parent on the matters required by this part before the entry of an order of confirmation of the parental consent.

(ii) The court may not accept any surrenders executed prior to its approval of the surrender that relinquish the parent's or guardian's rights, nor may it enter any orders confirming a parental consent, based upon any written statement of the parent agreeing to relinquish the parent's rights to the child, except as may be otherwise specifically provided by this part.

(iii) The execution of the surrender or parental consent shall occur in private in the chambers of the court or in another private area, and in the presence of the surrendering or consenting person's legal counsel if legal counsel has been requested by the surrendering or consenting person. In the discretion of the court or other person conducting the surrender or parental consent proceeding, the court's officer or other employee may be present.

(D) For surrenders taken pursuant to subsection (h), (i) or (j), the information required by this part to be supplied by the prospective adoptive parents, the department, or a licensed child-placing agency and the acceptance of a surrender by the prospective adoptive parents or the department or the licensed child-placing agency may be made by affidavit contained with the Tennessee surrender forms.

(2) In accordance with subdivision (k)(1), the following information shall be obtained under oath at the time of the surrender in Tennessee, when using a Tennessee surrender form, or at the time of the confirmation of the parental consent:

(A) A statement of the surrendering or consenting parent identifying any other legal or biological parent or legal guardian of the child being surrendered or for whom parental consent is being given and such person's whereabouts, or a statement that the identity or whereabouts of such other parent or guardian is not known;

(B) Whether the child is of Native American heritage and the tribal organization of which the child is a member or in which the child is eligible for membership, if known;

(C) Whether the child is intended to be sent out of state for the purposes of adoption, and, if the child surrendered is to be adopted under the laws of any jurisdiction other than Tennessee, a statement of the surrendering parent or guardian stating that the surrendering parent or guardian elects to have the surrender governed in all respects by Tennessee law, including choice of law;

(D) Whether the person has paid or received or has been promised any money or other remuneration or thing of value in connection with the birth of the child or placement of the child for adoption and, if so, to or from whom, the specific amount, and the purpose for which it was or is to be paid or received;

(E) Whether such person desires counseling from the department or a licensed child-placing agency or a licensed clinical social worker concerning the decision to surrender or give parental consent to the adoption of the child and if the person has been made aware of any assistance that might be available to the person should the person decide not to place the child for adoption;

(F) Whether the person is represented by legal counsel and, if not, whether the person wishes to consult with legal counsel prior to execution of the surrender or prior to the confirmation of the parental consent;

(G) Whether such person is freely and voluntarily executing the surrender or parental consent with full knowledge of its consequences and whether such person knows and understands the right to revoke the surrender or consent and the time limits in which the revocation may be executed;

(H) Whether the child is possessed of any real or personal property of any kind, or has any expectation of any real or personal property and the nature of such interest;

(I) A statement of the surrendering parent or guardian concerning whether that parent or guardian or some other person or persons or entity has legal and/or physical custody of the child at the time of the surrender or whether such person intends to give custody to the prospective adoptive parents, the department or a licensed child-placing agency.

(3)(A) The court shall require the person or persons surrendering the child for adoption or consenting to the child's adoption to complete the portion of the surrender or a parental consent form that indicates whether the person desires, or wishes to veto, further contact with other persons eligible under this part to have contact with the surrendering parent at a later time in accordance with §§ 36-1-127 — 36-1-131.

(B) The form that the surrendering or consenting parent signs shall notify the parent that the

parent may withdraw or vary the veto or consent at any time and the form, or an attachment to the form, shall inform the parent of the procedures for doing so.

(C) Upon receipt of the completed form, the department shall enter the surrendering or consenting person's request on the contact veto registry and shall maintain a copy of the form and all modifications to the form as part of the post-adoption record.

(4)(A) The court or persons authorized to receive the surrender shall obtain from the prospective adoptive parents or from a licensed child-placing agency receiving the surrender at the time of the execution of the surrender, or the court shall obtain, at the time an order of guardianship is entered that is based upon the execution of a parental consent, a statement of the fees paid to any person or persons, licensed child-placing agency, licensed clinical social worker, attorney, or other entity for the placement of the child or for legal costs or any other costs related in any way to the adoption or placement for adoption of the child as of the time the surrender is executed or at the time the parental consent is executed.

(B) In the case of a surrender of a child to be removed from Tennessee for adoption, the court shall obtain a statement from the prospective adoptive parents that there will be compliance with the interstate compact on the placement of children and how that compliance will be effected;

(*l*)(1) In the case of a surrender directly to prospective adoptive parents, if the person surrendering the child desires under subdivision (k)(2)(E) to have counseling prior to execution of the surrender and the child is being surrendered directly to the prospective adoptive parents, the prospective adoptive parents shall, if so requested by the surrendering person or persons, compensate a licensed child-placing agency, a licensed clinical social worker, or the department for such counseling, which must be certified as having been completed before the surrender can be executed;

(2) If the person surrendering the child states a desire under subdivision (k)(2)(F) to have legal counseling prior to or during the execution of a surrender directly to the prospective adoptive parents, the prospective adoptive parents shall, if so requested by the surrendering person or persons, compensate the attorney for such counseling sought, which must be certified as having been completed before the surrender can be executed;

(3) This subsection (*l*) shall also apply to the use of parental consents pursuant to § 36-1-117(g) prior to entry of the order of confirmation;

(4) The payment of compensation by the prospective adoptive parents shall not establish any professional/client relationship between the prospective adoptive parents and the counselor or attorney providing services under subdivisions (*l*)(1) and (2);

(5) The department shall, by rule, establish the form of the certification required by this section, including the counseling criteria that must be met with the surrendering parent as part of the certification.

(m) Before the surrender is received and before an order of guardianship is entered based upon a parental consent, the person or persons to whom the child is to be surrendered or the persons to whom a parental consent is given, other than the department or a licensed child-placing agency, shall present with the surrender executed in Tennessee or on a Tennessee form at the time of the execution of the surrender or before confirmation of a parental consent by the court, all of the following documents:

(1) A court report based upon a currently effective or updated home study or preliminary home study conducted by a licensed child-placing agency, a licensed clinical social worker, or the department;

(2) Certification of the completion of any counseling requested under subsection (*l*);

(3) An affidavit of the person or persons stating whether they have physical custody of the child at the time of the surrender or the affidavits required by subdivision (d)(6);

(4) If the child has been brought to Tennessee from another state or territory, a copy of the ICPC Form 100A, or other substitute form required for ICPC compliance, showing approval of the department for the child brought into Tennessee for foster care or adoption or a sworn statement stating why such form is not required pursuant to the ICPC; and

(5) A sworn statement that if the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., applies because of the child's Native American heritage, there has been compliance with that act.

(n)(1) A licensed child-placing agency receiving the surrender shall complete the provisions of subdivisions (m)(3)-(5).

(2) The department, when receiving the surrender, shall complete the provisions of subdivisions (m)(3) and (5).

(o) No surrender shall be accepted by the Tennessee court or on a Tennessee form by those persons authorized to accept a surrender under subsection (h), (i) or (j), nor shall a parental consent be confirmed by the court, nor shall an order of guardianship be entered by the court under subsection (r) based upon a surrender or a parental consent until there has been compliance with the provisions of subsections (*l*), (m) and (n).

(p)(1)(A) The person or persons executing the surrender and the person or persons, the local representative of the department or the local representative of the licensed child-placing agency to whom the child is surrendered shall receive certified copies of the original surrender from the clerk of the court immediately upon the conclusion of the surrender proceeding.

(B) Costs of all certified copies provided under this subdivision (p)(1) shall be taxed only to the person or persons receiving the surrender, the department, or the licensed child-placing agency.

(2)(A) The original of the surrender executed before the court shall be entered on a special docket

for surrenders and shall be styled: "In Re: (Child's Name)," and shall be permanently filed by the court in a separate file designated for that purpose maintained by the judge, or the judge's court officer, who accepted the surrender and shall be confidential and shall not be inspected by anyone without the written approval of the court where the file is maintained or by a court of competent jurisdiction with domestic relations jurisdiction if the file is maintained elsewhere. There will be no court costs or litigation tax assessed for the surrender. Within five (5) days, a certified copy of the surrender shall be sent by the clerk or the court to the adoptions unit in the state office of the department in Nashville.

(B)(i) The original of the surrender executed before the persons authorized under subsections (h) and (i), or, in out-of-state correctional facilities under subsection (j), shall be maintained in a separate file designated for that purpose, which shall be confidential and shall not be inspected by anyone else without the written approval of a court with domestic relations jurisdiction where the file is maintained.

(ii) For surrenders executed under subsection (j) in federal and state correctional facilities in Tennessee, the original shall be filed in a secure file in the office of the warden, which shall not be open to inspection by any other person, and after ten (10) days from the date of the surrender, the original shall be sent to the adoptions unit in the state office of the department in Nashville and a copy shall be maintained by the warden.

(3)(A) The clerk of the court, or the department as the case may be, upon request, shall send certified copies of the original surrender to:

(i) The court where the adoption petition or where the petition to terminate parental rights is filed;

(ii) A party who is petitioning for an adoption in cases where the child was not placed by the department or a licensed child-placing agency; provided, however, where the child was placed by the department or a licensed child-placing agency, the parties petitioning for an adoption or termination of parental rights are not entitled to copies of the surrenders made to the department or a licensed child-placing agency; and

(iii) The department's county office or a licensed child-placing agency or licensed clinical social worker that or who is performing any service related to an adoption or that has intervened in an adoption proceeding.

(B) Costs of providing certified copies under this subdivision (p)(3) may be taxed or charged to the person, the department, or the licensed child-placing agency that requests the certified copies, except where the department, the licensed child-placing agency, or licensed clinical social worker is responding to an order of reference from a court or where the department, licensed child-placing agency, or licensed clinical social worker is conducting any investigation related to the adoption or to the child's welfare.

(q)(1) The party to whom the child is surrendered pursuant to subsection (h), (i) or (j) shall file a certified copy of the surrender of a child with the chancery, circuit, or juvenile court in Tennessee where the child or the prospective adoptive parents reside, or with the court in which an adoption petition is filed in Tennessee, within fifteen (15) days of the date the surrender is actually received, or within fifteen (15) days of the date the child or the person or persons to whom the child has been surrendered becomes a resident of the state of Tennessee, whichever is earlier.

(2) The surrender filed pursuant to subdivision (q)(1) shall be recorded by the court and shall be processed by the clerk as required by subdivision (p)(2)(A).

(3) In cases under subdivision (q)(1), where the child is in the legal custody of the department or a licensed child-placing agency, the surrender also may be filed in the chancery, circuit, or juvenile court or other court that had placed custody of the child with the department or the licensed child-placing agency.

(4) In cases under subdivision (q)(1), and in accordance with subsection (r), the court shall enter such other orders for the guardianship and supervision of the child as may be necessary or required pursuant to this section or § 36-1-118.

(r)(1)(A)(i) A surrender, a confirmed parental consent, or a waiver of interest executed in accordance with this part shall have the effect of terminating all rights as the parent or guardian to the child who is surrendered, for whom parental consent to adopt is given, or for whom a waiver of interest is executed. It shall terminate the responsibilities of the surrendering parent or guardian and the consenting parent. It shall terminate the responsibilities of the person executing a waiver of interest under this section for future child support or other future financial responsibilities pursuant to subsection (w) if the child is ultimately adopted; provided, that this shall not eliminate the responsibility of such parent or guardian for past child support arrearages or other financial obligations incurred for the care of such child prior to the execution of the surrender, parental consent, or waiver of interest; provided further, that the court may, with the consent of the parent or guardian, restore such rights and responsibilities, pursuant to § 36-1-118(d).

(ii) If, after determining the surrender to be in the child's best interest, the department accepts a surrender of a child, who was previously placed for adoption by the department, from the child's adoptive parent or parents, the unrevoked surrender of such child shall terminate the responsibilities of the surrendering adoptive parent or parents for future child support or other future financial responsibilities; provided, that this shall not be construed to eliminate the responsi-

bility of such parent or parents for past child support arrearages or other financial obligations incurred for the care of such child prior to the execution of the surrender; and provided further, that the court may, with the consent of the parent or parents, restore such rights and responsibilities pursuant to § 36-1-118(d).

(B) Notwithstanding subdivision (r)(1)(A), a child who is surrendered, for whom a parental consent has been executed, or for whom a waiver of interest has been executed, shall be entitled to inherit from a parent who has surrendered the child or executed a parental consent or waiver of interest until the final order of adoption is entered.

(2)(A) Unless prior court orders or statutory authorization establishes guardianship or custody in the person or entity to whom the surrender or parental consent is executed, the surrender or parental consent alone does not vest the person, persons or entities who or that receive it with the legal authority to have custody or guardianship or to make decisions for the child without the entry of an order of guardianship or partial guardianship as provided in subdivision (r)(6)(A) or as provided in § 36-1-116(f). The court accepting the surrender or the parental consent shall not enter any orders relative to the guardianship or custody of a child for whom guardianship or custody is already established under prior court orders or statutory authorization, except upon motion under subdivision (r)(4)(D) by the person, persons or entities to whom the surrender or parental consent is executed.

(B) In order to preserve confidentiality, the court clerk or the court shall have a separate adoption order of guardianship minute book, which shall be kept locked and available for public view only upon written approval of the court.

(3)(A) Except as provided in subdivisions (r)(2) and (4), a validly executed surrender shall confer jurisdiction of all matters pertaining to the child upon the court where the surrender is executed or filed until the filing of the adoption petition, at which time jurisdiction of all matters pertaining to the child shall transfer to the court where the adoption petition is filed; provided, that the jurisdiction of the juvenile court to adjudicate allegations concerning any delinquent, unruly, or truant acts of a child pursuant to title 37 shall not be suspended.

(B) A waiver of interest does not confer jurisdiction over the child in any court nor does it permit the entry of any order of custody or guardianship based solely upon such waiver, but shall only permit a court to find that that person's parental rights, if any, are terminated.

(4)(A) When, at the time the surrender or parental consent is executed, a prior court order is in effect that asserts that court's jurisdiction over the child who is the subject of the surrender or parental consent, the prior court order shall remain effective until, and only as permitted by this section, an alternate disposition for the child is made by the court where the surrender is executed or filed or until, and only as permitted by this section, an alternate disposition is made for the child on the basis of a termination of parental rights proceeding, or, as permitted by § 36-1-116, until an alternate disposition for the child is made by the court where the adoption petition is filed.

(B) If the prior court order under subdivision (r)(4)(A) gives the right to legal and physical custody of the child to a person, the department, a licensed child-placing agency, or other child-caring agency, a surrender or parental consent by the parent or guardian to any other person, persons or entities shall be invalid as provided under subdivision (d)(5), and any purported surrender or parental consent to such other person or persons or entities shall not be recognized to grant standing to file a motion pursuant to subdivision (r)(6) and § 36-1-116(f)(3) to such other person or persons or entities who or that received the surrender or parental consent, and no order of guardianship or partial guardianship based upon that surrender or parental consent and motion shall be effective to deprive the existing legal or physical custodians under the court's prior order of legal or physical custody of that child. Any orders to the contrary shall be void and of no effect whatsoever.

(C) If the court that has entered the prior custody order under subdivision (r)(4)(A) has subject matter jurisdiction to terminate parental or guardian rights at the time a surrender of the child who is the subject of that order is validly executed in another court pursuant to subdivision (r)(4)(D) or at the time a petition to terminate parental rights is filed pursuant to subdivision (r)(4)(E), it shall continue to have jurisdiction to complete any pending petitions to terminate parental or guardian rights that are filed prior to the execution of the surrender or prior to the filing of the petition to terminate parental rights in the other court pursuant to subdivision (r)(4)(E). The court shall not have jurisdiction to complete any pending petitions to terminate parental rights subsequent to the filing of a petition for adoption. The court may enter orders of guardianship pursuant to the termination of parental rights proceedings unless prior thereto an order of guardianship is entered by another court pursuant to subdivisions (r)(4)(D) and (E). Any orders of guardianship entered pursuant to subdivisions (r)(4)(D) and (E) or pursuant to § 36-1-116 shall have priority over the orders of guardianship entered pursuant to this subdivision (r)(4)(C); provided, that orders terminating parental rights entered pursuant to this subdivision (r)(4)(C) shall be effective to terminate parental rights.

(D) If the person, persons or entities in subdivision (r)(4)(B) to whom the surrender is made have legal and physical custody of the child or the right to legal and physical custody of the child pursuant to a prior court order at the time the surrender is executed to them, any court with jurisdiction to

receive a surrender may receive a surrender that is executed to them and shall have jurisdiction, upon their motion, to enter an order giving guardianship or partial guardianship to the person, persons or entities, and, notwithstanding subdivision (r)(4)(A), such order may make an alternate disposition for the child.

(E) Notwithstanding subdivision (r)(4)(A), a person, the department, or a licensed child-placing agency that had custody of the child pursuant to a court's prior order, may file in any court with jurisdiction to terminate parental or guardian rights, and in which venue exists, any necessary petitions to terminate the remaining parental or guardian rights of any person or persons to the child, and if they have any subsequent orders of guardianship or partial guardianship based upon an executed surrender or a termination of parental rights from the other court of competent jurisdiction, they may place the child for adoption in accordance with those subsequent orders.

(5) If multiple surrenders or parental consents are received with respect to the same child in different courts, subject to the restrictions of subdivisions (r)(2) and (4), the court that first receives a surrender or parental consent or in which the surrender is first filed pursuant to subsection (q), and that enters an order of guardianship or partial guardianship, shall have jurisdiction of the child and shall issue any necessary orders of reference required by this section. Any other court that receives a surrender or parental consent or in which a surrender or parental consent is filed pursuant to subsection (q) subsequent to the surrender shall, upon notification by the first court, send the original of the surrender or filed pleading to the first court and shall retain a certified copy of the original in a closed file, which shall not be accessed by any person without the written order of the court.

(6)(A) Subject to the restrictions of subdivisions (r)(2) and (4), a validly executed surrender under this section or a parental consent shall give to the person to whom the child is surrendered or to whom a parental consent is given standing to file a written motion for an express order of guardianship or partial guardianship, as defined in § 36-1-102, from the court where the child was surrendered or where, under subsection (q), the surrender was filed, or in the court that, pursuant to subdivision (r)(4)(A), has granted legal custody of the child to such person, or in the court in which the adoption petition is filed. A validly executed surrender shall entitle the department or the licensed child-placing agency that received the surrender to have the court enter an order of guardianship pursuant to subdivision (r)(6)(C).

(B) The motion, which may be filed by any person or by that person's attorney, shall contain an affidavit that the party seeking the order of guardianship or partial guardianship has physical custody of the child, or if filed at the time of the execution of the surrender or the filing of the adoption petition containing a parental consent, it shall contain the affidavits otherwise required by subdivision (d)(6).

(C) If the person, the department, or the licensed child-placing agency to whom the child is surrendered or to whom parental consent is given has physical custody or has otherwise complied with the requirements of subdivision (d)(6), and if there has been full compliance with the other provisions of this section, the court may, contemporaneously with the surrender or the filing of an adoption petition, immediately upon written motion by the person or the person's attorney, and the court shall, if the surrender is to a licensed child-placing agency or the department, enter an order giving the person, the licensed child-placing agency, or the department, guardianship or partial guardianship of the child.

(D) A copy of the surrender, the motion and any resulting order shall be sent by the clerk to the adoptions unit in the state office of the department in Nashville, which shall record the surrender, the motion, and the order and their dates of filing and entry for purposes of tracking the child's placement status and the status of the adoption process involving the child.

(7) If an order of guardianship is entered, the appointed guardians shall have authority to act as guardian ad litem or next friend of the child in any suit by the child against third parties while the child is in the care and custody of the petitioners. The court may appoint a special guardian for the child for such purpose upon motion by the department for a child in its guardianship.

(8) If the court grants guardianship or custody of the child upon the filing of the surrender or upon the filing of a parental consent and the child is possessed of any real or personal property to be administered, the court shall appoint a guardian of the property of the child if no guardian of the property exists, and such guardian may be the same person or persons who are guardians of the person of the child except if the child is in the guardianship of the department in which case another person or entity shall be appointed.

(s) The Uniform Child Custody Jurisdiction and Enforcement Act, compiled in chapter 6, part 2 of this title, shall govern jurisdiction for the disposition of the child and the proceedings under this section.

(t)(1) Upon receipt of the surrender or upon filing a parental consent for an adoption by a person other than a related person, and if no home study had been completed or updated within six (6) months prior to the surrender or the filing of a parental consent, and no court report based upon the home study has been filed with the court, the court shall, by an order of reference issued within five (5) days, direct that a home study be conducted and filed as provided in this part.

(2) The order of reference shall be directed to a licensed child-placing agency or a licensed clinical social worker unless the prospective adoptive par-

ents are indigent under current federal poverty guidelines, in which case the order shall be directed to the department.

(3) The court report based upon the home study shall be filed with the court within sixty (60) days of the date of the order of reference.

(4) The court shall order a licensed child-placing agency, a licensed clinical social worker, or the department, if the parents are indigent under federal poverty guidelines, to provide supervision for the child who is in the home of prospective adoptive parents pursuant to a surrender or a parental consent under this section, and to make any necessary court reports that the court should have concerning the welfare of the child pending entry of the final order in the case; provided, that this subdivision (t)(4) shall not apply when the surrender is made to related persons.

(5) If the adoption petition is filed before the home study is completed or before the court report based upon the home study is filed, and the adoption petition is filed in a court other than the one where the surrender was executed, the court where the surrender was executed shall, upon request of the court where the adoption petition is filed or upon motion of the prospective adoptive parents, send any court report it receives to the adoption court.

(6) Unless they are indigent under federal poverty guidelines, the prospective adoptive parents shall be assessed by the court the costs of the study and the supervision of the placement by the agency, and the costs shall be paid by them to the licensed child-placing agency or licensed clinical social worker that performed the home study or supervision.

(u)(1) Failure to fully comply with this section or failure to file the surrender executed pursuant to subsection (h), (i) or (j) within the fifteen-day period required by subsection (q), or failure to obtain an order of guardianship in accordance with this section within thirty (30) days of the date the surrender is executed or filed, or within thirty (30) days of the date parental consent is filed, shall be grounds for removal of the child from the physical care and control of the person, the department, or licensed child-placing agency receiving the surrender; provided, that this shall not apply when the persons, the department or the licensed child-placing agency have legal custody or partial guardianship under an order of a court entered prior to the execution of the surrender or parental consent or pursuant to any statutory authority giving custody to the department or licensed child-placing agency.

(2) A sworn complaint concerning the grounds alleged in subdivision (u)(1) and concerning the best interests of a child for whom a surrender is sought or on whom a surrender or parental consent was executed or guardianship order entered, or which complaint otherwise seeks to present proof concerning the best interests of the child, may be filed by any person, the department, a licensed child-placing agency, or a licensed clinical social worker.

(3) The complaint may be filed in the court where the surrender was executed or filed or where the adoption petition containing a parental consent was filed. If the surrender was not executed or filed in Tennessee or if the surrender was not executed before a court or if the surrender was not filed at all, then the complaint may be filed in the circuit, chancery, or juvenile court in the county where the child resides.

(v)(1)(A) Upon its own motion or upon the complaint filed pursuant to subsection (u) and subject to the restrictions concerning custody of the child who is not in the custody of the prospective adoptive parents as stated in subdivisions (r)(2) and (4) and § 36-1-116(f)(1), the court receiving the surrender or entering the order of guardianship or partial guardianship and the adoption court to which jurisdiction may be transferred may make any suitable provisions for the care of the child and, notwithstanding the restrictions of subdivisions (r)(2) and (4) and § 36-1-116(f)(1), the court shall have jurisdiction to enter any necessary orders, including any emergency ex parte orders for the child's emergency protection, care, and supervision based upon probable cause that the child's health and safety is immediately endangered; provided, that such emergency orders shall only remain effective for thirty (30) days when the restrictions of subdivisions (r)(2) and (4) and § 36-1-116(f)(1) apply.

(B) If another court has jurisdiction under a prior order because of such restrictions, upon completion of all proceedings to protect the child, the court shall then return all jurisdiction over the child to the court having jurisdiction under the prior order; provided, that the juvenile court shall maintain jurisdiction pursuant to title 37 to adjudicate allegations of delinquency, unruliness, or truancy involving the child.

(C) If the child has no legal custodian with authority to provide temporary care for the child, then, subject to the restrictions of subdivisions (r)(2) and (4) and § 36-1-116(f)(1), the court shall give temporary legal custody pursuant to § 37-1-140 to the department or a licensed child-placing agency until full compliance has been effected and until a guardianship or partial guardianship order can be entered, or until some other disposition is made for the child by the court. The court may permit the department or a licensed child-placing agency, in its discretion, to place the child with any suitable person, including the prospective adoptive parents, under the department's or the licensed child-placing agency's supervision.

(D) If an emergency ex parte order removes the child from the custody of the prospective adoptive parents or the department or licensed child-placing agency, a preliminary hearing shall be held within five (5) days, excluding Saturdays, Sundays, and legal holidays, to determine if probable cause exists for the continuance of such order.

(2) The prospective adoptive parents or entities from which the child was removed shall be necessary parties at the preliminary hearing and the final

hearing, and the court may order the department or a licensed child-placing agency or licensed clinical social worker to provide any necessary information or court reports concerning the welfare of the child as it may require.

(3) A final hearing shall be held within thirty (30) days of the date of the preliminary hearing, except for good cause entered upon the record.

(4) Upon the final hearing, and based upon clear and convincing evidence that the action is in the best interests of the child, the court shall have jurisdiction to enter an order removing the child from the prospective adoptive parents or other custodian or guardian of the child, and may award temporary legal custody giving any person, the department or licensed child-placing agency, or a child-caring agency, the care and custody of the child as provided under § 37-1-140 or may enter a guardianship or partial guardianship order with the rights provided under this part, all subject to the rights of any remaining parent or guardian.

(w)(1) Notwithstanding any other law to the contrary, a waiver of interest and notice, when signed under oath by the alleged biological father, shall serve to waive the alleged biological father's interest in the child and the alleged biological father's rights to notice of any proceedings with respect to the child's adoption, custody or guardianship. The alleged biological father who executes the waiver shall not be required to be made a party to any adoption proceedings, custody or guardianship proceedings with respect to the child and shall not be entitled to receive notice thereof, and the court in any adoption proceeding, notwithstanding any law to the contrary, shall have jurisdiction to enter a final order of adoption of the child based upon the waiver, and in other proceedings to determine the child's legal custody or guardianship shall have jurisdiction to enter an order for those purposes. The waiver may not be revoked.

(2)(A) The execution of the waiver, in conjunction with a final order of adoption of the child, shall irrevocably terminate all rights the alleged biological father has or may have to the child and any rights the child has or may have relative to the alleged biological father. Upon entry of a final order of adoption of the child, the waiver, except as provided in subdivision (w)(2)(B), shall also terminate the responsibility of the alleged biological father for any future child support or other financial obligations to the child, or to the child's mother that are related to the child's support, arising after the date of the execution of the waiver.

(B) If, after execution of the waiver, a final order of adoption is not entered, and a parentage action is initiated against the alleged biological father or the alleged biological father executes a voluntary acknowledgment of paternity, the alleged biological father shall become liable for child support or other financial obligations to the child, or to the child's mother that are related to the child's support, arising after the execution of the waiver and beginning with the date of the entry of an order establishing the biological father's parentage to the child or upon the date of the biological father's execution of a voluntary acknowledgment of paternity; provided, if paternity is later established, the alleged biological father who executed the waiver shall be liable for all or a portion of the actual medical and hospital expenses of the child's birth and all or a portion of the mother's prenatal and postnatal care up to thirty (30) days following the child's birth if the parentage action is initiated or the voluntary acknowledgment of paternity is executed within two (2) years of the date of the execution of the waiver.

(3) The waiver shall not be valid for use by a legal father as defined under § 36-1-102 or for any man listed as the father of a child on the child's birth certificate.

(4) The waiver of interest and notice may be executed at any time after the biological mother executes a sworn statement identifying such person as the biological father of the biological mother's child to be born, or at any time after the birth of the child.

(5) The waiver of interest and notice shall be legally sufficient if it contains a statement comparable to the following:

WAIVER OF INTEREST AND NOTICE

STATE OF _____)
COUNTY OF _____)

Pursuant to Tennessee Code Annotated, § 36-1-111(w), and first being duly sworn according to law, affiant would state the following:

My name is _____. I understand that I have been named by _____, the mother of a child [to be born], or a [child who was born in _____ (City) _____ (State) on the __day of _____, 19__ (or 20__)], as the father or possible father of that child. I further understand that the mother has placed or wishes to place this child for adoption or that the child is the subject of legal proceedings leading to the child's adoption or leading to a determination of the child's legal custody or guardianship.

I am not necessarily admitting or saying that I am the father of this child, but if I am, I do not wish to provide care for this child, and I feel it would be in the child's best interest for this adoption to occur, or for other custody or guardianship proceedings to occur in the child's best interests. I hereby formally waive any right to notice of the legal proceedings: to adopt this child; to otherwise make this child available for adoption; or to award the child's legal custody or guardianship to other persons or agencies. I hereby formally waive any further parental rights to the child and execute this document to finally terminate my rights, if I have any rights, to this child, upon entry of a final order of adoption for this child.

If the child is not yet born:

[I have received and reviewed a copy of the sworn statement of the child's mother in which the mother identifies me as the father of the child.]

I consent to adoption of this child by any persons chosen by the child's mother or by any public or private agency, and consent to the establishment of any legal custody or guardianship arrangements for the child.

I understand that by execution of this waiver, this child may be adopted by other persons or that other custody or guardianship proceedings regarding the child's status may occur and that I will have no rights, if I have any, to act as parent, to visit with, or otherwise be involved in this child's life, unless and until a legal relationship is established between me and the child.

I further understand that I may not revoke this waiver at any time after I sign it.

I further understand that if the child is not adopted, that legal proceedings can be brought to seek to establish me as the legal father, and I may become liable for financial support or financial obligations for this child or to the child's mother that are related to the child's support, arising after I sign this waiver, and beginning on the date an order is entered that establishes me as the child's father or beginning on the date I sign a voluntary acknowledgment of paternity of the child. I also understand that if the child is not adopted and paternity is later established by legal proceedings, or if I sign a voluntary acknowledgement of paternity, I could be liable for all or a portion of the actual medical and hospital expenses of the child's birth and all or a portion of the mother's prenatal and postnatal care up to thirty (30) days following the child's birth if the legal proceeding to establish me as the child's father is brought, or the voluntary acknowledgment of paternity of the child is signed, within two (2) years of the date I sign this waiver.

FURTHER, AFFIANT SAITH NOT.

DATED: THE __DAY OF _____,19__ (20__).

_____

Alleged Father (Please Print)

_____

Signature of Alleged Father

_____

Address

Personally appeared before me the above-named _____ who is known to me and who acknowledged that he executed the above Waiver of Interest and Notice as his own free and voluntary act.

_____

Notary Public

My commission expires: _____

(x)(1) Notwithstanding any other law to the contrary, a denial of paternity and notice of a child, when signed under oath by the child's legal father claiming not to be the child's biological father, who is not the child's adoptive father, and when accompanied by credible proof that the legal father is not the father of the child, shall waive the legal father's parental rights and all parental interests with respect to the child. No further notice to the legal father or termination of the legal father's parental rights is necessary for the child to be placed in guardianship or adopted. "Credible proof" includes the written sworn statement of the child's mother.

(2) The parental rights of a man denying paternity of a child are terminated and the man's future parental responsibilities with respect to the child are terminated upon adoption of the child by other persons.

(3) The denial of paternity and notice shall not be valid for use by a legal father who is also a biological parent as defined in § 36-1-102.

(4) A denial of paternity and notice under this section may be executed at any time after conception of the child who is the subject of the denial, and may not be revoked by the father unless the adoption plan is abandoned. A father who executes a denial of paternity and notice under this section relinquishes any right to petition to have the father's legal or biological relationship to the child determined by a court.

(5) The denial of paternity and notice shall be legally sufficient if it contains a statement comparable to the following:

DENIAL OF PATERNITY AND NOTICE BY A LEGAL FATHER

STATE OF _____

COUNTY OF _____

Pursuant to Tennessee Code Annotated § 36-1-111(x), and first being duly sworn according to law, affiant would state the following:

My name is _____. I am personally acquainted with _____, the biological mother of _____, a child [to be born], or a [child who was born] in _____ (City) _____ (State) on the __day of _____, 20 _____.

I am or I have been told that I am or may be the presumed and/or legal father of the above- named child.

I AM CERTAIN THAT I AM NOT THE BIOLOGICAL FATHER OF THIS CHILD.

I understand that the mother has placed or wishes to place this child for adoption, or that the child is the subject of legal proceedings leading to the child's adoption, or leading to a determination of the child's legal custody or guardianship. I do not want custody of this child. I either agree with an adoption plan or I do not wish to be involved in the decision.

I HEREBY WAIVE MY PARENTAL RIGHTS TO THIS CHILD, IF I HAVE ANY RIGHTS, AND I WANT MY PARENTAL RIGHTS, IF ANY, TO BE TERMINATED WITHOUT FURTHER ACTION BY, OR NOTICE TO, ME.

I formally waive my rights to notice of legal proceedings regarding the child including: adoption, custody, guardianship, and termination of other

parents' rights and any other similar actions.

I understand that by my execution of this Denial of Paternity and Notice, along with the finalization of the child's adoption, I will lose any right I may have to act as parent, to visit with, or otherwise be involved in this child's life. I also relinquish any right to petition to have my legal and biological relationship to this child determined by a court.

I FURTHER UNDERSTAND THAT I MAY NOT REVOKE THIS DENIAL AT ANY TIME AFTER I SIGN IT.

I also understand that while this denial is not revocable, it is not effective to terminate my parental rights or responsibilities unless or until an adoption of the child is finalized. If the adoption is not finalized, I understand that I retain any rights that I otherwise had to rebut a presumption that I am the father of the child.

FURTHER AFFIANT SAITH NOT this _____ DAY OF _____, 20__.

Legal Father (Please Print)

Signature of Legal Father

Address

City, State, Zip Code

Personally appeared before me the above-named _____, who is known to me and who acknowledged that he executed the above Denial of Paternity and Notice as his own free and voluntary act.

Notary Public _____
My commission expires:

(y)(1) If a child is surrendered to a person other than a licensed child-placing agency or the department, and, after the expiration of the three-day period for revocation, the person or persons to whom the child was surrendered decide that they no longer wish to adopt the child, and if no order of guardianship has been entered by a court that gives those persons who had received the surrender the guardianship of the child, they may surrender the child to a licensed child-placing agency or the department without notice to the parent or guardians who originally had executed the surrender to them.

(2) In this event, the licensed child-placing agency or the department shall have the same rights as set forth above just as if the child had been originally surrendered to them; provided, that if the court has entered a guardianship order as set forth above, the surrender cannot be utilized in this manner, and a motion must be made to the court to modify the existing guardianship order.

(3) Certified copies of all such surrenders and orders modifying any order of guardianship shall be sent by the clerk to the adoptions unit in the state office of the department in Nashville.

(z) An interpreter shall be provided to a surrendering parent or guardian who is not fluent in English, before a final hearing on an adoption is conducted. The prospective adoptive parent or parents shall be responsible for payment of the cost of such interpreter.

History.

Acts 1995, ch. 532, § 1; 1996, ch. 1054, §§ 21-39, 106-110; 1998, ch. 1098, § 3; 2000, ch. 922, § 3; 2003, ch. 231, § 7; 2005, ch. 409, § 1; 2010, ch. 915, § 1; 2015, ch. 113, § 4; 2016, ch. 636, § 1; 2016, ch. 919, §§ 3-5.

Compiler's Notes.

Former § 36-1-111 (Acts 1951, ch. 202, § 6 (Williams, § 9572.20); 1975, ch. 196, § 1; T.C.A. (orig. ed.), § 36-111; Acts 1984, ch. 681, § 2; 1986, ch. 767, § 1; 1992, ch. 994, §§ 2, 3), concerning children born out of wedlock, was repealed by Acts 1995, ch. 532, § 1, effective January 1, 1996.

This section, as enacted by Acts 1995, ch. 532, did not contain a subdivision (p)(3). The compiler has redesignated (p)(4) in the act as (p)(3).

36-1-112. Revocation of surrender and parental consent — Form.

(a)(1)(A) A person who executed a surrender may revoke the surrender at any time within three (3) calendar days of the date of the surrender. The three-day period shall be calculated using the method for computation of time established in the Tennessee Rules of Civil Procedure Rule 6.01.

(B) The surrender shall be revoked by appearing before the judge who accepted the surrender or that judge's successor or substitute, or another judge of a court with jurisdiction to accept a surrender in the absence of the judge who accepted the surrender or that judge's successor or substitute, or by appearing before the person, or that person's successor, pursuant to § 36-1-111(h), (i) or (j) before whom the surrender was executed and by executing the revocation of surrender form.

(C) The three-day period for revocation of the surrender shall not limit the court's authority to order the revocation of the surrender pursuant to § 36-1-118.

(D) The revocation of the surrender shall be executed under oath by the parent or guardian who executed the surrender of the child, and the judge or other person who accepted the surrender or the judge's successor or substitute as indicated in subdivision (a)(1)(B) shall sign and date the revocation form.

(E) In the event the person under § 36-1-111(h), (i) or (j) is unavailable or has no authorized successor, the person may apply to a court that is qualified to receive a surrender in Tennessee or a court with domestic relations jurisdiction in another state or country to execute the revocation before a judge of that court as provided herein.

(F)(i) No surrender may be revoked by the person surrendering the child or set aside by a court after the expiration of the three-day period except as the surrender may be invalidated by court order entered pursuant to a timely filed

complaint filed pursuant to subsection (d) or as permitted by order of the court entered pursuant to § 36-1-118.

(ii) The execution of a revocation of a surrender within the three-day period shall be grounds for the dismissal of any adoption petition filed during that period and, upon motion of the person who revoked the surrender, the court shall dismiss the adoption petition without prejudice.

(2)(A) A parental consent may be revoked at any time prior to the entry of an order of confirmation of the parental consent by the court.

(B) The parent who executed the parental consent shall appear before the judge of the court in which the adoption petition is filed, or in the judge's absence, the judge's successor or substitute or, if no successor or substitute, any judge or a court with jurisdiction to adjudicate adoption petitions, and shall execute a revocation of the parental consent.

(b) The form for the revocation of a surrender or parental consent shall be prescribed by the department pursuant to rules promulgated by it pursuant to this part, and a copy of the form shall be attached to the parent's copy of the surrender.

(c)(1) The court or person receiving the revocations shall maintain the originals in the office of the clerk or the office of the person receiving the surrender, together with the original of the surrender or adoption petition containing the parental consent, if available, and shall personally give or shall send by certified mail, return receipt requested, certified copies of the revocations to the child's parents, the prospective adoptive parents, the local office of the department, or a licensed child-placing agency to whom the child had been surrendered, and if the prospective adoptive parents are represented by counsel, a certified copy of the revocation shall be forwarded to such counsel.

(2)(A) When the revocation is received, the court or the person before whom the revocation was executed shall attach a certified copy of the revocation to a certified copy of the surrender or petition for adoption containing the parental consent, and shall within three (3) days mail the copies of both documents by certified mail, return receipt requested, to the adoptions unit in the state office of the department in Nashville.

(B) If the revocation must be executed before a court or person before whom the surrender was not executed or in which the adoption petition was not filed, the original of the revocation shall be sent within three (3) days to the court or person before whom the surrender was executed or in which the adoption petition was filed, and that court or person shall be responsible for sending the forms to the department and to the persons or agencies who are entitled to copies of the revocation.

(C) The department shall record the revocation with the copies of the surrender or adoption petition containing the parental consent and the order of guardianship for purposes of tracking the adoptive placement status of the child.

(d) After the revocation period has expired or after the court has entered an order confirming a parental consent, no surrender or waiver of interest or parental consent shall be set aside by a court except upon clear and convincing evidence of duress, fraud, intentional misrepresentation or for invalidity under § 36-1-111(d), and no surrender, waiver of interest, or parental consent may be set aside for any reason under this part unless the action based on these grounds is initiated within thirty (30) days of the execution of the surrender, waiver of interest or within thirty (30) days of the date of entry of the order of confirmation of the parental consent.

(e)(1) A surrender or parental consent that is revoked shall have the effect of returning the child's legal status to that which existed before the surrender was executed, and the department, a licensed child-placing agency, or the person who or that had custody or guardianship of the child prior to the surrender pursuant to any parental status, prior court order or statutory authorization shall continue or resume custody or guardianship under that prior parental status, prior court order, or statutory authority, that had established the custodial or guardianship status of the child prior to the execution of the surrender or parental consent, unless a court of competent jurisdiction shall otherwise determine as specifically provided herein.

(2)(A) Unless they had received or maintained custody or guardianship of the child pursuant to a court order entered or pursuant to statutory authority prior to the execution of the surrender or parental consent, the department, the licensed child-placing agency, or the person or persons to whom the child was surrendered and who has physical custody of the child, shall, within five (5) days of the receipt by such department, agency or person of the revocation, return the child to the child's parents or guardian who executed and revoked the surrender or parental consent; provided, that a sworn complaint may be filed in the court where the revocation was executed, or in the event that the surrender was executed before a person or court pursuant to § 36-1-111(h), (i) or (j), in the chancery, circuit, or juvenile court where the child resides in Tennessee, to show cause why the child would likely suffer immediate harm to the child's health and safety if returned to the child's parent or parents or guardian who had executed the surrender.

(B) If a complaint is filed pursuant to subdivision (e)(2)(A), the child shall remain in the physical and/or legal custody or guardianship of the persons or agencies to whom the child was surrendered or with respect to whom the parental consent was executed until the court makes any further orders pursuant to this section, and those persons or agencies shall have authority to provide any necessary care and supervision of the child, subject to further orders of the court.

(C)(i) The complaint filed under this subdivision (e)(2) shall name the parent or parents or guardian or guardians who executed and revoked the surrender or parental consent as defendant or defendants. Except for cause shown in an order entered on the record, the court shall hold a preliminary hearing within three (3) days of the filing of the petition to determine if there is probable cause to believe that the child will be subject to immediate harm to the child's health or safety if the child is returned to the child's parent or parents or guardian or guardians.

(ii) If probable cause is not established in the preliminary hearing, the child shall be immediately returned to the child's parent or parents or guardian who executed the surrender that has been revoked.

(iii) If probable cause is established, the court shall continue the child in the custody of the persons or the agency to whom the child was surrendered or with respect to whom a parental consent was executed, subject to further orders of the court, pending the final hearing.

(iv) The court may make any necessary orders pending the final hearing for the protection of the child.

(D) The case shall be set for a final hearing on the merits within thirty (30) days of the preliminary hearing except for cause shown in a written order of the court entered on the record.

(E) Unless clear and convincing evidence at the final hearing shows that the child's safety and health would be in immediate danger if the child is returned or remains in the custody of the parent or guardian who executed the surrender or filed the parental consent, the complaint shall be dismissed. If the child was not returned to the parent at the preliminary hearing, the child shall be immediately returned to the child's parent or guardian who had executed the surrender or filed the parental consent.

(3)(A) If no complaint is filed pursuant to subdivision (e)(2), the court where the surrender or parental consent was revoked shall enter any orders that are necessary to effect the return of the child to the parent or parents or guardian who had custody of the child prior to the execution of the surrender or prior to filing the parental consent, unless another person, the department, or a licensed child-placing agency had custody or guardianship of the child under a prior order entered before the execution of the surrender or filing of the parental consent, or that had custody or guardianship under statutory authorization prior to the execution of the surrender or parental consent that was revoked by that parent.

(B) The court in which a surrender, revocation or parental consent is given or filed, or adoption court may not modify any prior custody or guardianship order that had given custody or guardianship of the child to the department, a licensed child-placing agency, or another person under a prior order or pursuant to any statutory authorization prior to the surrender or the filing of the parental consent, and if such order or statutory authority exists, the court's jurisdiction over the child shall terminate after the execution of the revocation of the surrender or parental consent, and the prior parental status, prior court order or prior statutory authority shall continue in effect; provided, that if for any reason, the agencies or persons who had prior custody or guardianship of the child are unable or unwilling to resume custody of the child, the court receiving the revocation shall be authorized to make a custody determination and award temporary custody of the child to any suitable person, the department, or a licensed child-placing agency with custodial authority pursuant to § 36-1-140, or it may make an order of guardianship or partial guardianship pursuant to § 36-1-102, with the right to adopt or consent to the child's adoption.

(4) In the event that the surrender was executed before a person or court under § 36-1-111(h), (i) or (j), the chancery, circuit or juvenile court where the surrender was filed pursuant to § 36-1-111(q), or in the county where the child resides in Tennessee if the surrender has not been filed, shall have jurisdiction to enter orders in compliance with this subsection (e) to effect the child's return to the child's parent or parents or guardian or to provide for the child's custody or guardianship as permitted herein.

(f) If the child is not returned to the child's parent or parents or guardian pursuant to subdivision (e)(2)(E), and unless the department, a licensed child-placing agency, or another person to whom the child was surrendered or to whom a parental consent was executed had custody or guardianship of the child pursuant to a court order entered prior to the filing of the surrender or the parental consent or pursuant to statutory authorization prior to the execution of the surrender or parental consent, the court where the revocation was executed shall have jurisdiction following a revocation of the surrender or parental consent to award temporary custody to any appropriate person, the department, or any other licensed child care agency, with the authority as legal custodian pursuant to § 37-1-140, or the court may award guardianship or partial guardianship pursuant to § 36-1-102 with the right to adopt or consent to the child's adoption.

(g) The department or a licensed child-placing agency or licensed clinical social worker shall have the right to intervene in any complaint filed pursuant to subdivision (e)(2)(A) for the purpose of introducing proof as to the child's health and safety.

History.

Acts 1951, ch. 202, § 11 (Williams, § 9572.25); 1959, ch. 223, § 6; impl. am. Acts 1975, ch. 219, § 1; T.C.A. (orig. ed.), § 36-117; Acts 1986, ch. 767, § 7; 1993, ch. 124, § 3, 4; T.C.A., § 36-1-117; Acts 1995, ch. 532, § 1; 1996, ch. 1054, §§ 40, 111; 2000, ch. 981, § 51; 2015, ch. 113, §§ 1-3; 2016, ch. 919, § 6.

Compiler's Notes.

Former § 36-1-112 (Acts 1951, ch. 202, §§ 9, 11 (Williams, §§ 9572.23, 9572.25); impl. am. Acts 1975, ch. 219, § 1; T.C.A. (orig.

ed.), § 36-112), concerning filing of consent making the consenting person a party to the proceedings, was repealed by Acts 1995, ch. 532, § 1, effective January 1, 1996.

36-1-113. Termination of parental rights.

(a) The chancery and circuit courts shall have concurrent jurisdiction with the juvenile court to terminate parental or guardianship rights to a child in a separate proceeding, or as a part of the adoption proceeding by utilizing any grounds for termination of parental or guardianship rights permitted in this part or in title 37, chapter 1, part 1 and title 37, chapter 2, part 4. All pleadings and records filed in the chancery and circuit courts pursuant to this section shall be placed under seal and shall not be subject to public disclosure, in the same manner as those filed in juvenile court, unless otherwise provided by court order.

(b)(1) The prospective adoptive parent or parents, including extended family members caring for a related child, any licensed child-placing agency having physical custody of the child, the child's guardian ad litem, or the department shall have standing to file a petition pursuant to this part or title 37 to terminate parental or guardianship rights of a person alleged to be a parent or guardian of the child. The child's parent, pursuant to subdivision (g)(11), shall also have standing to file a petition pursuant to this part or title 37 to terminate parental or guardianship rights of a person alleged to be a parent or guardian of the child. The prospective adoptive parents, including extended family members caring for a related child, shall have standing to request termination of parental or guardianship rights in the adoption petition filed by them pursuant to this part.

(2) The court shall notify the petitioning parent that the duty of future child support by the parent who is the subject of the termination petition will be forever terminated by entry of an order terminating parental rights.

(c) Termination of parental or guardianship rights must be based upon:

(1) A finding by the court by clear and convincing evidence that the grounds for termination of parental or guardianship rights have been established; and

(2) That termination of the parent's or guardian's rights is in the best interests of the child.

(d)(1) The petition, or allegations in the adoption petition, to terminate parental rights may be made upon information and belief and shall be verified. If a parent whose parental rights are proposed for termination is the legal parent of the child, as defined in § 36-1-102, and if such parent is alleged to be deceased, then diligent efforts must be made by the petitioner to verify the death of such parent.

(2) The petition, or allegations in the adoption petition, shall state:

(A) The child's birth name;

(B) The child's age or date of birth;

(C) The child's current residence address or county of residence or that the child is in the custody of the department or a licensed child-placing agency; and

(D) Any other facts that allege the basis for termination of parental rights and that bring the child and parties within the jurisdiction of the court.

(3)(A) The petition, or allegations in the adoption petition, shall contain a verified statement that:

(i) The putative father registry maintained by the department has been consulted within ten (10) working days of the filing of the petition and shall state whether there exists any claim on the registry to the paternity of the child who is the subject of the termination or adoption petition;

(ii) Indicates if there exists any other claim or potential claim to the paternity of the child;

(iii) Describes whether any other parental or guardianship rights have been terminated by surrender, parental consent, or otherwise, and whether any other such rights must be terminated before the child can be made available for adoption;

(iv) Any notice required pursuant to subdivision (d)(4) has been given; and

(v) The medical and social history of the child and the child's biological family has been completed to the extent possible on the form promulgated by the department pursuant to § 36-1-111(k); provided, however, the absence of such completed information shall not be a barrier to termination of parental rights.

(B) Any person or persons entitled to notice pursuant to § 36-1-117 shall be named as defendants in the petition to terminate parental rights or in the adoption petition and shall be served with a copy of the petition as provided by law.

(C) The petition to terminate, or the adoption petition that seeks to terminate parental rights, shall state that:

(i) The petition or request for termination in the adoption petition shall have the effect of forever severing all of the rights, responsibilities, and obligations of the parent or parents or the guardian or guardians to the child who is the subject of the order, and of the child to the parent or parents or the guardian or guardians;

(ii) The child will be placed in the guardianship of other person, persons or public or private agencies who, or that, as the case may be, shall have the right to adopt the child, or to place the child for adoption and to consent to the child's adoption; and

(iii) The parent or guardian shall have no further right to notice of proceedings for the adoption of the child by other persons and that the parent or guardian shall have no right to object to the child's adoption or thereafter, at any time, to have any relationship, legal or otherwise, with the child.

(4) The petition, if filed separately from the adoption petition, may be filed as provided in § 36-1-114. If the petition is filed in a court different from the court where there is a pending custody, dependency, neglect or abuse proceeding concerning a person

whose parental rights are sought to be terminated in the petition, a notice of the filing of the petition, together with a copy of the petition, shall be sent by the petitioner to the court where the prior proceeding is pending. In addition, the petitioner filing a petition under this section shall comply with the requirements of § 36-1-117(e).

(e) Service of process of the petition shall be made as provided in § 36-1-117.

(f) Before terminating the rights of any parent or guardian who is incarcerated or who was incarcerated at the time of an action or proceeding is initiated, it must be affirmatively shown to the court that such incarcerated parent or guardian received actual notice of the following:

(1) The time and place of the hearing to terminate parental rights;

(2) That the hearing will determine whether the rights of the incarcerated parent or guardian should be terminated;

(3) That the incarcerated parent or guardian has the right to participate in the hearing and contest the allegation that the rights of the incarcerated parent or guardian should be terminated, and, at the discretion of the court, such participation may be achieved through personal appearance, teleconference, telecommunication or other means deemed by the court to be appropriate under the circumstances;

(4) That if the incarcerated parent or guardian wishes to participate in the hearing and contest the allegation, such parent or guardian:

(A) If indigent, will be provided with a court-appointed attorney to assist the parent or guardian in contesting the allegation; and

(B) Shall have the right to perpetuate such person's testimony or that of any witness by means of depositions or interrogatories as provided by the Tennessee Rules of Civil Procedure; and

(5) If, by means of a signed waiver, the court determines that the incarcerated parent or guardian has voluntarily waived the right to participate in the hearing and contest the allegation, or if such parent or guardian takes no action after receiving notice of such rights, the court may proceed with such action without the parent's or guardian's participation.

(g) Initiation of termination of parental or guardianship rights may be based upon any of the grounds listed in this subsection (g). The following grounds are cumulative and non-exclusive, so that listing conditions, acts or omissions in one ground does not prevent them from coming within another ground:

(1) Abandonment by the parent or guardian, as defined in § 36-1-102, has occurred;

(2) There has been substantial noncompliance by the parent or guardian with the statement of responsibilities in a permanency plan pursuant to the provisions of title 37, chapter 2, part 4;

(3) The child has been removed from the home of the parent or guardian by order of a court for a period of six (6) months and:

(A) The conditions that led to the child's removal or other conditions that in all reasonable probability would cause the child to be subjected to further abuse or neglect and that, therefore, prevent the child's safe return to the care of the parent or parents or the guardian or guardians, still persist;

(B) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent or parents or the guardian or guardians in the near future; and

(C) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home;

(4) The parent or guardian has been found to have committed severe child abuse as defined in § 37-1-102, under any prior order of a court or is found by the court hearing the petition to terminate parental rights or the petition for adoption to have committed severe child abuse against the child who is the subject of the petition or against any sibling or half-sibling of such child, or any other child residing temporarily or permanently in the home of such parent or guardian;

(5) The parent or guardian has been sentenced to more than two (2) years' imprisonment for conduct against the child who is the subject of the petition, or for conduct against any sibling or half-sibling of the child or any other child residing temporarily or permanently in the home of such parent or guardian, that has been found under any prior order of a court or that is found by the court hearing the petition to be severe child abuse, as defined in § 37-1-102. Unless otherwise stated, for purposes of this subdivision (g)(5), "sentenced" shall not be construed to mean that the parent or guardian must have actually served more than two (2) years in confinement, but shall only be construed to mean that the court had imposed a sentence of two (2) or more years upon the parent or guardian;

(6) The parent has been confined in a correctional or detention facility of any type, by order of the court as a result of a criminal act, under a sentence of ten (10) or more years, and the child is under eight (8) years of age at the time the sentence is entered by the court;

(7) The parent has been convicted of or found civilly liable for the intentional and wrongful death of the child's other parent or legal guardian;

(8)(A) The chancery and circuit courts shall have jurisdiction in an adoption proceeding, and the chancery, circuit, and juvenile courts shall have jurisdiction in a separate, independent proceeding conducted prior to an adoption proceeding to determine if the parent or guardian is mentally incompetent to provide for the further care and supervision of the child, and to terminate that parent's or guardian's rights to the child;

(B) The court may terminate the parental or guardianship rights of that person if it determines on the basis of clear and convincing evidence that:

(i) The parent or guardian of the child is incompetent to adequately provide for the fur-

ther care and supervision of the child because the parent's or guardian's mental condition is presently so impaired and is so likely to remain so that it is unlikely that the parent or guardian will be able to assume or resume the care of and responsibility for the child in the near future; and

(ii) That termination of parental or guardian rights is in the best interest of the child;

(C) In the circumstances described under subdivisions (8)(A) and (B), no willfulness in the failure of the parent or guardian to establish the parent's or guardian's ability to care for the child need be shown to establish that the parental or guardianship rights should be terminated;

(9)(A) The parental rights of any person who, at the time of the filing of a petition to terminate the parental rights of such person, or if no such petition is filed, at the time of the filing of a petition to adopt a child, is the putative father of the child may also be terminated based upon any one (1) or more of the following additional grounds:

(i) The person has failed, without good cause or excuse, to pay a reasonable share of prenatal, natal, and postnatal expenses involving the birth of the child in accordance with the person's financial means promptly upon the person's receipt of notice of the child's impending birth;

(ii) The person has failed, without good cause or excuse, to make reasonable and consistent payments for the support of the child in accordance with the child support guidelines promulgated by the department pursuant to § 36-5-101;

(iii) The person has failed to seek reasonable visitation with the child, and if visitation has been granted, has failed to visit altogether, or has engaged in only token visitation, as defined in § 36-1-102(1);

(iv) The person has failed to manifest an ability and willingness to assume legal and physical custody of the child;

(v) Placing custody of the child in the person's legal and physical custody would pose a risk of substantial harm to the physical or psychological welfare of the child; or

(vi) The person has failed to file a petition to establish paternity of the child within thirty (30) days after notice of alleged paternity, or as required in § 36-2-318(j), or after making a claim of paternity pursuant to § 36-1-117(c)(3);

(B)(i) For purposes of this subdivision (g)(9), "notice" means the written statement to a person who is believed to be the biological father or possible biological father of the child. The notice may be made or given by the mother, the department, a licensed child-placing agency, the prospective adoptive parents, a physical custodian of the child, or the legal counsel of any of these people or entities; provided, that actual notice of alleged paternity may be proven to have been given to a person by any means and by any person or entity. The notice may be made or given at any time after the child is conceived and, if not sooner, may include actual notice of a petition to terminate the putative father's parental rights with respect to the child;

(ii) "Notice" also means the oral statement to an alleged biological father from a biological mother that the alleged biological father is believed to be the biological father of the biological mother's child;

(10)(A) The parent has been convicted of aggravated rape pursuant to § 39-13-502, rape pursuant to § 39-13-503, or rape of a child pursuant to § 39-13-522, from which crime the child was conceived. A certified copy of the conviction suffices to prove this ground;

(B) When one (1) of the child's parents has been convicted of one (1) of the offenses specified in subdivision (g)(10)(A), the child's other parent shall have standing to file a petition to terminate the parental rights of the convicted parent. Nothing in this section shall give a parent standing to file a petition to terminate parental rights based on grounds other than those listed in this subdivision (g)(10);

(11)(A)(i) The parent has been found to have committed severe child sexual abuse under any prior order of a criminal court;

(ii) For the purposes of this section, "severe child sexual abuse" means the parent is convicted of any of the following offenses towards a child:

(a) Aggravated rape, pursuant to § 39-13-502;

(b) Aggravated sexual battery, pursuant to § 39-13-504;

(c) Aggravated sexual exploitation of a minor, pursuant to § 39-17-1004;

(d) Especially aggravated sexual exploitation of a minor, pursuant to § 39-17-1005;

(e) Incest, pursuant to § 39-15-302;

(f) Rape, pursuant to § 39-13-503; or

(g) Rape of a child, pursuant to § 39-13-522;

(B) When one (1) of the child's parents has been convicted of one (1) of the offenses specified in subdivision (g)(11)(A)(ii), the child's other parent shall have standing to file a petition to terminate the parental rights of the abusive parent. Nothing in this section shall give a parent standing to file a petition to terminate parental rights based on grounds other than those listed in this subdivision (g)(11);

(12) The parent or guardian has been convicted of trafficking for commercial sex act under § 39-13-309;

(13) The parent or guardian has been convicted on or after July 1, 2015, of sex trafficking of children or by force, fraud, or coercion under 18 U.S.C. § 1591, or a sex trafficking of children offense under the laws of another state that is substantially similar to § 39-13-309; and

(14) A legal parent or guardian has failed to manifest, by act or omission, an ability and willingness to

personally assume legal and physical custody or financial responsibility of the child, and placing the child in the person's legal and physical custody would pose a risk of substantial harm to the physical or psychological welfare of the child.

(h)(1) The department shall file a petition to terminate the parental rights of the child's parents (or, if such a petition has been filed by another party, seek to be joined as a party to the petition), and, concurrently, to identify, recruit, process, and approve a qualified family for an adoption, under the following circumstances:

(A) In the case of a child who has been in foster care under the responsibility of the department for fifteen (15) of the most recent twenty-two (22) months; or

(B) If a court of competent jurisdiction has determined a child to be an abandoned infant as defined at § 36-1-102; or

(C) If a court of competent jurisdiction has made a determination in a criminal or civil proceeding that the parent has committed murder of any sibling or half-sibling of the child who is the subject of the petition or any other child residing temporarily or permanently in the home, committed voluntary manslaughter of another such child, aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter of the child that is the subject of the petition or any sibling or half-sibling of the child who is the subject of the petition or any other child residing temporarily or permanently in the home, or committed a felony assault that has resulted in serious bodily injury or severe child abuse as defined at § 37-1-102 to the child that is the subject of the petition or any sibling or half-sibling of the child who is the subject of the petition or any other child residing temporarily or permanently in the home. For the purposes of this subsection (h), such a determination shall be made by a jury or trial court judge designated by § 16-2-502 through an explicit finding, or by such equivalent courts of other states or of the United States; or

(D) If a juvenile court has made a finding of severe child abuse as defined at § 37-1-102.

(2) At the option of the department, the department may determine that a petition to terminate the parental rights of the child's parents shall not be filed (or, if such a petition has been filed by another party, shall not be required to seek to be joined as a party to the petition), if one of the following exists:

(A) The child is being cared for by a relative;

(B) The department has documented in the permanency plan, which shall be available for court review, a compelling reason for determining that filing such a petition would not be in the best interests of the child; or

(C) The department has not made reasonable efforts under § 37-1-166 to provide to the family of the child, consistent with the time period in the department permanency plan, such services as the department deems necessary for the safe return of the child to the child's home.

(i) In determining whether termination of parental or guardianship rights is in the best interest of the child pursuant to this part, the court shall consider, but is not limited to, the following:

(1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;

(2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;

(3) Whether the parent or guardian has maintained regular visitation or other contact with the child;

(4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;

(5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;

(6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;

(7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol, controlled substances or controlled substance analogues as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;

(8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or

(9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

(j) In the hearing on the petition, the circuit, chancery, or juvenile court shall, in addition to the Tennessee Rules of Evidence, admit evidence as permitted under the Tennessee Rules of Juvenile Procedure, and shall recognize the exemptions to privileges as provided pursuant to §§ 37-1-411 and 37-1-614.

(k) The court shall ensure that the hearing on the petition takes place within six (6) months of the date that the petition is filed, unless the court determines an extension is in the best interests of the child. The court shall enter an order that makes specific findings of fact and conclusions of law within thirty (30) days of the conclusion of the hearing. If such a case has not been completed within six (6) months from the date the petition was served, the petitioner or respondent shall have grounds to request that the court of appeals grant an order expediting the case at the trial level.

(*l*)(1) An order terminating parental rights shall have the effect of severing forever all legal rights and

obligations of the parent or guardian of the child against whom the order of termination is entered and of the child who is the subject of the petition to that parent or guardian. The parent or guardian shall have no further right to notice of proceedings for the adoption of that child by other persons and shall have no right to object to the child's adoption or thereafter to have any relationship, legal or otherwise, with the child. It shall terminate the responsibilities of that parent or guardian under this section for future child support or other future financial responsibilities even if the child is not ultimately adopted; provided, that the entry of an order terminating the parental rights shall not eliminate the responsibility of such parent or guardian for past child support arrearages or other financial obligations incurred for the care of such child prior to the entry of the order terminating parental rights.

(2) Notwithstanding subdivision (*l*)(1), a child who is the subject of the order for termination shall be entitled to inherit from a parent whose rights are terminated until the final order of adoption is entered.

(m) Upon termination of parental or guardian rights, the court may award guardianship or partial guardianship of the child to a licensed child-placing agency or the department. Such guardianship shall include the right to place the child for adoption and the right to consent to the child's adoption. Upon termination of parental or guardian rights, the court may award guardianship or partial guardianship to any prospective adoptive parent or parents with the right to adopt the child, or to any permanent guardian who has been appointed pursuant to title 37, chapter 1, part 8. In any of these cases, such guardianship is subject to the remaining rights, if any, of any other parent or guardian of the child. Before guardianship or partial guardianship can be awarded to a permanent guardian, the court shall find that the department or licensed child-placing agency currently having custody of the child has made reasonable efforts to place the child for adoption and that permanent guardianship is in the best interest of the child.

(n) An order of guardianship or partial guardianship entered by the court pursuant to this section shall supersede prior orders of custody or guardianship of that court and of other courts, except those prior orders of guardianship or partial guardianship of other courts entered as the result of validly executed surrenders or revocations pursuant to § 36-1-111 or § 36-1-112, or except as provided pursuant to § 36-1-111(r)(4)(D) and (E), or except an order of guardianship or partial guardianship of a court entered pursuant to § 36-1-116; provided, that orders terminating parental rights entered by a court under this section prior to the filing of an adoption petition shall be effective to terminate parental rights for all purposes.

(o) If the court terminates parental or guardianship rights, under this part or title 37 or a consent is given pursuant to § 36-1-117(f) or (g), or if there have been surrenders of parental or guardianship rights of all other necessary parties, then no further surrender or consent of that parent or guardian shall be necessary to authorize an adoption; provided, that the adoption court may review and confirm the validity of any denials of parentage made by persons under any statutory provisions from outside the state of Tennessee.

(p) A copy of the order or orders obtained by the prospective adoptive parents terminating parental or guardianship rights under this section shall be filed with the petition for adoption.

(q) After the entry of the order terminating parental rights, no party to the proceeding, nor anyone claiming under such party, may later question the validity of the termination proceeding by reason of any defect or irregularity therein, jurisdictional or otherwise, but shall be fully bound thereby, except based upon a timely appeal of the termination order as may be allowed by law; and in no event, for any reason, shall a termination of parental rights be overturned by any court or collaterally attacked by any person or entity after one (1) year from the date of the entry of the final order of termination. This provision is intended as a statute of repose.

History.

Acts 1951, ch. 202, § 5 (Williams, § 9572.19); Acts 1955, ch. 320, § 1; 1957, ch. 292, § 1; 1959, ch. 111, § 1; 1959, ch. 223, § 4; impl. am. Acts 1975, ch. 219, § 1; T.C.A. (orig. ed.), § 36-110; § 36-1-110; Acts 1995, ch. 532, § 1; 1996, ch. 1054, §§ 41-44; 1997, ch. 379, § 1; 1997, ch. 551, § 54; 1998, ch. 1097, §§ 4-11; 1998, ch. 1098, § 4; 1999, ch. 467, § 1; 2000, ch. 683, §§ 1, 3; 2003, ch. 84, §§ 1, 2; 2003, ch. 231, §§ 9, 10; 2006, ch. 890, § 2; 2007, ch. 372, §§ 1, 2; 2008, ch. 1059, §§ 1-3; 2008, ch. 1162, §§ 3, 4; 2010, ch. 821, § 1; 2010, ch. 842, § 1; 2010, ch. 881, § 2; 2012, ch. 848, § 8; 2012, ch. 1042, §§ 1-3; 2013, ch. 298, § 1; 2013, ch. 365, § 1; 2015, ch. 237, § 1; 2016, ch. 636, § 5; 2016, ch. 659, § 1; 2016, ch. 919, §§ 7-9, 20.

Compiler's Notes.

Former § 36-1-113 (Acts 1951, ch. 202, § 9 (Williams, § 9572.23); impl. am. Acts 1975, ch. 219, § 1; T.C.A. (orig. ed.), § 36-113), concerning consent filed with petition, was repealed by Acts 1995, ch. 532, § 1, effective January 1, 1996.

Acts 2000, ch. 683, § 4 provided that the act shall apply to all proceedings and petitions pending on May 8, 2000 and all arising on or after May 8, 2000.

Acts 2006, ch. 890, § 1 provided that the provisions of the act may be collectively known as the "Child Protection Act of 2006."

36-1-114. Venue.

The termination or adoption petition may be filed in the county:

(1) Where the petitioners reside;

(2) Where the child resides;

(3) Where the child resided when:

(A) The child became subject to the care and control of a public or private child-caring or child-placing agency; or

(B) The child became subject to partial or complete guardianship or co-guardianship pursuant to a surrender proceeding as provided in this part; or

(4) In which is located any licensed child-placing agency or institution operated under the laws of this state having custody or guardianship of the child or to which the child has been surrendered as provided in this part.

History.
Acts 1951, ch. 202, § 12 (Williams, § 9572.26); T.C.A. (orig. ed.), § 36-104; 36-1-104; Acts 1995, ch. 532, § 1; 2008, ch. 1059, § 4.

Compiler's Notes.
Former § 36-1-114 (Acts 1951, ch. 202, § 12 (Williams, § 9572.26); T.C.A. (orig. ed.), § 36-104), concerning surrender of child, was repealed by Acts 1995, ch. 532, § 1, effective January 1, 1996.

36-1-115. Persons eligible to file adoption petition — Residence requirements — Preference for foster parents.

(a) Any person over eighteen (18) years of age may petition the chancery or circuit court to adopt a person and may request that the adopted person's name be changed.

(b) The petitioners must have physical custody or must demonstrate to the court that they have the right to receive custody of the child sought to be adopted as provided in § 36-1-111(d)(6) at the time the petition is filed, unless they are filing an intervening petition seeking to adopt the child.

(c) If the petitioner has a spouse living, competent to join in the petition, such spouse shall join in the petition; provided, that if the spouse of the petitioner is a legal or biological parent of the child to be adopted, such spouse shall sign the petition as co-petitioner, and this shall be sufficient consent by the legal or biological parent for the petitioner's spouse to adopt the child of the legal or biological parent, and no surrender shall be necessary by such co-petitioning legal or biological parent. Such action by the legal or biological parent shall not otherwise affect the legal relationship between that parent and the child.

(d) The petitioner or petitioners shall have lived, or maintained a regular place of abode, in this state or on federal territory within the boundaries of this state for six (6) consecutive months immediately preceding the filing of the adoption petition. However, nonresidents may also file a petition to adopt a child in this state if they file such petition in the county in which the court that granted the nonresidents partial or complete guardianship of the child is located.

(e) If the petitioner is in military service stationed out of this state, but had lived, or maintained a regular place of abode, within this state for six (6) consecutive months immediately prior to entering military service, the residency requirement in subsection (d) shall not apply.

(f) Where the petitioner is seeking to adopt a child that is related, the residency requirement in subsections (d) and (e) shall not apply if the petitioner is an actual resident of this state at the time the petition is filed.

(g)(1) When a child is placed in a foster home by the department or otherwise, and becomes available for adoption due to the termination or surrender of all parental or guardianship rights to the child, those foster parents shall be given first preference to adopt the child if the child has resided in the foster home for twelve (12) or more consecutive months immediately preceding the filing of an adoption petition.

(2) In becoming adoptive parents, the foster parents shall meet all requirements otherwise imposed on persons seeking to adopt children in the custody of the department, and shall be subject to all other provisions of this part.

History.
Acts 1951, ch. 202, §§ 4, 40 (Williams, §§ 9572.18, 9572.52); Acts 1959, ch. 223, § 1; Acts 1961, ch. 150, § 1; 1971, ch. 232, § 1; 1971, ch. 329, § 1; 1972, ch. 612, § 7; impl. am. Acts 1975, ch. 219, § 1; Acts 1976, ch. 481, § 1; 1977, ch. 232, § 1; 1979, ch. 107, § 1; T.C.A. (orig. ed.), § 36-105; § 36-1-105; Acts 1995, ch. 532, § 1; 2016, ch. 919, § 10.

Compiler's Notes.
Former § 36-1-115 (Acts 1951, ch. 202, §§ 10, 40 (Williams, §§ 9572.24, 9572.52); T.C.A. (orig. ed.), § 36-115), concerning consent of child fourteen years of age or over, was repealed by Acts 1995, ch. 532, § 1, effective January 1, 1996.

36-1-116. Pre-petition home study — Information from surrender court — Contents of petition — Effect of filing — Order of preference.

(a)(1) Prior to filing a petition for the adoption of a child, the prospective adoptive parents may contact a licensed child-placing agency, or a licensed clinical social worker, or if indigent under federal poverty guidelines, they may contact the department, and request a home study or a preliminary home study concerning the suitability of their home and themselves as adoptive parents.

(2) To be valid for use in response to the order of reference issued pursuant to subsection (e), the home study must have been completed or updated within one (1) year prior to the date of the order of reference. The preliminary home study must have been completed within thirty (30) days prior to the filing of the petition.

(b) The petition to adopt must state:

(1) The full name of the petitioners;

(2) The name used for the child in the proceeding. In the petition or other orders related to the custody of the child and the final order of adoption, and in all other documents related to the case, the name selected by the petitioner as the name for the child may be used as the true and legal name of the child, and the original name of the child shall not be necessary. Only in the court report required by law on the investigation of the conditions and antecedents of the child sought to be adopted and on the form requesting the new certificate of birth by adoption shall the original name of the child given by the biological or prior legal parent or parents be necessary;

(3) The birth date, state, and county or country of birth of the child, if known;

(4) The information necessary to show that the court to which the petition is addressed has jurisdiction;

(5) That the petitioners have physical custody of the child or that they meet the requirements of § 36-1-111(d)(6), and from what person or agency such custody was or is to be obtained;

(6) That it is the desire of the petitioners that the relationship of parent and child be established be-

tween them and the child;

(7) The desire of the petitioners, if they have such, that the name of the child be changed, together with the new name desired;

(8) The value of the personal and real property owned by the child or in which the child may have some legal or equitable interest;

(9) That the petitioners are fit persons to have the care and custody of the child and that it is in the best interest of the child for this adoption to occur;

(10) That the petitioners are financially able to provide for the child;

(11) That there has been full compliance with the law in regard to surrender of the child to the petitioners, or termination of parental or guardianship rights, or consent to the adoption of the child by the agency with rights to place a child for adoption, or that the petitioner intends to effect compliance with the requirements for termination of parental or guardianship rights or parental consents as part of the adoption proceeding, and how such compliance will be effected. A copy of any orders obtained by the prospective adoptive parents terminating parental or guardianship rights and copies of any surrenders that were executed to the prospective adoptive parents shall be filed with the petition;

(12)(A) Whether the biological parent is giving parental consent for the adoption of the child as defined pursuant to § 36-1-102 and as executed pursuant to § 36-1-117(g), or that the parent is signing the petition pursuant to § 36-1-117(f) and that the parent understands that the child will be adopted by the relatives or stepparent of the child and that, in the case of the adoption by relatives, the parent will have no legal rights to the custody, control, or to visitation with the child in the future;

(B) In the case of a parental consent pursuant to § 36-1-102 and § 36-1-117(g), the petition must state that the parent understands that the entry of an order confirming the parental consent, without revoking the parental consent prior to the entry of such order, will terminate that parent's parental rights to the child forever and that the parent will have no legal rights to the custody, control, or to visitation with the child in the future;

(13)(A) That the petitioner has made inquiry to the putative father registry within ten (10) working days prior to the filing of the petition to determine whether any person claims a paternity interest in the child who is the subject of the proceeding by having entered a claim with the registry, the result of such inquiry, and that, if the child is less than thirty (30) days old at the time the petition is filed, the petitioner provided notice of the filing of the adoption petition to the registry; and

(B) Whether there are any other persons known to the petitioner or petitioners who are entitled to notice under § 36-1-117 and the identity of such persons;

(14) Whether the child was brought into Tennessee for foster care or adoption, and, if so, that there has been full compliance with the ICPC or, if compliance has not occurred, a statement alleging good cause for such noncompliance. Evidence of compliance in the form of the ICPC Form 100A or other form from the department, if appropriate, or a sworn statement stating why such form is not required shall be included or attached as an exhibit to the petition;

(15)(A) Whether the child was brought into Tennessee for foster care or adoption from a foreign country, and, if so, evidence shall be attached to the petition showing approval of the government or legal authority in the country from which the child was brought that the child's placement with the petitioners was appropriate and that the petitioners have legal authority under that country's law to have the custody of the child;

(B) The petition shall exhibit evidence from the immigration and naturalization service, the department of justice or the department of state that the child has proper authorization to enter the United States;

(C) If a child who was the subject of an adoption decree from the foreign country must be re-adopted under Tennessee law to effect a valid adoption due to any interpretation of the United States government, the petition shall so state and state that this is necessary for the child to be legally adopted in the United States, and the court shall have jurisdiction to enter an order of adoption for this purpose;

(D) If a child is in this country and the provisions of subdivision (b)(15)(A) cannot be met, the petitioners shall file an affidavit and any other available documentary evidence satisfactory to the court that shows why there is no approval available for the child from the foreign government or legal authority in the foreign country concerning the child's placement with the petitioners;

(16)(A) Whether the petitioners have paid, or promised to pay, any money, fees, contributions, or other remuneration or thing of value in connection with the birth, placement or the adoption of the child, and if so, to or from whom, the specific amount, and the specific purpose for which these were paid or promised;

(B) The disclosure required by this subdivision (b)(16) shall specifically include whether any attorney's fees or medical expenses or counseling fees and the other expenses permitted under §§ 36-1-108 and 36-1-109 or any other fees, remuneration, or contribution, were paid or promised in connection with the child's birth, placement, or adoption and if so, to whom, the specific amount and the specific purpose for which they were paid or promised;

(C) The disclosure required by this subdivision (b)(16) shall also specifically include the amount of fees paid to any licensed child-placing agency or licensed clinical social worker in connection with the placement of the child.

(c) The petition must be signed by each petitioner personally and must be verified and must be filed with

the clerk of the court, who shall send a certified copy of the petition to the director of adoptions in the state office of the department in Nashville, and to the local office of the department or the licensed child-placing agency or licensed clinical social worker that or who has been directed to answer the order of reference issued in accordance with subsection (e) within three (3) business days after its filing.

(d) Any person who files a petition to adopt a child less than thirty (30) days old shall notify the putative father registry maintained by the department of the filing of the petition unless the known biological or legal father has:

(1) Executed a surrender or a waiver of interest in accordance with this part;

(2) Had parental rights terminated by a court of competent jurisdiction; or

(3) Been made a party to the adoption proceedings and has been served notice as required by law.

(e)(1) Upon filing the adoption petition, the prospective adoptive parents shall notify the court if they have requested a home study or preliminary home study pursuant to subsection (a) and shall file or cause to be filed a copy of the court report based upon the home study or preliminary home study with the court, under seal, unless the court waives the home study or the preliminary home study for prospective adoptive parents who are related to the child.

(2)(A) Upon filing of the petition for adoption, the petitioners also shall inform the adoption court of the name of the court in which the surrender was filed, and the adoption court shall request the court where the surrender was filed to forward a certified copy of the surrender and copies of the medical and social information obtained at the time of the surrender to the adoption court and any court reports based upon home studies that were ordered by the court. This information shall be made a part of the adoption record, but shall be confidential and shall be placed in a sealed envelope within the court file or shall be filed in a protected electronically maintained file and shall remain under seal and shall not be open to inspection by any person or agency other than the department or the licensed child-placing agency or licensed clinical social worker to which the order of reference is issued under this subsection (e), except by written order of the court or as otherwise permitted under this part.

(B) Unless waived by the court in accordance with subdivision (e)(1), the court shall order a licensed child-placing agency or licensed clinical social worker, or the department if the petitioners are indigent under federal poverty guidelines, to conduct a preliminary home study, and a court report based upon such a study must be submitted within fifteen (15) days of the date of the order if, at the time the petition is filed, the petitioners have custody of the child, and the petitioners have not submitted to the court a court report based upon a timely home study or timely preliminary home study with the petition, and the court may enter any orders necessary for the child's care and protection as permitted by subsection (f) pending receipt of the preliminary home study.

(3) If no prior or updated home study of the prospective adoptive parents has been conducted and a court report filed with the court at the time the order of reference is issued and such home study has not been waived in accordance with subdivision (e)(1), then the court, within five (5) days of the date the petition is filed, shall direct the order of reference to a licensed child-placing agency or licensed clinical social worker chosen by the petitioners or, if the petitioners are indigent under federal poverty guidelines or if the child was placed with the petitioners by the department, to the department, to submit a preliminary court report, and any supplemental court reports as may be necessary, and a final court report concerning the circumstances of the child, the child's antecedents, and the proposed adoptive home. Except for good cause shown, the court shall issue the order of reference to the licensed child-placing agency, the licensed clinical social worker, or the department that conducted the home study pursuant to the prospective adoptive parents' request pursuant to subsection (a).

(4) The information in subdivision (e)(2) shall be made available to the licensed child-placing agency or licensed clinical social worker or the department which responds to the order of reference. If the necessary medical and social information was obtained by the court pursuant to § 36-1-111, it shall not be necessary for the department or the licensed child-placing agency or licensed clinical social worker to have any further contact with the biological parents in response to the order of reference, unless it is believed the information contained in the statements is inaccurate or incomplete, in which case the department, licensed child-placing agency, or the licensed clinical social worker may contact the biological or prior legal parents or the guardian to obtain such information.

(5)(A) A preliminary court report shall be filed by the department, the licensed child-placing agency or the licensed clinical social worker within sixty (60) days of the receipt of the order of reference and may be supplemented from time to time as the licensed child-placing agency, the licensed clinical social worker or the department determines necessary, or as ordered by the court.

(B) A final court report shall be submitted immediately prior to the finalization of the adoption upon fourteen (14) days' notice to the department, the licensed child-placing agency, or the licensed clinical social worker.

(6) Court filings in adoption actions by public or private agencies or parties, offered as proof of parentage, termination of parental rights, or related to establishment or termination of guardianship, may be reviewed by all parties to the case if the adoption court so orders. Such an order may be requested by motion of any party or by the agency that made the filing. A protective order may be

granted as well upon showing, by a preponderance of evidence, of good cause to restrict the information. The protective order shall be drawn as narrowly as possible while still offering the protections the court found to be warranted.

(f)(1) Upon the filing of the petition, the court shall have exclusive jurisdiction of all matters pertaining to the child, including the establishment of paternity of a child pursuant to chapter 2, part 3 of this title, except for allegations of delinquency, unruliness or truancy of the child pursuant to title 37; provided, that, unless a party has filed an intervening petition to an existing adoption petition concerning a child who is in the physical custody of the original petitioners, the court shall have no jurisdiction to issue any orders granting custody or guardianship of the child to the petitioners or to the intervening petitioners or granting an adoption of the child to the petitioners or to the intervening petitioners unless the petition affirmatively states, and the court finds in its order, that the petitioners have physical custody of the child at the time of the filing of the petition, entry of the order of guardianship, or entry of the order of adoption, or unless the petitioners otherwise meet the requirements of § 36-1-111(d)(6).

(2) Except for proceedings concerning allegations of delinquency, unruliness, or truancy of the child under title 37, any proceedings that may be pending seeking the custody or guardianship of the child or visitation with the child who is in the physical custody of the petitioners on the date the petition is filed, or where the petitioners meet the requirement of § 36-1-111(d)(6), shall be suspended pending the court's orders in the adoption proceeding, and jurisdiction of all other pending matters concerning the child and proceedings concerning establishment of the paternity of the child shall be transferred to and assumed by the adoption court; provided, that until the adoption court enters any orders affecting the child's custody or guardianship as permitted by this part, all prior parental or guardian authority, prior court orders regarding custody or guardianship, or statutory authority concerning the child's status shall remain in effect. Actions suspended by this section, regardless of the stage of adjudication, shall not be heard until final adjudication of the action for termination of parental rights or adoption regarding the same child, even if such adjudication of the termination of parental rights or adoption will render the custody, guardianship, or visitation action moot.

(3) If no prior order of guardianship or custody has been entered giving guardianship or legal custody to the petitioners, the court may, upon receipt of a satisfactory preliminary home study or a satisfactory home study, and if the petitioners have physical custody of the child or otherwise meet the requirements of § 36-1-111(d)(6), issue an order of guardianship or custody with the same authority given to the petitioners as is provided pursuant to §§ 36-1-102 and 37-1-140 as the case may be.

(4) If an order of guardianship is entered pursuant to this part, the petitioner or petitioners shall have authority to act as guardian ad litem or next friend of the child in any suit by the child against third parties while the child is in the care and custody of the petitioners.

(g)(1) The court shall order a licensed child-placing agency or licensed clinical social worker, or the department if the parents are indigent under federal poverty guidelines or if the child was placed with the prospective adoptive parents by the department, to provide supervision for the child who is in the home of prospective adoptive parents and to make any necessary reports that the court should have concerning the welfare of the child pending entry of the final order in the case; provided, that the court may waive this requirement when the child is to be adopted by related persons.

(2) Unless they are indigent under federal poverty guidelines, the prospective adoptive parents shall pay the costs of the home study and the supervision required by this subsection (g) and the supervision required by the court.

(h) The filing of a petition for involuntary termination of parental rights with or without an adoption shall be deemed the commencement of a custody proceeding. A petition for adoption, with or without a voluntary termination of parental rights or consent, shall not be deemed the commencement of a custody proceeding for purposes of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), compiled in chapter 6, part 2 of this title.

(i) If the court grants guardianship or custody of the child upon the filing of the petition or at any time thereafter to any person, and the child is possessed of any real or personal property to be administered, the court shall appoint a guardian of the property of the child if no guardian or trustee is currently appointed to care for the child's property.

(j) When the husband and wife are joint petitioners, the death of one (1) spouse shall not result in the dismissal of the petition for adoption for that reason alone, and the court may proceed to grant the adoption to the surviving petitioner.

(k)(1) The department, a licensed child-placing agency, or a licensed clinical social worker shall have the right to intervene in the adoption proceeding at any time to present evidence as to the best interests of the child by filing a sworn complaint in the adoption proceeding.

(2)(A) Subject to subsection (f), the court may make any necessary orders upon its own motion or upon the sworn complaint of the department, a licensed child-placing agency, or a licensed clinical social worker for the protection and welfare of the child, including emergency ex parte orders for the immediate care and protection of the child as permitted pursuant to § 36-1-111(v)(1)(A)-(C).

(B) Any emergency ex parte orders for the protection of the child may be entered if the court finds probable cause to believe that the child's immediate health or safety would be endangered. The ex parte order may direct the removal of the child from the custody of the prospective adoptive

parents.

(3) If an ex parte order of protection is entered that removes the child from the custody of the prospective adoptive parents, a preliminary hearing shall be held within five (5) days, excluding Saturdays, Sundays and legal holidays, to determine the need for the continuance of such order.

(4) The prospective adoptive parents shall be necessary parties at the preliminary hearing and the court may order the department or the licensed child-placing agency or licensed clinical social worker to provide any necessary information or court reports concerning the welfare of the child as it may require.

(5) If the court determines at the preliminary hearing that there is probable cause to believe that the child's health or safety will be immediately endangered if the child remains in or is returned to the custody of the prospective adoptive parents, or that any other orders must be entered to ensure the health and safety of the child, it shall make such orders as are necessary to protect the child and may continue or place temporary legal custody of the child with the department or a licensed child-placing agency or any other suitable persons approved by the department or a licensed child-placing agency or licensed clinical social worker.

(6) The court shall set a final hearing concerning the allegations involving the prospective adoptive parents within thirty (30) days, except for good cause shown in an order entered by the court.

(7) If the court determines upon clear and convincing evidence at a final hearing that it should make another disposition of the child, it may remove the child from the custody of the prospective adoptive parents and may make any other orders necessary for the child's welfare and best interests, including an alternate custody or guardianship order for the child, and the court may dismiss the adoption petition as provided in § 36-1-118. If the court does not find by clear and convincing evidence that it should make another disposition of the child, it shall dismiss the complaint that had made the allegations concerning the child's best interests and the adoption proceedings shall continue pending further orders of the court.

History.

Acts 1995, ch. 532, § 1; 1996, ch. 1054, §§ 45-52, 112; 1997, ch. 551, §§ 55, 56; 2003, ch. 231, §§ 11-13; 2016, ch. 919, §§ 11, 12, 18, 19.

Compiler's Notes.

Former § 36-1-116 (Acts 1951, ch. 202, § 35 (Williams, § 9572.49); 1953, ch. 171, § 1; impl. am. Acts 1975, ch. 219, § 1; T.C.A. (orig. ed.), § 36-116), concerning consent of persons eighteen years of age or older, was repealed by Acts 1995, ch. 532, § 1, effective January 1, 1996.

36-1-117. Parties to proceedings — Termination of rights of putative father — Consent of parent or guardian — Service of process.

(a) Unless the legal parent or the guardian, or, as provided in subsections (b) and (c), the putative father of the child has surrendered parental or guardianship rights to the child, has executed a parental consent that has been confirmed by the court, has waived the person's rights pursuant to § 36-1-111(w) or (x), or unless the person's rights have been terminated by the order of a court of competent jurisdiction, the legal parents, guardian of the person of the child or of an adult, the biological mother, and the established father or putative father of the child must be made parties to the adoption proceeding or to a separate proceeding seeking the termination of those rights, and their rights to the child must be terminated by a court to authorize the court to order the adoption of the child or adult by other persons.

(b)(1) If a petition has been filed to establish paternity of the child who is the subject of the adoption proceeding, the adoption court shall have exclusive jurisdiction to hear and decide any paternity petition filed in the adoption proceeding or that has been transferred to it pursuant to § 36-2-307.

(2) The paternity petition shall be heard and concluded prior to any action by the adoption court to determine whether to grant the petition for adoption.

(3)(A) The petition shall be granted if it is shown by a preponderance of the evidence that the person alleged to be the father of the child is the father of the child; provided, that the entry of such an order shall not prevent the filing and consideration of a petition pursuant to § 36-1-113.

(B) If the petition to establish paternity is granted, then the parental rights of the legal father must be terminated as provided by § 36-1-113 or as otherwise provided by law, or the legal father must execute a surrender under the provisions of § 36-1-111, file a parental consent, or the legal father must co-sign the petition for adoption pursuant to the provisions of subsection (f) before the court may be authorized to order an adoption of the child.

(4) If grounds for termination of parental rights do not exist, then the child's legal father shall be granted custody of the child, unless the court determines, upon clear and convincing evidence, that the legal father is unable currently to provide proper custodial care for the child, in which case the court shall make such orders as may be necessary for the child's care and supervision pursuant to § 37-1-140; or unless the child's mother's rights have not been previously terminated, in which case the court shall make a determination of the custodial status of the child between the legal father and the mother, and the court may make such other orders as are necessary to provide for the child's care and supervision. If the court determines that neither parent is suitable to provide for the care of the child, it shall make such other orders as it may determine are necessary for the child's care and supervision.

(5) If the petition to establish paternity is not granted by the court after a hearing and determination based upon subdivision (3), then the court may enter an order to that effect specifying the basis for the determination, and may proceed with the adoption proceeding without further need to terminate

the rights of that putative father.

(6) The provisions of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), compiled in chapter 6, part 2 of this title shall govern jurisdiction of the adoption court in this state if a paternity proceeding has been filed by the putative father in another state, territory, or foreign country.

(c) The parental rights of the putative father of a child who has not filed a petition to establish paternity of the child or who has not established paternity of the child who is the subject of an adoption proceeding and who meets any of the following criteria shall be terminated by surrender, parental consent, termination of parental rights pursuant to § 36-1-113, or by waiver of interest, before the court may enter an order of adoption concerning that child:

(1) The biological father of a child has filed with the putative father registry, pursuant to § 36-2-318 a statement of an intent to claim paternity of the child at any time prior to or within thirty (30) days after the child's birth and has notified the registry of all address changes;

(2) The biological father has been specifically identified to the petitioners or their attorney, or to the department, the licensed child-placing agency, or the licensed clinical social worker involved in the care, placement, supervision, or study of the child as the child's father by the child's biological mother in a sworn, written statement or by other information that the court determines to be credible and reliable;

(3) The biological father has claimed to the child's biological mother, or to the petitioners or their attorney, or to the department, a licensed child-placing agency, or a licensed clinical social worker who or that is involved in the care, placement, supervision, or study of the child that the biological father believes that the biological father is the father of the child; provided, that if the biological father has previously notified the department of the biological father's claim to paternity of the child pursuant to the provisions of the putative father registry, § 36-2-318(e)(3), the biological father shall be subject to all the requirements for waiver of notice provisions of § 36-2-318(f)(2) and to all requirements for filing a paternity petition;

(4) The biological father is recorded on the child's birth certificate as the father of the child;

(5) The biological father is openly living with the child at the time the adoption proceeding is commenced and is holding himself out as the father of the child; provided that, if custody of the child has been removed from the biological mother by court order, notice shall be given to any man who was openly living with the child at time of the initiation of the custody or guardianship proceeding that resulted in the removal of the custody or guardianship of the child from the biological mother or biological father, if the man held himself out to be the father of the child at the time of the removal; or

(6) The biological father has entered a permanency plan under the provisions of title 37, chapter 2, part 4, or under similar provisions of any other state or territory in which the biological father acknowledges paternity of the child.

(d)(1) Other biological or legal relatives of the child or the adult are not necessary parties to the proceeding and shall not be entitled to notice of the adoption proceedings unless they are legal guardians as defined in § 36-1-102 or legal custodians of the person of the child or adult at the time the petition is filed.

(2) The legal custodian of the child may only receive notice of the proceeding and may only present evidence as to the child's best interests.

(e) Any public or private agency that may have custody or complete or partial guardianship of the child and that has not given consent as provided under this part shall be made a defendant and given notice of the filing of the adoption or termination of parental or guardian rights petition filed under this part or under title 37, and shall be permitted to assert its rights to custody or guardianship of the child.

(f) When the child is related to one (1) of the petitioners or is the stepchild of the petitioner, and the legal or biological parent or parents or guardian or guardians of the child signs the adoption petition as a co-petitioner for the specific purpose, as stated in the petition, of giving consent to the adoption, no further surrender, parental consent, or termination of parental rights shall be required as to that parent or guardian, as the act of joining in the adoption petition shall be deemed a complete surrender, notwithstanding subsection (g), and no further notice or service of process need be made to that person; provided, that where the stepparent of a stepchild seeks to adopt a stepchild, the co-signing of the petition by the child's parent who is the spouse of the petitioner shall not affect the existing parent/child legal relationship between that parent and the parent's child who is the subject of the adoption petition by the stepparent of the child.

(g)(1) A parent may sign a petition for adoption as provided by § 36-1-102 for the purpose of giving parental consent to the adoption of the parent's child by unrelated persons. The petition must state that the parent understands that the entry of an order confirming the parental consent, without revoking the parental consent prior to the entry of such order, will terminate that parent's parental rights to the child forever and that the parent will have no legal rights to the custody, control, or to visitation with the child in the future.

(2) It is specifically and expressly declared that the act of signing the adoption petition shall not terminate the parental rights of such parent until the court where the adoption petition is filed has entered an order confirming the parental consent and until the court shall have required such parent to answer, under oath, each of the questions required of parents pursuant to § 36-1-111(k), including the question regarding the contact veto required by § 36-1-111(k)(3).

(3) The parent signing the petition for the purpose of giving parental consent shall be provided ten (10) calendar days' written notice by the court of the appearance date for the required response to the

court pursuant to § 36-1-111 before entry of the order confirming the parental consent is entered by the court. Unless the parent is disabled or the parent's appearance is impracticable as determined by the court, that parent must personally attend the hearing before the court in chambers. If the parent is disabled or the parent's appearance is impracticable as determined by the court, the answers shall be taken under oath at the parent's location by the court or by any person appointed by an order of the court to do so. If the parent executing the parental consent cannot be found or does not appear at the time of such hearing, the court may terminate that parent's rights upon any grounds available pursuant to § 36-1-113.

(4) Following the satisfactory completion of such questions, which shall be recorded on the forms required pursuant to § 36-1-111, the court shall enter an order that confirms the parental consent, and the court shall then, and only then, be authorized to enter an order terminating such parent's rights to the child who is the subject of the adoption petition; provided, that a parental consent may be revoked at any time prior to the entry of an order of confirmation of the parental consent by the court by executing a revocation form as provided in § 36-1-112, and such revocation shall negate and void the parental consent executed pursuant to this subsection (g).

(5) The death of the consenting parent or termination of parental rights of such parent by a validly executed surrender or by court action prior to the entry of the adoption order will make any requirements for the parental consent contained herein unnecessary.

(6) Upon entry of the order of confirmation, the clerk shall send certified copies of the order to the adoptions unit in the state office of the department in Nashville.

(h) The department, through any authorized person, or the executive head of such licensed child-placing agency may give consent to the adoption of the child by the petitioners for whom it holds complete or partial guardianship.

(i)(1) When the child who is the subject of the adoption is fourteen (14) years of age or older at any time before the granting of the petition, the adoption court must receive the sworn, written consent of such child to the adoption, which shall be filed with the record, and the consent of such minor shall be recited in the order of adoption. The court shall receive the consent and testimony from the child in chambers with only the child and a guardian ad litem if required and appointed by the court for the child present.

(2) If the child is mentally disabled, the court shall appoint a guardian ad litem to give or withhold consent for the child to the adoption and the court shall follow the procedure of subdivisions (j)(2)(B) and (C).

(j)(1) When the person sought to be adopted is eighteen (18) years of age or older, only the sworn, written consent of the person sought to be adopted shall be required and no order of reference or any home studies need be issued.

(2)(A) If the adult person to be adopted has been adjudicated incompetent, then the written consent of the adult person's guardian or conservator of the person shall be required.

(B) If the person is without a guardian or conservator and the court has reason to believe that the person is incompetent to give consent, then the court shall appoint a guardian ad litem who shall investigate the person's circumstances and that guardian ad litem shall give or withhold consent.

(C) The guardian ad litem shall file a written report stating the basis for the decision and the court shall afford a hearing to all parties to present evidence as to the best interests of the person, and if the court determines upon clear and convincing evidence that the decision to withhold consent by the guardian ad litem is arbitrary and is not in the best interests of the incompetent person, it may proceed to make any other orders it deems necessary for the person's welfare, including granting the adoption petition.

(3) In all other situations under this subsection (j) for adult persons who are the subject of an adoption petition, no order of reference, social investigation, report to the court by a licensed child-placing agency or licensed clinical social worker or the department, or the waiting period under § 36-1-119 shall be required.

(k) When the child has been surrendered or parental rights have been relinquished to an agency operating under the laws of another state, territory, or foreign country, or such agency has received guardianship or the right to place a child for adoption pursuant to the laws of its jurisdiction, the surrender or relinquishment, or any order terminating parental rights, and the written consent of the agency pursuant to the laws of its jurisdiction or pursuant to its procedures shall be filed with the adoption petition and shall be sufficient for the purposes of providing the necessary consent required by this part.

(*l*) If a person has surrendered that parent's parental rights or guardianship rights, if a person has filed a parental consent and the consent has been confirmed as provided herein, if a person has executed a waiver of interest pursuant to this part, if a person or agency has consented to the adoption of the child who is the subject of the adoption proceeding, or if a person's parental or guardianship rights to the child have been properly terminated, no notice of the adoption proceeding or service of process shall be made to that person or agency.

(m)(1) Service of process for adoption proceedings and termination proceedings in chancery and circuit courts pursuant to this part shall be made pursuant to the Tennessee Rules of Civil Procedure and the statutes governing substituted service.

(2) Service of process for proceedings to terminate parental rights in juvenile court shall be pursuant to the Tennessee Rules of Civil Procedure, unless a finding is made pursuant to Tennessee Rules of Juvenile Procedure Rule 1 that the interests of

justice require otherwise, the statutory requirements of title 37, chapter 1, part 1, where not otherwise in conflict with this part, and the statutes governing substituted service.

(3) Any motion for an order for publication in these proceedings shall be accompanied by an affidavit of the petitioners or their legal counsel attesting, in detail, to all efforts to determine the identity and whereabouts of the parties against whom substituted service is sought.

(n) The court may enter a default judgment against any party to the adoption or termination proceeding upon a finding that service of process has been validly made against that party in accordance with the Tennessee Rules of Civil or Juvenile Procedure and the statutes concerning substituted service; however, in termination proceedings, proof must be presented as to legal grounds and best interest pursuant to § 36-1-113.

(o) The response or answer to a petition for termination of parental rights shall be signed by the respondent personally, sworn to and verified, and filed with the clerk of the court.

History.

Acts 1951, ch. 202, § 7 (Williams, § 9572.21); Acts 1955, ch. 320, § 2; 1955, ch. 345, § 1; 1959, ch. 223, § 3; 1961, ch. 150, § 2; impl. am. Acts 1975, ch. 219, § 1; 1976, ch. 455, § 1; T.C.A. (orig. ed.), § 36-108; § 36-1-108; Acts 1995, ch. 532, § 1; 1996, ch. 1054, §§ 53-56, 113; 1997, ch. 551, §§ 57-65; 1998, ch. 1098, §§ 5-7; 2003, ch. 231, § 14; 2007, ch. 199, §§ 1, 2; 2008, ch. 1059, § 5; 2008, ch. 1162, § 1; 2010, ch. 842, § 2; 2010, ch. 849, § 1; 2016, ch. 636, § 3; 2016, ch. 919, § 13.

Compiler's Notes.

Former § 36-1-117, concerning revocation of surrender, was transferred to § 36-1-112.

36-1-118. Dismissal of adoption proceedings and guardianship orders — Revocation of surrender by court — Notice — Disposition of child.

(a) If at any time between the surrender of a child directly to prospective adoptive parents or a licensed child-placing agency and the filing of an adoption petition or at any time between the filing of an adoption petition and the issuance of the final order of the adoption, it is made known to the court on the basis of clear and convincing evidence that circumstances are such that the child should not be adopted, the court may dismiss the adoption proceedings or, if no adoption proceedings have been commenced, the court may order the surrender or parental consent to prospective adoptive parents to be revoked and may modify or dismiss any order of guardianship previously entered, and may order the reinstatement of parental rights, all in consideration of the best interests of the child.

(b) If it is made known to the court where the surrender of a child directly to adoptive parents was executed or filed and that, in accordance with § 36-1-111(r), has jurisdiction of the child, that the prospective adoptive parents to whom the child had been surrendered have not filed a petition to adopt the child within thirty (30) days of the date of execution of the surrender, or if the court where the adoption petition determines that the prospective adoptive parents do not have, or have not obtained, an order of guardianship or an order of legal custody for the child who is the subject of the adoption petition within thirty (30) days of the date of the filing of the petition, the court shall set a hearing for the purpose of determining if any surrender to the prospective adoptive parents should be ordered revoked, if any order of guardianship should be modified or dismissed, if an order of custody or guardianship should be entered, if parental rights should be reinstated, or if some other disposition should be made for the child in the child's best interests.

(c)(1) Before entering an order pursuant to subsection (a) or (b) directing that the surrender directly to prospective adoptive parents or a licensed child-placing agency be revoked or that the parental consent to prospective adoptive parents be disallowed, or that the order of guardianship be modified or dismissed, that an order of custody or guardianship be entered, or that parental rights be reinstated, or before dismissing the adoption proceedings, the court must give written notice of not less than five (5) days, excluding Saturdays, Sundays, and legal holidays, of its intent to do so.

(2) The notice shall be given to the persons or entity to whom the child was surrendered and for whom an order of guardianship was entered, to any petitioners and other parties to the proceeding, and to the department or licensed child-placing agency, or licensed clinical social worker that or who placed the child or conducted any studies involving the placement of the child in the home, and to the parent whose rights were terminated, but only if the court will consider reinstatement of that parent's rights.

(d)(1) Following the hearing, the court may order the revocation of the surrender or any parental consent, modify or dismiss the order of guardianship, may enter an order of custody or guardianship, may order reinstatement of parental rights, or may dismiss the petition if it determines upon clear and convincing evidence that such action is in the child's best interests.

(2) The court may reinstate parental rights only with the consent of the parent whose rights were terminated.

(e)(1) After the court's dismissal of the petition or after the order of revocation by the court of a surrender or parental consent, if the child had been in the legal custody or guardianship of the department or a licensed child-placing agency prior to the surrender, the parental consent, the entry of a guardianship order, or the filing of the adoption petition, the court shall enter an order directing that the child shall be placed in the guardianship of the department or the licensed child-placing agency that had legal custody or guardianship of the child immediately before the placement was made with the prospective adoptive parents or immediately before the surrender was executed or parental consent was filed or before the prior order giving guardianship to the prospective adoptive parent was entered.

(2) In all other cases in which the child was not in the legal custody or guardianship of the department

or a licensed child-placing agency prior to the revocation by the court of the surrender or parental consent to prospective adoptive parents or prior to the dismissal of the guardianship order, or prior to the dismissal of the adoption proceeding by the court, or when the agency that had had custody or guardianship of the child prior to the child's placement or prior to the revocation of the surrender by the court, or dismissal of the petition cannot or will not resume guardianship or custody of the child, the child shall remain a ward of the court, which shall have jurisdiction to award the child's guardianship or legal custody according to the best interest of the child.

(3) The court shall continue to have jurisdiction of the child to make such further orders as are necessary until another adoption petition is filed, at which time jurisdiction over the child shall transfer to the court where the new adoption petition may be filed; provided, the juvenile court shall retain jurisdiction of the child for allegations of delinquency, unruliness, and truancy pursuant to title 37, chapter 1, part 1.

(4)(A) Unless the child's custody or guardianship is required to be returned to the custody of the department or a licensed child-placing agency, or unless the court must return jurisdiction of the child to a court with prior jurisdiction, then, after entry of an order revoking the surrender or parental consent, dismissing the order of guardianship, after entry of an order of custody or guardianship, or after dismissing the petition for adoption, the court may, in its discretion, by order entered in the record, transfer all jurisdiction and wardship of the child to the juvenile court of the county of the child's residence.

(B)(i) After the clerk has transferred to the department the information required under this part, certified copies of any records of the child needed by the juvenile court from the court where the surrender was revoked, the guardianship order was dismissed, the custody or guardianship order was entered, or the adoption petition was dismissed, shall be transferred to the juvenile court and the clerk of the court that had taken action pursuant to subsection (d) and subdivision (e)(4) shall maintain the original of the records in that court's files.

(ii) Except as otherwise provided by this part, all such records shall remain confidential in the files of the juvenile court and shall not be open to any person except the child's legal custodian or legal guardian, or pursuant to a written order of the court, or to the department that may be investigating a report of child abuse or neglect or that may be responding to an order of reference by the juvenile court, or to a law enforcement agency investigating a report of child abuse or neglect or that is investigating any crime involving the child.

(5) Any order of guardianship or legal custody entered pursuant to this subsection (e) shall continue until modified by the court to which the jurisdiction is transferred or by the court where a new adoption petition is filed.

(6) If guardianship is awarded pursuant to this section, the court shall, in addition to the authority under § 37-1-140, give authority to place the child for adoption and to consent to adoption, or to adopt the child, or may give authority to surrender the child for that purpose.

(7) The department or the licensed child-placing agency receiving guardianship of the child under this section shall have authority to make another placement of the child for adoption and to consent to the adoption by new adoptive parents without further approval of the court.

(8) For purposes of this section, legal custody awarded by the court shall vest the legal custodian with the authority to provide the care and control of the child as set forth in § 37-1-140, but does not, by itself, without entry of an order of guardianship pursuant to this part, authorize the legal custodian to place the child for adoption or to consent to the adoption.

(9) Prior to entering an order establishing a permanent plan for the child who is not returned to the department or a licensed child-placing agency as provided in subdivision (e)(1), the court shall order the department or a licensed child-placing agency or licensed clinical social worker to investigate and report to the court within sixty (60) days regarding a suitable permanent plan for the child. Subject to the jurisdiction of the juvenile court for allegations of delinquency, unruliness, or truancy against the child pursuant to title 37, the court may make further orders of custody or guardianship upon receipt of the report.

History.

Acts 1995, ch. 532, § 1; 2016, ch. 919, §§ 14, 15.

Compiler's Notes.

Former § 36-1-118 (Acts 1951, ch. 202, § 16 (Williams, § 9572.30); 1959, ch. 223, § 7; 1961, ch. 150, § 4; 1961, ch. 264, § 1; 1971, ch. 286, § 1; impl. am. Acts 1975, ch. 219, § 1; Acts 1978, ch. 611, §§ 3, 4; 1983, ch. 435, § 6; T.C.A. (orig. ed.), § 36-118; Acts 1986, ch. 767, § 8; 1988, ch. 560, § 12; 1991, ch. 158, § 1), concerning investigation by the human services department or agency, was repealed by Acts 1995, ch. 532, § 1, effective January 1, 1996.

36-1-119. Final order of adoption — When entered.

(a) Unless the child is related to the petitioners, no final order of adoption shall be entered before the home study has been filed with the court and before the petition has been on file at least six (6) months and before a final court report is filed with the court, except when the order is based upon a petition for readoption pursuant to § 36-1-106.

(b) If the child is related to the petitioners, the court may, in its discretion, waive the six-month waiting period, the orders of reference, the preliminary home study and home study, the order of guardianship or custody, and the final court report and may proceed to immediately grant an order of adoption.

(c) If the child has already resided in the home of the petitioners for six (6) months, the court has received

the final court report concerning the circumstances of the child and the petitioners, and is satisfied that the adoption will be in the best interest of the child, the court may waive the six-month waiting period after the filing of the adoption petition and may enter an order of adoption.

(d) If no appeal has been taken from any order of the court, the court must complete or dismiss the adoption proceeding by entering a final order within one (1) year of the filing of the petition, unless the petitioner shows good cause why such final order should not be entered.

(e) If an appeal is taken from an order of the court, the proceeding must be completed by the court by entering a final order of adoption or a final order dismissing the proceeding within nine (9) months from the final judgment upon appeal, except for good cause shown by the petitioner.

History.

Acts 1951, ch. 202, § 21 (Williams, § 9572.35); Acts 1955, ch. 320, § 4; 1959, ch. 223, § 9; 1961, ch. 150, § 5; impl. am. Acts 1975, ch. 219, § 1; T.C.A. (orig. ed.), § 36-124; Acts 1989, ch. 229, § 1; 1992, ch. 994, § 1; T.C.A., § 36-1-124; Acts 1995, ch. 532, § 1; 1996, ch. 1054, § 57; 2006, ch. 890, § 3.

Compiler's Notes.

Former § 36-1-119 (Acts 1951, ch. 202, § 17 (Williams, § 9572.31); T.C.A. (orig. ed.), § 36-119), concerning interlocutory decrees, was repealed by Acts 1995, ch. 532, § 1, effective January 1, 1996.

Acts 2006, ch. 890, § 1 provided that the provisions of the act may be collectively known as the "Child Protection Act of 2006."

36-1-120. Final order of adoption — Contents — Report of foreign birth.

(a) The final order of adoption must state:

(1) The full name of the child used in the proceeding;

(2) The full names of the petitioners and their county of residence and whether the petitioner is a stepparent of the adopted person;

(3) The fact and date of the filing of the petition;

(4) The date when the petitioners acquired physical custody of the child and from what person or agency or by which court order;

(5) The fact and date of the filing of a guardianship order, if such order has been entered;

(6)(A) That all persons entitled to notice of the proceedings have been served with process and the status of those persons in the proceedings and that all necessary parties were properly before the court;

(B) That the time for answering the petition has expired;

(C) That termination of all parental or guardian rights to the child by court order or surrenders or parental consents that are necessary to proceed with the adoption have occurred; and

(D) That orders reflecting the termination of parental rights pursuant to actions filed by the prospective adoptive parents, orders confirming parental consents, or the consents of the department or a licensed child-placing agency with authority to place and consent to the child's adoption, the consent of the child who is over fourteen (14) years of age, the consent of the guardian ad litem of an incompetent adult or mentally disabled child, or of any other person or entity required by law have been filed in the court record;

(7) That if the child has been brought into Tennessee from another state or foreign country, there has been compliance with the ICPC, if applicable, or with the requirements of the foreign government or legal authorities in the foreign country for the petitioners to have custody of the child and with all requirements of the United States government for the immigration of the child to this country, unless good cause has been shown to excuse such compliance;

(8) That the child's adoption is in compliance with or is not subject to the Indian Child Welfare Act (ICWA), 25 U.S.C. § 1901 et seq.;

(9) Whether the child has been the subject of an adoption decree in a foreign country in which the petitioners were given the child in adoption by such decree and whether this adoption is a readoption for the purpose of complying with the requirements of the United States government for the purposes of the child's immigration or naturalization;

(10) That the petitioners are fit persons to have the care and custody of the child;

(11) That the petitioners are financially able to provide for the child;

(12) That the child is a suitable child for adoption; and

(13) That the adoption is for the best interest of the child.

(b) Before the entry of the final order, there shall be filed with the proposed order:

(1) An affidavit by the attorney for the petitioners detailing the fees charged for any services rendered in the placement of the child or for legal services, and any fees paid by the attorney to any other person or entity for services rendered in securing the placement of the child or for providing any services related to securing any home studies to secure a surrender or adoption of the child; and

(2) An affidavit by the licensed child-placing agency or licensed clinical social worker that or who placed the child with the petitioners regarding the fees charged by such agency or social worker to the adoptive parents for the placement of the child and for any home studies and supervision of the placement conducted by the licensed child-placing agency or by the licensed clinical social worker.

(c) The court shall review the affidavits required in subsection (b) and shall determine whether all fees set forth therein are reasonable. The court shall retroactively approve such fees or order reimbursement of any fees it determines to be unreasonable.

(d) The court shall, if satisfied that all the requirements necessary for the adoption of the child are present, thereupon decree the adoption of the child by the petitioners and shall order that the name of the child be changed to that requested by the petitioners.

(e) The clerk of the court shall furnish the department a certified copy of all final orders of adoption and the affidavits required under subsection (b) or final

orders dismissing the adoption proceedings, and the department shall record pertinent information from the order, and the department shall maintain a copy of the order with all other information in the sealed adoption record.

(f)(1) All final orders of adoption shall be reported by the clerk to the division of vital records of the department of health by sending a certified copy of the order or a certified certificate of adoption, and by reporting the information required by that division for a new certificate of birth or for a Report of Foreign Birth for the child to the registrar of the division of vital records for preparation of a new certificate of birth by adoption or for a Report of Foreign Birth as provided in §§ 68-3-310 — 68-3-313.

(2) The court clerk shall supply the registrar of the division of vital records the following information for the preparation of a Report of Foreign Birth if the child who has been adopted was born in a foreign country:

(A) The full adoptive name of the child;

(B) The adopted child's date of birth;

(C) The adopted child's sex;

(D) The city, province and country of the adopted child's birth;

(E) The full name of the adoptive father;

(F) The full maiden name of the adoptive mother; and

(G) The legal residence of the adoptive parents.

(g) Costs for furnishing certified copies under subsections (e) and (f) shall be taxed to the petitioners.

(h) Notwithstanding the sealing and confidentiality of adoption records pursuant to this part, the clerk of the court in which adoption proceedings have occurred, upon being furnished verification of the identity of the requesting person, shall furnish to the adopted person, adoptive parents or their attorney or attorneys, upon their request at any time, certified copies of the final order of adoption or re-adoption or final orders dismissing such adoption proceedings. Nothing other than certified copies of the final order of adoption or re-adoption or final order dismissing such adoption proceedings shall be released pursuant to this subsection (h).

History.

Acts 1951, ch. 202, § 22 (Williams, § 9572.36); Acts 1959, ch. 223, § 10; impl. am. Acts 1975, ch. 219, § 1; T.C.A. (orig. ed.), § 36-125; § 36-1-125; Acts 1995, ch. 532, § 1; 1996, ch. 1054, § 128; 2003, ch. 231, § 15.

Compiler's Notes.

Former § 36-1-120 (Acts 1951, ch. 202, § 18 (Williams, § 9572.32); T.C.A. (orig. ed.), § 36-120.), concerning disposition of a child following an interlocutory decree, was repealed by Acts 1995, ch. 532, § 1, effective January 1, 1996.

36-1-121. Effect of adoption on relationship.

(a) The signing of a final order of adoption terminates any existing guardianship orders and establishes from that date the relationship of parent and child between the adoptive parent or parents and the adopted child as if the adopted child had been born to the adoptive parent or parents and the adopted child shall be deemed the lawful child of such parent or parents, the same as if the child had been born to the parent or parents, for all legal consequences and incidents of the biological relation of parents and children.

(b) The adopted child and the child's descendants shall be capable of inheriting and otherwise receiving title to real and personal property from the adoptive parents and their descendants, and of succeeding to the rights of either such parent or such parent's descendants in such property, whether created by will, by other instrument or by law, including, but not limited to, taking as a beneficiary of a remainder interest following a life interest or estate in either such parent or such parent's ancestor or descendant. The adopted child shall have the same such rights as to lineal and collateral kindred of either adoptive parent and the ancestors or descendants of such kindred, as the adoptive child has as to such parent, and the lineal and collateral kindred of either adoptive parent and the descendants of such kindred shall have the same such rights as to the adopted child and the child's descendants, but only as to property of the adopted child acquired after the child's adoption.

(c) In the construction of any instrument, whether will, deed, or otherwise, whether executed before or after August 24, 1995, and whether the testator or other party creating an interest by such instrument died before or after August 24, 1995, or before or after an adoption, a child so adopted and the descendants of such child are deemed included within the class created by any limitation contained in such instrument restricting a devise, bequest or conveyance to the lawful heirs, issue, children, descendants, or the like, as the case may be, of the adoptive parent, or of an ancestor or descendant of one (1) of them, and such adopted child shall be treated as a member of such class unless a contrary intention clearly shall appear by the terms of such instrument or unless the particular estate so limited shall have vested in interest and in possession in and as to the person or persons entitled thereto on August 24, 1995; provided, that this sentence shall not apply in the construction of any instrument as to any child who is over twenty-one (21) years of age at the time of such child's adoption.

(d) "Contrary intention clearly shall appear," as set forth in this section, shall not be found by any court to exist by use in such instrument of such terms as "issue," "children" or similar legal terms, unless the instrument specifically states that adopted children are to be excluded from such class.

(e) An adopted child shall not inherit real or personal property from a biological parent or relative thereof when the relationship between them has been terminated by final order of adoption, nor shall such biological parent or relative thereof inherit from the adopted child. Notwithstanding the provisions of subsection (a), if a parent of a child dies without the relationship of parent and child having been previously terminated and any other person thereafter adopts the child, the child's right of inheritance from or through the deceased biological parent or any relative thereof shall be unaffected by the adoption.

(f) The adoptive parents of a child shall not be required by any order of the adoption court to permit visitation by any other person, nor shall the order of the adoption court place any conditions on the adoption of the child by the adoptive parents. Any provision in an order of the court or in any written agreement or contract between the parent or guardian of the child and the adoptive parents requiring visitation or otherwise placing any conditions on the adoption shall be void and of no effect whatsoever; provided, that nothing under this part shall be construed to prohibit "open adoptions" where the adoptive parents permit, in their sole discretion, the parent or guardian of the child who surrendered the child or whose rights to the child were otherwise terminated, or the siblings or other persons related to the adopted child, to visit or otherwise continue or maintain a relationship with the adopted child; and provided further, that the permission or agreement to permit visitation or contact shall not, in any manner whatsoever, establish any enforceable rights in the parent or guardian, the siblings or other related persons.

(g) The adoption of a child shall have no effect upon arrearages owed by an obligor of child support for that child that existed prior to the termination of parental rights or to that child's adoption and that are owed by an obligor to any person or any governmental agency, nor shall it affect any other financial obligations of a person that may be related to the care of the adopted child prior to a surrender, termination of parental rights, or adoption involving that child.

History.

Acts 1951, ch. 202, § 23 (Williams, § 9572.37); Acts 1955, ch. 302, §§ 1, 2; 1957, ch. 345, § 1; 1968, ch. 406, § 1; 1976, ch. 751, § 1; 1983, ch. 432, §§ 1-4; T.C.A. (orig. ed.), § 36-126; Acts 1992, ch. 994, § 4; 1995, ch. 532, § 1.

Compiler's Notes.

Former § 36-1-121 (Acts 1951, ch. 202, § 19 (Williams, § 9572.33); T.C.A. (orig. ed.), § 36-121; Acts 1988, ch. 560, § 12; 1991, ch. 158, § 2), concerning supervision of children in adoptive homes, was repealed by Acts 1995, ch. 532, § 1, effective January 1, 1996.

36-1-122. Binding effect of adoption.

(a) When a child is adopted pursuant to this part, the adoptive parents shall not thereafter be deprived of any rights in the child, at the insistence of the child's biological or prior legal parents or guardian of the child or any other person or agency except in the same manner and for the same causes as are applicable in proceedings to deprive biological or legal parents or guardians of their children or wards as provided by law.

(b)(1) After the final order of adoption is entered, no party to an adoption proceeding, nor anyone claiming under such party, may later question the validity of the adoption proceeding by reason of any defect or irregularity therein, jurisdictional or otherwise, but shall be fully bound by the order, except for such appeal as may be allowed by law.

(2) In no event, for any reason, shall an adoption be overturned by any court or collaterally attacked by any person or entity after one (1) year from the date of entry of the final order of adoption by a court of competent jurisdiction. This provision is intended as a statute of repose.

(3) The failure of the clerk of the court, the department, a licensed child-placing agency, or a licensed clinical social worker to perform any of the duties or acts with the time requirements of this part shall not affect the validity of any adoption proceeding.

History.

Acts 1951, ch. 202, §§ 27, 30 (Williams, §§ 9572.41, 9572.44); impl. am. Acts 1975, ch. 219, § 1; T.C.A. (orig. ed.), § 36-127; § 36-1-127; Acts 1995, ch. 532, § 1.

Compiler's Notes.

Former § 36-1-122 (Acts 1951, ch. 202, § 29 (Williams, § 9572.43); T.C.A. (orig. ed.), § 36-122), concerning guardians, was repealed by Acts 1995, ch. 532, § 1, effective January 1, 1996.

36-1-123. Biological parents illegally obtaining custody of a child — Custodial interference — Survival of existing restraining order.

(a) Any biological or prior legal parents or guardian whose rights to a child have been terminated by order of any court under this part or any other title or by the laws of any other state or territory, or foreign country, or by a surrender, parental consent, or waiver of interest, and who shall, otherwise than by legal process, obtain custody of the child shall be in violation of and shall be subject to prosecution pursuant to § 39-13-306.

(b) A restraining order or order of protection that restrains any person from contacting or otherwise interfering with a child and that is entered prior to the finalization of the adoption shall survive the adoption of the child unless such order is expressly set aside by the court that entered the order or the court hearing the adoption. Actions to enforce such order post-adoption may be brought in the court that issued the order or in the court hearing the adoption.

History.

Acts 1951, ch. 202, § 32 (Williams, § 9572.46); T.C.A. (orig. ed.), § 36-133; § 36-1-132; Acts 1995, ch. 532, § 1; 2016, ch. 919, § 17.

Compiler's Notes.

Former § 36-1-123 (Acts 1951, ch. 202, § 20 (Williams, § 9572.34); 1959, ch. 223, § 8; impl. am. Acts 1975, ch. 219, § 1; T.C.A. (orig. ed.), § 36-123), concerning dismissal of adoption proceedings, was repealed by Acts 1995, ch. 532, § 1, effective January 1, 1996.

36-1-124. Contested terminations of parental rights and adoptions — Appeals — Expedited schedule.

(a) In all cases where the termination of parental rights or adoption of a child is contested by any person or agency, the trial court shall, consistent with due process, expedite the contested termination or adoption proceeding by entering such scheduling orders as are necessary to ensure that the case is not delayed, and such case shall be given priority in setting a final hearing of the proceeding and shall be heard at the earliest possible date over all other civil litigation other

than child protective services cases arising under title 37, chapter 1, parts 1, 4 and 6.

(b) In all cases that are appealed from the decision of a trial court, the appellate court shall, consistent with its rules, expedite the contested termination of parental rights or adoption case by entering such scheduling orders as are necessary to ensure that the case is not delayed, and such case shall be given priority over all other civil litigation in reaching a determination on the status of the adoption, other than child protective services cases arising under title 37, chapter 1, parts 1, 4 and 6.

(c) It is the intent of the general assembly that the permanency of the placement of a child who is the subject of a termination of parental rights proceeding or an adoption proceeding not be delayed any longer than is absolutely necessary consistent with the rights of all parties, but that the rights of the child to permanency at the earliest possible date be given priority over all other civil litigation other than child protective services cases arising under title 37, chapter 1, parts 1, 4 and 6.

(d) Any notice of appeal filed in a termination of parental rights action shall be signed by the appellant.

History.
Acts 1995, ch. 532, § 1; 2016, ch. 919, § 16.

Compiler's Notes.
Former § 36-1-124, concerning final orders of adoption, was transferred to § 36-1-119.

36-1-125. Confidentiality of records — Penalties for unauthorized disclosure — Protected orders.

(a) All adoption records, sealed adoption records, or sealed records held by a court, the department, a licensed child-placing agency, a licensed clinical social worker or any other person, and not yet under seal, or any sealed adoption records or sealed records that have been unsealed for any reason, any post-adoption records, and any adoption assistance records are confidential and shall not be subject to disclosure except as provided in this part.

(b) Adoption records, home studies or preliminary home studies may be utilized by the judge of the court, by the clerk of the court, or by the department, or by a licensed child-placing agency or a licensed clinical social worker, in any act consistent with the litigation of the adoption, custody or guardianship proceedings involving a person in any court, or for the placement, study, or supervision of a person for whom an adoption or custody or guardianship proceeding is pending in any court, and which records may be necessary to carry out such judge's, clerk's, department's, agency's, or social worker's duties consistent with the law.

(c) If any adoption records, sealed adoption records, sealed records, post-adoption records, adoption assistance records, home studies, preliminary home studies or information obtained in connection therewith are required by court order under this part to be disclosed for any legal proceeding other than the adoption proceeding or termination of parental rights proceedings, the court in which they are to be utilized shall enter a protective order to restrict their further disclosure or dissemination. Such records, studies, or information shall not become a public record in any legal proceeding.

(d) Unauthorized disclosure of any records, studies or information protected as confidential under this part is a Class A misdemeanor. Unauthorized disclosure of such records for personal gain or for a malicious purpose is a Class E felony.

History.
Acts 1995, ch. 532, § 1; 1996, ch. 1054, §§ 58-62.

Compiler's Notes.
Former § 36-1-125, concerning contents of the final order of adoption, was transferred to § 36-1-120.

36-1-126. Record kept under seal — Confidential records — Access to certain records — Preservation of records.

(a)(1) After the entry of the final order of adoption;

(2) After entry of the final order dismissing the adoption;

(3) After entry of an order revoking the surrender or parental consent;

(4) After entry of an order dismissing a termination of parental rights proceeding filed in conjunction with an adoption proceeding; or

(5) Upon conclusion of all termination of parental rights proceedings that were filed in conjunction with an adoption proceeding;

all adoption records, court reports, home studies, preliminary home studies, other reports or other documents or papers or other information concerning the placement or attempted placement of a person for adoption, or other information concerning the litigation of the adoption or attempted adoption of a person, which information is in the office of the judge or clerk of the court where the adoption was filed or where the surrender or confirmation of parental consent or revocation of a surrender or parental consent was taken, or any such records, reports, or documents in the offices of a licensed child-placing agency, a licensed clinical social worker, or in the county, regional or state offices of the department of health, or in the county, district, and state offices of the department of children's services, shall be placed and remain under seal, except as provided herein or in § 36-1-118(e)(4), or in title 68, and shall be confidential and shall be disclosed only as provided in this part.

(b)(1) Upon the granting or dismissal of an adoption petition, or after entry of the final order dismissing the adoption or revoking the surrender or the parental consent or upon conclusion of all termination of parental rights proceedings that were filed in conjunction with an adoption proceeding, all records and reports, home studies, and preliminary home studies or other information described in subsection (a) relating to the adoption proceeding and all records, reports and other documents related to the child's placement with the department or the licensed or chartered child-placing agency or licensed clinical

social worker and with the adoptive or prospective adoptive family that are in the offices of the department or in the offices of any Tennessee licensed child-placing agency or licensed clinical social worker, shall be forwarded by the county and district offices of the department's social services division and by the licensed child-placing agency or licensed clinical social worker involved in any such proceedings to the state office of the department, which shall place the records under seal and ensure their safekeeping; provided, that copies of any records that relate to a child who is placed or retained in the custody or guardianship of the department or a licensed child-placing agency after the dismissal of an adoption proceeding without further adoption of the child by any person or pursuant to any guardianship or other order of the court pursuant to this part shall be retained as confidential foster care records pursuant to title 37, chapter 2, part 4 and shall be utilized by the department or licensed child-placing agency for the care, supervision, protection, and treatment of that child as may be necessary.

(2) The licensed child-placing agency, chartered child-placing agency or licensed clinical social worker shall, however, maintain a limited record that indicates the child's date of birth, the date the agency received the child for placement, from whom the child was received and their last known address, with whom the child was placed and their last known address, and the court in which the adoption proceeding was filed and the date the adoption order was entered or the adoption petition dismissed.

(3) The information in the limited record shall be confidential and not open to inspection by any person, except as provided in this part. These records shall be maintained in a locked file or other secure depository by the agency or by the licensed clinical social worker or, if kept in electronic media, shall be maintained in a method that restricts access only to authorized agency personnel or the licensed clinical social worker. The limited record shall only be accessible to authorized agency personnel or the licensed clinical social worker or to authorized personnel of the department in the performance of its duties under this part or for inspection under the department's licensing duties, or as otherwise authorized by this part.

(4) Upon entry of an order of adoption or dismissal of a petition for adoption or dismissal of termination proceedings that were filed in conjunction with an adoption proceeding, or upon revocation of a surrender or parental consent, or modification of an order of guardianship, the clerk of the court where the adoption or surrender proceedings were initiated or filed shall forward a certified copy of the orders to the adoptions unit in the state office of the department in Nashville.

(5)(A) Any licensed child-placing agency or licensed clinical social worker that or who plans to cease conducting its activities related to the adoptive placement of children, the conduct of home studies, or any other such adoption-related services, shall notify the adoptions unit of the state office of the department in Nashville by certified mail, return receipt requested, thirty (30) days in advance, and shall forward all records related to any adoption-related services it has performed to the department.

(B) The department is specifically authorized to file a complaint and seek any necessary court orders, including injunctive relief of any kind, from any chancery or circuit court to preserve those records from loss or destruction and to obtain possession of those records for their preservation.

(C) Upon receipt of the records, reports, home studies and other information, the department shall take any necessary steps to preserve the records, reports, home studies and other information in accordance with this part. These records, reports, home studies and other information shall be filed as a sealed adoption record or sealed record, and all such records shall be confidential, and shall be otherwise subject to the provisions for access as provided pursuant to this part.

(6)(A) The clerks of the courts of this state are specifically authorized to undertake efforts to locate in any public building in their respective counties any records of adoptions or attempted adoptions of any person by any court, including former county courts or any court that previously had adoption jurisdiction, which records may be in the control or possession of any person or entity. Upon location of these records, if it is determined that the information therein was the result of an adoption that was filed or consummated and the clerk has no prior record of the adoption, the clerk shall record the existence of this adoption record in a special docket book for this purpose, shall maintain the adoption petition, consents or surrenders, and the order in a file for that purpose under this part, and shall transmit to the department certified copies of the adoption petition, the surrenders and consents and the order of adoption, and the originals of any remaining documents in the record that have been located.

(B) Upon receipt of the record, the department shall take any necessary steps to preserve the record, and the record shall be treated as sealed adoption records pursuant to this part.

(c)(1) The sealed adoption record shall be registered by the department in such a manner as to record the names of the adopted person, the adopted person's birth name, the person's date of birth and social security number, the names of the adoptive parents, and, if possible, any information concerning the names of birth parents of the child that is readily accessible to the department, the court where the adoption was filed, the docket number of the court proceeding, and the date of the adoption decree or the order of dismissal of the adoption petition, the order revoking the surrender, or the order dismissing the order of guardianship; provided that sealed records may continue to be registered and maintained under prior departmental procedures. The department may

record such other information as it shall deem necessary to maintain adequate information concerning the location of the sealed adoption record or sealed record and the means by which to locate such record.

(2) Such registration record shall be maintained in a secure manner so that no unauthorized persons may obtain access to the records. The sealed adoption record shall be placed in a separate sealed folder or in a suitable electronic media format wherein the record can be held under a separate file name, and shall be stored with the division of records management of the department of state, which shall carefully protect and preserve the sealed adoption records or sealed records and shall maintain proper security for the confidentiality of the sealed adoption records or sealed records.

(3) If electronic methods of recording the information contained in the sealed adoption records or sealed records are employed, the departments of children's services and general services shall utilize any necessary methods to ensure the preservation and confidentiality of the electronic records.

(d)(1) The department may open the adoption records, the sealed adoption records, sealed records, or post-adoption records, adoption assistance records, or limited records in subsection (b) in order to perform any duties required under this part, and any specific provision for access to such records contained herein shall not be construed as a limitation on the ability of the department to access such records for such purposes.

(2) Notwithstanding any law to the contrary, including § 68-3-313, the department shall, upon its request, be granted access to and shall be provided a copy of the original birth certificate or any order or record of adoption of the adopted person in the custody of the division of vital records.

(3) For purposes related to any federal or state audit relative to an adoption assistance program or an adoption assistance grant, the department may open any record for the sole and limited purpose of complying with the audit requirements of the federal or state program.

(4) For purposes related to the determination of eligibility of any child for adoption assistance, the departments of children's services and finance and administration, or any successor agencies responsible for the care of children in state custody or guardianship or for administration of the finances for children in state custody or guardianship, may open any adoption record, sealed adoption record, sealed record, post-adoption record, sealed home study records, or adoption assistance record for that limited purpose and may utilize any information in such records in any manner necessary for eligibility determination or adjudication of a claim for such assistance.

(5)(A) For purposes related to the determination of eligibility of any adopted person or any person placed for adoption for any federal or state benefit or any other benefits to which they may be entitled, or to provide to a Title IV-D child support office information necessary to verify the status of an adoption for purposes of determining a current or past child support obligation or for terminating a future obligation for child support, the departments of children's services and finance and administration, or any successor agencies responsible for the care of children in state custody or guardianship or for administration of the finances for children in state custody or guardianship, may open any adoption record, sealed adoption record, sealed record, post-adoption record, sealed home study records or any adoption assistance record and disclose any information contained in those records that may be necessary to permit determination of:

(i) Eligibility for or correction of payments made to or on behalf of an adopted person; or

(ii) The status of current, past or future child support obligations that are, or may be, due on behalf of any adopted person.

(B) Any information released for any purpose of this subdivision (d)(5) shall be used only for the purposes stated in this subdivision (d)(5), and shall otherwise remain confidential in any agency or court records in which it may appear; and the information shall not be open to the public, except as otherwise provided by this part.

(6) The department may open or utilize for any purpose the adoption record, sealed adoption record, sealed record or the post-adoption record at any time in order to obtain any information concerning any person who may be placed in the custody or guardianship of the department or any other agency of the state or service provider of the state by any court or by the adopted person's parents, or who may be placed with the department or any other agency of the state or service provider of the state due to any re-surrender of the adopted person to the department by the adopted person's adoptive parents or the person's prospective adoptive parents.

(7) The department may open the sealed adoption record or sealed record when a birth certificate in the adopted name was not issued and it becomes necessary to open the sealed adoption record to provide any information to the office of vital records to complete the birth certificate.

(8) The department, the department of general services, or their specifically authorized agents, may open the sealed adoption records, sealed records, or post-adoption records at any time it becomes necessary to perform any tasks related to the preservation of the records, and each department is specifically authorized to utilize any methodology that now exists or that may be developed in the future for the permanent preservation of a sealed adoption record, sealed record or post-adoption record, and they may open the records for the limited purpose of undertaking these preservation methods. This subdivision (d)(8) shall not authorize the release of any information contained in the records to any other person or entity except as specifically authorized by this part, or as may be directly related to the preservation of

the records.

(9) After use of the records pursuant to this subsection (d), they shall be re-sealed and returned to storage.

(e) In the event of an appeal from any ruling of the trial court in the adoption proceeding, the clerk shall place the court's record of the adoption proceedings in a sealed file in a locked file or other secure depository or, in the event of the use of electronic storage, the records shall be maintained in a secure method of storage that restricts access only to the clerk and other persons authorized by the court. These records shall remain confidential and shall not be open to inspection by anyone other than the trial or appellate courts, the clerk, the parties to the proceeding, or the licensed child-placing agencies, or the licensed clinical social worker, or the department or other governmental agencies that have been involved in the case, except by order of the court.

History.

Acts 1951, ch. 202, § 24 (Williams, § 9572.38); 1975, ch. 280, § 1; modified; T.C.A. (orig. ed.), § 36-130; § 36-1-129; Acts 1995, ch. 532, § 1; 1996, ch. 1054, §§ 63-79; 1996, ch. 1079, § 69; 2008, ch. 1162, § 2; 2013, ch. 207, § 11.

Compiler's Notes.

Title IV-D of the Social Security Act, referred to in this section, is compiled in 42 U.S.C. § 651 et seq.

Former § 36-1-126, concerning effect of adoption on relationship, was transferred to § 36-1-121.

36-1-127. Availability of records to adopted persons and certain other persons for adoptions finalized or attempted prior to certain dates.

(a)(1) On March 16, 1951, Chapter 202 of the Public Acts of 1951 became effective. As a result, all records related to persons who had been adopted, all records concerning a person for whom any records were maintained and that may have related to an adoption or attempted adoption and that were treated by the department of human services, the former department of public welfare, the courts, the department of health, or any other information sources as a sealed record or sealed adoption record involving an adoption or attempted adoption of a person, became confidential, non-public records that were not made readily available to persons about whom the records were kept.

(2) It is the intent of the general assembly that all adoption records, court records, sealed records, or sealed adoption records, and post-adoption records and other records or information, except as may otherwise be provided in this part, and that are contained in any information source on and after January 1, 1996, and that were in existence on March 16, 1951, be made available to eligible persons as provided in this part, and that to that end this is remedial legislation.

(3) It is the further intent of the general assembly, in view of the testimony before the adoption study commission established by Senate Joint Resolution 17 of the Ninety-Eighth General Assembly (1993 session), which testimony demonstrated the great concern by many persons regarding the practices of certain Tennessee adoption agencies in earlier years, that any adoption records, sealed records, sealed adoption records or post-adoption records, or other records maintained at any time by the Tennessee children's home society or its branches or divisions, chartered on June 24, 1913, and authorized under Chapter 113 of the Public Acts of 1919; and any branch or division thereof, including an organization known as the Tennessee children's home society-Shelby County division, which was referenced in the report of the Tennessee department of public welfare to Governor Gordon Browning dated June 12, 1951, shall also be made available to eligible persons in accordance with this part, whether such records were completed or sealed before, on, or after March 16, 1951, and whether any persons subject to the care and supervision of such agency or its branches were ever actually adopted, and to that end this is remedial legislation.

(b) Effective January 1, 1996, pursuant to the requirements of subsections (g) and (h), and subject to the restrictions in the following sections or subsections:

(1)(A) All adoption records, sealed records, sealed adoption records, post-adoption records, home studies, or any other records or papers, existing prior to March 16, 1951, and relating to the adoption or attempted adoption of a person, which adoption was finalized by completion of the adoption by the entry of an order of adoption or an order of dismissal of the adoption proceeding prior to March 16, 1951; or which adoption was otherwise never completed due to the abandonment, prior to March 16, 1951, of any further necessary activity related to the completion of the adoption, and which records were sealed or closed by the court before that date, or where the record or other evidence demonstrates that a person was surrendered for adoption prior to March 16, 1951; or

(B) Any adoption records, sealed records, sealed adoption records, post-adoption records, or any other records or papers, existing prior to March 16, 1951, and relating to the adoption or attempted adoption of a person that before the effective date of Chapter 532 of the Public Acts of 1995 [see Compiler's Notes], have been treated as, or have been determined by the department or any other information source to be, cases of adoptions finalized by the completion of the adoption by the entry of an order of adoption or by entry of an order of dismissal of the adoption prior to March 16, 1951; or that have been treated by or are determined by the department as finalized adoptions due to the abandonment, prior to March 16, 1951, of any further necessary activity related to the completion of the adoption, or where the record or other evidence demonstrates that a person was surrendered for adoption prior to March 16, 1951; or

(2) All adoption records, sealed records, sealed adoption records, post-adoption records, or any other papers or records, existing either before or after

March 16, 1951, concerning a person who was subject to the care and supervision, or subject to placement for foster care or adoption, by any agency described in subdivision (a)(3), or which records were maintained by any child care or child-placing agency that had, either before or after March 16, 1951, subsequently assumed the care and supervision of a child who had previously been subject to the care and control of an agency described in subdivision (a)(3), whether or not the adoption of such person was the plan, whether the person was placed for the purpose of adoption or whether the adoption was finalized by entry of an order of adoption or by order of dismissal of the adoption, whether the adoption was attempted, or was otherwise never completed due to failure to file an adoption petition or due to the abandonment of any further necessary activity related to the completion of the adoption, either before or after March 16, 1951; and

(3) Which records are in the office of the clerk of the adoption court, in the offices of the department of health, in the office of any child-placing agency, whether or not it is chartered or licensed, in the state, district, or county offices of the department of children's services, or in any other information source, shall be made available to the following eligible persons:

(A) An adopted person or a person subject to subdivision (b)(1) and (2) who is twenty-one (21) years of age or older for whom an adoption record, sealed record, sealed adoption record, post-adoption record, or other record or paper is, nevertheless, maintained;

(B) The parents of any person described in subdivision (b)(3)(A);

(C) The siblings of any person described in subdivision (b)(3)(A);

(D) The lineal descendants, twenty-one (21) years or older, of any person described in subdivision (b)(3)(A);

(E) The lineal ancestors of a person described in subdivision (b)(3)(A); or

(F) The legal representatives of the person described in subdivisions (b)(3)(A)-(E).

(c) Effective July 1, 1996, pursuant to the requirements of subsections (g) and (h), and subject to the restrictions in the following sections or subsections:

(1)(A) All adoption records, sealed records, sealed adoption records, post-adoption records, or any other records or papers for a person relating to the adoption or attempted adoption of a person, which adoption was finalized by the completion of the adoption by the entry of an order of adoption or an order of dismissal of the adoption proceeding on or after March 16, 1951, or which records relate to an adoption or attempted adoption where the adoption petition was filed on or after March 16, 1951, or that was otherwise never completed, due to the abandonment, as determined by the department, on or after March 16, 1951, of any further necessary activity related to the completion of the adoption, and which records are in the office of the clerk of the adoption court, in the offices of the department of health, in the office of any child-placing agency, whether or not it is chartered or licensed, in the state, district, or county offices of the department of children's services, or in any other information source, shall be made available to the following eligible persons:

(i) An adopted person or a person subject to subdivision (c)(1)(A) who is twenty-one (21) years of age or older on whom an adoption record, sealed record, sealed adoption record, post-adoption record, or other record or paper is maintained;

(ii) The legal representative of a person described in subdivision (c)(1)(A)(i).

(B) Information from any records of an adopted person, or any person otherwise subject to subdivision (c)(1)(A) for whom records are otherwise maintained, shall be released by the department or any other information source only to the parents, siblings, lineal descendants, or lineal ancestors, of the adopted person or of a person for whom records are maintained as described in subdivision (c)(1)(A), and only with the express written consent given to the department by the adopted person or of a person for whom records are maintained as described in subdivision (c)(1)(A), twenty-one (21) years of age or older, or such person's legal representative, and, notwithstanding any other of the following provisions of this part to the contrary, the adopted person or a person for whom records are maintained as described in subdivision (c)(1)(A), such person's legal representative shall, under no circumstances, be required to take any affirmative action pursuant to the contact veto provisions of this part to protect the confidentiality of such identifying information; provided, that nothing herein shall be construed to prevent access to identifying information in the records of the adopted person as otherwise permitted or required pursuant to §§ 36-1-125, 36-1-126 and 36-1-138.

(C) If an adopted person or a person for whom records are maintained as described in subdivision (c)(1)(A) is deceased or is disabled as defined for purposes of appointment of a conservator under title 34, the lineal descendants of such person may petition the court pursuant to § 36-1-138(c)(7), to be given access to the records of such person. A lineal descendant given access pursuant to this subdivision (c)(1)(C) is subject to all the requirements of the contact veto process.

(2) Notwithstanding any other law to the contrary, §§ 36-1-139 and 36-1-141 as such sections existed immediately prior to January 1, 1996, shall be revived and shall continue in full force and effect from May 15, 1996, and shall expire on July 1, 1996, to provide a method for contact with siblings and biological parents as provided therein until the effective date of the contact veto process.

(3) On July 1, 1996, the contact veto registry process and records access procedure established pursuant to subdivision (c)(1) and subsections (d)-(h)

and other sections of this part shall become effective for access to records and contact by eligible persons under this part as set forth in subdivision (c)(1) and any other provisions of this part.

(4) Effective January 1, 1996, the basis for judicially-ordered opening of all records pursuant to this part shall be the provisions set forth in § 36-1-138 and any other relevant provisions of this part.

(d) No contact, whether by personal contact, correspondence, or otherwise, shall be made in any manner whatsoever by those requesting persons who are subject to the provisions of subsection (c), or any agent or other person acting in concert with those requesting persons, with any person or persons eligible to file a contact veto under the provisions of §§ 36-1-128 — 36-1-131, except as permitted pursuant to those sections.

(e)(1) Except in cases arising pursuant to subsection (b) or § 36-1-138, no access to identifying information in any adoption record, sealed record, sealed adoption record, post adoption record or adoption assistance record shall be granted:

(A) To any parent, pre-adoptive guardian, sibling, lineal descendant or lineal ancestor of a person under twenty-one (21) years of age; or

(B) At any time to any parent or pre-adoptive guardian, or to a sibling, lineal ancestor, or spouse or legal representative of the person whose rights were involuntarily terminated for cause in a termination of parental rights proceeding; or

(C) To any persons whom the sealed record, sealed adoption record or the post adoption record indicates were guilty of a crime of violence or neglect involving the person who was placed for adoption or who was the subject of the termination of parental rights by court action or by surrender or parental consent.

(2) Notwithstanding any other law to the contrary, no identifying information from the sealed records, sealed adoption records or post adoption records shall be released without the written consent of the biological parent if such records indicate that, with respect to the adopted person, the biological parent was the victim of rape or incest. If a biological parent for whom records contain such information is deceased or if a conservator of the person and property of such person has been appointed under title 34, the lineal descendants of such person may petition the court pursuant to the same procedures established pursuant to § 36-1-138(c)(7) to be given access to identifying information of the biological parent. A lineal descendant given access pursuant to this subsection (e) is subject to all requirements of the contact veto process.

(f) The adoption record, sealed adoption record, sealed record, or post-adoption record requested by the persons stated in subsection (c) shall be made available only after completion by the requesting party of a sworn statement agreeing that such person or persons shall not contact or attempt to contact in any manner, by themselves or in concert with any other persons or entities, any of the persons eligible to file a contact veto pursuant to § 36-1-128, until the department has completed the search of the contact veto registry as provided in § 36-1-130 or pursuant to § 36-1-131, and that such person or persons understand the legal remedies for violation of the contact veto. The sworn statement shall contain language, which shall be acknowledged by the requesting party, concerning the existence of the contact veto procedure and the legal remedies for breach of the contact veto.

(g)(1) Access by any eligible person under any subsection of this section to any records held by the department, the court, the department of general services or health, or any licensed child-placing agency or licensed clinical social worker may only be had after verification of the identity of the requesting party and written authorization by the department is received by those information sources from the department.

(2) If the department does not have a sealed record, sealed adoption record, or post-adoption record, and if the person seeking information concerning the history of an adopted person has a copy of the order of adoption from a Tennessee court, or in cases where the adoption was handled by any agency described in subdivision (a)(3), a copy of an order of adoption from any other court and/or any other proof of the person's care, supervision, or placement for adoption by any agency described in subdivision (a)(3), and any other proof of the adoption of the person in Tennessee, any of which, in the discretion of the department is satisfactory to prove that the person is an eligible person, the department may issue a statement to that person permitting that person to obtain access to any records held by any other information source.

(h)(1) A request for access to an adoption record, sealed adoption record, sealed record, or a post-adoption record, pursuant to this section, shall be made in writing to the department.

(2) The writing shall include the following information:

(A) The name, date of birth, address, and telephone number of the person requesting the access;

(B) Information, including legal documents or affidavits, if available, that establish the person's legal relationship to any person under this section or that otherwise establishes the person's right to request access;

(C) Any other information that the department requires to establish the person's identity, to locate records involving the requesting parties or the persons with whom contact may be sought, and to establish the person's right to request access; and

(D) Identification of any person or persons or class of persons, if any, with whom the requesting party seeks contact; provided, that this provision shall not apply to persons seeking information pursuant to subsection (b).

(3) If the information in the written request does not establish the person's right to have access to the records, the department will search the sealed adoption and post-adoption records, including those of other alleged siblings, if available, for information

that may establish the person's right to have such access.

History.
Acts 1995, ch. 532, § 1; 1996, ch. 1054, §§ 80-83, 86, 129; 1996, ch. 1068, § 2; 1996, ch. 1079, § 69.

Compiler's Notes.
Former § 36-1-127, concerning the binding effect of adoption, was transferred to § 36-1-122, effective January 1, 1996.

Acts 1995, ch. 532, referred to in (b)(1)(B), became effective July 1, 1995, for purposes of implementing the access to adoption records prior to March 16, 1951, and for persons affected by the adoptive placements through the Tennessee children's home society pursuant to (b), as enacted by § 1 of that act.

Acts 1996, ch. 1079, § 184 provided: "Any provision of this act, or the application thereof, which is inconsistent with federal law, rule or regulation shall be deemed to be construed as being consistent with federal law, rule or regulation."

36-1-128. Contact veto registry — Persons eligible to have names entered.

(a) The department shall establish and maintain a contact veto registry for the purposes of permitting registration of the willingness or unwillingness of the persons or classes of persons named herein for contact with persons eligible to have access to any records covered by this part; provided, that the contact veto registry shall not be applicable to records requested pursuant to § 36-1-127(b).

(b) The following persons may have their names entered in the registry either to file a contact veto or to give consent to contact:

(1) A parent, sibling, spouse, lineal ancestor, or lineal descendant of an adopted person or a person for whom records are maintained as described in § 36-1-127(c)(1)(A), either before or after such persons reach twenty-one (21) years of age.

(2) The legal representative of any person described in subdivision (b)(1).

(c) The registry shall contain the following information:

(1) The name of each person who has duly filed a contact veto or who has given consent for further contact;

(2) The address given by the person as the address at which any personal, postal, or telephone contact shall be made by the department;

(3) The date and place of birth of the person, if known;

(4) Any persons whom the person who files a contact veto wishes to exclude from the application of the contact veto pursuant to § 36-1-130(a)(6)(A)(i);

(5) The name, address, and telephone number of the person requesting contact so as to be notified in the event that the contact veto is withdrawn or varied;

(6) The method of contact, if any, to which the person consents, including contact through one (1) or more third parties; and

(7) Any other information that eligible parties wish to release to the other eligible parties.

(d) Within ninety (90) days of January 1, 1996, and periodically thereafter on at least an annual basis, through the use of public service announcements and other forms of media coverage as may be available without cost, the department shall announce the existence of the registry and its services.

History.
Acts 1995, ch. 532, § 1; 1996, ch. 1054, §§ 84, 85, 114.

Compiler's Notes.
Former § 36-1-128 (Acts 1951, ch. 202, § 28 (Williams, § 9572.42); 1974, ch. 412, § 1; 1975, ch. 217, §§ 1, 2; impl. am. Acts 1975, ch. 219, § 1; T.C.A. (orig. ed.), § 36-128), concerning reports of adoptions and new birth certificates, was repealed by Acts 1995, ch. 532, § 1, effective January 1, 1996.

36-1-129. Procedures for filing contact veto or giving consent.

(a)(1) A person eligible to file a contact veto or give consent for further contact may notify the department in writing on a form supplied by the department that such person does or does not object to contact being made with such person by any person or group of persons who are eligible to establish contact. The department shall supply the necessary form upon request of any persons eligible to have their names entered on the registry.

(2) A contact veto is not effectively filed or consent properly given unless the person provides the department with satisfactory proof of such person's identity and completes and files with the department a form from the department containing the relevant information in § 36-1-128(c) and pays any necessary fees.

(b) As part of the surrender under § 36-1-111 or as part of a parental consent, a biological parent or guardian shall indicate in the appropriate place on the surrender or parental consent document whether or not such person wishes to file a contact veto or give consent for further contact, and shall complete the information requirements for registration on the contact veto registry on a form supplied by the department containing the relevant information in § 36-1-128(c). A contact veto is not effectively filed or consent properly given unless the person surrendering or giving a parental consent completes such form at the time of the surrender or parental consent or properly files the form with the department at a later time; provided, that no fee for filing a contact veto or consent to contact shall be required if the veto or consent is completed at the time of the surrender or parental consent. If, for any reason, the person failed to complete a consent for contact or a veto at the time of the surrender or parental consent, the person may do so at a later time after compliance with all provisions for filing, including the payment of all necessary fees.

(c) By filing a contact veto that complies with the requirements of this section, a person is entitled to notification of any inquiry requesting contact with the filing person.

(d) Forms for filing consents for contact or for filing contact vetoes shall be made available by the department in the offices of the clerks of courts with adoption jurisdiction and in the department's state office and county offices.

History.
Acts 1995, ch. 532, §§ 1, 19; 1996, ch. 1054, §§ 97, 115.

Compiler's Notes.
Former subsection (e) was deleted by the code commission as obsolete in 2001.
Former § 36-1-129, concerning keeping of records under seal, was transferred to § 36-1-126.

36-1-130. Access to records — Search of registry — Restrictions on contact.

(a)(1) When a request is made for access to an adoption record, sealed adoption record, sealed record or a post-adoption record by a person eligible to have access, that person shall identify in writing on the form supplied by the department, the persons or classes of persons who are eligible under § 36-1-128 to refuse or allow contact with whom the person wishes to establish contact, if any, and shall submit the sworn statement required by § 36-1-127(f).

(2) Upon submission of the sworn statement and after proper identification of the requesting party, the department shall grant access to the records requested. Notwithstanding § 68-3-313, upon receipt of a copy of the sworn statement required by § 36-1-127 or upon notification from the department, the division of vital records of the department of health shall grant access to a copy of an adopted person's original or amended birth certificate.

(3) No person requesting access to the records, whether acting alone or in concert with any other person, persons or entities, shall at anytime contact or attempt contact with any person or persons who are eligible to file a contact veto until the completion of the search by the department pursuant to this section and § 36-1-131. A violation of this prohibition shall make the requesting party, the party's agents, or any person or persons acting in concert with them subject to the legal remedies pursuant to § 36-1-132.

(4) If the person eligible to request access to the records does state on the form a desire to contact any person who is eligible to file a contact veto, then the department shall search the contact veto registry to determine whether a contact veto has been filed or whether consent has been given for further contact with the person who is sought.

(5) The department shall only search for those persons with whom the requesting party seeks contact.

(6)(A)(i) If a person files a contact veto in conformity with this part, the contact veto shall, in addition, automatically protect and apply to the person's spouse, siblings or future siblings, lineal descendants and lineal ancestors and any spouses of those other persons, but may exclude from such protection and application, by specific reference, any such relatives or spouses where permission is given to the department in writing by the person filing the contact veto. If, because contact vetoes or consents are filed on the same date, the department is unable to determine which was filed first, the contact veto shall be deemed to be the first filed.

(ii) The person filing the automatic veto or giving consent to contact may vary or withdraw the automatic veto or consent that has been given upon satisfactory proof of identity and by making such request in writing to the department.

(iii) If a request is made by an adopted person or person for whom records are maintained as described in § 36-1-127(c)(1)(A), or such person's legal representative, to have contact with a person to whom the automatic veto under subdivision (a)(6)(A)(i) applies or to have contact with a person who is otherwise eligible to file a contact veto, the department shall attempt to contact those persons for whom a contact request is made who are listed on the registry or, if not listed on the registry, shall attempt contact pursuant to the search requirements of § 36-1-131.

(iv) If a request is made under this part to have contact with an adopted person or a person for whom records are maintained as described in § 36-1-127(c)(1)(A) by a parent, sibling, lineal descendant, lineal ancestor of such person, or the legal representative of the requesting party, the department shall make a diligent effort to contact the adopted person or the person for whom records are maintained as described in § 36-1-127(c)(1)(A), or such person's legal representatives, based upon information contained in any records that it maintains pursuant to this part or based upon other information that it is given by the parent, sibling, lineal descendant, lineal ancestor or the legal representative of such persons.

(v) In the circumstances described in subdivision (a)(6)(A)(iii) or (a)(6)(A)(iv), the department shall determine if any of these persons wish to consent to contact with the requesting party or whether they wish to confirm, alter, vary or withdraw a contact veto, or in the case of an adopted person or a person for whom records are maintained as described in § 36-1-127(c)(1)(A), whether they wish to release any identifying information.

(vi) If the adopted person or person for whom records are maintained as described in § 36-1-127(c)(1)(A), is twenty-one (21) years of age or older, or such person's legal representative, wishes to permit contact or wishes to release identifying information, such person may give written direction to the department relative to the desire for contact or the extent of identifying information such person wishes to release; provided, that notwithstanding any other provisions of this part to the contrary, they shall not be under any affirmative duty to use any of the procedures for filing any contact veto pursuant to this part to prevent contact or to prevent the release of any identifying information from any record subject to this part, and no identifying information from any record shall be made available to any other persons without the written

consent to the department by an adopted person or person for whom records are maintained as described in § 36-1-127(c)(1)(A), or such person's legal representative; provided, that nothing herein shall be construed to prevent access to identifying information in the records of the adopted person as otherwise permitted or required pursuant to §§ 36-1-125, 36-1-126 and 36-1-138. If written direction is given by an adopted person or person for whom records are maintained as described in § 36-1-127(c)(1)(A), or such person's legal representative, to permit contact or the release of certain identifying information, the department shall require the requesting party to sign a sworn statement similar to that required under § 36-1-127(f), acknowledging the restrictions on contact or use of any identifying information permitted or allowed under this subdivision (a)(6)(A)(vi).

(vii) The spouse of the person filing an automatic veto and the siblings, lineal descendants and lineal ancestors and any spouses of those persons, or the legal representatives of any persons eligible to file a contact veto, may also give written consent to the department for release from the automatic veto that may have been filed prior to such person's filing with the contact veto registry, and the person, or the person's legal representative, may alter or vary the automatic veto as it applies specifically to that person, and, if contacted by the department pursuant to this part in response to a search request, may agree to contact.

(B) The restrictions of § 36-1-132 shall apply to the persons enumerated in subdivision (a)(6)(A)(i) or their agents or persons acting on their behalf.

(C) If a person who is contacted pursuant to this part agrees to contact before any other person files a contact veto pursuant to this part, the provisions of subdivision (a)(6)(A)(i) shall not apply to that person.

(b)(1) If a contact veto has been filed, the department shall notify the person with whom contact has been sought of the inquiry concerning the request for contact. Such person shall have the opportunity to confirm the veto, vary it, or withdraw it.

(2) If a contact veto that has been filed with the department remains intact or is filed as a result of a search pursuant to § 36-1-131, or if a consent to contact is altered to withdraw the ability to have contact, the department shall notify the requesting party of this fact and the requesting party shall not be permitted contact with the person sought.

(3) If the contact veto remains intact, or if the adopted person or a person for whom records are maintained as described in § 36-1-127(c)(1)(A), or such person's legal representative, refuses contact or refuses to release identifying information, the person making the request for contact or information may place such person's name, address and telephone number in the registry to request notification from the department should the contact veto be varied, altered or withdrawn or permission for release of identifying information be given, or such requesting person may, in writing, permit the department to release such person's name, address and telephone number to the person who had entered the contact veto or who had denied contact or who had denied the release of identifying information, and that person may contact the requesting person at such person's discretion without further involvement of the department.

(c) If consent for contact is shown from the registry records or is given by the person with whom contact is sought either by withdrawing or varying the veto, or if the adopted person or a person for whom records are maintained as described in § 36-1-127(c)(1)(A), or such person's legal representative, gives permission for contact or for release of identifying information, the department shall, in conformity with the consent or the varied or altered veto, notify the person making the original request of this fact and shall provide such information as may be available to establish contact or shall provide such identifying information as may be released from any record in conformity with this part by the adopted person or a person for whom records are maintained as described in § 36-1-127(c)(1)(A), or such person's legal representative.

(d) If the persons or classes of persons who are the subject of the search were not located on the registry or could not be notified at the address designated in the registry, the department shall follow the procedures under § 36-1-131.

History.
Acts 1995, ch. 532, § 1; 1996, ch. 1054, §§ 87, 116-118.

Compiler's Notes.
Former § 36-1-130 (Acts 1951, ch. 202, § 25 (Williams, § 9572.39); T.C.A. (orig. ed.), § 36-131), concerning the impoundment of papers during appeal, was repealed by Acts 1995, ch. 532, § 1, effective January 1, 1996.

36-1-131. Search of sealed adoption record, sealed record or post-adoption records — Opportunity to veto contact.

(a) If, after a search has been made of the registry, then either no person with whom contact was requested was located on the registry or the person named on the registry could not be notified at the address designated in the registry, then the department shall search the sealed adoption record, sealed record or the post-adoption records in its possession for information concerning the location of the person who is the subject of the search and shall conduct a diligent search for such person.

(b)(1) Upon locating such person whose relationship to the requesting party is confirmed by the person sought or whose relationship to the requesting party is or has been confirmed by other evidence satisfactory to the department, the department shall notify such person of the inquiry and of the department's determination of relationship to the requesting party.

(2)(A) Such person whose relationship to the requesting party is confirmed as provided in subdivision (b)(1), or that person's legal representative,

may file a written consent with the registry.

(B) If the person wishes to veto contact, the person must, unless such person is an adopted person or a person for whom records are maintained as described in § 36-1-127(c)(1)(A) or a person for whom an automatic veto applies pursuant to § 36-1-130(a)(6)(A)(i), file a contact veto pursuant to §§ 36-1-128 and 36-1-129 and must pay any necessary fees, within ninety (90) days of the date the department gives oral or written notice of that time period for filing a contact veto. If the contact veto is timely and effectively filed pursuant to this part, then the department shall notify the requesting party in writing and no contact shall be permitted with that person with whom contact was sought. If the contact veto is not timely and effectively filed, the department shall notify the person requesting the search, and that person shall be permitted to attempt contact with the person or persons sought unless such person is an adopted person or a person for whom records are maintained as described in § 36-1-127(c)(1)(A), or unless such person is a person for whom an automatic veto applies pursuant to § 36-1-130(a)(6)(A)(i). Written notice shall be effective upon the date the notice is sent.

(c) If the person who is the subject of the search whose relationship to the requesting party has been confirmed by evidence satisfactory to the department cannot be located after diligent search, including the sending of notice to the last known mailing address of such person, and, unless such person is an adopted person or a person for whom records are maintained as described in § 36-1-127(c)(1)(A) or unless such person is a person for whom an automatic veto applies pursuant to § 36-1-130(a)(6)(A)(i), the department shall inform the person requesting the search of this fact in writing, and that person shall be under no further restrictions pursuant to § 36-1-130 against contact with the person who has been sought.

History.
Acts 1995, ch. 532, § 1; 1996, ch. 1054, § 88.

Compiler's Notes.
Former § 36-1-131, concerning disclosure of information upon court order, was transferred to § 36-1-138, effective January 1, 1996.

36-1-132. Violation of contact veto a misdemeanor — Injunction and damages — Attorney's Fees — Using information to injure persons whose names were obtained.

(a) Any person who has filed a contact veto pursuant to this part or the adopted person or a person for whom records are maintained as described in § 36-1-127(c)(1)(A), or such person's legal representative, shall have a cause of action in the circuit or chancery court for injunctive relief and for compensatory and punitive damages against any person or entity who or that has violated the provisions of the contact veto or for violation of any restrictions on contact with the adopted person or a person for whom records are maintained as described in § 36-1-127(c)(1)(A).

(b) Venue for such action shall be in the county of the residence of the plaintiff, or, if the plaintiff resides out of state, in the county where the adoption petition was originally filed, or if no petition was filed, or if its venue is unknown, in the chancery or circuit court of any county with a population of one hundred thousand (100,000) or greater as established by the federal census of 1990 or any subsequent census.

(c) A certified copy of the sworn statement that was signed pursuant to § 36-1-127(f) or § 36-1-130(a)(6)(A)(vi), by the person against whom the action is brought for violation of the contact veto shall be admissible in the action under this section as conclusive evidence of that person's knowledge of the restrictions imposed by a contact veto or the restrictions imposed by § 36-1-130.

(d) Any person who has filed a contact veto or an adopted person or a person for whom records are maintained as described in § 36-1-127(c)(1)(A), or such person's legal representative, who has prevailed in an action under subsection (a) shall be entitled to recover attorney's fees and all costs of the proceeding from the opposing party or parties.

(e) Any action under this section shall be brought within three (3) years of any contact or attempted contact or violation of other restrictions on contact in violation of this part.

(f) Any person who, after obtaining information under this part, uses such information to cause injury to the person whose name was obtained under this part, commits a Class A misdemeanor. Further, any person who has been injured pursuant to this subsection (f) shall have a cause of action in the circuit or chancery court for injunctive relief and damages, including both compensatory and punitive damages, against any person who uses the information in violation of this subsection (f).

(g) Any person who, in violation of this part, contacts or causes to be contacted a person with respect to whom the contacting person or person causing the contact knows a contact veto has been filed pursuant to this part commits a Class B misdemeanor.

History.
Acts 1995, ch. 532, § 1; 1996, ch. 1054, § 119; 1996, ch. 1068, § 1; 1998, ch. 1002, § 1.

Compiler's Notes.
Former § 36-1-132, concerning natural parents illegally obtaining repossession of children, was transferred to § 36-1-133, effective January 1, 1996.
For table of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

36-1-133. Release of nonidentifying information concerning biological or legal family.

(a) Upon written request of an adopted person eighteen (18) years of age or older or of the adoptive parents or guardian of an adopted person under eighteen (18) years of age, the biological or legal relatives of an adopted person, the lineal descendants of the adopted

person, or the legal representatives of such persons, the department shall provide to such persons, upon proper identification of such persons by the department, nonidentifying information about the adopted person and such person's biological or legal relatives as may be contained in the adopted person's sealed adoption record, sealed record or post-adoption record.

(b) The information that may be released shall include only the following; provided, that nothing in this section shall be construed to authorize or require the release of any information from a sealed adoption record, sealed record or post-adoption record if such information would lead to the discovery of the identity or whereabouts of the biological or legal relatives of the adopted person, if those biological or legal relatives have not registered their consent as provided under §§ 36-1-128 — 36-1-131, or unless § 36-1-138 is applicable:

(1) The date and time of the birth of the adopted person and such person's weight and other physical characteristics at birth;

(2) The age of the adopted person's biological relatives at the time of such person's birth;

(3) The nationality, ethnic background, race and religious preference of the biological or legal relatives;

(4) The educational level of the biological or legal relatives, general occupation and any talents or hobbies;

(5) A general physical description of the biological or legal relatives, including height, weight, color of hair, color of eyes, complexion and other similar information;

(6) Whether the biological or legal parent had any other children, and if so, any available nonidentifying information about such children; and

(7) Available health history of the adopted person, and the person's biological or legal relatives, including specifically, any psychological or psychiatric information that would be expected to have any substantial effect on the adopted person's mental or physical health.

(c) Whenever the department releases information pursuant to this section and it appears from the record that the adopted person who has sought information has been adopted two (2) or more times, the department shall specify whether the information released pertains to the adopted person's birth parents or to any intervening adoptive parent or parents.

(d) [Deleted by 2015 amendment]

History.

Acts 1982, ch. 668, § 1; T.C.A., § 36-141; § 36-1-140; Acts 1995, ch. 532, § 1; 1996, ch. 1054, §§ 89, 90, 120; 2003, ch. 231, § 16; 2015, ch. 199, § 1.

Compiler's Notes.

Former § 36-1-133 (Acts 1951, ch. 202, § 37 (Williams, § 9572.51); T.C.A. (orig. ed.), § 36-134; Acts 1989, ch. 591, § 112), concerning penalties for violation of the part, was repealed by Acts 1995, ch. 532, § 1, effective January 1, 1996.

36-1-134. Transmission of information between affected parties — Access to records of deceased or disabled persons — Updating of information to allow contact.

(a)(1) The department, or a licensed child-placing agency or the licensed clinical social worker that has had a prior relationship with the persons stated in § 36-1-133(a) through placement of a child or through a home study process and that maintains a limited record or post-adoption record, shall, subject to the written consent of each party and only in any situation where contact has been sought, transmit between an adopted person twenty-one (21) years of age or older or a person for whom records are maintained as described in § 36-1-127(c)(1)(A), or such person's legal representative, and such person's parent, sibling, lineal ancestor or lineal descendant any written, photographic, video or audio communication that such entity may have, and that is not contained in the records of the department, the licensed child-placing agency or the licensed clinical social worker, even if no direct contact is permitted or desired.

(2) If an adopted person or a person for whom records are maintained as described in § 36-1-127(c)(1)(A) is deceased, or is disabled as defined for purposes of appointment of a conservator under title 34, the lineal descendants of such person may petition the court pursuant § 36-1-138(c)(7), to be given access to the records of such person, and to transmit or receive the information permitted by this section. A lineal descendant given access to records under this subdivision (a)(2) is subject to the requirements of the contact veto process.

(b) The adopted person or other persons for whom records are maintained as described in § 36-1-127(c)(1)(A), or such person's legal representative, or a person eligible to file a contact veto may, in writing from time-to-time to the department, a licensed child-placing agency, or the licensed clinical social worker, update such person's personal information, addresses, and telephone numbers in order to allow periodic contact by the department for subsequent search requests, or for other contact by the department or the licensed child-placing agency or the licensed clinical social worker.

(c) The licensed child-placing agency or licensed clinical social worker receiving any updated information pursuant to this section shall provide such information to the department to be included in the post-adoption record for future reference.

History.

Acts 1995, ch. 532, § 1; 1996, ch. 1054, § 98.

Compiler's Notes.

Former § 36-1-134, concerning entities authorized to place children for adoption, was transferred to § 36-1-108.

36-1-135. Updated medical information in records — Searches for persons affected.

(a) The department shall update its post-adoption records with any medical, psychological or psychiatric information provided by an adopted person or a person for whom records are maintained, as described in § 36-1-127(c)(1)(A), eighteen (18) years of age or older, or such person's legal representative, or by such person's adoptive or legal parent if the adopted person or a person for whom records are maintained as described in § 36-1-127(c)(1)(A) is under eighteen (18) years of age, or which information is provided by any biological or legal relative of an adopted person or a person for whom records are maintained, as described in § 36-1-127(c)(1)(A), or such person's legal representative, which information concerns any of those persons; provided, that such information shall be provided in the form of a letter or other written evidence from a licensed health care professional or from a licensed health care facility that explains the health care status of persons who may be affected and why the transmission of such information to other persons is necessary.

(b) Upon receipt of the information under subsection (a), the department shall, at no charge to any of the persons listed under subsection (a), conduct a diligent search for the person or persons who may be affected and, if located, shall notify them, their parents, if applicable, or their legal representatives, if applicable, of the availability of and the nature of this information and those persons may request that the information be provided to them. In any case, copies of all such updated information shall be maintained in the post-adoption record for future use.

(c) If any of the persons listed in subsection (a) seek additional or updated information for a medically established need as determined by written evidence from a licensed health care professional or a licensed health care facility pursuant to the requirements of subsection (a), the department shall, at no charge, contact the persons who have access to or who have or may have knowledge of such information, and shall request the persons so contacted to provide such information to the department for transmittal to the treating professionals or health care facility of the requesting party. Such information shall be provided to the department by means of a specific release for a stated purpose and the release shall be time limited.

(d) Any notification required to be made by the department as part of a search and information request or transmittal pursuant to this section with an adopted person or with a person for whom records are maintained, as described under § 36-1-127(c)(1)(A), who is under eighteen (18) years of age shall be made with such person's adoptive or legal parent, or with the legal representative of the adopted person or person for whom records are maintained as described under § 36-1-127(c)(1)(A), or with the parents or with the legal representative of the minor biological or legal relative of the adopted person or person for whom records are maintained as described under § 36-1-127(c)(1)(A), and such parents or legal representatives shall make any decisions relative to release of information or provision of information pursuant to this section.

History.
Acts 1995, ch. 532, § 1; 1996, ch. 1054, § 121.

Compiler's Notes.
Former § 36-1-135, concerning illegal payments in connection with placing a child, was transferred to § 36-1-109, effective January 1, 1996.

36-1-136. Notification made as part of search, contact or identifying requests.

(a)(1) Any notification required to be made as part of a search or a contact or an identifying request pursuant to this part for an adopted person or a person for whom records are maintained as described under § 36-1-127(c)(1)(A), shall be made with such persons who are twenty-one (21) years of age or older, except as otherwise provided by § 36-1-135, or with the legal representative of such persons;

(2) Any notification for search or contact requests involving the biological or legal relative, who is under twenty-one (21) years of age, of the adopted person or person for whom records are maintained as described under § 36-1-127(c)(1)(A), shall be with the parents or legal representative of such biological or legal relative; and

(3) Any notification involving any other persons who are subject to contact for search requests or contact requests under this part shall be made with those persons who are twenty-one (21) years of age or older or with the known legal representative of any such persons.

(b) Any decision to permit contact or to permit the disclosure of information authorized by this part to be disclosed under subsection (a) shall be made, as the case may be:

(1) By the adopted person or a person for whom records are maintained as described under § 36-1-127(c)(1)(A) and in subdivision (a)(1), twenty-one (21) years of age or older, or such person's legal representative, except as otherwise provided by § 36-1-135;

(2) By the parents or by the legal representative of the biological or legal relative in subdivision (a)(2), who is under twenty-one (21) years of age, of the adopted person or person for whom records are maintained as described under § 36-1-127(c)(1)(A); or

(3) By those other persons in subdivision (a)(3) who are twenty-one (21) years of age or older or by the known legal representative of any such persons.

History.
Acts 1995, ch. 532, § 1; 1996, ch. 1054, § 122.

Compiler's Notes.
Former § 36-1-136 (Acts 1951, ch. 202, § 33 (Williams, § 9572.47); T.C.A. (orig. ed.), § 36-136; Acts 1978, ch. 704, § 2; T.C.A. (orig. ed.), § 36-137), concerning the legality of adoptions ordered prior to March

16, 1951, was repealed by Acts 1995, ch. 532, § 1, effective January 1, 1996.

36-1-137. Inability of department to verify adoptive status of relationships — Waiting period to request further searches — Limitations on searches.

(a) If, after reviewing the sealed adoption records, the sealed records or the post-adoption records, and any other credible evidence, and after conducting a diligent search and making any other reasonable inquiries as to the adoptive status of a requesting party or the relationship of the biological or legal relatives to the adopted person or any person for whom records are maintained as described in § 36-1-127(c)(1)(A), or of the adopted person or any person for whom records are maintained as described in § 36-1-127(c)(1)(A), to a biological or legal relative, as the case may be, the department is unable to verify the requesting party's adoptive status or the legal, biological, or sibling relationships of the persons seeking to establish contact to the persons sought or the status of any legal representatives, then the department shall notify the requesting party of this fact and the basis for the inability to verify the relationship, but shall not provide access to any record to the requesting party, or otherwise authorize contact with the person sought or transmit information between any parties.

(b) No additional searches shall be required to be made pursuant to this part in an effort to establish relationships, status or contact for a period of six (6) months from the date of the department's response to the requesting party unless satisfactory evidence is presented to the department in the interim to justify additional searches or unless, in the department's discretion, circumstances warrant such further attempts.

(c) The department shall not attempt further contact with the person sought if that person specifically requests that no further contact be made unless that person or the person's legal representative withdraws such request in writing; provided, that if the person's relationship to the requesting party is confirmed by the person sought or by other evidence satisfactory to the department, the department shall notify such person of the requirement for filing of a contact veto pursuant to §§ 36-1-128, 36-1-129, and 36-1-131(b)(2), and that failure to file the contact veto pursuant to those sections shall permit the requesting party to establish contact.

(d) No more than two (2) records search or contact attempts shall be required to be made by the department, unless, in the department's discretion, circumstances warrant further attempts.

History.
Acts 1995, ch. 532, § 1; 1996, ch. 1054, § 91.

Compiler's Notes.
Former § 36-1-137, concerning readoption, was transferred to § 36-1-106.

36-1-138. Court orders for the release of information from adoption and sealed records.

(a)(1) Any necessary information in the files or the record of an adoption proceeding or in an adoption record, sealed adoption record, sealed record, post-adoption record or adoption assistance record may be disclosed pursuant to the requirements of subsection (c), to the party requiring it, upon a written, sworn motion before the court of original jurisdiction of the adoption proceeding, or, where the adoption proceeding is not yet filed, in the chancery or circuit court of the county where the record is located, or in the chancery or circuit court of any county that has a population of one hundred thousand (100,000) or greater, according to the 1990 federal census or any subsequent census.

(2) Jurisdiction for motions filed pursuant to subdivision (c)(5) shall be in the chancery court for Davidson County.

(3) If the court that had original jurisdiction was a county court or is a court that no longer exists, the chancery court for the county in which such court was established shall have jurisdiction to hear the motion, in addition to the circuit or chancery courts in counties with a population of one hundred thousand (100,000) or more, as established by the 1990 federal census or any subsequent census.

(4) The department, licensed child-placing agency or licensed clinical social worker shall, upon request of the party seeking such information, disclose to the party the court in which such proceeding was filed and the docket number, if known to the department, or the licensed child-placing agency, or the licensed clinical social worker, or shall disclose the county in which the adoption record, sealed adoption record, or sealed record is located.

(b) The motion must be served upon the commissioners of children's services and health by certified mail, return receipt requested, or by personal service upon the commissioners or a duly designated agent of either commissioner. The hearing shall not be held sooner than fifteen (15) days after the return receipt is dated or the date of personal service. Failure to obtain service on both commissioners, or any hearing held prior to the expiration of the fifteen-day service period, shall result in the order entered in the proceeding being void and of no effect whatsoever. Each commissioner shall be permitted to file a response and may appear through counsel to respond in writing or orally, and may appeal any resulting order.

(c) The record of the adoption proceeding, the adoption record, sealed adoption record, sealed record, post-adoption record or adoption assistance record may be opened, under whatever conditions the court shall determine necessary, if the court finds, for good cause shown, that the best interests of the adopted person or of the public require such disclosure, and that one (1) or more of the following requirements are met:

(1) The movant must show that information is needed for purposes of treating or preventing a physical, psychological or psychiatric condition af-

fecting any person, which is clearly and specifically described by testimony or affidavit of a qualified treatment professional. For purposes of this section, "qualified treatment professional" means a person licensed by any state or federal authority or the duly authorized licensing body of any other government to provide treatment for physical, psychological or psychiatric conditions;

(2) The movant must show that the information is needed for purposes of establishing legal status or standing for inheritance or for property rights determinations or for the determination of legal relationships for third parties;

(3) The movant must show that the information is necessary for the movant to prosecute or defend a legal proceeding and that alternative information sources or other means of accomplishing this end are not available;

(4) The movant is any public agency that requires the disclosure of the information in such record for purposes directly related to its authorized duties and that such information cannot be obtained by any other method, or that further delay in obtaining information that may be contained in such record may result in harm to the adopted person, the adopted person's biological parent or parents or biological or legal relatives, or to the public;

(5) The movant is an individual who has sought disclosure under §§ 36-1-127 — 36-1-131, 36-1-133, 36-1-134 and 36-1-135, and claims to have been improperly denied access to the information so requested by the departments of children's services or health pursuant to those sections;

(6) The movant is an individual who alleges wrongful denial of access pursuant to § 36-1-127(e)(1)(B) or (C); or

(7) The movant is a lineal descendant of a deceased adopted person or a person for whom records are maintained as described in § 36-1-127(c)(1)(A) or is the lineal descendant of such a person who is disabled as defined for purposes of appointment of a conservator under title 34. The effect of any order permitting the lineal descendant who is permitted to have access pursuant to this subdivision (c)(7) shall be to make the lineal descendant subject to the contact veto process.

(d) In determining whether to order disclosure of information contained in the sealed adoption record, sealed record or the post-adoption record, the court shall conduct an in camera inspection of the records and shall permit disclosure of only such information as shall be necessary to fulfill the requirements of subsection (c).

(e) The departments of children's services or health may consent to the release of any sealed adoption records, sealed records or post-adoption records or records of birth under this section by an agreed order that is approved by the court if any of the conditions of subdivisions (c)(1) — (4) have been met or if the departments determine that they have been in error in refusing to release requested information pursuant to §§ 36-1-127 — 36-1-131, 36-1-133, 36-1-134 and 36-1-135.

(f)(1) The court may, upon notice to the department of children's services pursuant to subsection (b), order the department to attempt to establish contact with any person or entity for the purpose of obtaining any updated medical information necessary to assist in the treatment of the adopted person or the adopted person's biological or legal relatives or any person who has filed a motion under this section.

(2) If the department obtains the information sought under this subsection (f), it will report this fact to the court and shall send such information directly to the qualified treatment professional who is providing care and treatment for the person who sought the information, unless the court, for good cause entered in the record, shall order otherwise.

(g)(1) No contact by a party receiving information pursuant to this section who is eligible to request a search under this part for any other person who is or may be protected by a contact veto of any kind, or who is an adopted person or a person for whom records are maintained as described under § 36-1-127(c)(1)(A), shall be permitted unless the provisions of §§ 36-1-130 and 36-1-131 have been completed and contact is permissible pursuant to those sections.

(2) The department's response to the court shall inform the court if any person is subject to the protection of a contact veto or if any person is an adopted person or a person for whom records are maintained as described under § 36-1-127(c)(1)(A).

(h) This section is supplemental to the previous provisions of this part permitting access to records by eligible persons without court orders and shall not be construed to be restrictive of those provisions.

History.

Acts 1951, ch. 202, § 26 (Williams, § 9572.40); T.C.A. (orig. ed.), § 36-132; Acts 1985, ch. 40, §§ 1-3; 1989, ch. 533, § 1; T.C.A., § 36-1-131; Acts 1995, ch. 532, § 1; 1996, ch. 1054, §§ 92-96, 99, 123, 124; 1996, ch. 1079, § 69.

Compiler's Notes.

Former § 36-1-138, concerning adoption of adults, was transferred to § 36-1-103.

For tables of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

36-1-139. Penalty for providing false information related to information requests.

Any person who or entity that knowingly provides false information to the department, a licensed child-placing agency or licensed clinical social worker, or the court in connection with any of the provisions of §§ 36-1-125 — 36-1-138 or § 36-1-141, or the rules and regulations of the department that establish procedures for search requests or access to records, commits a Class E felony.

History.

Acts 1995, ch. 532, § 1.

Compiler's Notes.

Former § 36-1-139 (Acts 1979, ch. 360, § 1; T.C.A., § 36-140; Acts 1989, ch. 507, § 2), concerning the reuniting of siblings after adoption, was repealed by Acts 1995, ch. 532, § 1, effective January 1, 1996.

36-1-140. Immunity for actions in good faith by department personnel and immunity of certain other persons.

(a) The actions of the personnel of the department, or the departments of health, finance and administration, and general services, or their successors, undertaken in the performance of their duties pursuant to §§ 36-1-125 — 36-1-138 or pursuant to § 36-2-318, or those actions of a licensed child-placing agency or licensed clinical social worker when acting pursuant to § 36-1-134, within the scope of its authority shall be presumed to be undertaken in good faith and the personnel of these departments or licensed child-placing agencies or the licensed clinical social worker and the officers and agents of the state of Tennessee shall thereby be entitled to absolute immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. The presumption shall only be overcome by clear and convincing evidence that the actions were malicious or were for personal gain.

(b) The absolute immunity of subsection (a) shall extend to information provided by any of the entities, their officers, personnel or agents under subsection (a) that is obtained from another source and that is either incorrect or false.

(c) No information that is released pursuant to this part concerning a biological or legal parent or guardian who voluntarily surrendered or consented to adoption of a child shall be the basis for any civil liability of the biological or legal parent or guardian.

History.
Acts 1995, ch. 532, § 1.

Compiler's Notes.
Former § 36-1-140, concerning release of information about the adoptee's biological family, was transferred to § 36-1-133.

36-1-141. Fees for searches, registration of contact vetoes, and copies — Promulgation of rules — Forms.

(a)(1)(A) The department shall, by rules promulgated pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 2, establish fees or charges for conducting any search or record disclosure, except for those pursuant to § 36-1-135, and for transmission of any data in connection with such searches, for:

(i) Providing any nonidentifying information;

(ii) Registering requests for contact vetoes;

(iii) Registering requests with the advance notice of registry; or

(iv) Providing copies of documents.

(B) The rules shall provide for waiver of any fees or charges based upon a person's ability to pay.

(2) Any fees or charges received by the department pursuant to this part shall be deposited with the state treasurer in accordance with § 9-4-301.

(b) The department shall, by rules promulgated pursuant to the Uniform Administrative Procedures Act, establish forms that shall be required for use by all Tennessee courts, agencies, and persons for:

(1) Surrenders and parental consents;

(2) Medical and social history information required by § 36-1-111;

(3) Revocation of surrenders and parental consents;

(4) Consents by minors or guardians ad litem required by § 36-1-117;

(5) Certifications of completion of counseling and the criteria for counseling and certifications of the completion of legal service required by § 36-1-111;

(6) Disclosure forms required pursuant to this part;

(7) Contact veto forms used in the surrender or parental consents pursuant to any other requirements of this part, or sworn statement forms required for access to records pursuant to any requirements of this part; and

(8) Releases of information.

(c)(1) The forms required by subsection (b) shall be promulgated pursuant to the Uniform Administrative Procedures Act, and shall be mandatory forms, and shall, notwithstanding any law to the contrary, be effective as emergency rules on the dates any of the sections of this part necessitating their promulgation become effective as provided by this part; provided, that the provisions of the Uniform Administrative Procedures Act, related to promulgation of such forms as permanent rules must be followed.

(2)(A) Unless otherwise specifically directed by the general assembly, no provision of Acts 1996, ch. 1054, or any other law that may necessitate the modification of any of the mandatory forms that may be required by this part or any other title of Tennessee Code Annotated at any time shall require the modification of any existing form or use of any new form until the department or its successor agency providing adoption services under this part pursuant to any executive order or pursuant to any other legislation promulgates such form as a permanent rule and such rule is effective, or unless it is determined by the department or its successor agency providing adoption services under this part pursuant to any executive order or pursuant to any other legislation that such change must be made under any requirements of § 4-5-209.

(B) No surrender, revocation, adoption or any other activity requiring the use of any form promulgated pursuant to this part shall be defective, void or invalid because it is undertaken using any form that is in effect as a promulgated and effective rule of the department or its successor agency providing adoption services under this part pursuant to any executive order or pursuant to any other legislation on the date of such action, whether or not any new or amended provision of Acts 1996, ch. 1054, or any law has been enacted prior to the date of such action, until such form has been promulgated and is effective as a permanent rule, or as otherwise required by § 4-5-209. It is the intent of the general assembly to preclude in any manner questions concerning the validity of any adoption or related proceeding or procedure due to the

failure or inability of the department or its successor agency providing adoption services under this part pursuant to any executive order or pursuant to any other legislation to make timely changes to such mandatory forms.

(3) Notwithstanding the provisions of the Uniform Administrative Procedures Act, or any other provision of Acts 1996, ch. 1054, to the contrary, any forms promulgated by the department, or its successor state agency providing adoption services under this part pursuant to any executive order or pursuant to any other legislation, which forms are related to any provisions of this part for the implementation of the contact veto or consent to contact or release of identifying information process involving the access to records pursuant to this part, shall be effective as emergency rules, following approval of such emergency rules by the attorney general and reporter, upon the date of the filing of such rules with the secretary of state; provided, that the provisions of the Uniform Administrative Procedures Act, relative to the promulgation of such rules as permanent rules must be followed.

(d) Any other rules required by the departments of children's services, health, and general services to effect implementation of the provisions of this part upon the effective dates of any sections in this part, including rules establishing fees and charges for services, shall, notwithstanding any law to the contrary, be effective as emergency rules on the date of filing such rules; provided, that the provisions of the Uniform Administrative Procedures Act, related to promulgation of such rules as permanent rules must be followed.

(e) The departments of children's services, health, and general services shall be authorized to promulgate such other rules pursuant to the Uniform Administrative Procedures Act, as may be necessary for the implementation of this part.

(f) The departments of children's services, health and general services shall make master copies of all forms necessary for compliance with Acts 1995, ch. 532, available to all clerks of courts with adoption or surrender jurisdiction, to the administrative office of the courts, to the department of children's services' county offices, to all licensed child-placing agencies and to any persons requesting them. Such master copies may then be duplicated and such exact duplicates shall be valid for any use required by this part. Master copies may, in addition, be provided to the clerks, the administrative office of the courts, the department of children's services' county offices, to all licensed child-placing agencies and to any persons requesting them by any suitable electronic medium as is deemed suitable to each of the departments for its purposes. Electronic facsimile copies of the forms prescribed under this section shall be valid for use as may be required.

History.

Acts 1995, ch. 532, § 1; 1996, ch. 1054, §§ 100, 101, 126; 1996, ch. 1079, § 69; 1998, ch. 1022, § 2; 2009, ch. 566, § 12.

Compiler's Notes.

Former § 36-1-141 (Acts 1995, ch. 285, §§ 1, 2; 1986, ch. 767, § 10; 1989, ch. 507, §§ 1, 3-5), concerning disclosure of adoption records, was repealed by Acts 1995, ch. 532, § 1, effective January 1, 1996.

Acts 1995, ch. 532, referred to in (f), rewrote this part and amended several sections in titles 37, 68 and 71. For codification of this act, see the Session Laws Disposition Table in Volume 13 of the Tennessee Code Annotated.

Acts 1996, ch. 1054, referred to throughout (c), amended numerous sections in this chapter. See the Session Laws Disposition Table in Volume 13 of the Tennessee Code Annotated.

Former subdivision (c)(2)(A) was deleted as obsolete, and former subdivisions (c)(2)(B) and (c)(2)(C) were redesignated as subdivisions (c)(2)(A) and (c)(2)(B) by the code commission in 2001.

Acts 2009, ch. 566, § 12 provided that the Tennessee code commission is directed to change all references to public necessity rules, wherever such references appear in this code, to emergency rules, as sections are amended and volumes are replaced.

36-1-142. Voluntary delivery of infant to facility, revocation of voluntary delivery, and termination of parental rights.

(a) Notwithstanding any other law to the contrary and without complying with the surrender provisions of this part, any facility, as defined by § 68-11-255, shall receive possession of an infant aged seventy-two (72) hours or younger upon the voluntary delivery of the infant by the infant's mother, pursuant to § 68-11-255.

(b) The facility, any facility employee or any member of the professional medical community at such facility shall notify the department of children's services as soon as reasonably possible and no later than twenty-four (24) hours after taking possession of an infant under this section. The department or the department's authorized designee shall immediately assume the care, custody and control of such infant and shall petition the appropriate court for legal custody of such child.

(c) Voluntary delivery of an infant pursuant to § 68-11-255 and failure of the mother voluntarily delivering such child to visit or seek contact with such infant for a period of thirty (30) days after the date of delivery, and failure to seek contact with the infant through the department or to revoke the voluntary delivery within thirty (30) days after notice was completed pursuant to this section, which shall cumulatively be no less than ninety (90) days from the date such child was voluntarily delivered to such facility, shall be a basis for termination of parental rights pursuant to this part.

(d)(1) A mother who voluntarily delivers an infant pursuant to § 68-11-255 may revoke such voluntary delivery by applying to a court that is qualified to receive a surrender pursuant to § 36-1-111 no later than thirty (30) days after notice was completed under subsection (e).

(2) After such thirty (30) days, no voluntary delivery pursuant to § 68-11-255 shall be set aside except upon clear and convincing evidence of duress, fraud or intentional misrepresentation.

(e)(1) Within ten (10) days of receipt of an infant under this section, the department shall give notice once a week for four (4) consecutive weeks in a newspaper or other publication of general circulation in the county in which such voluntary delivery occurred. The department shall also give such notice in any other county for which there are any facts known to the department that reasonably indicate the infant's mother or father may be so located. The notice

shall include information to provide an opportunity for the putative father to claim paternity and for the mother to revoke voluntary delivery. Such notice shall describe the infant, identify where and when voluntary delivery occurred, specify how and who to contact for follow up and provide any other relevant information.

(2) The notice shall specify that failure to seek contact with the infant through the department or to revoke the voluntary delivery within thirty (30) days of the date of the last publication of notice shall constitute abandonment of the infant and of the mother's interest.

(3) The notice shall specify that any father of such infant who fails to claim paternity by contacting the department or registering with the putative father registry pursuant to § 36-2-318 within thirty (30) days of the last publication shall be barred from thereafter bringing or maintaining any action to establish paternity of the infant. It shall also specify that such failure shall constitute abandonment of any right to notice of, or to a hearing in, any judicial proceeding for the adoption of such infant and that consent of such putative father shall not be required for adoption of the infant.

(f) The department shall designate one (1) or more persons to serve as a contact in the event the mother requires additional information, including but not limited to the legal effect of voluntary delivery of the infant, revocation of voluntary delivery, availability of relevant social services and follow-up inquiries once the mother has left the facility. The department shall provide all facilities designated to receive infants under this section with the name, phone number and other necessary information regarding such contact person.

History.
Acts 2001, ch. 388, § 2.

Compiler's Notes.
Acts 2001, ch. 388, § 8 provided that the departments of children's services and health are authorized to promulgate rules and regulations pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, as necessary to effectuate the provisions of this section.

Acts 2001, ch. 388, § 9 provided that the department of health, in conjunction with the department of children's services, shall encourage and support, to the extent of existing resources, community programs to raise public awareness of the incidence of infant abandonment and to provide information and intervention services for parents of unwanted infants.

Acts 2001, ch. 388, § 11 provided that nothing in the act shall be construed to be an appropriation of funds and no funds shall be obligated or expended pursuant to the act unless such funds are specifically appropriated by the General Appropriations Act.

36-1-143. Post-adoption services to support permanency in adoption.

(a) The department shall provide post-adoption services in order to reduce the risk of adoption dissolution and to support the goal of permanency in adoption.

(b) The department shall provide the following post-adoption services either directly or through purchase of service providers:

(1) Crisis intervention, including the provision of immediate assessment and time limited treatment in volatile situations and connecting families to long-term adoption sensitive treatment providers;

(2) Family and individual counseling, including the provision of mental health counseling to families and children to address issues challenging family communication, integration and other issues that may be threatening the family unit;

(3) Support groups for parents and children, including educational and recreational group experiences that bring families and children together who share the experience of the adoption process and are family strength focused;

(4) Advocacy, including information and referral services to assist families in navigating and accessing services through the community, educational, mental health and medical provider systems;

(5) Respite, including services that provide temporary, non-threatening relief to families and children undergoing challenging circumstances and those in crisis;

(6) Case management services to stabilize volatile family situations, to develop short-term intervention plans and to connect the family with ongoing services and support systems; and

(7) Networking of families and community providers, including the provision of educational experiences that build a more adoption sensitive provider community to be aware of and responsive to families created through adoption.

(c) Post-adoption services are available to:

(1) Families who have adopted children for whom the department had legal responsibility immediately preceding the adoption; and

(2) Biological families of children adopted through the department.

(d) Nothing in this section shall be construed to prevent access to records of the adopted person as otherwise permitted or required by this part.

(e) It is the legislative intent that this section shall be carried out subject to the availability of funds with which to do so and that this section shall not be implemented beyond budgetary limitations.

History.
Acts 2009, ch. 521, § 1.

Compiler's Notes.
Acts 2009, ch. 521, § 2 provided that the commissioner of children's services is authorized to promulgate rules and regulations to effectuate the purposes of this section. The rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

36-1-144. Categories of information to be provided to adoptive family.

(a) To provide full disclosure about a child to be adopted from the department's guardianship, the department shall provide to the adoptive family the following categories of information, to the extent that they are available:

(1) Historical and current health information;

(2) Historical and current educational information;

(3) Historical and current mental and behavioral

health information;

(4) Nationality, ethnic background, race, and religious preference;

(5) Other information required for the adoptive family to evaluate its ability to provide appropriate care for the child, including daily routine, social and emotional well-being, and personality;

(6) Relevant information about the child's experience in foster care and reasons for coming into care;

(7) Pertinent prenatal and birth information, including birth date, time of birth, weight, and other physical characteristics at birth; and

(8) A general physical description, including height, weight, hair color, eye color, and any other information related to the child's physical appearance.

(b) The department shall also provide the following categories of nonidentifying information about the child's biological or legal family, to the extent that they are available:

(1) Historical and current health information;

(2) Historical and current educational and occupational information;

(3) Historical and current mental and behavioral health information;

(4) Nationality, ethnic background, race, and religious preference; and

(5) A general physical description, including height, weight, hair color, eye color, and any other information related to the physical appearance of the child's biological or legal family.

(c) Nothing in this section shall be construed to authorize or require the release of information that may lead to the discovery of the identity or location of the biological or legal relatives of the child to be adopted.

History.
Acts 2015, ch. 199, § 2.

PART 2

INTERSTATE COMPACT ON ADOPTION AND MEDICAL ASSISTANCE

36-1-201. Terms of compact.

The Interstate Compact on Adoption and Medical Assistance is hereby enacted into law and entered into with all other jurisdictions legally joining therein in form substantially as follows:

INTERSTATE COMPACT ON ADOPTION AND MEDICAL ASSISTANCE

Article I. Findings

The party states find that:

(1) In order to obtain adoptive families for children with special needs, prospective adoptive parents must be assured of substantial assistance (usually on a continuing basis) in meeting the high costs of supporting and providing for the special needs and services required by such children;

(2) The states have a fundamental interest in promoting adoption for children with special needs because the care, emotional stability and general support and encouragement required by such children to surmount their physical, mental or emotional conditions can be best, and often only, obtained in family homes with a normal parent-child relationship;

(3) The states obtain advantages from providing adoption assistance because the customary alternative is for the state to defray the entire cost of meeting all the needs of such children;

(4) The special needs involved are for the emotional, physical maintenance of the child, and medical support and services; and

(5) The necessary assurance of adoption assistance for children with special needs, in those instances where children and adoptive parents are in states other than the one undertaking to provide the assistance, is to establish and maintain suitable substantive guarantees and workable procedures for interstate payments to assist with the necessary child maintenance, procurement of services, and medical assistance.

Article II. Purposes

The purposes of this compact are to:

(1) Strengthen protections for the interest of the children with special needs on behalf of whom adoption assistance is committed to be paid, when such children are in or move to states other than the one committed to make adoption assistance payments; and

(2) Provide substantive assurances and procedures which will promote the delivery of medical and other services on an interstate basis to children through programs of adoption assistance established by the laws of the party states.

Article III. Definitions

As used in this compact, unless the context clearly requires a different construction:

(1) "Adoption assistance" means the payment or payments for maintenance of a child, which payment or payments are made or committed to be made pursuant to the adoption assistance program established by the laws of a party state;

(2) "Adoption assistance state" means the state that is signatory to an adoption assistance agreement in a particular case;

(3) "Child with special needs" means a minor who has not yet attained the age at which the state normally discontinues children's services or twenty-one (21) years of age, where the state determines that the child's disabilities warrant the continuation of assistance, for whom the state has determined the following:

(A) That the child cannot or should not be returned to the home of the child's parents;

(B) That there exists with respect to the child a specific factor or condition (such as the child's ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as

medical condition or disabilities) because of which it is reasonable to conclude that such child cannot be placed with adoptive parents without providing adoption assistance;

(C) That, except where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of such parents as a foster child, a reasonable, but unsuccessful, effort has been made to place the child with appropriate adoptive parents without providing adoption assistance payments;

(4) "Parents" means either the singular or plural of the word "parent;"

(5) "Residence state" means the state of which the child is a resident by virtue of the residence of the adoptive parents; and

(6) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or a territory or possession of the United States.

Article IV. Adoption Assistance

(1) Each state shall determine the amounts of adoption assistance and other aid which it will give to children with special needs and their adoptive parents in accordance with its own laws and programs. The adoption assistance and other aid may be made subject to periodic reevaluation of eligibility by the adoption assistance state in accordance with its laws. The provisions of this Article and of Article V are subject to the limitation set forth in this paragraph.

(2) The adoption assistance and medical assistance services and benefits to which this compact applies are those provided to children with special needs and their adoptive parents from the time of the final decree of adoption or the interlocutory decree of adoption, as the case may be, pursuant to the laws of the adoption assistance state. In addition to the content required by subsequent provisions of this Article for adoption assistance agreements, each such agreement shall state whether the initial adoption assistance period thereunder begins with the final or interlocutory decree of adoption. Aid provided by party states to children with special needs during the preadoptive placement period or earlier shall be under the foster care or other programs of the states and, except as provided in paragraph 3 of this Article, shall not be governed by the provisions of this compact.

(3) Every case of adoption assistance shall include an adoption assistance agreement between the adoptive parents and the agency of the state undertaking to provide the adoption assistance. Every such agreement shall contain provisions for the fixing of actual or potential interstate aspects of the adoption assistance, as follows:

(A) An express commitment that the adoption assistance shall be payable without regard for the state of residence of the adoptive parents, both at the outset of the agreement period and at all times during its continuance;

(B) A provision setting forth with particularity the types of child care and services toward which the adoption assistance state will make payments;

(C) A commitment to make medical assistance available to the child in accordance with Article V of this compact; and

(D) An express declaration that the agreement is for the benefit of the child, the adoptive parents and the state and that it is enforceable by any or all of them.

(4) Any services or benefits provided by the residence state and the adoption assistance state for a child may be facilitated by the party states on each other's behalf. To this end, the personnel of the child welfare agencies of the party states will assist each other and beneficiaries of adoption assistance agreements with other party states in implementing benefits expressly included in adoption assistance agreements. However, it is recognized and agreed that in general children to whom adoption assistance agreements apply are eligible for benefits under the child welfare, education, rehabilitation, mental health and other programs of their state of residence on the same basis as other resident children.

(5) Adoption assistance payments, when made on behalf of a child in another state, shall be made on the same basis and in the same amounts as they would be made if the child were in the state making the payments.

Article V. Medical Assistance

(1) Children for whom a party state is committed in accordance with the terms of an adoption assistance agreement to make adoption assistance payments are eligible for medical assistance during the entire period for which such payments are to be provided. Upon application therefor by the adoptive parents of a child on whose behalf a party state's duly constituted authorities have entered into an adoption assistance agreement, the adoptive parents shall receive a medical assistance identification made out in the child's name. The identification shall be issued by the medical assistance program of the residence state and shall entitle the child to the same benefits, pursuant to the same procedures, as any other child who is a resident of the state and covered by medical assistance, whether or not the adoptive parents are eligible for medical assistance.

(2) The identification shall bear no indication that an adoption assistance agreement with another state is the basis for issuance. However, if the identification is issued on account of an outstanding adoption assistance agreement to which another state is a signatory, the records of the issuing state and the adoption assistance state shall show the fact, shall contain a copy of the adoption assistance agreement and any amendment or replacement therefor, and all other pertinent information. The adoption assistance and medical assistance programs of the adoption assistance state shall be notified of the identification issuance.

(3) A state which has issued a medical assistance identification pursuant to this compact, which

identification is valid and currently in force, shall accept, process and pay medical assistance claims thereon as on any other medical assistance eligibilities of residents.

(4) An adoption assistance state which provides medical services or benefits to children covered by its adoption assistance agreements, which services or benefits are not provided for those children under the medical assistance program of the residence state, may enter into cooperative arrangements with the residence state to facilitate the delivery and administration of such services and benefits. However, any such arrangements shall not be inconsistent with this compact nor shall they relieve the residence state of any obligation to provide medical assistance in accordance with its laws and this compact.

(5) A child whose residence is changed from one (1) party state to another party state shall be eligible for medical assistance under the medical assistance program of the new state of residence.

Article VI. Joinder and Withdrawal

(1) This compact shall be open to joinder by any state. It shall enter into force as to a state when its duly constituted and empowered authority has executed it.

(2) In order that the provisions of this compact may be accessible to and known by the general public and so that its status as law in each of the party states may be fully implemented the full text of the compact, together with a notice of its execution, shall be caused to be published by the authority which has executed it in each party state. Copies of the compact shall be made available upon request made of the executing authority in any state.

(3) Withdrawal from this compact shall be by written notice sent by the authority which executed it to the appropriate officials of all other party states, but no such notice shall take effect until one (1) year after it is given in accordance with the requirements of this paragraph.

(4) All adoption assistance agreements outstanding and to which a party state is signatory at the time when its withdrawal from this compact takes effect shall continue to have the effects given to them pursuant to this compact, until they expire or are terminated in accordance with their provisions. Until such expiration or termination, all beneficiaries of the agreements involved shall continue to have all rights and obligations conferred or imposed by this compact and the withdrawing state shall continue to administer the compact to the extent necessary to accord and implement fully the rights and protections preserved hereby.

History.
Acts 1985, ch. 35, § 1; 2011, ch. 47, §§ 27, 28.

Compiler's Notes.
Acts 2011, ch. 47, § 107 provided that nothing in the legislation shall be construed to alter or otherwise affect the eligibility for services or the rights or responsibilities of individuals covered by the provision on the day before the date of enactment of this legislation, which was July 1, 2011.

Acts 2011, ch. 47, § 108 provided that the provisions of the act are declared to be remedial in nature and all provisions of the act shall be liberally construed to effectuate its purposes.

36-1-202. Amount of assistance.

The amounts of adoption assistance and other aid that Tennessee will provide to children with special needs in accordance with Article IV of the Interstate Compact on Adoption and Medical Assistance shall be determined in accordance with § 37-5-106(a)(13).

History.
Acts 1985, ch. 35, § 2.

36-1-203. Documentation of eligibility.

For the purpose of determining eligibility for any benefit under this part from the state of Tennessee, the adoptive parents of any child on whose behalf benefits are sought shall annually furnish the department of children's services documentation establishing that the adoption assistance agreement continues in force or has been renewed.

History.
Acts 1985, ch. 35, § 3; 1996, ch. 1079, § 69.

36-1-204. Applicability of part.

This part shall apply only to medical assistance for children under adoption assistance agreements from states that have entered into a compact with this state under which the other state provides medical assistance to children with special needs under adoption assistance agreements made by this state. Eligibility of all other children for assistance pursuant to adoption assistance agreements entered into by this state shall be determined in accordance with the laws and regulations applicable thereto.

History.
Acts 1985, ch. 35, § 4.

36-1-205. Violations — Penalties.

Whoever knowingly obtains, or attempts to obtain, or aids, or abets any person to obtain, by means of a willfully false statement or representation or by impersonation, or other fraudulent device, any assistance on behalf of a child or other person pursuant to the Interstate Compact on Adoption Assistance and Medical Assistance to which such child or other person is not entitled or assistance greater than such child or other person is entitled, commits a Class E felony.

History.
Acts 1985, ch. 35, § 5; 1989, ch. 591, § 32.

36-1-206. Construction — Compliance with federal laws.

This compact shall, insofar as practical, be construed to be in compliance with all federal laws governing adoption assistance and payment for medical assistance. In the event subsequent changes in federal law or regulations necessitate changes in the text of the

compact, the commissioner of children's services is authorized to promulgate such regulations as may be necessary to alter the terms of the compact to comply with federal law or regulations.

History.
Acts 1985, ch. 35, § 6; 1996, ch. 1079, § 69.

Compiler's Notes.
Acts 1996, ch. 1079, § 184 provided: "Any provision of this act, or the application thereof, which is inconsistent with federal law, rule or regulation shall be deemed to be construed as being consistent with federal law, rule or regulation."

PART 3

ADOPTION CONTACT VETO REGISTRY

36-1-301. Advance notice system.

The object of this part is to establish an advance notice system that enables an eligible person to request the department to provide advance notification prior to the release of adoption records, sealed records, sealed adoption records, post-adoption records, or any other records or papers under § 36-1-127(c) that have information regarding such person in order to give the person requesting advance notification the opportunity to prepare for the release and any impact this might have on the person or the person's family or associates. If the department has received such a request, it shall delay the release of the adoption records, sealed records, sealed adoption records, post-adoption records, or any other records or papers to another person during the advance notice period.

History.
Acts 1998, ch. 1022, § 1.

36-1-302. "Advance notice period" defined.

As used in this part, unless the context otherwise requires, "advance notice period" means the fifteen-day period from the date of mailing a notice regarding the impending release of adoption records, sealed records, sealed adoption records, post-adoption records, or any other records or papers to a person who has requested that the department provide advance notice prior to releasing the information.

History.
Acts 1998, ch. 1022, § 1.

36-1-303. Persons entitled to file a request for advance notice.

(a) A person is entitled to file a request to be given advance notice before any adoption record, sealed record, sealed adoption record, post-adoption record, or any other records or papers with information regarding that person is released to another person if the person seeking to file the request is otherwise eligible to receive such information pursuant to this part.

(b) An eligible person desiring to place that person's name on the advance notice registry shall notify the department in writing on a form provided by the department, provide satisfactory proof of identity, and pay any necessary fees. The department shall supply the registration form upon request.

History.
Acts 1998, ch. 1022, § 1.

36-1-304. Advance notice registry.

(a) The department shall establish and maintain an advance notice registry. Notwithstanding any other law to the contrary, the advance notice registry shall not be considered part of the post-adoption record or any other record or paper subject to release under § 36-1-127(c), and the information contained in the advance notice registry shall be confidential.

(b) The advance notice registry shall include, but not be limited to, the following information:

(1) Name of each person who has duly filed an advance notice request;

(2) Address given by the person as the mailing address at which any postal contact by the department with the person should be made;

(3) Date and place of birth of the person filing with the advance notice registry;

(4) Persons or class of persons affected by the request; and

(5) Advance notice period.

(c) A person whose name is entered in the advance notice registry shall advise the department of any change in the person's address.

History.
Acts 1998, ch. 1022, § 1.

36-1-305. Promulgation of necessary rules and regulations.

The department is authorized to promulgate necessary rules and regulations to facilitate the implementation of this part in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 2.

History.
Acts 1998, ch. 1022, § 1.

CHAPTER 2

PARENTAGE

Part 1. Paternity Proceedings [Repealed]

SECTION.
36-2-101 — 36-2-115. [Repealed.]

Part 2. Legitimation [Repealed]

36-2-201 — 36-2-210. [Repealed.]

Part 3. Parentage and Legitimation

36-2-301. Statement of purpose.
36-2-302. Chapter definitions.
36-2-303. Custody with mother absent an order of custody.
36-2-304. Presumption of parentage.
36-2-305. Agreement to establish parentage — Complaint to establish parentage — Parties — When action may be brought — Order of protection.
36-2-306. Statute of limitations.
36-2-307. Jurisdiction — Venue.

SECTION.
36-2-308. Conduct of trial — Expedited hearings.
36-2-309. Tests to determine parentage.
36-2-310. Temporary order of support.
36-2-311. Order of parentage.
36-2-312. Custody and visitation issues.
36-2-313. Inheritance of child from father — Information to commissioner of health — Recovery of fees paid by the department of health — New birth certificates.
36-2-314. [Repealed.]
36-2-315. Appeals.
36-2-316. Discrimination against children born out of wedlock — Penalty.
36-2-317. Official references to illegitimacy.
36-2-318. Putative father registry.
36-2-319. Enrollment of child in supporting party's health care plan.
36-2-320. License revocation requests.
36-2-321. Limitations period for child support payment orders.
36-2-322. Payment of overdue support for children receiving assistance.

Part 4. Parentage of Children Born of Donated Embryo Transfer

36-2-401. Single means of establishing parentage — Legislative intent.
36-2-402. Part definitions.
36-2-403. Establishing embryo parentage — Relinquishment of rights and responsibilities.

PART 1

PATERNITY PROCEEDINGS [REPEALED]

36-2-101 — 36-2-115. [Repealed.]

Compiler's Notes.
Former part 1, §§ 36-2-101 — 36-2-115 (Acts 1955, ch. 186, §§ 1-15; 1957, ch. 316, § 1; 1965, ch. 36, §§ 1, 2; 1969, ch. 268, § 1; 1974, ch. 744, § 1; impl. am. 1975, ch. 219, § 1; 1979, ch. 233, §§ 1-4; T.C.A., §§ 36-222 — 36-236; Acts 1981, ch. 449, § 2(23); 1983, ch. 459, § 2; 1984, ch. 614, §§ 1-3; 1985, ch. 229, § 1; 1985, ch. 477, §§ 2-4; 1989, ch. 108, § 1; 1989, ch. 206, §§ 3, 9; 1989, ch. 314, § 1; 1991, ch. 240, § 2; 1991, ch. 380, § 3; 1992, ch. 969, § 1; 1994, ch. 488, § 5; 1995, ch. 504, § 1), concerning paternity, was repealed by Acts 1997, ch. 477, § 1. See part 3 of this chapter for new provisions.

PART 2

LEGITIMATION [REPEALED]

36-2-201 — 36-2-210. [Repealed.]

Compiler's Notes.
Former part 2, §§ 36-2-201 — 36-2-210 (Code 1858, §§ 3636, 3640-3642, 3647; Shan., §§ 5402, 5406-5408, 5412, 5413; mod. Code 1932, §§ 9561, 9565-9567, 9571, 9572; Acts 1949, ch. 40, § 1; impl. am. Acts 1949, ch. 127; C. Supp. 1950, §§ 9561, 9567, 9571, 9572; Acts 1951, ch. 202, § 38; impl. am. 1957, ch. 59, § 1; 1965, ch. 112, §§ 1-4; 1976, ch. 474, § 1; 1983, ch. 359, § 1; T.C.A. (orig. ed.), §§ 36-301 — 36-308; Acts 1984, ch. 681, § 1; 1985, ch. 477, § 15; 1986, ch. 612, § 1; 1989, ch. 206, § 8; 1989, ch. 591, § 113; 1991, ch. 240, § 1; 1992, ch. 1012, § 1; 1994, ch. 988, §§ 6, 7; 1995, ch. 532, §§ 2, 3; 1996, ch. 1079, § 70), concerning legitimation, was repealed by Acts 1997, ch. 477, § 1. See part 3 of this chapter for present provisions.

PART 3

PARENTAGE AND LEGITIMATION

36-2-301. Statement of purpose.

This chapter provides a single cause of action to establish parentage of children other than establishment by adoption pursuant to chapter 1 of this title, or by acknowledgement of parentage pursuant to §§ 68-3-203(g), 68-3-302 or 68-3-305(b).

History.
Acts 1997, ch. 477, § 1.

Compiler's Notes.
Acts 1997, ch. 477, § 2 provides that any petition for legitimation filed prior to July 1, 1997, shall be adjudicated based upon the law in effect prior to July 1, 1997. Any order that results from a petition for legitimation in such circumstance shall be effective to establish all rights and responsibilities arising under the provisions of title 36, chapter 2, part 2 as it existed prior to July 1, 1997, whether the order is entered on or after July 1, 1997.

Acts 1997, ch. 477, § 2 further provides that nothing in this chapter shall be construed to alter or disturb any rights that accrued to any person or responsibilities assumed by any person pursuant to title 36, chapter 2, part 2 prior to July 1, 1997, including the authority of the state registrar to issue certificates of birth pursuant to the provisions of title 68, chapter 3, part 3 for children who have been the subject of orders of legitimation pursuant to court orders entered before or after July 1, 1997, that are based upon petitions filed prior to July 1, 1997, and which petitions resulted in orders of legitimation for those children.

36-2-302. Chapter definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Child born out of wedlock" means a child born to parents who are not married to each other when the child was born;

(2) "Court" means the juvenile court or any trial court with general jurisdiction;

(3) "Father" means the biological father of a child born out of wedlock;

(4) "Mother" means the biological mother of a child born out of wedlock;

(5) "Parent" means the biological mother or biological father of a child, regardless of the marital status of the mother and father; and

(6) "Father," "mother," and "parent" do not include a biological parent whose parental rights have been terminated for a child whose parentage is at issue.

History.
Acts 1997, ch. 477, § 1.

36-2-303. Custody with mother absent an order of custody.

Absent an order of custody to the contrary, custody of a child born out of wedlock is with the mother.

History.
Acts 1997, ch. 477, § 1.

36-2-304. Presumption of parentage.

(a) A man is rebuttably presumed to be the father of a child if:

(1) The man and the child's mother are married or have been married to each other and the child is born during the marriage or within three hundred (300) days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce;

(2) Before the child's birth, the man and the mother have attempted to marry each other in compliance with the law, although the attempted marriage is or could be declared illegal, void and voidable;

(3) After the child's birth, the man and the mother have married or attempted to marry each other in compliance with the law although such marriage is or could be declared illegal, void, or voidable; and:

(A) The man has acknowledged his paternity of the child in a writing filed under the putative father registry established by the department of children services, pursuant to § 36-2-318;

(B) The man has consented in writing to be named the child's father on the birth certificate; or

(C) The man is obligated to support the child under a written voluntary promise or by court order;

(4) While the child is under the age of majority, the man receives the child into the man's home and openly holds the child out as the man's natural child; or

(5) Genetic tests have been administered as provided in § 24-7-112, an exclusion has not occurred, and the test results show a statistical probability of parentage of ninety-five percent (95%) or greater.

(b)(1) Except as provided in subdivision (b)(2), a presumption under subsection (a) may be rebutted in an appropriate action.

(2)(A) If the mother was legally married and living with her husband at the time of conception and has remained together with that husband through the date a petition to establish parentage is filed and both the mother and the mother's husband file a sworn answer stating that the husband is the father of the child, any action seeking to establish parentage must be brought within twelve (12) months of the birth of the child. In the event that an action is dismissed based upon the filing of such a sworn answer, the husband and wife who filed such sworn answer shall be estopped to deny paternity in any future action.

(B) A petition to establish parentage may be brought under this part if a dismissal of a petition under the prior legitimization statutes was based upon the mother's marriage to another man at the time of conception or upon the petitioner's lack of standing. In such cases, the requirements of subdivision (b)(2)(A) requiring a petition to be filed within twelve (12) months of the birth of the child shall not apply. It is the intent of the general assembly that putative fathers who filed a cause of action under this chapter prior to the July 1, 1997, effective date of Acts 1997, ch. 477, and whose action was so dismissed, shall have an opportunity to prosecute a single cause of action under this part. Thus, the doctrines of res judicata and collateral estoppel shall not bar such new or pending action, nor shall any statute of limitation that may have run bar such new or pending action. It is the clear and unequivocal intent of the general assembly that this provision shall be applied retroactively to such petitions to establish parentage. No such retroactive application shall, however, abrogate § 36-1-122.

(3) The standard of proof in an action to rebut paternity shall be by preponderance of the evidence.

(4) In any case, except terminations of parental rights or adoptions under this title or title 37, in which the paternity of a child is at issue and an agreed order or divorce decree has been entered finding that an individual is not the parent of the child, the finding shall not be entitled to preclusive effect unless the finding was based upon scientific tests to determine parentage that excluded the individual from parentage of the child in question.

(c) All prior presumptions of parentage established by the previous paternity and legitimation statutes and cases are abolished.

History.

Acts 1997, ch. 477, § 1; 1998, ch. 1098, § 8; 1999, ch. 339, § 1; 2000, ch. 922, § 4.

36-2-305. Agreement to establish parentage — Complaint to establish parentage — Parties — When action may be brought — Order of protection.

(a) The court may enter an order of parentage upon the agreement of the mother and father unless the court on its own motion orders genetic testing. In any such agreement, the mother and father must affirmatively acknowledge their parentage of the child. Any agreement under this part shall comply with the requirements of § 36-2-311.

(b) Absent an agreement or an acknowledgement of parentage as prescribed by § 68-3-203(g), § 68-3-302, or § 68-3-305(b), a complaint to establish parentage may be filed. Except as hereinafter provided, Tennessee Rules of Civil Procedure shall govern all actions under this subsection (b).

(1) A complaint to establish parentage of a child may be filed by:

(A) The child, if the child has reached the age of majority, or if the child is a minor, the child through a guardian or next friend;

(B) The child's mother, or if the mother is a minor, the mother's personal representative, parent, or guardian;

(C) A man claiming to be the child's father, or if the man is a minor, the man's parent, guardian, or personal representative;

(D) The department of human services or its contractor.

(2) One (1) man or several men may be named as the father. The naming of one (1) man as father does not preclude a later suit against another man if the court finds that the first man is not the father of the child.

(3) If an action under this section is brought before the birth of the child, all proceedings may be stayed until after the birth, except service of process, the taking of depositions to preserve testimony, and the performance of genetic testing.

(4) If the alleged father threatens or attempts to harm the complainant in any manner, the court may enter an order of protection pursuant to chapter 3, part 6 of this title. Nothing in this subsection (b) shall be construed to alter or increase the jurisdiction of the juvenile courts to issue orders of protection except when the parties are before the court in connection with a complaint filed pursuant to this chapter.

(5) The action may be commenced by service of a summons as in civil cases and tried as a civil action. In the alternative, notice of the filing of the complaint shall be delivered to the defendant or the defendant's representative or shall be sent to the defendant at the defendant's last known address. If the defendant fails to make an appearance or file an answer to the complaint, the court may proceed as in civil cases or may issue a warrant for the apprehension of the defendant, directed to any officer in this state authorized to execute warrants, commanding such officer without delay to apprehend the defendant and bring the defendant before the court for the purpose of having an adjudication as to the paternity of the child, and such warrant may be issued to any county of this state.

History.
Acts 1997, ch. 477, § 1; 2001, ch. 447, § 1.

36-2-306. Statute of limitations.

An action to establish the parentage of a child may be instituted before or after the birth of the child and until three (3) years beyond the child's age of majority. This chapter shall not affect the relationship of parent and child as established in § 31-2-105.

History.
Acts 1997, ch. 477, § 1.

36-2-307. Jurisdiction — Venue.

(a)(1) The juvenile court or any trial court with general jurisdiction shall have jurisdiction of an action brought under this chapter; provided, that, in any county having a population not less than eight hundred twenty-five thousand (825,000) nor more than eight hundred thirty thousand (830,000), according to the 1990 federal census or any subsequent federal census, only the juvenile court shall have jurisdiction of an action brought under this chapter.

(2) The court shall have statewide jurisdiction over the parties involved in the case.

(b) Any minimum contact relevant to a child's being born out of wedlock that meets constitutional standards shall be sufficient to establish the jurisdiction of the courts of Tennessee over the parents for an action under this chapter. Any conduct in Tennessee that results in conception of a child born out of wedlock shall be deemed sufficient contact to submit the parents to the jurisdiction of the courts of Tennessee for action under this chapter.

(c)(1) The complaint may be filed in the county where the father resides or is found, the county where the mother resides or is found, or the county in which the child resides or is present when the application is made. However, a man who seeks to establish parentage of a child who is the subject of a pending petition for adoption pursuant to chapter 1, part 1 of this title, must file this petition in the court where the adoption petition is filed.

(2) Any complaint to establish parentage that may be filed or that is pending in any court subsequent to the filing of an adoption petition involving the same child shall be transferred for any further proceedings to the court where the adoption proceedings are pending on motion of any party to the paternity complaint or the adoption petition, on the court's own motion, or upon the request of the court in which an adoption petition is pending.

(3) The adoption court shall have exclusive jurisdiction to determine the issues relating to the parentage of the child.

(4) Any order of parentage entered by any court other than the adoption court subsequent to the date of the adoption petition is filed shall be void, unless the adoption petition is denied or dismissed.

History.
Acts 1997, ch. 477, § 1; 1998, ch. 1098, § 9.

Compiler's Notes.
For table of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

36-2-308. Conduct of trial — Expedited hearings.

(a) The trial shall be without a jury.

(b) Hearings under this section shall be expedited on the court's civil docket.

(c) Upon proper motion, default judgment shall be entered against the defendant upon showing of service of process on the defendant where the defendant has failed to answer or make an appearance within thirty (30) days of service of process.

(d) Bills for the mother's care during pregnancy and childbirth and genetic testing shall be admissible without requiring third party foundation testimony and shall constitute prima facie evidence of amounts incurred for such services or for testing on behalf of the child.

History.
Acts 1997, ch. 477, § 1.

36-2-309. Tests to determine parentage.

(a) Tests for parentage in actions arising pursuant to this part or in any actions to determine parentage shall be conducted pursuant to § 24-7-112.

(b) The state of Tennessee, its officers, employees, agents or contractors shall not be liable to any person for, nor be ordered to refund to any person, any moneys received pursuant to an order entered pursuant to this part that is subsequently set aside by the court due to a finding of non-paternity of the person previously adjudicated as the child's father. Nothing in this subsection (b) shall preclude the issuance of a judgment against the mother or actual biological father of the

child or children in favor of the person subsequently found not to be the father of a child or children.

History.
Acts 1997, ch. 477, § 1; 1998, ch. 1098, § 10.

36-2-310. Temporary order of support.

The court shall, upon motion of the party, enter a temporary order of child support pending the final determination of paternity upon a showing of clear and convincing evidence of parentage on the basis of genetic tests.

History.
Acts 1997, ch. 477, § 1.

36-2-311. Order of parentage.

(a) Upon establishing parentage, the court shall make an order declaring the father of the child. This order shall include the following:

(1) Full names and residential and mailing addresses of the mother, father and child, if known;

(2) Dates of birth and social security numbers of the mother, father and the child, if known;

(3) Father's place of birth, if known;

(4) Home telephone number of the mother and the father, if known;

(5) Driver license numbers of mother and father, if known;

(6) Name, address and telephone number of mother and father's employers, if known;

(7) Availability of health insurance to cover the child, if known;

(8) Determination of the child's name on the child's birth certificate;

(9) Determination of the custody of the child pursuant to chapter 6 of this title;

(10) Determination of visitation or parental access pursuant to chapter 6 of this title;

(11)(A) Determination of child support pursuant to chapter 5 of this title. When making retroactive support awards pursuant to the child support guidelines established pursuant to this subsection (a), the court shall consider the following factors as a basis for deviation from the presumption in the child support guidelines that child and medical support for the benefit of the child shall be awarded retroactively to the date of the child's birth:

(i) The extent to which the father did not know, and could not have known, of the existence of the child, the birth of the child, his possible parentage of the child or the location of the child;

(ii) The extent to which the mother intentionally, and without good cause, failed or refused to notify the father of the existence of the child, the birth of the child, the father's possible parentage of the child or the location of the child; and

(iii) The attempts, if any, by the child's mother or caretaker to notify the father of the mother's pregnancy, or the existence of the child, the father's possible parentage or the location of the child;

(B) In cases in which the presumption of the application of the guidelines is rebutted by clear and convincing evidence, the court shall deviate from the child support guidelines to reduce, in whole or in part, any retroactive support. The court must make a written finding that application of the guidelines would be unjust or inappropriate in order to provide for the best interests of the child or the equity between the parties;

(C) Deviations shall not be granted in circumstances where, based upon clear and convincing evidence:

(i) The father has a demonstrated history of violence or domestic violence toward the mother, the child's caretaker or the child;

(ii) The child is the product of rape or incest of the mother by the father of the child;

(iii) The mother or caretaker of the child, or the child has a reasonable apprehension of harm from the father or those acting on his behalf toward the mother, the child's caretaker or the child; or

(iv) The father or those acting on his behalf, have abused or neglected the child;

(D) Nothing in this subdivision (a)(11) shall limit the right of the state of Tennessee to recover from the father expenditures made by the state for the benefit of the child, or the right, or obligation, of the Title IV-D child support agency to pursue retroactive support for the custodial parent or caretaker of the child where appropriate;

(E) Any amounts of retroactive support ordered that have been assigned to the state of Tennessee pursuant to § 71-3-124 shall be subject to the child support distribution requirements of 42 U.S.C. § 657. In such cases, the court order shall contain any language necessary to allow the state to recover the assigned support amounts;

(F) In making any deviations from awarding retroactive support, the court shall make written findings of fact and conclusions of law to support the basis for the deviation, and shall include in the order the total amount of retroactive support that would have been paid retroactively to the birth of the child, had a deviation not been made by the court;

(12) Determination of liability for funeral expense to either or both parties, if the child is deceased;

(13) Determination of liability for a mother's reasonable expenses for her pregnancy, confinement and recovery to either or both parties; and

(14) Determination of the liability for counsel fees to either or both parties after consideration of all relevant factors.

(b) This order may include the following:

(1) An order of protection; and

(2) Any provision determined to be in the best interests of the child.

(c) All provisions of chapter 5 of this title that relate to child support and § 50-2-105 shall apply to support orders issued in any action under this chapter.

(d)(1)(A) When the court enters an order in which the paternity of a child is determined or support is ordered, enforced or modified for a child, each individual who is a party to any action pursuant to this part shall be immediately required to file with the court and, if the case is a Title IV-D child support case, shall immediately file with the local Title IV-D child support office, for entry into the state registry of support cases, and shall update, as appropriate, the parties' and, for subdivisions (d)(1)(A)(i)-(iii), the child's or children's:

(i) Full name and any change in name;

(ii) Social security number and date and place of birth;

(iii) Residential and mailing addresses;

(iv) Home telephone numbers;

(v) Driver license number;

(vi) The name, address, and telephone number of the person's employer;

(vii) The availability and cost of health insurance for the child; and

(viii) Gross annual income.

(B) The requirements of this subdivision (d)(1) may be included in the court's order.

(2) Each individual who is a party must update changes in circumstances of the individual for the information required by subdivision (d)(1) within ten (10) days of the date of such change. At the time of the entry of the first order pertaining to child support after July 1, 1997, clear written notice shall be given to each party of the requirements of this subsection (d), procedures for complying with this subsection (d) and a description of the effect or failure to comply. Such requirement may be noted in the order of the court.

(3) In any subsequent child support enforcement action, the delivery of written notice as required by Rule 5 of the Tennessee Rules of Civil Procedure to the most recent residential or employer address shown in the court's records or the Title IV-D agency's records as required in subdivision (d)(1) shall be deemed to satisfy due process requirements for notice and service of process with respect to that party if there is a sufficient showing and the court is satisfied that a diligent effort has been made to ascertain the location and whereabouts of the party.

(e) Upon motion of either party, upon a showing of domestic violence or the threat of such violence, the court may enter an order to withhold from public access the address, telephone number, and location of the alleged victim or victims or threatened victim or victims of such circumstances. The clerk of the court shall withhold such information based upon the court's specific order but may not be held liable for release of such information.

History.

Acts 1997, ch. 477, § 1; 1998, ch. 1098, § 11; 2003, ch. 361, § 1.

Compiler's Notes.

Title IV-D of the Social Security Act, referred to in this section, is compiled in 42 U.S.C. § 651 et seq.

Acts 2003, ch. 361, § 4 provided that the act shall apply to any pending case in which the judgment of the trial court has not become final by June 17, 2003.

36-2-312. Custody and visitation issues.

(a) In any case that is brought by the department of human services or its contractors, the Title IV-D child support office shall have no authority to represent the state of Tennessee on issues of custody or parental access. The fact that custody and parental access are sought in a petition that is filed by the department or its contractors to comply with this part, or that the court orders the department or its contractors to enter the finding of fact or the conclusions of law of the court relative to a custody or parental access determination in its order, shall not be deemed to make the department or its contractors responsible for presenting any evidence on these issues or to have any continuing duty to present evidence on these issues in any subsequent hearing. The department or its contractors shall have the duty to inform the individuals in the Title IV-D case that the department or its contractors will not provide legal assistance relative to custody or parental access and that the individual has a right to independent counsel for such representation.

(b) The department may apply for and utilize any federal grants for the purpose of implementing a pilot project for access and visitation programs. The department may contract with other persons or entities to establish the pilot projects that will be administered by the department; provided, that in establishing any such pilot project through contract, the department shall give preference to existing family preservation services programs, family resource centers, headstart programs and other established programs for children.

History.

Acts 1997, ch. 477, § 1.

Compiler's Notes.

Title IV-D of the Social Security Act, referred to in this section, is compiled in 42 U.S.C. § 651 et seq.

36-2-313. Inheritance of child from father — Information to commissioner of health — Recovery of fees paid by the department of health — New birth certificates.

(a) When, under this chapter, the relationship of father and child is established, the child shall be entitled to inherit from the father as if born to the father in wedlock.

(b) When an order of parentage has been entered, the clerk of the court shall transmit to the commissioner of health, on a form prescribed by the commissioner, a written notification as to such order, together with such other facts as may assist in identifying the birth record of the child whose parentage is at issue. The form shall contain at a minimum the information required by § 36-2-311(a)(1)-(8). If such order shall be abrogated by a later judgment or order of the same or a higher court, that fact shall be immediately communicated in writing to the commissioner, on a form prescribed by the commissioner, by the clerk of the court that entered such order, if the information is available in the court records.

(c) The court shall include in each order of parentage an order that the nonprevailing party or, if parentage was not contested, the person who is being confirmed as the father of the child by the order of parentage, pay into the court an amount equal to the sum of any fees required to be paid by the department of health, or any successor to the department, for the processing or issuance of a birth certificate. Any money paid into court pursuant to this subsection (c) shall be received by the clerk and paid out by the clerk as required by subsection (d).

(d) When an order of parentage has been entered, the clerk of the court shall immediately transmit a certified copy of the order and the completed application for a new certificate of birth by parentage to the registrar of vital records, who shall issue a new certificate of birth by parentage in conformity with the rules and regulations of the department of health. Upon receipt of the fee required by the department of health, the clerk shall transmit the fee to the registrar of vital records. Notwithstanding any law or regulation to the contrary, the registrar shall not be required to issue a new certificate of birth until the fee is paid.

History.
Acts 1997, ch. 477, § 1; 1998, ch. 1098, § 73; 2007, ch. 138, § 1.

36-2-314. [Repealed.]

Compiler's Notes.
Former § 36-2-314 (Acts 1997, ch. 477, § 1), concerning clerk's fees, was repealed by Acts 2005, ch. 429, § 1, effective January 1, 2006.

36-2-315. Appeals.

An appeal from any final order of parentage as provided for in this chapter may be taken to the court of appeals pursuant to the Tennessee Rules of Appellate Procedure.

History.
Acts 1997, ch. 477, § 1.

36-2-316. Discrimination against children born out of wedlock — Penalty.

(a) No child born out of wedlock shall be deprived of any civil benefit afforded to other citizens by law.

(b) Any person, including any employee or official of any governmental agency, who deprives any person of any civil benefit afforded to other citizens by law, by reason of the child being born out of wedlock, commits a Class C misdemeanor.

History.
Acts 1997, ch. 477, § 1.

36-2-317. Official references to illegitimacy.

No explicit references shall be made to illegitimacy in any legal proceeding, record, certificates or other papers except the departments of human services and health may keep records of out-of-wedlock births.

History.
Acts 1997, ch. 477, § 1.

36-2-318. Putative father registry.

(a) The department of children's services shall establish a putative father registry, which shall be maintained by the department's adoptions unit in the department's state office in Nashville.

(b) The registrar of the division of vital records of the department of health shall notify the department's registry of all orders of parentage received by the registrar pursuant to § 36-2-311, or of any acknowledgements of parentage received by the registrar pursuant to § 68-3-203(g), § 68-3-302 or § 68-3-305(b), on a form or by any electronic information exchange method agreed upon by the commissioners of children's services and health. Such notification shall occur on a daily basis in order to update the putative father registry on a current basis.

(c) The registry shall contain the names of the persons listed in subdivision (e)(3) and any other information required in subdivisions (e)(1)-(3).

(d)(1) Those persons contained on the registry shall be given notice by the petitioners in proceedings for the adoption of a child or for the termination of parental rights involving a child, and they shall be necessary parties to the proceedings, and, except as they may waive their rights under subsection (f), must have their parental rights to the child terminated prior to entry of an adoption order, as may be required pursuant to chapter 1, part 1, of this title, unless they have executed a surrender, waiver of interest, or parental consent as provided in chapter 1, part 1 of this title.

(2) Nothing in this section shall be construed to eliminate the requirement to terminate the parental rights of any person if such person meets all of the requirements of a legal or biological parent pursuant to § 36-1-117, even if such person is not registered.

(e) The registry shall contain the names of the following persons:

(1) Those persons, their addresses, if available, the name of the child, and the name of the biological mother of the child, if available, for whom the registrar of the division of vital records has a record that an order of parentage has been entered involving any person and those persons for whom the registrar has a record of any acknowledgement of parentage executed under § 68-3-203(g), § 68-3-302 or § 68-3-305(b), and their addresses, if available, the name of the child, and the name of the biological mother of the child appearing on the acknowledgment;

(2) Those persons who have filed with the registry a certified copy of a court order from this state or any other state or territory of the United States or any other country that adjudicates such person to be a father of a child born out of wedlock, and those persons who have filed with the registry a copy of a sworn acknowledgement of parentage executed pursuant to the law of this state or pursuant to the law

of any other state or territory or any other country; or

(3) Those persons who have filed only a written notice of intent to claim paternity of a child with the putative father registry either prior to, or within thirty (30) days after, the birth of such child.

(f)(1) Those persons who have filed only a written notice of intent to claim parentage of a child pursuant to subdivisions (e)(2) and (3) shall include with such notice of such person's name, current address and current telephone number, if any, and, if filed under subdivision (e)(3), shall include the name of the child, if known, for whom such person claims parentage and the name of the child's biological mother and the current legal or physical custodian, and their address and telephone number, if known, any other information that may identify the child and the child's whereabouts. This information shall be maintained on the registry.

(2) The person filing written notice of intent to claim parentage pursuant to subdivision (e)(3) shall be responsible for notifying the registry of any change of address and telephone number within ten (10) days of that change. Failure to do so within the ten-day period shall constitute a waiver of any right to notice of any proceedings for the adoption of the child for whom the person seeks to claim parentage, unless such person is otherwise entitled to notice pursuant to § 36-1-117(b) or (c).

(g) A person who has filed a notice of intent to claim parentage under subdivision (e)(3) may revoke the notice at any time in writing to the registry, and upon receipt of such notification by the registry, the notice of intent to claim parentage shall be deemed a nullity as of the date it is filed.

(h) Any notice of intent to claim parentage filed under subsection (e), whether revoked or still in effect, may be introduced in evidence by any other party, other than the person who filed such notice, in any proceeding in which the parentage of a child may be relevant, including proceedings seeking payment of child support, medical payments on behalf of the child, or any other payments, or that may involve the payment of damages involved in connection with such parentage.

(i) Any person listed on the registry pursuant to subdivisions (e)(1)-(3) by the department shall be notified by the department, based upon the information filed with the registry, of any proceedings for the adoption of any child or the termination of parental rights of any child of which the department's state office adoption unit has actual notice of filing and for whom the registrant has made a claim of parentage, unless the person has previously executed an unrevoked surrender of the child or waiver of interest pursuant to § 36-1-111, or has consented to the child's adoption in accordance with chapter 1, part 1, of this title, or unless the person's parental rights have been terminated by court action.

(j) A person listed on the registry and entitled to notice of pending adoption or termination proceedings under subdivision (e)(3) shall have thirty (30) days from the receipt of such notice to file a complaint for parentage or to intervene in the adoption proceedings or termination of parental rights proceedings for the purpose of establishing a claim to parentage of the child or to present a defense to the termination or adoption case. The failure of such person to file a petition to intervene shall be sufficient cause for the court where the adoption proceedings or termination proceedings are pending to terminate the parental rights, if any, of such person pursuant to § 36-1-113(g)(9)(A)(vi).

(k) At the time a person files a written notice of intent to claim paternity under subsection (e), the registry shall notify such person of the provisions of §§ 68-11-255, 36-1-142, 36-1-102(1)(A)(v), and 37-2-402(1)(A)(v), concerning abandoned infants and shall inform such person that it is the duty of such person to make appropriate inquiries concerning any possibly relevant birth.

History.
Acts 1997, ch. 477, § 1; 2001, ch. 388, § 6.

36-2-319. Enrollment of child in supporting party's health care plan.

(a) In any case in which the court enters an order of support in a case enforced under Title IV-D of the Social Security Act, compiled in 42 U.S.C. § 651 et seq., the court shall enter an order providing for health care coverage to be provided for the child or children.

(b) Section 36-5-501(a)(3) shall apply with respect to enrollment of a child in the noncustodial parent's employer-based health care plan.

History.
Acts 1997, ch. 551, § 23; 2001, ch. 447, § 2.

36-2-320. License revocation requests.

In establishing paternity or enforcing any provision of child support, if the party seeking to establish paternity or to enforce an order of support specifically prays for revocation of a license, or if the court determines on its own motion or on motion of the party seeking to establish paternity or seeking to enforce an order of support that an individual party has failed to comply with a subpoena or a warrant in connection with the establishment of paternity or enforcement of an order of support, the court may invoke the provisions of § 36-5-101(f)(5).

History.
Acts 1997, ch. 551, § 26.

36-2-321. Limitations period for child support payment orders.

Judgments for child support payments for each child subject to the order for child support pursuant to this part shall be enforceable without limitation as to time.

History.
Acts 1997, ch. 551, § 46.

36-2-322. Payment of overdue support for children receiving assistance.

In any case in which a child is receiving assistance under a state program funded under the Social Secu-

rity Act, Title IV-A, compiled in 42 U.S.C. § 601 et seq., including, but not limited to, temporary assistance as provided under title 71, chapter 3, part 1, and the payment of support for such child is overdue, then, the department of human services may issue an administrative order, directing an individual who owes overdue support to such a child to pay the overdue support in accordance with a plan for payment of all overdue support or to engage in work activities, as otherwise required and defined by § 36-5-113.

History.
Acts 1997, ch. 551, § 49; 1998, ch. 1098, § 12.

PART 4

PARENTAGE OF CHILDREN BORN OF DONATED EMBRYO TRANSFER

36-2-401. Single means of establishing parentage — Legislative intent.

This chapter provides a single means to establish parentage of children born of donated embryo transfer to recipient intended parent. It is intended to promote the interests of children who may be born as a result of donated embryo transfer. It is the intent that no adoption pursuant to chapter 1 of this title or no parentage pursuant to chapter 3 of this title shall be required to create parentage in recipient intended parent pursuant to this part.

History.
Acts 2013, ch. 309, § 1.

36-2-402. Part definitions.

As used in this part:

(1) "Embryo" or "human embryo" means an individual fertilized ovum of the human species from the single-cell stage to eight-week development;

(2) "Embryo parentage" means the acceptance of rights and responsibilities for an embryo by a recipient intended parent;

(3) "Embryo relinquishment" or "legal transfer of rights to an embryo" means the relinquishment of rights and responsibilities by the person or persons who hold the legal rights and responsibilities for an embryo;

(4) "Embryo transfer" means the medical procedure of physically placing an embryo into the uterus of a female recipient intended parent;

(5) "Legal embryo custodian" means the person or entity, including an embryo transfer clinic, who hold the legal rights and responsibilities for a human embryo and who relinquishes said embryo to another person; and

(6) "Recipient intended parent" means a person or persons who receive a relinquished embryo and who accepts full legal rights and responsibilities for such embryo and any child that may be born as a result of embryo transfer.

History.
Acts 2013, ch. 309, § 1.

36-2-403. Establishing embryo parentage — Relinquishment of rights and responsibilities.

(a)(1) A legal embryo custodian may relinquish all rights and responsibilities for an embryo prior to embryo transfer. A written contract shall be entered into as appropriate when establishing embryo parentage prior to embryo transfer for the legal transfer of rights to an embryo and to any child that may result from the embryo transfer:

(A) Between legal embryo custodians and the embryo transfer clinic; or

(B) Between a legal embryo custodian and each recipient intended parent.

(2) The contract shall be signed, as appropriate, by each legal embryo custodian for such embryo, by the embryo transfer clinic or by each recipient intended parent in the presence of a notary public. Initials or other designations may be used if the individuals desire anonymity.

(b) If the embryo was created using donor gametes, the sperm or oocyte donors who irrevocably relinquished their rights in connection with in vitro fertilization shall not be entitled to any notice of the embryo relinquishment, nor shall their consent to the embryo relinquishment be required.

(c) Upon embryo relinquishment by each legal embryo custodian pursuant to subsection (a), the legal transfer of rights to an embryo shall be considered complete at the time of thawing or to such other time as the parties may agree, and the embryo transfer shall be authorized.

(d) A child born to a recipient intended parent as the result of embryo relinquishment pursuant to subsection (a) shall be presumed to be the legal child of the recipient intended parent; provided, that each legal embryo custodian and each recipient intended parent has entered into a written contract pursuant to this part.

(e) Any and all prior legal embryo custodians whose donation of an embryo has resulted in the birth of a child to a recipient intended parent pursuant to subsection (a) shall have no rights or responsibilities with such child and of the child to them.

History.
Acts 2013, ch. 309, § 1.

CHAPTER 3

MARRIAGE

Part 1. License

SECTION.

36-3-101. Prohibited degrees of relationship.
36-3-102. Second marriage before dissolution of first prohibited — Effect of absence for five years.
36-3-103. License required — County of issuance.
36-3-104. Conditions precedent to issuance of license.
36-3-105. Minimum age of applicant for license.

SECTION.
36-3-106. Consent of parent, guardian, next of kin, agency or custodian.
36-3-107. Waiver of age requirements and waiting period.
36-3-108. [Repealed.]
36-3-109. Issuance of license to drunks, insane persons or imbeciles forbidden.
36-3-110. Contest of issuance.
36-3-111. County clerk violating law — Penalty.
36-3-112. Fraudulently signing or using false documents — Misdemeanor.
36-3-113. Marriage between one man and one woman only legally recognized marital contract.

Part 2. Pre-Marital Medical Examination [Repealed]

36-3-201 — 36-3-210. [Repealed.]

Part 3. Ceremony

36-3-301. Persons who may solemnize marriages.
36-3-302. Formula not required.
36-3-303. Return of license to clerk — Penalty for failure to return — Society of Friends.
36-3-304. Form of certificate.
36-3-305. Solemnizing marriage between incapable persons — Misdemeanor.
36-3-306. Marriage consummated by ceremony not invalidated by failure to comply with law — Restriction.
36-3-307. Nickname in license does not invalidate marriage.
36-3-308. Marriages during War Between the States validated.

Part 4. Breach of Marriage Contract

36-3-401. Proof of contract.
36-3-402. Plaintiff's testimony — Corroboration required.
36-3-403. Questions considered in determining damages.
36-3-404. Measure of damages when defendant over sixty years of age.
36-3-405. Joinder with other actions prohibited.

Part 5. Property Rights of Spouses

36-3-501. Enforcement of antenuptial agreements.
36-3-502. Creditor's rights.
36-3-503. Antenuptial debts of wife — Nonliability of husband.
36-3-504. Disabilities of coverture removed from married women — Statute of limitations.
36-3-505. Tenancies by entirety unaffected.

Part 6. Domestic Abuse

36-3-601. Part definitions.
36-3-602. Application of part — Venue. [Effective until January 1, 2017. See version effective on January 1, 2017.]
36-3-602. Application of part — Venue. [Effective on January 1, 2017. See version effective until January 1, 2017.]
36-3-603. Duration of protection order — Petition for protection order in divorce action.
36-3-604. Forms.
36-3-605. Protection order — Extension — Hearing.
36-3-606. Scope of protection order.
36-3-607. Bond not required.
36-3-608. Duration of protection order — Modification.
36-3-609. Copies of protection order to be issued.
36-3-610. Violation of order or consent agreement — Civil or criminal contempt — Financial penalty.
36-3-611. Arrest for violation of protection order.
36-3-612. Violation of protection order or restraining order — Elements — Arrest — Notification to protected party — Continued validity and enforceability.
36-3-613. Leaving residence or use of necessary force — Right to relief unaffected.
36-3-614. Failure to contest parentage — Parentage tests and comparisons.
36-3-615. Notification to victim that family or household member arrested for assault may be released on bond.
36-3-616. Domestic violence community education fund.
36-3-617. Protection order — Filing costs and assistance.
36-3-618. Purpose — Legislative intent.
SECTION.
36-3-619. Officer response — Primary aggressor — Factors — Reports — Notice to victim of legal rights. [Effective until January 1, 2017. See version effective on January 1, 2017.]
36-3-619. Officer response — Primary aggressor — Factors — Reports — Notice to victim of legal rights. [Effective on January 1, 2017. See version effective until January 1, 2017.]
36-3-620. Seizure of weapons in possession of alleged domestic abuser.
36-3-621. [Repealed.]
36-3-622. Out-of-state protection orders.
36-3-623. Confidentiality of records of shelters or centers.
36-3-624. Death review teams established — Protocol — Composition of teams — Disclosure of communications — Authority to subpoena.
36-3-625. Disclosures to respondent regarding firearms possession upon issuance of an order of protection — Orders and instructions to respondent — Affidavit of firearms dispossession — Lawful means of dispossession of firearms — Offense of failure to dispossess firearms.

Part 7. Alienation of Affections

36-3-701. Tort action abolished.

PART 1

LICENSE

36-3-101. Prohibited degrees of relationship.

Marriage cannot be contracted with a lineal ancestor or descendant, nor the lineal ancestor or descendant of either parent, nor the child of a grandparent, nor the lineal descendants of husband or wife, as the case may be, nor the husband or wife of a parent or lineal descendant.

History.
Code 1858, § 2436 (deriv. Acts 1829, ch. 23, § 18); Shan., § 4185; Code 1932, § 8408; T.C.A. (orig. ed.), § 36-401.

36-3-102. Second marriage before dissolution of first prohibited — Effect of absence for five years.

A second marriage cannot be contracted before the dissolution of the first. But the first shall be regarded as dissolved, for this purpose, if either party has been absent five (5) years, and is not known to the other to be living.

History.
Code 1858, § 2438 (deriv. Acts 1829, ch. 23, § 16); Shan., § 4188; Code 1932, § 8411; T.C.A. (orig. ed.), § 36-404.

36-3-103. License required — County of issuance.

(a) Before being joined in marriage, the parties shall present to the minister or officer a license under the hand of a county clerk in this state, directed to such minister or officer, authorizing the solemnization of a marriage between the parties. Such license shall be valid for thirty (30) days from its issuance by the clerk.

(b) All existing marriages that occurred before March 24, 1986, are validated if a marriage certificate was signed by the county clerk either from a county in which the female did not reside or from a county where the marriage was not solemnized.

(c)(1) The county clerk issuing a marriage license is hereby authorized to record and certify any license used to solemnize a marriage that is properly signed by the officiant when such license is returned to the issuing county clerk. The issuing county clerk shall forward the record to the office of vital records to be filed and registered with such office. If a license issued by a county clerk in Tennessee is used to solemnize a marriage outside Tennessee, such marriage and parties, their property and their children shall have the same status as if the marriage were solemnized in this state. A county clerk is prohibited from issuing a license for a marriage that is prohibited in this state.

(2) All existing marriages occurring prior to May 2, 1989, by the authority of a Tennessee license, properly signed and certified by the officiant, are validated and the issuing clerk is authorized to record such license when it is returned to the issuing county clerk and to forward the record to the office of vital records to be filed and registered with such office.

History.
Code 1858, § 2441 (deriv. Acts 1778, ch. 7, §§ 2, 3); Shan., § 4191; Code 1932, § 8414; Acts 1976, ch. 539; § 1; T.C.A. (orig. ed.), § 36-405; Acts 1986, ch. 582, §§ 1, 2; 1989, ch. 224, § 1; 1996, ch. 1031, § 2.

36-3-104. Conditions precedent to issuance of license.

(a) No county clerk or deputy clerk shall issue a marriage license until the applicants make an application in writing, stating the names, ages, addresses and social security numbers of both the proposed male and female contracting parties and the names and addresses of the parents, guardian or next of kin of both parties. The application shall be sworn to by both applicants. Should either individual be incarcerated, the inmate shall not be made to appear but shall submit a notarized statement containing the name, age, current address and a name and address of the individual's parents, guardian or next of kin. If an applicant has a disability that prevents the applicant from appearing, the applicant may submit a notarized statement containing the person's name, age, current address and the names and address of the parents, guardian or next of kin.

(b)(1) If either applicant is under eighteen (18) years of age, the application shall remain on file, open to the public, in the office of the county clerk for three (3) full days before issuance of the license. No waiting period shall apply if both parents, the guardian or the next of kin of any minor applicant join in the application. No waiting period shall apply if both applicants are eighteen (18) years of age or over.

(2) If either applicant is under eighteen (18) years of age, immediately upon filing of the application, the county clerk shall cause to be sent by registered mail to the parents, guardian or next of kin of any minor applicant, a notice of the application. This subdivision (b)(2) shall not apply if both parents, the guardian or the next of kin of any minor applicant join in the application.

(3) The parents, guardian or next of kin of an applicant may join in the application either by personal appearance before the county clerk or deputy county clerk, or by submitting a sworn and notarized affidavit.

History.
Acts 1937, ch. 81, § 2; C. Supp. 1950, § 8414.2; modified; Acts 1959, ch. 124, § 1; 1965, ch. 59, §§ 1, 2; 1971, ch. 60, §§ 1, 2; 1976, ch. 755, § 1; T.C.A. (orig. ed.), § 36-406; Acts 1993, ch. 418, § 2; 1994, ch. 639, § 1; 1995, ch. 241, §§ 1, 2; 1997, ch. 551, § 30.

36-3-105. Minimum age of applicant for license.

(a) It is unlawful for any county clerk or deputy clerk in this state to issue a marriage license to any person where either of the contracting parties is under sixteen (16) years of age, except as provided in this part.

(b) Any marriage contracted in violation of subsection (a) may be annulled upon proper proceedings therefor by such person or any interested person acting in the person's behalf.

History.
Acts 1937, ch. 81, § 1; C. Supp. 1950, § 8414.1; T.C.A. (orig. ed.), § 36-407.

36-3-106. Consent of parent, guardian, next of kin, agency or custodian.

(a) When either applicant is under eighteen (18) years of age, the parents, guardian, next of kin or party having custody of the applicant shall join in the application, under oath, stating that the applicant is sixteen (16) years of age or over and that the applicant has such person's consent to marry.

(b) If the applicant is in the legal custody of any public or private agency or is in the legal custody of any person other than a parent, next of kin or guardian, then such person or the duly authorized representative of such agency shall join in the application with the parent, guardian or next of kin stating, under oath, that the applicant is sixteen (16) years of age but less than eighteen (18) years of age and that the applicant has such person's consent to marry. This subsection (b) does not apply to applicants who are in the legal custody of the department of mental health and substance abuse services or the department of intellectual and developmental disabilities.

History.
Acts 1937, ch. 81, § 3; C. Supp. 1950, § 8414.3; modified; Acts 1959, ch. 124, § 2; 1972, ch. 545, § 1; T.C.A. (orig. ed.), § 36-408; Acts 1987, ch. 131, § 1; 2000, ch. 947, § 6; 2010, ch. 1100, § 46; 2012, ch. 575, § 1.

Compiler's Notes.
Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

36-3-107. Waiver of age requirements and waiting period.

(a)(1)(A) Except as provided in subdivision (a)(1)(B), upon good cause, the judge of the probate, juvenile,

circuit or chancery court, or county mayor, shall have the power to suspend the three-day period prescribed in § 36-3-104 or in such person's judgment remove the restriction as to age herein set out, and to authorize the county clerk to issue a marriage license regardless of the waiting period or age limit.

(B)(i) In counties having a population of not less than thirty-four thousand eight hundred fifty (34,850) nor more than thirty-five thousand (35,000), according to the 1990 federal census or any subsequent federal census, upon good cause, the judge of the probate, juvenile, circuit or chancery court shall have the power to suspend the three-day period prescribed in § 36-3-104 or in such person's judgment remove the restriction as to age herein set out, and to authorize the county clerk to issue a marriage license regardless of the waiting period or age limit.

(ii) Subdivision (a)(1)(B)(i) is local in effect, and shall have no effect unless it is approved by a two-thirds (⅔) vote of the legislative body of any county having a population of not less than thirty four thousand eight hundred fifty (34,850) nor more than thirty five thousand (35,000), according to the 1990 federal census or any subsequent federal census. Its approval or non-approval shall be proclaimed by the presiding officer of any county subject to this subdivision (a)(1)(B) and certified by the presiding officer to the secretary of state.

(2)(A) In any county with a metropolitan form of government with a population greater than one hundred thousand (100,000) the county clerk shall, upon good cause, have the power to suspend the three-day period prescribed in § 36-3-104.

(B) Subdivision (a)(2)(A) shall be local in effect and shall become effective in a particular county upon a two-thirds (⅔) majority vote of the county legislative body.

(C) Subdivision (a)(2)(A) does not apply in counties having a population, according to the 1990 federal census or any subsequent federal census, of not less than one hundred three thousand one hundred (103,100) and not more than one hundred three thousand four hundred (103,400).

(b) A petition to a court filed on behalf of an individual under eighteen (18) years of age to waive the age restriction for marriage shall include a statement indicating the filing in any other court of similar petitions requesting such waiver.

History.

Acts 1937, ch. 81, § 3; C. Supp. 1950, § 8414.3; impl. am. Acts 1978, ch. 934, §§ 22, 36; Acts 1981, ch. 159, § 1; T.C.A. (orig. ed.), § 36-409; Acts 1984, ch. 939, § 1; 1990, ch. 894, § 1; 1992, ch. 941, §§ 1-6; 2003, ch. 90, § 2.

Compiler's Notes.

Acts 2003, ch. 90, § 2, directed the code commission to change all references from "county executive" to "county mayor" and to include all such changes in supplements and replacement volumes for the Tennessee Code Annotated.

For table of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

36-3-108. [Repealed.]

Compiler's Notes.

Former § 36-3-108 (Acts 1937, ch. 81, § 3; C. Supp. 1950, § 8414.3; modified; impl. am. Acts 1971, ch. 162, § 3; T.C.A. (orig. ed.), § 36-410), concerning the inapplicability of certain marriage provisions to persons known to be over eighteen (18) years of age, was repealed by Acts 1995, ch. 241, § 3, effective May 15, 1995. For new law, see § 36-3-104.

36-3-109. Issuance of license to drunks, insane persons or imbeciles forbidden.

No license shall be issued when it appears that the applicants or either of them is at the time drunk, insane or an imbecile.

History.

Acts 1937, ch. 81, § 3; C. Supp. 1950, § 8414.3; T.C.A. (orig. ed.), § 36-411.

36-3-110. Contest of issuance.

Any interested person shall have the right to contest the issuance of the marriage license, which contest shall be filed, heard and determined by the judge of the probate court, or judge of the juvenile court, or any judge or chancellor; provided, that such contest shall not be filed without the filing of a cost bond in the sum of at least fifty dollars ($50.00) with solvent sureties executed by the contestant, conditioned as in civil cases, and the cost of such contest shall be adjudged against the losing party.

History.

Acts 1937, ch. 81, § 4; C. Supp. 1950, § 8414.4; T.C.A. (orig. ed.), § 36-412.

36-3-111. County clerk violating law — Penalty.

Any county clerk or deputy clerk who issues a marriage license without compliance with the last sentence in §§ 36-3-103(c)(1), 36-3-104 — 36-3-107, 36-3-109, 36-3-110, or 36-3-113, and not in good faith, commits a Class C misdemeanor.

History.

Acts 1937, ch. 81, § 5; C. Supp. 1950, § 8414.5; Acts 1959, ch. 124, § 3; T.C.A. (orig. ed.), § 36-413; Acts 1989, ch. 591, § 113; 1996, ch. 1031, § 3.

36-3-112. Fraudulently signing or using false documents — Misdemeanor.

Fraudulently signing or knowingly using any false document purporting to be one provided for in § 36-3-104(a) or § 36-3-106 is a Class C misdemeanor.

History.

Acts 1937, ch. 81, § 7; C. Supp. 1950, § 8414.7; T.C.A. (orig. ed.), § 36-414; Acts 1989, ch. 591, § 113.

36-3-113. Marriage between one man and one woman only legally recognized marital contract.

(a) Tennessee's marriage licensing laws reinforce, carry forward, and make explicit the long-standing public policy of this state to recognize the family as essential to social and economic order and the common

good and as the fundamental building block of our society. To that end, it is further the public policy of this state that the historical institution and legal contract solemnizing the relationship of one (1) man and one (1) woman shall be the only legally recognized marital contract in this state in order to provide the unique and exclusive rights and privileges to marriage.

(b) The legal union in matrimony of only one (1) man and one (1) woman shall be the only recognized marriage in this state.

(c) Any policy, law or judicial interpretation that purports to define marriage as anything other than the historical institution and legal contract between one (1) man and one (1) woman is contrary to the public policy of Tennessee.

(d) If another state or foreign jurisdiction issues a license for persons to marry, which marriages are prohibited in this state, any such marriage shall be void and unenforceable in this state.

History.
Acts 1996, ch. 1031, § 1.

Compiler's Notes.
In *Obergefell, et al. v. Hodges*, 576 U.S. —, 2015 U.S. LEXIS 4250 (June 26, 2015), the United States Supreme Court declared this section to be invalid to the extent that it excludes same-sex couples from civil marriage on the same terms and conditions as opposite sex couples, holding that same-sex couples have a fundamental right to marry in all states and that there is no lawful basis for a state to refuse to recognize a lawful same-sex marriage performed in another state on the ground of its same-sex character.

PART 2

PRE-MARITAL MEDICAL EXAMINATION [REPEALED]

36-3-201 — 36-3-210. [Repealed.]

Compiler's Notes.
Former part 2, §§ 36-3-201 — 36-3-210 (Acts 1939, ch. 122, §§ 1-10; 1943, ch. 27, §§ 1, 2; C. Supp. 1950, §§ 8425.1-8425.10 (Williams, §§ 8425.1-8425.10); Acts 1981, ch. 245, §§ 1, 2; T.C.A. (orig. ed), §§ 36-501 — 36-510), concerning pre-marital medical examinations, was repealed by Acts 1985, ch. 13, § 1. For present provisions relating to pregnancy serological tests, see title 68, ch. 5, part 6.

PART 3

CEREMONY

36-3-301. Persons who may solemnize marriages.

(a)(1) All regular ministers, preachers, pastors, priests, rabbis and other spiritual leaders of every religious belief, more than eighteen (18) years of age, having the care of souls, and all members of the county legislative bodies, county mayors, judges, chancellors, former chancellors and former judges of this state, former county executives or county mayors of this state, former members of quarterly county courts or county commissions, the governor, the speaker of the senate and former speakers of the senate, the speaker of the house of representatives and former speakers of the house of representatives, the county clerk of each county, former county clerks of this state who occupied the office of county clerk on or after July 1, 2014, and the mayor of any municipality in the state may solemnize the rite of matrimony. For the purposes of this section, the several judges of the United States courts, including United States magistrates and United States bankruptcy judges, who are citizens of Tennessee are deemed to be judges of this state. The amendments to this section by Acts 1987, ch. 336, which applied provisions of this section to certain former judges, do not apply to any judge who has been convicted of a felony or who has been removed from office.

(2) In order to solemnize the rite of matrimony, any such minister, preacher, pastor, priest, rabbi or other spiritual leader must be ordained or otherwise designated in conformity with the customs of a church, temple or other religious group or organization; and such customs must provide for such ordination or designation by a considered, deliberate, and responsible act.

(3) If any marriage has been entered into by license issued pursuant to this chapter at which any minister officiated before June 1, 1999, such marriage shall not be invalid because the requirements of the preceding subdivision (2) have not been met.

(b) The traditional marriage rite of the Religious Society of Friends (Quakers), whereby the parties simply pledge their vows one to another in the presence of the congregation, constitutes an equally effective solemnization.

(c) Any gratuity received by a county mayor, county clerk, members of the county legislative body, or municipal mayor for the solemnization of a marriage, whether performed during or after such person's regular working hours, shall be retained by such person as personal remuneration for such services, in addition to any other sources of compensation such person might receive, and such gratuity shall not be paid into the county general fund or the treasury of such municipality.

(d) If any marriage has been entered into by license regularly issued at which a county mayor officiated prior to April 24, 1981, such marriage shall be valid and is hereby declared to be in full compliance with the laws of this state.

(e) For the purposes of this section, "retired judges of this state" is construed to include persons who served as judges of any municipal or county court in any county that has adopted a metropolitan form of government and persons who served as county judges (judges of the quarterly county court) prior to the 1978 constitutional amendments.

(f) If any marriage has been entered into by license regularly issued at which a retired judge of this state officiated prior to April 13, 1984, such marriage shall be valid and is hereby declared to be in full compliance with the laws of this state.

(g) If any marriage has been entered into by license issued pursuant to this chapter at which a judicial commissioner officiated prior to March 28, 1991, such marriage is valid and is declared to be in full compliance with the laws of this state.

(h) The judge of the general sessions court of any county, and any former judge of any general sessions court, may solemnize the rite of matrimony in any county of this state. Any marriage performed by any judge of the general sessions court in any county of this state before March 16, 1994, shall be valid and declared to be in full compliance with the laws of this state.

(i) All elected officials and former officials, who are authorized to solemnize the rite of matrimony pursuant to the provisions of subsection (a), may solemnize the rite of matrimony in any county of this state.

(j) If any marriage has been entered into by license issued pursuant to this chapter at which a county mayor officiated outside such mayor's county prior to May 29, 1997, such marriage is valid and is declared to be in full compliance with the laws of this state.

(k) The judge of the municipal court of any municipality, whether elected or appointed, shall have the authority to solemnize the rite of matrimony in any county of the state.

History.
Code 1858, § 2439 (deriv. Acts 1778, ch. 7, § 2; 1845-1846, ch. 145, § 7); Acts 1879, ch. 98, § 1; 1889, ch. 134, § 1; Shan., § 4189; Code 1932, § 8412; Acts 1949, ch. 251, § 4; C. Supp. 1950, § 8412; Acts 1970, ch. 440, § 1; 1973, ch. 66, § 3; impl. am. Acts 1978, ch. 934, § 7; Acts 1979, ch. 87, § 1; 1981, ch. 211, §§ 1, 2; 1983, ch. 331, §§ 1, 2; T.C.A. (orig. ed.), § 36-415; Acts 1984, ch. 516, § 1; 1987, ch. 146, § 1; 1987, ch. 336, §§ 4, 5; 1988, ch. 471, §§ 1, 2; 1991, ch. 86, § 1; 1992, ch. 911, § 1; 1993, ch. 50, § 1; 1994, ch. 619, § 1; 1995, ch. 94, § 1; 1995, ch. 128, § 1; 1997, ch. 295, §§ 1, 2; 1998, ch. 745, §§ 1, 2; 1999, ch. 526, § 1; 2003, ch. 90, § 2; 2003, ch. 376, § 3; 2005, ch. 21, § 1; 2012, ch. 677, § 1; 2014, ch. 747, § 1; 2015, ch. 159, § 1.

Compiler's Notes.
Acts 2003, ch. 90, § 2, directed the code commission to change all references from "county executive" to "county mayor" and to include all such changes in supplements and replacement volumes for the Tennessee Code Annotated.

36-3-302. Formula not required.

No formula need be observed in such solemnization, except that the parties shall respectively declare, in the presence of the minister or officer, that they accept each other as husband and/or wife.

History.
Code 1858, § 2440; Shan., § 4190; Code 1932, § 8413; T.C.A. (orig. ed.), § 36-416.

36-3-303. Return of license to clerk — Penalty for failure to return — Society of Friends.

(a) One authorized by § 36-3-301 who solemnizes the rite of matrimony shall endorse on the license the fact and time of the marriage, and sign the license, and return it to the county clerk within three (3) days from the date of marriage. Every person who fails to make such return of the license commits a Class C misdemeanor.

(b) The functions, duties and liabilities of the party solemnizing marriage as set forth in this part shall, in the case of marriages solemnized among the Religious Society of Friends, be incumbent upon the clerk of the congregation, or in the clerk's absence, the clerk's duly designated alternate.

History.
Code 1858, § 2443 (deriv. Acts 1815, ch. 47, § 1); Acts 1879, ch. 98, § 2; 1889, ch. 134, § 2; 1915, ch. 109, §§ 1, 2; Shan., § 4193; mod. Code 1932, § 8421; Acts 1963, ch. 68, § 1; 1970, ch. 440, § 2; T.C.A. (orig. ed.), § 36-417; Acts 1989, ch. 591, § 113.

36-3-304. Form of certificate.

The clerk shall, on each license, place the following form of certificate, to be signed by the person solemnizing the marriage:

"I solemnize the rite of matrimony between the above (or within) named parties on the __day of __, __."

History.
Code 1858, § 2444; Shan., § 4194; mod. Code 1932, § 8422; T.C.A. (orig. ed.), § 36-418.

36-3-305. Solemnizing marriage between incapable persons — Misdemeanor.

Any such minister or officer who knowingly joins together in matrimony two (2) persons not capable thereof commits a Class C misdemeanor and shall also forfeit and pay the sum of five hundred dollars ($500), to be recovered by action of debt, for the use of the person suing.

History.
Code 1858, § 2446 (deriv. Acts 1778, ch. 7, § 5); Shan., § 4196; mod. Code 1932, § 8423; T.C.A. (orig. ed.), § 36-419; Acts 1989, ch. 591, § 113.

36-3-306. Marriage consummated by ceremony not invalidated by failure to comply with law — Restriction.

Failure to comply with the requirements of §§ 36-3-104 — 36-3-107, 36-3-109 — 36-3-111 shall not affect the validity of any marriage consummated by ceremony. No marriage shall be valid, whether consummated by ceremony or otherwise, if the marriage is prohibited in this state.

History.
Acts 1937, ch. 81, § 6; C. Supp. 1950, § 8414.6; T.C.A. (orig. ed.), § 36-420; Acts 1996, ch. 1031, § 4.

36-3-307. Nickname in license does not invalidate marriage.

Any marriage that may have been or may be celebrated between persons, by license regularly issued, is valid, and the issue thereof is declared legitimate, although the baptismal name of either party may be omitted in the license, or a nickname be used instead thereof; provided, that the parties have consummated the marriage by cohabitation, and can be identified as the persons between whom such marriage was solemnized.

History.
Acts 1870-1871, ch. 100, § 1; Shan., § 4200; mod. Code 1932, § 8425; T.C.A. (orig. ed.), § 36-421.

36-3-308. Marriages during War Between the States validated.

All marriages contracted and entered into during the War Between the States (1861-1865) and duly solem-

nized, are declared valid, and the issue of these marriages are declared legitimate.

History.
Acts 1865-1866, ch. 58, § 1; Shan., § 4199; mod. Code 1932, § 8424; T.C.A. (orig. ed.), § 36-422.

PART 4

BREACH OF MARRIAGE CONTRACT

36-3-401. Proof of contract.

In all actions for damages for the breach of promise or contract of marriage that may hereafter be tried in the courts of this state, unless there is written evidence of such contract, signed by the party against whom the action is brought, the alleged contract must be proved by at least two (2) disinterested witnesses before any recovery may be allowed.

History.
Acts 1949, ch. 161, § 3; C. Supp. 1950, § 8462.3 (Williams, § 9720.7); T.C.A. (orig. ed.), § 36-701.

36-3-402. Plaintiff's testimony — Corroboration required.

In any suit for damages for breach of promise or contract of marriage that may hereafter be tried in the courts of this state, the unsupported testimony of the plaintiff shall not be sufficient to prove such contract, and proof of the association of the parties shall not be sufficient corroboration.

History.
Acts 1949, ch. 161, § 2; C. Supp. 1950, § 8462.2 (Williams, § 9720.6); T.C.A. (orig. ed.), § 36-702.

36-3-403. Questions considered in determining damages.

In all suits for damages for breach of promise or contract of marriage that may hereafter be tried in the courts of this state, the judge hearing the case shall instruct the jury to take into consideration the age and experience of the parties and whether the plaintiff has been previously married. Any previous marriage on the part of such plaintiff shall be considered by the court and jury in mitigation of the damages that might otherwise be allowed.

History.
Acts 1949, ch. 161, § 1; C. Supp. 1950, § 8462.1 (Williams, § 9720.5); T.C.A. (orig. ed.), § 36-703.

36-3-404. Measure of damages when defendant over sixty years of age.

In all suits for damages for breach of promise or contract of marriage that may be tried in the courts of this state, where the defendant is more than sixty (60) years of age at the time the case is tried, proof of damages shall be limited to the actual financial loss of the plaintiff up to the date of the trial and no punitive damages shall be allowed.

History.
Acts 1949, ch. 161, § 4; C. Supp. 1950, § 8462.4 (Williams, § 9720.8); T.C.A. (orig. ed.), § 36-704.

36-3-405. Joinder with other actions prohibited.

No action for the breach of promise of marriage can be joined or tried with any other action for damages.

History.
Acts 1949, ch. 161, § 5; C. Supp. 1950, § 8462.5 (Williams, § 9720.9); T.C.A. (orig. ed.), § 36-705.

PART 5

PROPERTY RIGHTS OF SPOUSES

36-3-501. Enforcement of antenuptial agreements.

Notwithstanding any other law to the contrary, except as provided in § 36-3-502, any antenuptial or prenuptial agreement entered into by spouses concerning property owned by either spouse before the marriage that is the subject of such agreement shall be binding upon any court having jurisdiction over such spouses and/or such agreement if such agreement is determined, in the discretion of such court, to have been entered into by such spouses freely, knowledgeably and in good faith and without exertion of duress or undue influence upon either spouse. The terms of such agreement shall be enforceable by all remedies available for enforcement of contract terms.

History.
Acts 1980, ch. 492, § 1; T.C.A., § 36-606.

36-3-502. Creditor's rights.

(a) No marriage settlement or other marriage contract shall be good against creditors, where a greater value is secured to the intended wife, and the children of the marriage, or either of them, than the portion actually received with the wife in marriage, and such estate as the husband at the time of the husband's marriage shall be possessed of, after deducting the just debts by the husband then due and owing.

(b) In case of any suit upon any such marriage contract, where any creditor is a party, the burden of proof lies upon the person claiming under such marriage contract.

(c) In such case, any legacy given to the wife in general words, and not in trust, or any distributive share in an estate during coverture, shall be taken as a part of the portion received with the wife, and secured to those claiming under the marriage contract, to make up any deficiency created by the claims of creditors on the property conveyed in the marriage contract.

History.
Code 1858, §§ 1767, 1768 (deriv. Acts 1785, ch. 12, § 2); Shan., §§ 3157, 3158; Code 1932, §§ 7839, 7840; T.C.A. (orig. ed.), § 36-605.

36-3-503. Antenuptial debts of wife — Nonliability of husband.

No husband shall be liable for the debts, contracts or obligations of the wife incurred by the wife previous to marriage.

History.
Acts 1877, ch. 79, § 1; Shan., § 4238; mod. 1932, § 8459; T.C.A. (orig. ed.), § 36-604.

36-3-504. Disabilities of coverture removed from married women — Statute of limitations.

(a) Married women are fully emancipated from all disability on account of coverture, and the common law as to the disability of married women and its effects on the rights of property of the wife, is totally abrogated, except as set out in § 36-3-505, and marriage shall not impose any disability or incapacity on a woman as to the ownership, acquisition or disposition of property of any sort, or as to the wife's capacity to make contracts and to do all acts in reference to property that the wife could lawfully do, if the wife were not married, but every woman now married, or hereafter to be married, shall have the same capacity to acquire, hold, manage, control, use, enjoy and dispose of, all property, real and personal, in possession, and to make any contract in reference to it, and to bind herself personally, and to sue and be sued with all the rights and incidents thereof, as if the wife were not married.

(b) All of the statutes of limitation that apply in favor of or against a feme sole, and the feme sole's property, shall apply and operate in favor of or against married women and their property.

History.
Acts 1913, ch. 26, § 1; 1919, ch. 126, §§ 1, 3; Shan. Supp., §§ 4249a4, 4249a4½, 4249a6; mod. Code 1932, §§ 8460, 8462; T.C.A. (orig. ed.), §§ 36-601, 36-603.

36-3-505. Tenancies by entirety unaffected.

Nothing in § 36-3-504 shall be construed as abolishing tenancies by the entirety.

History.
Acts 1919, ch. 126, § 2; Shan. Supp., § 4249a5; mod. Code 1932, § 8461; Acts 1976, ch. 529, § 20; T.C.A. (orig. ed.), § 36-602.

Compiler's Notes.
Acts 1913, ch. 26 was held in *Gill v. McKinney*, 140 Tenn. 549, 205 S.W. 416 (1918) and *Kellar v. Kellar*, 142 Tenn. 524, 221 S.W. 189 (1920) to abolish tenancy by the entireties. Acts 1913 took effect January 1, 1914. Acts 1919, ch. 126 whose effect was to reestablish tenancy by the entireties took effect April 16, 1919. Therefore, there is a hiatus in the estate of tenancy by the entireties, which extends from January 1, 1914, to April 16, 1919, and affects deeds executed in that period. See *Hicks v. Sprankle*, 149 Tenn. 310, 257 S.W. 1044 (1923).

PART 6

DOMESTIC ABUSE

36-3-601. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Abuse" means inflicting, or attempting to inflict, physical injury on an adult or minor by other than accidental means, placing an adult or minor in fear of physical harm, physical restraint, malicious damage to the personal property of the abused party, including inflicting, or attempting to inflict, physical injury on any animal owned, possessed, leased, kept, or held by an adult or minor, or placing an adult or minor in fear of physical harm to any animal owned, possessed, leased, kept, or held by the adult or minor;

(2) "Adult" means any person eighteen (18) years of age or older, or who is otherwise emancipated;

(3)(A) "Court," in counties having a population of not less than two hundred thousand (200,000) nor more than eight hundred thousand (800,000), according to the 1980 federal census or any subsequent federal census, means any court of record with jurisdiction over domestic relation matters;

(B) Notwithstanding subdivision (3)(A), "court," in counties with a metropolitan form of government with a population of more than one hundred thousand (100,000), according to the 1990 federal census or any subsequent federal census, means any court of record with jurisdiction over domestic relation matters and the general sessions court. In such county having a metropolitan form of government, a judicial commissioner may issue an ex parte order of protection. Nothing in this definition may be construed to grant jurisdiction to the general sessions court for matters relating to child custody, visitation, or support;

(C) "Court," in all other counties, means any court of record with jurisdiction over domestic relation matters or the general sessions court;

(D) "Court" also includes judicial commissioners, magistrates and other officials with the authority to issue an arrest warrant in the absence of a judge for purposes of issuing ex parte orders of protection when a judge of one of the courts listed in subdivisions (3)(A), (3)(B) or (3)(C) is not available;

(E) In counties having a population in excess of eight hundred thousand (800,000), according to the 1990 federal census or any subsequent federal census, "court" means any court of record with jurisdiction over domestic relations matters or the general sessions criminal court. In such counties, "court" also includes judicial commissioners, magistrates and other officials with the authority to issue an arrest warrant in the absence of a judge for purposes of issuing any order of protection

pursuant to this part when a judge of one of the courts listed in subdivisions (3)(A), (3)(B) or (3)(C) is not available. Nothing in this definition may be construed to grant jurisdiction to the general sessions court, both criminal and civil, for matters relating to child custody, visitation, or support;

(F) Any appeal from a final ruling on an order of protection by a general sessions court or by any official authorized to issue an order of protection under this subdivision (3) shall be to the circuit or chancery court of the county. Such appeal shall be filed within ten (10) days and shall be heard de novo;

(4) "Domestic abuse" means committing abuse against a victim, as defined in subdivision (5);

(5) "Domestic abuse victim" means any person who falls within the following categories:

(A) Adults or minors who are current or former spouses;

(B) Adults or minors who live together or who have lived together;

(C) Adults or minors who are dating or who have dated or who have or had a sexual relationship. As used herein, "dating" and "dated" do not include fraternization between two (2) individuals in a business or social context;

(D) Adults or minors related by blood or adoption;

(E) Adults or minors who are related or were formerly related by marriage; or

(F) Adult or minor children of a person in a relationship that is described in subdivisions (5)(A)-(E);

(6) "Firearm" means any weapon designed, made or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use;

(7) "Petitioner" means the person alleging domestic abuse, sexual assault or stalking in a petition for an order for protection;

(8) "Preferred response" means law enforcement officers shall arrest a person committing domestic abuse unless there is a clear and compelling reason not to arrest;

(9) "Respondent" means the person alleged to have abused, stalked or sexually assaulted another in a petition for an order for protection;

(10) "Sexual assault victim" means any person, regardless of the relationship with the perpetrator, who has been subjected to, threatened with, or placed in fear of any form of rape, as defined in § 39-13-502, § 39-13-503, § 39-13-506 or § 39-13-522, or sexual battery, as defined in § 39-13-504, § 39-13-505, or § 39-13-527;

(11) "Stalking victim" means any person, regardless of the relationship with the perpetrator, who has been subjected to, threatened with, or placed in fear of the offense of stalking, as defined in § 39-17-315; and

(12) "Weapon" means a firearm or a device listed in § 39-17-1302(a)(1)-(7).

History.

Acts 1979, ch. 350, § 1; T.C.A., § 36-1201; Acts 1988, ch. 925, §§ 1, 2; 1991, ch. 380, § 1; 1994, ch. 764, § 1; 1995, ch. 507, § 3; 1996, ch. 684, § 1; 1997, ch. 96, § 1; 1997, ch. 211, § 1; 1997, ch. 459, §§ 1, 2; 1998, ch. 887, §§ 1, 2; 2001, ch. 96, §§ 1-3; 2002, ch. 646, §§ 1, 2; 2005, ch. 381, §§ 1, 2; 2007, ch. 348, § 1; 2007, ch. 352, § 1.

Compiler's Notes.

For table of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

36-3-602. Application of part — Venue. [Effective until January 1, 2017. See version effective on January 1, 2017.]

(a) Any domestic abuse victim, stalking victim or sexual assault victim who has been subjected to, threatened with, or placed in fear of, domestic abuse, stalking, or sexual assault, may seek relief under this part by filing a sworn petition alleging domestic abuse, stalking, or sexual assault by the respondent.

(b) Any petition filed by an unemancipated person under eighteen (18) years of age shall be signed by one (1) of that person's parents or by that person's guardian. The petition may also be signed by a caseworker at a not-for-profit organization that receives funds pursuant to title 71, chapter 6, part 2 for family violence and child abuse prevention and shelters; provided, however, that a petition signed by a caseworker may not be filed against the unemancipated minor's parent or legal guardian. In such case, unless the court finds that the action would create a threat of serious harm to the minor, a copy of the petition, notice of hearing and any ex parte order of protection shall also be served on the parents of the minor child, or if the parents are not living together and jointly caring for the child, upon the primary residential parent. In cases before the juvenile court where the department of children's services is a party or where a guardian ad litem has been appointed for the child by the juvenile court, the petition may be filed on behalf of the unemancipated person by the department or the guardian ad litem.

(c) Venue for a petition for an order of protection, and all other matters relating to orders of protection, shall be in the county where the respondent resides or the county in which the domestic abuse, stalking or sexual assault occurred. If the respondent is not a resident of Tennessee, the petition may be filed in the county where the petitioner resides.

History.

Acts 1979, ch. 350, §§ 3, 16; T.C.A., § 36-1203; Acts 1987, ch. 270, § 1; 1997, ch. 211, § 2; 1997, ch. 459, § 2; 2002, ch. 646, § 3; 2005, ch. 75, § 2; 2005, ch. 257, § 1; 2005, ch. 381, § 3; 2006, ch. 871, § 1; 2007, ch. 348, § 2.

36-3-602. Application of part — Venue. [Effective on January 1, 2017. See version effective until January 1, 2017.]

(a) Any domestic abuse victim, stalking victim or sexual assault victim who has been subjected to, threatened with, or placed in fear of, domestic abuse, stalking, or sexual assault, may seek relief under this part by filing a sworn petition alleging domestic abuse, stalking, or sexual assault by the respondent.

(b) Any petition filed by an unemancipated person under eighteen (18) years of age shall be signed by one (1) of that person's parents or by that person's guardian. The petition may also be signed by a caseworker at a not-for-profit organization that receives funds pursuant to title 71, chapter 6, part 2 for family violence and child abuse prevention and shelters; provided, however, that a petition signed by a caseworker may not be filed against the unemancipated minor's parent or legal guardian. In such case, unless the court finds that the action would create a threat of serious harm to the minor, a copy of the petition, notice of hearing and any ex parte order of protection shall also be served on the parents of the minor child, or if the parents are not living together and jointly caring for the child, upon the primary residential parent. In cases before the juvenile court where the department of children's services is a party or where a guardian ad litem has been appointed for the child by the juvenile court, the petition may be filed on behalf of the unemancipated person by the department or the guardian ad litem.

(c)(1) A temporary order of protection shall be issued against a respondent pursuant to § 36-3-605 if, at the respondent's initial appearance following an arrest for a crime involving domestic abuse, the court finds there is probable cause to believe the respondent either:

(A) Caused serious bodily injury, as defined in § 39-11-106, to the alleged domestic abuse victim; or

(B) Used or displayed a deadly weapon, as defined in § 39-11-106.

(2) The alleged domestic abuse victim does not need to be present at the time the temporary order of protection is issued.

(3) A hearing on whether the temporary order of protection should be dissolved, extended, or modified shall be held within fifteen (15) days of service of the temporary order of protection upon the respondent. The domestic abuse victim shall have the right to notice of the hearing and the right to be present at the hearing. The procedures set forth in § 36-3-605 shall apply.

(4) The temporary order of protection may include any relief available under an ex parte order of protection issued pursuant to § 36-3-605.

(d) Venue for a petition for an order of protection, and all other matters relating to orders of protection, shall be in the county where the respondent resides or the county in which the domestic abuse, stalking or sexual assault occurred. If the respondent is not a resident of Tennessee, the petition may be filed in the county where the petitioner resides.

History.

Acts 1979, ch. 350, §§ 3, 16; T.C.A., § 36-1203; Acts 1987, ch. 270, § 1; 1997, ch. 211, § 2; 1997, ch. 459, § 2; 2002, ch. 646, § 3; 2005, ch. 75, § 2; 2005, ch. 257, § 1; 2005, ch. 381, § 3; 2006, ch. 871, § 1; 2007, ch. 348, § 2; 2016, ch. 906, § 2.

Compiler's Notes.

Acts 2016, ch. 906, § 1 provided that the act, which amended this section, shall be known and may be cited as the "Public Safety Act of 2016."

36-3-603. Duration of protection order — Petition for protection order in divorce action.

(a) If an order of protection is ordered by a court and either the petitioner or respondent files a complaint for divorce, the order of protection shall remain in effect until the court in which the divorce action lies modifies or dissolves the order.

(b) Nothing in this section shall prohibit a petitioner from requesting relief under this section in a divorce action.

History.

Acts 1979, ch. 350, § 2; T.C.A., § 36-1202; Acts 1986, ch. 715, § 1.

36-3-604. Forms.

(a)(1) The office of the clerk of court shall provide forms that may be necessary to seek a protection order under this part. These forms shall be limited to use in causes filed under this part and they shall be made available to all who request assistance in filing a petition. The clerk may obtain the most current forms by printing them from the web site of the administrative office of the courts.

(2) The petitioner is not limited to the use of these forms and may present to the court any legally sufficient petition in whatever form. The office of the clerk shall also assist a person who is not represented by counsel by filling in the name of the court on the petition, by indicating where the petitioner's name shall be filled in, by reading through the petition form with the petitioner, and by rendering any other assistance that is necessary for the filing of the petition. All such petitions that are filed pro se shall be liberally construed procedurally in favor of the petitioner.

(b) The administrative office of the courts, in consultation with the domestic violence coordinating council, shall develop a petition for orders of protection form, an amended order of protection form, an ex parte order of protection form and other forms that are found to be necessary and advisable. These forms shall be revised as the laws relative to orders of protection and ex parte orders of protection are amended by the general assembly. To the extent possible, the forms shall be uniform with those promulgated by surrounding states so that Tennessee forms may be afforded full faith and credit.

(c) The administrative office of the courts shall revise the petition for an order of protection form to fully advise the respondent of this part in language substantially similar to the following:

(1) If the order of protection is granted in a manner that fully complies with 18 U.S.C. § 922(g)(8), the respondent is required to terminate physical possession by any lawful means, such as transferring possession to a third party who is not prohibited from possessing firearms, of all firearms that the respondent possesses within forty-eight (48) hours of the granting of the order;

(2) It is a criminal offense for a person subject to an order of protection that fully complies with 18 U.S.C. § 922(g)(8), to possess a firearm while that

order is in effect; and

(3) The issuance of an order of protection may terminate or, at least, suspend the individual's right to purchase or possess a firearm.

(d) These forms shall be used exclusively in all courts exercising jurisdiction over orders of protection.

History.

Acts 1979, ch. 350, § 4; 1982, ch. 935, § 1; T.C.A., § 36-1204; Acts 1987, ch. 270, §§ 2-5; 1995, ch. 410, § 2; 1995, ch. 456, § 6; 1996, ch. 684, § 5; 1997, ch. 211, § 3; 1998, ch. 715, § 1; 1999, ch. 344, § 3; 2000, ch. 638, § 2; 2001, ch. 319, § 1; 2009, ch. 455, § 1; 2010, ch. 959, § 2.

Compiler's Notes.

Acts 1999, ch. 344, § 6 provided that for the purpose of the preparation of a standardized affidavit form for directors of rape crisis centers and domestic violence shelters for use as a protection document by Tennessee task force against domestic violence, the act would take effect on June 14, 1999; however, for all other purposes, the act would take effect on July 1, 1999.

Acts 2000, ch. 638, § 3 provided that the Order of Protection forms in existence on April 10, 2000, may continue to be used provided the change required by the 2000 amendment to this section is made on the form prior to its use. All Order of Protection forms printed after April 10, 2000, shall reflect the changes made by the amendment to this section by the act, as well as the new century.

Acts 2001, ch. 319, § 2, provided that, for the purposes of the supreme court consulting and promulgating the specified forms, this section shall take effect May 30, 2001, and that any forms so promulgated shall take effect as provided in the supreme court rule.

The "Petition for Orders of Protection" form, "Amended Order of Protection" form, and "Ex Parte Order of Protection" form, referred to in subsection (b), have been revised. Copies may be obtained through the Administrative Office of the Courts, Suite 600, Nashville City Center, 511 Union Street, Nashville, TN 37243-0607; Phone: (615) 741-2687; Fax: (615) 532-9818; (http://www.tsc.state.tn.us).

36-3-605. Protection order — Extension — Hearing.

(a) Upon the filing of a petition under this part, the courts may immediately, for good cause shown, issue an ex parte order of protection. An immediate and present danger of abuse to the petitioner shall constitute good cause for purposes of this section.

(b) Within fifteen (15) days of service of such order on the respondent under this part, a hearing shall be held, at which time the court shall either dissolve any ex parte order that has been issued, or shall, if the petitioner has proved the allegation of domestic abuse, stalking or sexual assault by a preponderance of the evidence, extend the order of protection for a definite period of time, not to exceed one (1) year, unless a further hearing on the continuation of such order is requested by the respondent or the petitioner; in which case, on proper showing of cause, such order may be continued for a further definite period of one (1) year, after which time a further hearing must be held for any subsequent one-year period. Any ex parte order of protection shall be in effect until the time of the hearing, and, if the hearing is held within fifteen (15) days of service of such order, the ex parte order shall continue in effect until the entry of any subsequent order of protection issued pursuant to § 36-3-609. If no ex parte order of protection has been issued as of the time of the hearing, and the petitioner has proven the allegation of domestic abuse, stalking or sexual assault by a preponderance of the evidence, the court may, at that time, issue an order of protection for a definite period of time, not to exceed one (1) year.

(c) The court shall cause a copy of the petition and notice of the date set for the hearing on such petition, as well as a copy of any ex parte order of protection, to be served upon the respondent at least five (5) days prior to such hearing. An ex parte order issued pursuant to this part shall be personally served upon the respondent. However, if the respondent is not a resident of Tennessee, the ex parte order shall be served pursuant to §§ 20-2-215 and 20-2-216. Such notice shall advise the respondent that the respondent may be represented by counsel. In every case, unless the court finds that the action would create a threat of serious harm to the minor, when a petitioner is under eighteen (18) years of age, a copy of the petition, notice of hearing and any ex parte order of protection shall also be served on the parents of the minor child, or in the event that the parents are not living together and jointly caring for the child, upon the primary residential parent, pursuant to the requirements of this section.

(d) Within the time the order of protection is in effect, any court of competent jurisdiction may modify the order of protection, either upon the court's own motion or upon motion of the petitioner. If a respondent is properly served and afforded the opportunity for a hearing pursuant to § 36-3-612, and is found to be in violation of the order, the court may extend the order of protection up to five (5) years. If a respondent is properly served and afforded the opportunity for a hearing pursuant to § 36-3-612, and is found to be in a second or subsequent violation of the order, the court may extend the order of protection up to ten (10) years. No new petition is required to be filed in order for a court to modify an order or extend an order pursuant to this subsection (d).

History.

Acts 1979, ch. 350, § 5; T.C.A., § 36-1205; Acts 1987, ch. 270, § 6; 1997, ch. 459, §§ 2, 4, 5; 1998, ch. 715, § 2; 2004, ch. 588, § 2; 2005, ch. 75, § 1; 2005, ch. 381, § 4; 2006, ch. 676, § 1; 2006, ch. 871, § 2; 2007, ch. 348, § 4.

Compiler's Notes.

Acts 2004, ch. 588, § 3 provided that, for the purpose of changing any forms necessary to implement the provisions of the act, the act shall take effect May 3, 2004; for all other purposes, it shall take effect on July 1, 2004.

36-3-606. Scope of protection order.

(a) A protection order granted under this part to protect the petitioner from domestic abuse, stalking or sexual assault may include, but is not limited to:

(1) Directing the respondent to refrain from committing domestic abuse, stalking or sexual assault or threatening to commit domestic abuse, stalking or sexual assault against the petitioner or the petitioner's minor children;

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

(3) Prohibiting the respondent from stalking the

petitioner, as defined in § 39-17-315;

(4) Granting to the petitioner possession of the residence or household to the exclusion of the respondent by evicting the respondent, by restoring possession to the petitioner, or by both;

(5) Directing the respondent to provide suitable alternate housing for the petitioner when the respondent is the sole owner or lessee of the residence or household;

(6) Awarding temporary custody of, or establishing temporary visitation rights with regard to, any minor children born to or adopted by the parties;

(7) Awarding financial support to the petitioner and such persons as the respondent has a duty to support. Except in cases of paternity, the court shall not have the authority to order financial support unless the petitioner and respondent are legally married. Such order may be enforced pursuant to chapter 5 of this title;

(8) Directing the respondent to attend available counseling programs that address violence and control issues or substance abuse problems. A violation of a protection order or part of such order that directs counseling pursuant to this subdivision (a)(8) may be punished as criminal or civil contempt. Section 36-3-610(a) applies with respect to a non-lawyer general sessions judge who holds a person in criminal contempt for violating this subdivision (a)(8);

(9) Directing the care, custody, or control of any animal owned, possessed, leased, kept, or held by either party or a minor residing in the household. In no instance shall the animal be placed in the care, custody, or control of the respondent, but shall instead be placed in the care, custody or control of the petitioner or in an appropriate animal foster situation;

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

(11) Directing the respondent to pay the petitioner all costs, expenses and fees pertaining to the petitioner's breach of a lease or rental agreement for residential property if the petitioner is a party to the lease or rental agreement and if the court finds that continuing to reside in the rented or leased premises may jeopardize the life, health and safety of the petitioner or the petitioner's children. Nothing in this subdivision (a)(11) shall be construed as altering the terms of, liability for, or parties to such lease or rental agreement.

(b) Relief granted pursuant to subdivisions (a)(4)-(8) shall be ordered only after the petitioner and respondent have been given an opportunity to be heard by the court.

(c) Any order of protection issued under this part shall include the statement of the maximum penalty that may be imposed pursuant to § 36-3-610 for violating such order.

(d) No order of protection made under this part shall in any manner affect title to any real property.

(e) [Deleted by 2016 amendment.]

(f) An order of protection issued pursuant to this part shall be valid and enforceable in any county of this state.

(g) An order of protection issued pursuant to this part that fully complies with 18 U.S.C. § 922(g)(8) shall contain the disclosures set out in § 36-3-625(a).

History.

Acts 1979, ch. 350, §§ 6-8; T.C.A., §§ 36-1206 —36-1208; Acts 1987, ch. 270, §§ 7, 12; 1991, ch. 380, § 4; 1995, ch. 507, § 4; 1996, ch. 684, § 2; 1996, ch. 734, § 1, 2; 1997, ch. 459, §§ 2, 3; 2001, ch. 352, § 2; 2005, ch. 381, § 5; 2007, ch. 352, § 2; 2009, ch. 455, § 2; 2010, ch. 959, § 1; 2010, ch. 981, § 1; 2011, ch. 253, § 1; 2011, ch. 402, § 2; 2016, ch. 865, § 1.

36-3-607. Bond not required.

The court shall not require the execution of a bond by the petitioner to issue any order of protection under this part.

History.

Acts 1979, ch. 350, § 9; T.C.A., § 36-1209.

36-3-608. Duration of protection order — Modification.

(a) All orders of protection shall be effective for a fixed period of time, not to exceed one (1) year.

(b) The court may modify its order at any time upon subsequent motion filed by either party together with an affidavit showing a change in circumstances sufficient to warrant the modification.

History.

Acts 1979, ch. 350, § 10; T.C.A., § 36-1210.

36-3-609. Copies of protection order to be issued.

(a) If the respondent has been served with a copy of the petition, notice of hearing, and any ex parte order issued pursuant to § 36-3-605(c), any subsequent order of protection shall be effective when the order is entered. For purposes of this section, an order shall be considered entered when such order is signed by:

(1) The judge and all parties or counsel;

(2) The judge and one party or counsel and contains a certificate of counsel that a copy of the proposed order has been served on all other parties or counsel; or

(3) The judge and contains a certificate of the clerk that a copy has been served on all other parties or counsel.

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

(c) Notwithstanding when an order is considered entered under subsection (a), if the court finds that the

protection of the petitioner so requires, the court may order, in the manner provided by law or rule, that the order of protection take effect immediately.

(d) If the respondent has been served with a copy of the petition, notice of hearing, and any ex parte order issued pursuant to § 36-3-605(c), an order of protection issued pursuant to this part after a hearing shall be in full force and effect against the respondent from the time it is entered regardless of whether the respondent is present at the hearing.

(e) A copy of any order of protection and any subsequent modifications or dismissal shall be issued to the petitioner, the respondent, the local law enforcement agencies having jurisdiction in the area where the petitioner resides, and any court other than the issuing court in which the respondent and petitioner are parties to an action. The petitioner and respondent shall notify the judge of any such court. Upon receipt of the copy of the order of protection or dismissal from the issuing court or clerk's office, the local law enforcement agency shall take any necessary action to immediately transmit it to the national crime information center.

History.

Acts 1979, ch. 350, § 11; T.C.A., § 36-1211; Acts 1987, ch. 270, § 8; 1993, ch. 484, § 2; 2000, ch. 638, § 1; 2000, ch. 781, § 1; 2004, ch. 588, § 1; 2011, ch. 39, § 1; 2014, ch. 993, § 1; 2016, ch. 720, § 2.

Compiler's Notes.

Acts 2000, ch. 638, § 3 provided that the Order of Protection forms in existence on April 10, 2000, may continue to be used provided the change required by the 2000 amendment to § 36-3-604 is made on the form prior to its use. All Order of Protection forms printed after April 10, 2000, shall reflect the changes made to former § 36-3-604(b)(3) by the act, as well as the new century.

Acts 2004, ch. 588, § 3 provided that, for the purpose of changing any forms necessary to implement the provisions of the act, the act shall take effect May 3, 2004; for all other purposes, it shall take effect on July 1, 2004.

36-3-610. Violation of order or consent agreement — Civil or criminal contempt — Financial penalty.

(a) Upon violation of the order of protection or a court-approved consent agreement, the court may hold the defendant in civil or criminal contempt and punish the defendant in accordance with the law. A judge of the general sessions court shall have the same power as a court of record to punish the defendant for contempt when exercising jurisdiction pursuant to this part or when exercising concurrent jurisdiction with a court of record. A judge of the general sessions court who is not a licensed attorney shall appoint an attorney referee to hear charges of criminal contempt.

(b)(1) In addition to the authorized punishments for contempt of court, the judge may assess any person who violates an order of protection or a court-approved consent agreement a civil penalty of fifty dollars ($50.00). The judge may further order that any support payment made pursuant to an order of protection or a court-approved consent agreement be made under an income assignment to the clerk of court.

(2) The judge upon finding a violation of an order of protection or a court-approved consent order shall require a bond of the respondent until such time as the order of protection expires. Such bond shall not be less than two thousand five hundred dollars ($2,500) and shall be payable upon forfeit as provided. Bond shall be set at whatever the court determines is necessary to reasonably assure the safety of the petitioner as required. Any respondent for whom bond has been set may deposit with the clerk of the court before which the proceeding is pending a sum of money in cash equal to the amount of the bond. The clerk of the court may deposit funds received in lieu of bonds, or any funds received from the forfeiture of bonds, in an interest bearing account. Any interest received from such accounts shall be payable to the office of the clerk. Failure to comply with this subsection (b) may be punished by the court as a contempt of court as provided in title 29, chapter 9.

(3) If a respondent posting bond under this subsection (b) does not comply with the conditions of the bond, the court having jurisdiction shall enter an order declaring the bond to be forfeited. Notice of the order of forfeiture shall be mailed forthwith by the clerk to the respondent at the respondent's last known address. If the respondent does not within thirty (30) days from the date of the forfeiture satisfy the court that compliance with the conditions of the bond was met, the court shall enter judgment for the state against the defendant for the amount of the bond and costs of the court proceedings. The judgment and costs may be enforced and collected in the same manner as a judgment entered in a civil action.

(4) Nothing in this section shall be construed to limit or affect any remedy in effect on July 1, 2010.

(c) Upon collecting the civil penalty imposed by subsection (b), the clerk shall, on a monthly basis, send the money to the state treasurer who shall deposit it in the domestic violence community education fund created by § 36-3-616.

(d) The proceeds of a judgment for the amount of the bond pursuant to this section shall be paid quarterly to the administrative office of the courts. The quarterly payments shall be due on the fifteenth day of the fourth month of the year; the fifteenth day of the sixth month; the fifteenth day of the ninth month; and on the fifteenth day of the first month of the next succeeding year. The proceeds shall be allocated equally on an annual basis as follows:

(1) To provide legal representation to low-income Tennesseans in civil matters in such manner as determined by the supreme court as described in § 16-3-808(c); provided, that one fourth (¼) of such funds shall be allocated to an appropriate statewide nonprofit organization capable of providing continuing legal education, technology support, planning assistance, resource development and other support to organizations delivering civil legal representation to indigents. The remainder shall be distributed to organizations delivering direct assistance to clients with Legal Services Corporation funding as referenced in the Tennessee State Plan for Civil Legal Justice approved in March, 2001, by the Legal Services Corporation;

(2) To the domestic violence state coordinating council, created by title 38, chapter 12;

(3) To the Tennessee Court Appointed Special Advocates Association (CASA); and

(4) To Childhelp.

History.
Acts 1979, ch. 350, § 12; T.C.A., § 36-1212; Acts 1989, ch. 297, § 1; 1994, ch. 858, § 1; 1995, ch. 127, § 1; 2010, ch. 1094, §§ 1, 2.

Compiler's Notes.
Acts 1994, ch. 858, § 3 provided that (b) and (c) shall apply to violations of orders of protection or court-approved consent agreements occurring on or after July 1, 1994.

For the Preamble to the act concerning violations of orders of protection, please refer to Acts 2010, ch. 1094.

36-3-611. Arrest for violation of protection order.

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

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

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

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

(b) No ex parte order of protection can be enforced by arrest under this section until the respondent has been served with the order of protection or otherwise has acquired actual knowledge of such order.

History.
Acts 1979, ch. 350, § 13; T.C.A., § 36-1213; Acts 1987, ch. 270, §§ 9, 10.

36-3-612. Violation of protection order or restraining order — Elements — Arrest — Notification to protected party — Continued validity and enforceability.

(a) A person arrested for the violation of an order of protection issued pursuant to this part or a restraining order or court-approved consent agreement, shall be taken before a magistrate or the court having jurisdiction in the cause without unnecessary delay to answer a charge of contempt for violation of the order of protection, restraining order or court-approved consent agreement, and the court shall:

(1) Notify the clerk of the court having jurisdiction in the cause to set a time certain for a hearing on the alleged violation of the order of protection, restraining order or court-approved consent agreement within ten (10) working days after arrest, unless extended by the court on the motion of the arrested person;

(2) Set a reasonable bond pending the hearing on the alleged violation of the order of protection, restraining order or court-approved consent agreement; and

(3) Notify the person to whom the order of protection, restraining order or court-approved consent agreement was issued to protect and direct the party to show cause why a contempt order should issue.

(b) Either the court that originally issued the order of protection or restraining order or a court having jurisdiction over orders of protection or restraining orders in the county where the alleged violation of the order occurred shall have the authority and jurisdiction to conduct the contempt hearing required by subsection (a). If the violation is of a court-approved consent agreement, the same court that approved the agreement shall conduct the contempt hearing for any alleged violation of it. If the court conducting the contempt hearing is not the same court that originally issued the order of protection or restraining order, the court conducting the hearing shall have the same authority to punish as contempt a violation of the order of protection or restraining order as the court originally issuing the order.

History.
Acts 1979, ch. 350, § 14; T.C.A., § 36-1214; Acts 1987, ch. 270, § 11; 1999, ch. 482, § 1; 2005, ch. 394, § 1; 2006, ch. 920, § 2.

36-3-613. Leaving residence or use of necessary force — Right to relief unaffected.

(a) The petitioner's right to relief under this part is not affected by the petitioner's leaving the residence or household to avoid domestic abuse, stalking or sexual assault.

(b) The petitioner's right to relief under this part is not affected by use of such physical force against the respondent as is reasonably believed to be necessary to defend the petitioner or another from imminent physical injury, domestic abuse, or sexual assault.

History.
Acts 1979, ch. 350, § 15; T.C.A., § 36-1215; Acts 1997, ch. 459, § 2; 2005, ch. 381, § 6.

36-3-614. Failure to contest parentage — Parentage tests and comparisons.

(a) Failure of a respondent to contest paternity in any proceeding commenced pursuant to this part shall not be construed as an admission of paternity by such respondent, nor shall such failure to contest be admissible as evidence against the respondent at any pending or subsequent paternity proceeding.

(b) Where paternity is contested in a proceeding commenced pursuant to this part, if the court orders the parties to submit to any tests and comparisons to determine parentage authorized by § 24-7-112, the court may grant an order of protection pending the outcome of any such tests and comparisons.

History.
Acts 1991, ch. 380, § 2.

36-3-615. Notification to victim that family or household member arrested for assault may be released on bond.

(a) After a person has been arrested for assault pursuant to § 39-13-101, aggravated assault pursuant to § 39-13-102, against a victim as defined in § 36-3-601, domestic assault pursuant to § 39-13-111, or violation of a protective order pursuant to § 39-13-113, the arresting officer shall inform the victim that the person arrested may be eligible to post bond for the offense and be released until the date of trial for the offense.

(b) Subsection (a) is solely intended to be a notification provision, and no cause of action is intended to be created thereby.

History.
Acts 1993, ch. 436, §§ 1, 2; 1997, ch. 211, § 4; 2001, ch. 352, § 1; 2006, ch. 920, § 3.

36-3-616. Domestic violence community education fund.

(a) There is hereby established a general fund reserve to be allocated through the general appropriations act, which shall be known as the domestic violence community education fund. Moneys from the fund shall be expended to fund activities authorized by this section. Any revenues deposited in this reserve shall remain in the reserve until expended for purposes consistent with this section, and shall not revert to the general fund on any June 30. Any excess revenues or interest earned by such revenues shall not revert on any June 30, but shall remain available for appropriation in subsequent fiscal years. Any appropriation from such reserve shall not revert to the general fund on any June 30, but shall remain available for expenditure in subsequent fiscal years.

(b) The general assembly shall appropriate, through the general appropriations act, moneys from the domestic violence community education fund to the department of human services. Such appropriations shall be specifically earmarked for the purposes set out in this section.

(c) All moneys appropriated from the domestic violence community education fund shall be used exclusively by the department to provide grants to the Tennessee task force against domestic violence. The commissioner of human services shall promulgate rules and regulations in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, for the distribution and use of the grant funds provided by it. Such grants shall be for the purpose of providing education, training and technical assistance to communities on domestic violence.

History.
Acts 1994, ch. 858, § 2.

Compiler's Notes.
Acts 1994, ch. 858, § 3 provided that this section shall apply to violations of orders of protection or court-approved consent agreements occurring on or after July 1, 1994.

36-3-617. Protection order — Filing costs and assistance.

(a)(1) Notwithstanding any other law to the contrary, no domestic abuse victim, stalking victim or sexual assault victim shall be required to bear the costs, including any court costs, filing fees, litigation taxes or any other costs associated with the filing, issuance, registration, service, dismissal or nonsuit, appeal or enforcement of an ex parte order of protection, order of protection, or a petition for either such order, whether issued inside or outside the state. If the court, after the hearing on the petition, issues or extends an order of protection, all court costs, filing fees, litigation taxes and attorney fees shall be assessed against the respondent.

(2) If the court does not issue or extend an order of protection, the court may assess all court costs, filing fees, litigation taxes and attorney fees against the petitioner if the court makes the following finding by clear and convincing evidence:

(A) The petitioner is not a domestic abuse victim, stalking victim or sexual assault victim and that such determination is not based on the fact that the petitioner requested that the petition be dismissed, failed to attend the hearing or incorrectly filled out the petition; and

(B) The petitioner knew that the allegation of domestic abuse, stalking, or sexual assault was false at the time the petition was filed.

(b)(1) The clerk of the court may provide order of protection petition forms to agencies that provide domestic violence assistance.

(2) Any agency that meets with a victim in person and recommends that an order of protection be sought shall assist the victim in the completion of the form petition for filing with the clerk.

(3) No agency shall be required to provide this assistance unless it has been provided with the appropriate forms by the clerk.

History.
Acts 1995, ch. 410, § 3; 1997, ch. 459, § 4; 2002, ch. 666, § 1; 2007, ch. 348, § 3; 2008, ch. 1074, § 1; 2009, ch. 263, § 1; 2011, ch. 402, § 1.

36-3-618. Purpose — Legislative intent.

The purpose of this part is to recognize the seriousness of domestic abuse as a crime and to assure that the law provides a victim of domestic abuse with enhanced protection from domestic abuse. A further purpose of this chapter is to recognize that in the past law enforcement agencies have treated domestic abuse crimes differently than crimes resulting in the same harm but occurring between strangers. Thus, the general assembly intends that the official response to domestic abuse shall stress enforcing the laws to protect the victim and prevent further harm to the victim, and the official response shall communicate the attitude that violent behavior is not excused or tolerated.

History.
Acts 1995, ch. 507, § 2.

36-3-619. Officer response — Primary aggressor — Factors — Reports — Notice to victim of legal rights. [Effective until January 1, 2017. See version effective on January 1, 2017.]

(a) If a law enforcement officer has probable cause to believe that a person has committed a crime involving domestic abuse, whether the crime is a misdemeanor or felony, or was committed within or without the presence of the officer, the preferred response of the officer is arrest.

(b) If a law enforcement officer has probable cause to believe that two (2) or more persons committed a misdemeanor or felony, or if two (2) or more persons make complaints to the officer, the officer shall try to determine who was the primary aggressor. Arrest is the preferred response only with respect to the primary aggressor. The officer shall presume that arrest is not the appropriate response for the person or persons who were not the primary aggressor. If the officer believes that all parties are equally responsible, the officer shall exercise such officer's best judgment in determining whether to arrest all, any or none of the parties.

(c) To determine who is the primary aggressor, the officer shall consider:

(1) The history of domestic abuse between the parties;

(2) The relative severity of the injuries inflicted on each person;

(3) Evidence from the persons involved in the domestic abuse;

(4) The likelihood of future injury to each person;

(5) Whether one (1) of the persons acted in self-defense; and

(6) Evidence from witnesses of the domestic abuse.

(d) A law enforcement officer shall not:

(1) Threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage future requests for intervention by law enforcement personnel; or

(2) Base the decision of whether to arrest on:

(A) The consent or request of the victim; or

(B) The officer's perception of the willingness of the victim or of a witness to the domestic abuse to testify or participate in a judicial proceeding.

(e) When a law enforcement officer investigates an allegation that domestic abuse occurred, the officer shall make a complete report and file the report with the officer's supervisor in a manner that will permit data on domestic abuse cases to be compiled. If a law enforcement officer decides not to make an arrest or decides to arrest two (2) or more parties, the officer shall include in the report the grounds for not arresting anyone or for arresting two (2) or more parties.

(f) Every month, the officer's supervisor shall forward the compiled data on domestic abuse cases to the administrative director of the courts.

(g) When a law enforcement officer responds to a domestic abuse call, the officer shall:

(1) Offer to transport the victim to a place of safety, such as a shelter or similar location or the residence of a friend or relative, unless it is impracticable for the officer to transport the victim, in which case the officer shall offer to arrange for transportation as soon as practicable;

(2) Advise the victim of a shelter or other service in the community; and

(3) Give the victim notice of the legal rights available by giving the victim a copy of the following statement:

IF YOU ARE THE VICTIM OF DOMESTIC ABUSE, you have the following rights:

1. You may file a criminal complaint with the district attorney general (D.A.).

2. You may request a protection order. A protection order may include the following:

(A) An order preventing the abuser from committing further domestic abuse against you;

(B) An order requiring the abuser to leave your household;

(C) An order preventing the abuser from harassing you or contacting you for any reason;

(D) An order giving you or the other parent custody of or visitation with your minor child or children;

(E) An order requiring the abuser to pay money to support you and the minor children if the abuser has a legal obligation to do so; and

(F) An order preventing the abuser from stalking you.

The area crisis line is _____

The following domestic abuse shelter/programs are available to you:

_____

_____

(4) Offer to transport the victim to the location where arrest warrants are issued in that city or county and assist the victim in obtaining an arrest warrant against the alleged abuser.

History.

Acts 1995, ch. 507, § 5; 1996, ch. 684, §§ 3, 4.

36-3-619. Officer response — Primary aggressor — Factors — Reports — Notice to victim of legal rights. [Effective on January 1, 2017. See version effective until January 1, 2017.]

(a) If a law enforcement officer has probable cause to believe that a person has committed a crime involving domestic abuse, whether the crime is a misdemeanor or felony, or was committed within or without the presence of the officer, the preferred response of the officer is arrest.

(b) If a law enforcement officer has probable cause to believe that two (2) or more persons committed a misdemeanor or felony, or if two (2) or more persons make complaints to the officer, the officer shall try to determine who was the primary aggressor. Arrest is the preferred response only with respect to the primary aggressor. The officer shall presume that arrest is not the appropriate response for the person or persons who

were not the primary aggressor. If the officer believes that all parties are equally responsible, the officer shall exercise such officer's best judgment in determining whether to arrest all, any or none of the parties.

(c) To determine who is the primary aggressor, the officer shall consider:

(1) The history of domestic abuse between the parties;

(2) The relative severity of the injuries inflicted on each person;

(3) Evidence from the persons involved in the domestic abuse;

(4) The likelihood of future injury to each person;

(5) Whether one (1) of the persons acted in self-defense; and

(6) Evidence from witnesses of the domestic abuse.

(d) A law enforcement officer shall not:

(1) Threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage future requests for intervention by law enforcement personnel; or

(2) Base the decision of whether to arrest on:

(A) The consent or request of the victim; or

(B) The officer's perception of the willingness of the victim or of a witness to the domestic abuse to testify or participate in a judicial proceeding.

(e) When a law enforcement officer investigates an allegation that domestic abuse occurred, the officer shall make a complete report and file the report with the officer's supervisor in a manner that will permit data on domestic abuse cases to be compiled. If a law enforcement officer decides not to make an arrest or decides to arrest two (2) or more parties, the officer shall include in the report the grounds for not arresting anyone or for arresting two (2) or more parties.

(f) Every month, the officer's supervisor shall forward the compiled data on domestic abuse cases to the administrative director of the courts.

(g) When a law enforcement officer responds to a domestic abuse call, the officer shall:

(1) Offer to transport the victim to a place of safety, such as a shelter or similar location or the residence of a friend or relative, unless it is impracticable for the officer to transport the victim, in which case the officer shall offer to arrange for transportation as soon as practicable;

(2) Advise the victim of a shelter or other service in the community; and

(3) Give the victim notice of the legal rights available by giving the victim a copy of the following statement:

IF YOU ARE THE VICTIM OF DOMESTIC ABUSE, you have the following rights:

1. You may file a criminal complaint with the district attorney general (D.A.).

2. You may request a protection order. A protection order may include the following:

(A) An order preventing the abuser from committing further domestic abuse against you;

(B) An order requiring the abuser to leave your household;

(C) An order preventing the abuser from harassing you or contacting you for any reason;

(D) An order giving you or the other parent custody of or visitation with your minor child or children;

(E) An order requiring the abuser to pay money to support you and the minor children if the abuser has a legal obligation to do so; and

(F) An order preventing the abuser from stalking you.

The area crisis line is _____

The following domestic abuse shelter/programs are available to you:

_____

_____

(4) Offer to transport the victim to the location where arrest warrants are issued in that city or county and assist the victim in obtaining an arrest warrant against the alleged abuser.

(h)(1) For good cause shown, the court may issue an ex parte order of protection pursuant to § 36-3-605 upon a sworn petition filed by a law enforcement officer responding to an incident of domestic abuse who asserts in the petition reasonable grounds to believe that a person is in immediate and present danger of abuse, as defined in § 36-3-601, and that the person has consented to the filing in writing; provided, that the person on whose behalf the law enforcement officer seeks the ex parte order of protection shall be considered the petitioner for purposes of this part.

(2) The law enforcement officer may seek on behalf of the person the ex parte order regardless of the time of day and whether or not an arrest has been made.

(3) If an ex parte order is issued pursuant to this section outside of the issuing court's normal operating hours:

(A) The law enforcement officer, judge, or judicial official shall cause the petition and order to be filed with the court as soon as practicable after issuance, but no later than two (2) business days after issuance; and

(B) The law enforcement officer shall use reasonable efforts to notify the person on whose behalf the petition was filed and provide the person with a copy of the ex parte order as soon as practicable after issuance.

(4) The court shall cause a copy of the petition, a notice of the date set for the hearing, and a copy of the ex parte order of protection to be served upon the respondent in accordance with § 36-3-605(c). A hearing on whether or not the ex parte order of protection should be dissolved, extended, or modified shall be held within fifteen (15) days of service of the order on the respondent. The person who consented to the filing shall be given notice of the hearing and the right to be present at the hearing. The procedures set forth in § 36-3-605 shall apply.

(5) Law enforcement officers shall not be subject to civil liability under this section for failure to file a petition or for any statement made or act performed in filing the petition, if done in good faith.

History.
Acts 1995, ch. 507, § 5; 1996, ch. 684, §§ 3, 4; 2016, ch. 906, § 3.

Compiler's Notes.
Acts 2016, ch. 906, § 1 provided that the act, which amended this section, shall be known and may be cited as the "Public Safety Act of 2016."

36-3-620. Seizure of weapons in possession of alleged domestic abuser.

(a)(1) If a law enforcement officer has probable cause to believe that a criminal offense involving domestic abuse against a victim, as defined in § 36-3-601, has occurred, the officer shall seize all weapons that are alleged to have been used by the abuser or threatened to be used by the abuser in the commission of a crime.

(2) Incident to an arrest for a crime involving domestic abuse against a victim, as defined in § 36-3-601, a law enforcement officer may seize a weapon that is in plain view of the officer or discovered pursuant to a consensual search, if necessary for the protection of the officer or other persons; provided, that a law enforcement officer is not required to remove a weapon such officer believes is needed by the victim for self defense.

(b) The provisions of § 39-17-1317, relative to the disposition of confiscated weapons, shall govern all weapons seized pursuant to this section that were used or threatened to be used by the abuser to commit the crime; provided, that if multiple weapons are seized, the court shall have the authority to confiscate only the weapon or weapons actually used or threatened to be used by the abuser to commit the crime. All other weapons seized shall be returned upon disposition of the case. Also, the officer shall append an inventory of all seized weapons to the domestic abuse report that the officer files with the officer's supervisor pursuant to § 36-3-619(e).

(c) The officer's supervisor shall include the appended information on seized weapons in the compilation of data that the officer's supervisor forwards to the administrative director of the courts pursuant to § 36-3-619(f).

History.
Acts 1995, ch. 507, § 6; 1997, ch. 211, § 5; 1997, ch. 459, § 2.

36-3-621. [Repealed.]

History.
Acts 1996, ch. 835, § 1; 1997, ch. 459, § 2; 2007, ch. 83, §§ 1, 2; 2009, ch. 513, §§ 1-3; repealed by Acts 2012, ch. 1093, § 2, effective May 21, 2012.

Compiler's Notes.
Former § 36-3-621 concerned the reporting, by health care practitioners, of injuries indicating domestic violence or domestic abuse.

36-3-622. Out-of-state protection orders.

(a) Any valid protection order related to abuse, domestic abuse, or domestic or family violence, issued by a court of another state, tribe or territory shall be afforded full faith and credit by the courts of this state and enforced as if it were issued in this state.

(b)(1) A protection order issued by a state, tribal or territorial court related to abuse, domestic abuse or domestic or family violence shall be deemed valid if the issuing court has jurisdiction over the parties and matter under the law of the issuing state, tribe or territory. There shall be a presumption in favor of validity where an order appears authentic on its face.

(2) For a foreign protection order to be valid in this state, the respondent must have been given reasonable notice and the opportunity to be heard before the order of the foreign state, tribe or territory was issued; provided, that in the case of ex parte orders, notice and opportunity to be heard must have been given as soon as possible after the order was issued, consistent with due process.

(3) Failure to provide reasonable notice and the opportunity to be heard shall be an affirmative defense to any charge or process filed seeking enforcement of a foreign protection order.

(c) A petitioner may present a certified copy of a foreign order of protection to a court having jurisdiction of orders of protection in the county in which the petitioner believes enforcement may be necessary. The clerk of such court shall receive the certified copies of any foreign order of protection and any supporting documents used to show the validity of such order and shall maintain such orders, along with any submitted documents. No costs, fees or taxes shall be charged by the clerks for this service. If an enforcement action is instituted in the court pursuant to any such order, the clerk shall file the order and shall otherwise treat the enforcement action as a case, except that all court costs, fees and litigation taxes shall be taxed by the judge at the adjudication of the enforcement action. It shall be a defense to any action taken for the enforcement of such order that the order is not valid as provided in subsection (b) or (d). No person shall present a foreign order of protection to a clerk that the person knows to no longer be in effect. A foreign order of protection shall continue in effect for the period of time specified in the order, and, if no time limitation is so specified, then the order shall continue in effect for a period of one (1) year from the date on which it is first presented to a Tennessee court pursuant to subsection (c); provided, that a continuation of any such order may be granted by the court subject to the requirements set forth in § 36-3-605.

(d) A protection order entered against both the petitioner and respondent shall not be enforceable against the petitioner in a foreign jurisdiction unless:

(1) The respondent filed a cross- or counter-petition, or a complaint or other written pleading was filed seeking such a protection order; and

(2) The issuing court made specific findings of domestic or family violence against the petitioner.

(e) The clerk shall be under no obligation to make a determination as to the validity of such orders or documentation, but shall forward a copy of the foreign protection order and any supporting documentation filed with the order to the local police or sheriff's office, as provided for in § 36-3-609.

(f) Upon request, the clerk shall provide a copy of the order to the person offering the same showing proof of receipt by the clerk's office.

(g) Regardless of whether a foreign order of protection has been filed in this state pursuant to this section, a law enforcement officer may rely upon a copy of any such protection order that has been provided to the officer by any source and may also rely upon the statement of any person protected by a foreign order that the order remains in effect. A law enforcement officer acting in good faith shall be immune from civil and criminal liability in any action in connection with a court's finding that the foreign order was for any reason not enforceable.

History.
Acts 1997, ch. 250, § 1; 2011, ch. 39, §§ 2, 3.

36-3-623. Confidentiality of records of shelters or centers.

The records of domestic violence shelters and rape crisis centers shall be treated as confidential by the records custodian of such shelters or centers, unless:

(1) The individual to whom the records pertain authorizes their release; or

(2) A court approves a subpoena for the records, subject to such restrictions as the court may impose, including in camera review.

History.
Acts 1999, ch. 344, § 5; 2005, ch. 226, § 1.

Compiler's Notes.
Acts 1999, ch. 344, § 6 provided that for the purpose of the preparation of a standardized affidavit form for directors of rape crisis centers and domestic violence shelters for use as a protection document by Tennessee task force against domestic violence, the act would take effect on June 14, 1999; however, for all other purposes, the act would take effect on July 1, 1999.

36-3-624. Death review teams established — Protocol — Composition of teams — Disclosure of communications — Authority to subpoena.

(a) A county may establish an interagency domestic abuse death review team to assist local agencies in identifying and reviewing domestic abuse deaths, including homicides and suicides, and facilitating communication among the various agencies involved in domestic abuse cases.

(b) For purposes of this section, "domestic abuse" has the meaning set forth in § 36-3-601.

(c) A county may develop a protocol that may be used as a guideline to assist coroners and other persons who perform autopsies on domestic abuse victims in the identification of domestic abuse, in the determination of whether domestic abuse contributed to death or whether domestic abuse had occurred prior to death but was not the actual cause of death, and in the proper written reporting procedures for domestic abuse, including the designation of the cause and mode of death.

(d) County domestic abuse death review teams may be comprised of, but not limited to, the following:

(1) Experts in the field of forensic pathology;

(2) Medical personnel with expertise in domestic violence abuse;

(3) Coroners and medical examiners;

(4) Criminologists;

(5) District attorneys general and city attorneys;

(6) Domestic abuse shelter staff;

(7) Legal aid attorneys who represent victims of abuse;

(8) A representative of the local bar association;

(9) Law enforcement personnel;

(10) Representatives of local agencies that are involved with domestic abuse reporting;

(11) County health department staff who deal with domestic abuse victims' health issues;

(12) Representatives of local child abuse agencies; and

(13) Local professional associations of persons described in subdivisions (d)(1)-(10), inclusive.

(e) An oral or written communication or a document shared within or produced by a domestic abuse death review team related to a domestic abuse death is confidential and not subject to disclosure or discoverable by a third party. An oral or written communication or a document provided by a third party to a domestic abuse death review team is confidential and not subject to disclosure or discoverable by a third party. Notwithstanding the foregoing, recommendations of a domestic abuse death review team upon the completion of a review may be disclosed at the discretion of a majority of the members of a domestic abuse death review team.

(f) To complete a review of a domestic abuse death, whether confirmed or suspected, each domestic abuse death review team shall have access to and subpoena power to obtain all records of any nature maintained by any public or private entity that pertain to a death being investigated by the team. Such records include, but are not limited to, police investigations and reports, medical examiner investigative data and reports, and social service agency reports, as well as medical records maintained by a private health care provider or health care agency. Any entity or individual providing such information to the local team shall not be held liable for providing the information.

History.
Acts 2000, ch. 788, § 1.

36-3-625. Disclosures to respondent regarding firearms possession upon issuance of an order of protection — Orders and instructions to respondent — Affidavit of firearms dispossession — Lawful means of dispossession of firearms — Offense of failure to dispossess firearms.

(a) Upon issuance of an order of protection that fully complies with 18 U.S.C. § 922(g)(8), the order shall include on its face the following disclosures:

(1) That the respondent is required to dispossess the respondent by any lawful means, such as transferring possession to a third party who is not prohibited from possessing firearms, of all firearms the respondent possesses within forty-eight (48) hours of the issuance of the order;

(2) That the respondent is prohibited from possessing a firearm for so long as the order of protection

or any successive order of protection is in effect, and may reassume possession of the dispossessed firearm at such time as the order expires or is otherwise no longer in effect; and

(3) Notice of the penalty for any violation of this section and § 39-17-1307(f).

(b) The court shall then order and instruct the respondent:

(1) To terminate the respondent's physical possession of the firearms in the respondent's possession by any lawful means, such as transferring possession to a third party who is not prohibited from possessing firearms, within forty-eight (48) hours;

(2) To complete and return the affidavit of firearm dispossession form created pursuant to subsection (e), which the court may provide the respondent or direct the respondent to the administrative office of the courts' web site; and

(3) That if the respondent possesses firearms as business inventory or that are registered under the National Firearms Act, compiled in 26 U.S.C. §§ 5801 et seq., there are additional statutory provisions that may apply and shall include these additional provisions in the content of the order.

(c) Upon issuance of the order of protection, its provisions and date and time of issuance shall be transmitted to the sheriff and all local law enforcement agencies in the county where the respondent resides.

(d) When the respondent is lawfully dispossessed of firearms as required by this section, the respondent shall complete an affidavit of firearms dispossession form created pursuant to subsection (e) and return it to the court issuing the order of protection.

(e) The affidavit of firearms dispossession form shall be developed by the domestic violence state coordinating council, in consultation with the administrative office of the courts. Upon completion, the form shall be posted on the web site of the administrative office of the courts where it can be copied by respondents or provided to them by the court or the court clerk.

(f) In determining what a lawful means of dispossession is:

(1) If the dispossession, including, but not limited to, the transfer of weapons registered under the National Firearms Act, compiled in 26 U.S.C. §§ 5801 et seq., that requires the approval of any state or federal agency prior to the transfer of the firearm, the respondent may comply with the dispossession requirement by having the firearm or firearms placed into a safe or similar container that is securely locked and to which the respondent does not have the combination, keys or other means of normal access.

(2) If the respondent is licensed as a federal firearms dealer or a responsible party under a federal firearms license, the determination of whether such an individual possesses firearms that constitute business inventory under the federal license shall be determined based upon the applicable federal statutes or the rules, regulations and official letters, rulings and publications of the bureau of alcohol, tobacco, firearms and explosives. The order of protection shall not require the surrender or transfer of the inventory if there are one (1) or more individuals who are responsible parties under the federal license who are not the respondent subject to the order of protection.

(g) A firearm subject to this section shall not be forfeited as provided in § 39-17-1317, unless the possession of the firearm prior to the entry of the order of protection constituted an independent crime of which the respondent has been convicted or the firearms are abandoned by the respondent.

(h)(1) It is an offense for a person subject to an order of protection that fully complies with 18 U.S.C. § 922(g)(8) to knowingly fail to surrender or transfer all firearms the respondent possesses as required by this section.

(2) A violation of subdivision (h)(1) is a Class A misdemeanor and each violation shall constitute a separate offense.

(3) If the violation of subdivision (h)(1) also constitutes a violation of § 39-13-113(h) or § 39-17-1307(f), the respondent may be charged and convicted under any or all such sections.

History.
Acts 2009, ch. 455, § 3.

PART 7

ALIENATION OF AFFECTIONS

36-3-701. Tort action abolished.

The common law tort action of alienation of affections is hereby abolished.

History.
Acts 1989, ch. 517, § 1.

CHAPTER 4

DIVORCE AND ANNULMENT

SECTION.

36-4-101. Grounds for divorce from bonds of matrimony.
36-4-102. Legal separation.
36-4-103. Irreconcilable differences — Procedure.
36-4-104. Residence requirements.
36-4-105. Venue.
36-4-106. Contents of petition for divorce and legal separation.
36-4-107. Verification of petition — Effect of noncompliance.
36-4-108. Security for costs — Service of process.
36-4-109. Time for hearing.
36-4-110. Appearance and answer.
36-4-111. Failure to separate not a defense.
36-4-112. Defense when ground is adultery.
36-4-113. Issues — Trial by jury — New trial.
36-4-114. Proof required.
36-4-115. Form of proof.
36-4-116. Affidavits of proof not required — Sworn statements concerning financial matters required — Sworn statements as evidence.
36-4-117. Proof when ground is spouse's refusal to remove to this state.
36-4-118. Proof when ground is conviction of crime.
36-4-119. Decree of court generally.
36-4-120. Decree of court in action brought under § 36-4-102.
36-4-121. Distribution of marital property.
36-4-122. Costs.
36-4-123. Appeals.
36-4-124. Right to remarry.
36-4-125. Legitimacy of children unaffected by divorce or annulment.

SECTION.
36-4-126. Suspension of proceedings to attempt reconciliation — Revocation.
36-4-127. Expunction of divorce records upon reconciliation of parties.
36-4-128. Remarriage after spouse's two-year absence — Effect of spouse's return.
36-4-129. Stipulated grounds and/or defenses — Grant of divorce.
36-4-130. Mediation — Confidentiality of information and documents.
36-4-131. Mediation — Waiver or extension — Domestic abuse.
36-4-132. Appointment of guardian ad litem.
36-4-133. Compliance with notice of insurance termination provisions required.
36-4-134. Notice that the decree does not necessarily affect the ability of a creditor to proceed against a party or a party's property.
36-4-135. False allegations of sexual abuse in furtherance of litigation.

36-4-101. Grounds for divorce from bonds of matrimony.

(a) The following are causes of divorce from the bonds of matrimony:

(1) Either party, at the time of the contract, was and still is naturally impotent and incapable of procreation;

(2) Either party has knowingly entered into a second marriage, in violation of a previous marriage, still subsisting;

(3) Either party has committed adultery;

(4) Willful or malicious desertion or absence of either party, without a reasonable cause, for one (1) whole year;

(5) Being convicted of any crime that, by the laws of the state, renders the party infamous;

(6) Being convicted of a crime that, by the laws of the state, is declared to be a felony, and sentenced to confinement in the penitentiary;

(7) Either party has attempted the life of the other, by poison or any other means showing malice;

(8) Refusal, on the part of a spouse, to remove with that person's spouse to this state, without a reasonable cause, and being willfully absent from the spouse residing in Tennessee for two (2) years;

(9) The woman was pregnant at the time of the marriage, by another person, without the knowledge of the husband;

(10) Habitual drunkenness or abuse of narcotic drugs of either party, when the spouse has contracted either such habit after marriage;

(11) The husband or wife is guilty of such cruel and inhuman treatment or conduct towards the spouse as renders cohabitation unsafe and improper, which may also be referred to in pleadings as inappropriate marital conduct;

(12) The husband or wife has offered such indignities to the spouse's person as to render the spouse's position intolerable, and thereby forced the spouse to withdraw;

(13) The husband or wife has abandoned the spouse or turned the spouse out of doors for no just cause, and has refused or neglected to provide for the spouse while having the ability to so provide;

(14) Irreconcilable differences between the parties; and

(15) For a continuous period of two (2) or more years that commenced prior to or after April 18, 1985, both parties have lived in separate residences, have not cohabited as man and wife during such period, and there are no minor children of the parties.

(b) A complaint or petition for divorce on any ground for divorce listed in this section must have been on file for sixty (60) days before being heard if the parties have no unmarried child under eighteen (18) years of age, and must have been on file at least ninety (90) days before being heard if the parties have an unmarried child under eighteen (18) years of age. The sixty-day or ninety-day period shall commence on the date the complaint or petition is filed.

History.

Code 1858, § 2448 (deriv. Acts 1819, ch. 20, § 2; 1835-1836, ch. 26, §§ 1, 2; 1841-1842, ch. 133, § 3; 1843-1844, ch. 176, § 1); Acts 1867-1868, ch. 63, § 1; 1867-1868, ch. 68, § 1; Shan., § 4201; mod. Code 1932, § 8426; Acts 1961, ch. 168, § 1; 1972, ch. 679, § 1; 1977, ch. 107, § 1; 1978, ch. 577, § 1; 1981, ch. 311, § 1; 1981, ch. 420, § 1; 1981, ch. 532, § 1; 1982, ch. 853, § 2; T.C.A. (orig. ed.), § 36-801(I); Acts 1985, ch. 178, § 1; 1989, ch. 393, § 1; 1998, ch. 1059, § 1; 2007, ch. 519, § 1.

36-4-102. Legal separation.

(a) A party who alleges grounds for divorce from the bonds of matrimony may, as an alternative to filing a complaint for divorce, file a complaint for legal separation. Such complaint shall set forth the grounds for legal separation in substantially the language of § 36-4-101 and pray only for legal separation or for such other and further relief to which complainant may think to be entitled. The other party may deny the existence of grounds for divorce but, unless the other party specifically objects to the granting of an order of legal separation, the court shall declare the parties to be legally separated.

(b) If the other party specifically objects to legal separation, the court may, after a hearing, grant an order of legal separation, notwithstanding such objections if grounds are established pursuant to § 36-4-101. The court also has the power to grant an absolute divorce to either party where there has been an order of legal separation for more than two (2) years upon a petition being filed by either party that sets forth the original order for legal separation and that the parties have not become reconciled. The court granting the divorce shall make a final and complete adjudication of the support and property rights of the parties. However, nothing in this subsection (b) shall preclude the court from granting an absolute divorce before the two-year period has expired.

(c) Legal separation shall not affect the bonds of matrimony but shall permit the parties to cease matrimonial cohabitation. The court may provide for matters such as child custody, visitation, support and property issues during legal separation upon motion by either party or by agreement of the parties.

(d) Notwithstanding this section, a party who can establish grounds for divorce from the bonds of matrimony pursuant to § 36-4-101 shall be entitled to an absolute divorce pursuant to this chapter.

History.
Code 1858, § 2449 (deriv. Acts 1835-1836, ch. 26, § 19; 1841-1842, ch. 133, § 1); Shan., § 4202; Acts 1919, ch. 70, § 1; mod. Code 1932, § 8427; Acts 1963, ch. 283, § 1; 1967, ch. 284, § 1; T.C.A. (orig. ed.), § 36-802; Acts 1989, ch. 489, § 1; 1998, ch. 1059, § 2.

36-4-103. Irreconcilable differences — Procedure.

(a)(1) In all divorces sought because of irreconcilable differences between the parties, if the defendant is a nonresident, personal service may be effectuated by service upon the secretary of state pursuant to § 20-2-215.

(2) In lieu of service of process, the defendant may enter into a written notarized marital dissolution agreement with plaintiff that makes specific reference to a pending divorce by a court and docket number, or states that the defendant is aware that one will be filed in this state and that the defendant waives further service and waives filing an answer to the complaint. Such waiver of service shall be valid for a period of one hundred eighty (180) days from the date the last party signs the agreement. The agreement may include the obligation and payment of alimony, in solido or in futuro, to either of the parties, any other law notwithstanding. The signing of such an agreement shall be in lieu of service of process for the period such waiver is valid and shall constitute a general appearance before the court and answer that shall give the court personal jurisdiction over the defendant, and constitute a default judgment for the purpose of granting a divorce on the grounds of irreconcilable differences.

(3) No divorce heretofore granted shall be invalid because the agreement was signed and notarized or acknowledged prior to filing under prior law before the action was filed.

(b) No divorce shall be granted on the ground of irreconcilable differences unless the court affirmatively finds in its decree that the parties have made adequate and sufficient provision by written agreement for the custody and maintenance of any children of that marriage and for the equitable settlement of any property rights between the parties. If the court does not affirmatively find that the agreement is sufficient or equitable, the cause shall be continued by the court to allow further disposition by the petitioner. If both parties are present at the hearing, they may, at that time, ratify any amendments the court may have to the agreement. The amended agreement shall then become a part of the decree. The agreement shall be incorporated in the decree or incorporated by reference, and such decree may be modified as other decrees for divorce.

(c)(1) Bills for divorce on the ground of irreconcilable differences must have been on file for sixty (60) days before being heard if the parties have no unmarried child under eighteen (18) years of age, and must have been on file at least ninety (90) days before being heard if the parties have an unmarried child under eighteen (18) years of age. The sixty-day or ninety-day period bills for divorce that must be on file shall commence on the date the original bill was filed and not on the date the bill was amended to include the ground of irreconcilable differences.

(2) A divorce decree or order issued prior to March 22, 1996, in which the hearing for such divorce occurred before the specified time periods required by this subsection (c), shall remain valid and the parties shall remain divorced. Likewise, all other issues resolved in the divorce decree, order or agreement, such as distribution of marital property, alimony, child support and custody, shall remain valid and in full force and effect.

(d)(1) A bill of complaint for divorce where the respondent has been personally served or acknowledged as set out in subsection (a), which includes the ground of irreconcilable differences, may be taken as confessed and a final decree entered thereon, as in other cases and without corroborative proof or testimony, §§ 36-4-107 and 36-4-114 to the contrary notwithstanding.

(2) For purposes of this section, "without corroborative proof or testimony" means that the petitioner shall not be required to testify as to the material facts constituting irreconcilable differences or any attempts to reconcile such differences.

(e) If there has been a contest or denial of the grounds of irreconcilable differences, no divorce shall be granted on the grounds of irreconcilable differences. However, a divorce may be granted on the grounds of irreconcilable differences where there has been a contest or denial, if a properly executed marital dissolution agreement is presented to the court.

(f) Irreconcilable differences may be asserted as a sole ground for divorce or as an alternate ground for divorce with any other cause for divorce set out in § 36-4-101 or § 36-4-102.

(g) Notwithstanding any law to the contrary requiring mediation, the filing with the court of a properly executed marital dissolution agreement and, if there are minor children of the marriage, a properly executed parenting plan shall serve to remove any requirement that the parties shall attend mediation. If the court does not approve either the marital dissolution agreement or the parenting plan, then any requirement to attend mediation shall be reinstated as of the date of the court's rejection of either agreement.

History.
Code 1858, § 2448 (deriv. Acts 1819, ch. 20, § 2; 1835-1836, ch. 26, §§ 1, 2; 1841-1842, ch. 133, § 3; 1843-1844, ch. 176, § 1); Acts 1867-1868, ch. 63, § 1; 1867-1868, ch. 68, § 1; Shan., § 4201; mod. Code 1932, § 8426; Acts 1961, ch. 168, § 1; 1972, ch. 679, § 1; 1977, ch. 107, § 1; 1978, ch. 577, § 1; 1981, ch. 311, § 1; 1981, ch. 420, § 1; 1981, ch. 532, § 1; 1982, ch. 853, § 2; T.C.A. (orig. ed.), § 36-801(II); Acts 1987, ch. 390, §§ 3, 4; 1989, ch. 489, §§ 2, 3; 1991, ch. 234, § 1; 1996, ch. 655, § 2; 1998, ch. 1059, § 4; 2008, ch. 868, § 1.

Compiler's Notes.
Acts 1996, ch. 655, § 3, which added (c)(2), provides that the provisions of that act are remedial in nature and that the provisions shall be liberally construed to effectuate its purposes.

36-4-104. Residence requirements.

(a) A divorce may be granted for any of the causes referenced in § 36-4-101 if the acts complained of were committed while the plaintiff was a bona fide resident

of this state or if the acts complained of were committed out of this state and the plaintiff resided out of the state at the time, if the plaintiff or the defendant has resided in this state six (6) months next preceding the filing of the complaint.

(b) For the purposes of this section, any person in the armed services of the United States, or the spouse of any such person, who has been living in this state for a period of not less than one (1) year shall be presumed to be a resident of this state, and the presumption of residence shall be overcome only by clear and convincing evidence of a domicile elsewhere.

History.

Code 1858, § 2450 (deriv. Acts 1799, ch. 19, § 7; 1835-1836, ch. 26, § 1; 1839-1840, ch. 54, § 1; 1845-1846, ch. 67, § 1); Shan., § 4203; Code 1932, § 8428; Acts 1957, ch. 274, § 1; 1971, ch. 363, § 1; 1973, ch. 219, § 1; 1976, ch. 548, § 1; T.C.A. (orig. ed.), § 36-803.

36-4-105. Venue.

(a) The bill or petition may be filed in the proper name of the complainant, in the chancery or circuit court or other court having divorce jurisdiction, in the county where the parties reside at the time of their separation, or in which the defendant resides, if a resident of the state; but if the defendant is a nonresident of the state or a convict, then in the county where the applicant resides.

(b) Any divorce granted prior to May 4, 1967, will not be deemed void solely on the ground that the parties to the divorce action were residents of a county or counties other than the county in which the divorce decree was entered.

History.

Code 1858, § 2451 (deriv. Acts 1835-1836, ch. 26, § 3); Acts 1859-1860, ch. 88; Shan., § 4204; Code 1932, § 8429; Acts 1961, ch. 180, § 1; 1963, ch. 153, § 1; 1967, ch. 185, § 1; 1971, ch. 363, § 2; T.C.A. (orig. ed.), § 36-804.

36-4-106. Contents of petition for divorce and legal separation.

(a)(1) The complaint for divorce shall set forth the grounds for the divorce in substantially the language of § 36-4-101 or § 36-4-102, and pray only for a divorce from the defendant, or for a divorce and such other and further relief to which the complainant may think to be entitled. In cases wherein an answer is filed, the court shall, on motion of the defendant, require the complainant to file a bill of particulars, setting forth the facts relied on as grounds for the divorce, with reasonable certainty as to time and place.

(2) The complaint for legal separation shall set forth the grounds for legal separation in substantially the language of § 36-4-101, and pray for such further relief to which the complainant is entitled. In all cases where an answer is filed, the court shall, on motion of the defendant, require the complainant to file a bill of particulars, stating the facts relied on as a ground for legal separation, with reasonable certainty as to time and place.

(b)(1) The complainant shall also allege the full name of the husband, the full maiden name of the wife, their mailing addresses, dates and places of their birth, race or color of each spouse, number of previous marriages of each spouse, date and place of the marriage of the parties, the number of their children who are minors at the time of the filing of the complaint, and any other litigation concerning the custody of those children in this or any other state in which either party has participated, as specified in § 36-6-224. Further, at the time a complaint or pleading is filed under this part, the filing party shall, simultaneously with the initial complaint or pleading filed by that party, file with the clerk a separate document that contains the full names and social security numbers, current mailing addresses and dates of birth of the husband, the wife, and those of all children born of the marriage. The filing party shall provide to the clerk one (1) eight and one-half inch by eleven inch (8½″ x 11″) envelope labeled with the names of the parties, which shall be marked with the docket number. The clerk shall file stamp the document and the envelope, store the document in the envelope, which shall be sealed, and place the sealed envelope in the case file. The social security numbers and other information filed with the clerk shall be available to the clerk of court for processing of documents and legal actions such as, but not limited to, divorce certificates, garnishments, and income assignments. On request, the sealed information shall be made available to the department of human services and any other agency required by law to have access to the information, and to other persons or agencies as ordered by the court. It shall be mandatory that every complaint filed under this chapter shall contain the foregoing information or that such information is provided by the parties and is contained in the court's records as described above prior to the entry of the final decree of divorce, unless it can be shown to the satisfaction of the court that such information could not be obtained by the complainant or petitioner by exercising due diligence or after the court has granted a reasonable time to amend the complaint. In lieu of a mailing address, either party may designate an agent for the service of process throughout the proceedings and, except as provided in subdivision (b)(2), the name and address of such agent shall be the only address used for the designating party in all petitions, pleadings, motions and orders relating to such divorce action.

(2) If the complainant or the defendant shows to the satisfaction of the court in which the petition is filed that the residential address of the other party is relevant and necessary in order to prove the allegations contained in the complaint or to ascertain information necessary to determine value and/or ownership of property, or to ascertain other data necessary to evaluate and agree upon a property division or custody or defend against such allegations, the court may order either party to reveal such residential address to the other party.

(3) If the complainant elects to designate an agent for service of process in lieu of the mailing address as

authorized by this subsection (b) but does not designate a specific person, the complainant's attorney shall be deemed the complainant's agent for service of process.

(c) Notwithstanding any other law to the contrary, the plaintiff or other party shall not be required in those counties having a divorce proctor to file an affidavit swearing that the defendant is not in the military service where:

(1) The complaint states facts that would make the defendant ineligible for military service; or

(2) The residence address of the defendant is set forth in the complaint, and:

(A) The defendant has been personally served with service of process, or has been mailed a copy of the complaint by a divorce proctor;

(B) The defendant has actual notice of the commencement of the suit;

(C) Proof of mailing to the defendant of notice of the suit is exhibited to the court; or

(D) The defendant is represented by an attorney.

(d) Upon the filing of a petition for divorce or legal separation, and upon personal service of the complaint and summons on the respondent or upon waiver and acceptance of service by the respondent, the following temporary injunctions shall be in effect against both parties until the final decree of divorce or order of legal separation is entered, the petition is dismissed, the parties reach agreement, or until the court modifies or dissolves the injunction, written notice of which shall be served with the complaint:

(1)(A) An injunction restraining and enjoining both parties from transferring, assigning, borrowing against, concealing or in any way dissipating or disposing, without the consent of the other party or an order of the court, of any marital property. Nothing herein is intended to preclude either of the parties from seeking broader injunctive relief from the court.

(B) Expenditures from current income to maintain the marital standard of living and the usual and ordinary costs of operating a business are not restricted by this injunction. Each party shall maintain records of all expenditures, copies of which shall be available to the other party upon request.

(2) An injunction restraining and enjoining both parties from voluntarily canceling, modifying, terminating, assigning, or allowing to lapse for nonpayment of premiums, any insurance policy, including, but not limited to, life, health, disability, homeowners, renters, and automobile, where such insurance policy provides coverage to either of the parties or the children, or that names either of the parties or the children as beneficiaries without the consent of the other party or an order of the court. "Modifying" includes any change in beneficiary status.

(3) An injunction restraining both parties from harassing, threatening, assaulting or abusing the other and from making disparaging remarks about the other to or in the presence of any children of the parties or to either party's employer.

(4) An injunction restraining and enjoining both parties from hiding, destroying or spoiling, in whole or in part, any evidence electronically stored or on computer hard drives or other memory storage devices.

(5) An injunction restraining both parties from relocating any children of the parties outside the state of Tennessee, or more than fifty (50) miles from the marital home, without the permission of the other party or an order of the court, except in the case of a removal based upon a well-founded fear of physical abuse against either the fleeing parent or the child. In such cases, upon request of the nonrelocating parent, the court will conduct an expedited hearing, by telephone conference if appropriate, to determine the reasonableness of the relocation and to make such other orders as appropriate.

(6) The provisions of these injunctions shall be attached to the summons and the complaint and shall be served with the complaint. The injunctions shall become an order of the court upon fulfillment of the requirements of this subsection (d). However, nothing in this subsection (d) shall preclude either party from applying to the court for further temporary orders, an expanded temporary injunction, or modification or revocation of this temporary injunction.

(7) The temporary injunctions provided in this section shall only apply to the spousal parties named in the petition and shall not apply to any third party named in the petition; provided, however, that nothing in this subsection (d) shall preclude any party from applying to the court for an order of injunctive or extraordinary relief against any other party named in any petition as provided by law or rule.

History.

Code 1858, § 2452 (deriv. Acts 1835-1836, ch. 26, §§ 3, 18); Shan., § 4205; mod. Code 1932, § 8430; Acts 1957, ch. 46, § 1; 1957, ch. 74, § 1; 1971, ch. 50, § 1; 1971, ch. 437, § 1; T.C.A. (orig. ed.), § 36-805; Acts 1987, ch. 36, § 1; 1994, ch. 975, §§ 1-3; 1997, ch. 544, § 1; 1997, ch. 551, § 31; 1998, ch. 1059, §§ 8-10; 2001, ch. 280, § 1; 2002, ch. 565, § 1; 2007, ch. 187, §§ 1-3; 2009, ch. 280, § 1; 2014, ch. 617, § 1.

Compiler's Notes.

Acts 2009, ch. 280, § 2 provided that the act, which amended subdivision (b)(1), shall apply to petitions for divorce or legal separation filed on or after July 1, 2009.

For the Preamble to the act concerning domestic relations, please refer to Acts 2014, ch. 617.

36-4-107. Verification of petition — Effect of noncompliance.

(a) The bill or petition, except those seeking a divorce from the bonds of matrimony on the grounds of irreconcilable differences, shall be verified by an affidavit, upon oath or affirmation, before a general sessions court judge, notary public or the judge or clerk of the court, or as provided in §§ 58-1-605 — 58-1-607, that the facts stated in the bill are true to the best of the complainant's knowledge and belief for the causes mentioned in the bill. The authority conferred in §§ 58-1-605 — 58-1-607 may be exercised beyond the continental limits of the United States.

(b) If the issue of whether the affidavit contains the complainant's verification that the complaint is not made out of levity or in collusion with the defendant is not raised at trial, each party waives the right to contest such issue on appeal.

(c) A divorce decree or order issued prior to March 22, 1996, in which the bill or petition for such divorce did not include the affidavit of verification required by this section shall remain valid and the parties shall remain divorced. Likewise, all other issues resolved in the divorce decree, order or agreement, such as distribution of marital property, alimony, child support and custody, shall remain valid and in full force and effect.

History.
Code 1858, § 2453 (deriv. Acts 1835-1836, ch. 26, § 4); Shan., § 4206; mod. Code 1932, § 8431; Acts 1953, ch. 174, § 1; modified; impl. am. Acts 1957, ch. 320, § 2; 1977, ch. 107, § 3; T.C.A. (orig. ed.), § 36-806; Acts 1996, ch. 655, § 1; 1996, ch. 872, § 1.

Compiler's Notes.
Acts 1996, ch. 655, § 3 provided that the provisions of that act, which added (b) and (c), are to be liberally construed to effectuate its purposes.

36-4-108. Security for costs — Service of process.

(a) The complainant, upon giving security for costs, or otherwise complying with the law, shall have the usual process to compel the defendant to appear and answer the bill, or it may be taken for confessed, as in other chancery cases.

(b) In actions for annulment of marriage, service on the defendant may be by subpoena or by publication as in divorce cases.

History.
Code 1858, § 2454 (deriv. Acts 1831, ch. 20, § 1; 1835-1836, ch. 26, §§ 3, 18; 1841-1842, ch. 133, § 3); Shan., § 4207; mod. Code 1932, § 8432; Acts 1957, ch. 100, § 1; T.C.A. (orig. ed.), §§ 36-807, 36-834.

36-4-109. Time for hearing.

If the subpoena to answer has been served upon the defendant, or if publication has been completed as required by law, the cause may be set for hearing and tried at the first term of court thereafter.

History.
Code 1858, § 2455 (deriv. Acts 1841-1842, ch. 133, § 3); Shan., § 4208; Code 1932, § 8433; Acts 1933, ch. 156, § 1; C. Supp. 1950, § 8433; T.C.A. (orig. ed.), § 36-808.

36-4-110. Appearance and answer.

The defendant may appear according to the rules of the court and answer the bill upon oath or affirmation.

History.
Code 1858, § 2457 (deriv. Acts 1835-1836, ch. 26, § 5); Shan., § 4210; Code 1932, § 8435; T.C.A. (orig. ed.), § 36-810.

Compiler's Notes.
For abolition of demurrers, pleas, etc., see Tenn. R. Civ. P. 7.03.

36-4-111. Failure to separate not a defense.

It is no impediment to a divorce that the offended spouse did not leave the marital domicile or separate from the offending spouse on account of the conduct of the offending spouse.

History.
Acts 1977, ch. 107, § 2; T.C.A., § 36-809.

36-4-112. Defense when ground is adultery.

If the cause assigned for the divorce is adultery, it is a good defense and perpetual bar to the same if the defendant alleges and proves that:

(1) The complainant has been guilty of like act or crime;

(2) The complainant has admitted the defendant into conjugal society and embraces after knowledge of the criminal act;

(3) The complainant, if the husband, allowed the wife's prostitutions and received hire for them; or

(4) The husband exposed the wife to lewd company, whereby the wife became ensnared to the act or crime of adultery.

History.
Code 1858, § 2460 (deriv. Acts 1835-1836, ch. 26, § 9); Shan., § 4213; mod. Code 1932, § 8438; T.C.A. (orig. ed.), § 36-811.

36-4-113. Issues — Trial by jury — New trial.

Issues may be made up at the request of either party upon matters of fact charged in the bill or petition and denied in the answer, and be tried by a jury in presence of the court, and a new trial may be granted of the issues, should the court deem it necessary.

History.
Code 1858, § 2458 (deriv. Acts 1835-1836, ch. 26, § 5); Shan., § 4211; Code 1932, § 8436; T.C.A. (orig. ed.), § 36-812.

36-4-114. Proof required.

If the defendant admits the facts charged in the bill or petition and relied upon as the ground for a divorce, or the bill is taken for confessed, the court shall, nevertheless, before decreeing a divorce, except a divorce on the ground of irreconcilable differences, hear proof of the facts alleged as aforementioned, and either dismiss the bill or petition or grant a divorce, as the justice of the case may require.

History.
Code 1858, § 2459 (deriv. Acts 1835-1836, ch. 26, § 6); Shan., § 4212; mod. Code 1932, § 8437; Acts 1977, ch. 107, § 4; T.C.A. (orig. ed.), § 36-813.

36-4-115. Form of proof.

Either party may take proof by depositions according to the rules or orders of the court, or have the witnesses examined in open court at pleasure.

History.
Code 1858, § 2462 (deriv. Acts 1835-1836, ch. 26, § 22); Shan., § 4215; mod. Code 1932, § 8440; T.C.A. (orig. ed.), § 36-814.

36-4-116. Affidavits of proof not required — Sworn statements concerning financial matters required — Sworn statements as evidence.

(a) No judge or chancellor shall require the filing of affidavits of proof from witnesses, plaintiffs, defendants, or petitioners and respondents in support of any complaint for divorce, legal separation, separate maintenance or annulment.

(b) Any such judge or chancellor may, however, require a sworn statement from such persons relative or pertaining to the income of the parties, their expenses, any real or personal property in which the parties have an interest and the extent of such parties' interest therein, and such sworn statement shall be admissible as evidence of the truth of the contents.

History.
Acts 1982, ch. 640, § 1; T.C.A., § 36-839; Acts 1991, ch. 273, § 39; 1998, ch. 1059, § 3.

36-4-117. Proof when ground is spouse's refusal to remove to this state.

If the divorce is sought by the complainant spouse on the ground of the defendant spouse's refusal to remove with the complainant spouse to this state, and of the defendant spouse's willful absence for two (2) years without reasonable cause, the complainant spouse shall prove endeavors to induce the defendant spouse to live with the complainant spouse after the separation, and that the complainant spouse did not remove from the state where the complainant spouse resided for the purpose of obtaining a divorce.

History.
Code 1858, § 2463 (deriv. Acts 1835-1836, ch. 26, § 2); Shan., § 4216; Code 1932, § 8441; Acts 1982, ch. 853, § 3; T.C.A. (orig. ed.), § 36-815.

36-4-118. Proof when ground is conviction of crime.

The proof that the defendant is a convict, or is sentenced to the penitentiary, if that is the cause relied upon for the divorce, shall be by the record of the conviction and sentence.

History.
Code 1858, § 2464 (deriv. Acts 1841-1842, ch. 133, § 3); Shan., § 4217; Code 1932, § 8442; T.C.A. (orig. ed.), § 36-816.

36-4-119. Decree of court generally.

If, upon hearing the cause, the court is satisfied that the complainant is entitled to relief, it may be granted either by pronouncing the marriage void from the beginning, or by dissolving it forever and freeing each party from the obligations thereof, or by a separation for a limited time.

History.
Code 1858, § 2465 (deriv. Acts 1835-1836, ch. 26, §§ 7, 19); Shan., § 4218; Code 1932, § 8443; T.C.A. (orig. ed.), § 36-817.

36-4-120. Decree of court in action brought under § 36-4-102.

(a) If the cause assigned for a divorce is that specified in § 36-4-101(a)(11), the defendant may make defense by alleging and proving the ill conduct of the complainant as a justifiable cause for the conduct complained of, and on making out the defense to the satisfaction of the court, the bill may be dismissed with or without costs, in the discretion of the court.

(b) But, if the court is of the opinion that the complainant is entitled to relief, it may be granted, according to the prayer of the bill, by annulling the marriage, or by ordering a separation, perpetual or temporary, or such other decree as the nature and circumstances of the case require.

History.
Code 1858, §§ 2466, 2467 (deriv. Acts 1835-1836, ch. 26, §§ 19, 20); Shan., §§ 4219, 4220; Code 1932, §§ 8444, 8445; T.C.A. (orig. ed.), §§ 36-818, 36-819; Acts 1998, ch. 1059, § 11.

36-4-121. Distribution of marital property.

(a)(1) In all actions for divorce or legal separation, the court having jurisdiction thereof may, upon request of either party, and prior to any determination as to whether it is appropriate to order the support and maintenance of one (1) party by the other, equitably divide, distribute or assign the marital property between the parties without regard to marital fault in proportions as the court deems just.

(2) In all actions for legal separation, the court, in its discretion, may equitably divide, distribute, or assign the marital property in whole or in part, or reserve the division or assignment of marital property until a later time. If the court makes a final distribution of marital property at the time of the decree of legal separation, any after-acquired property is separate property.

(3)(A) Any auction sale of property ordered pursuant to this section shall be conducted in accordance with title 35, chapter 5.

(B) To this end, the court shall be empowered to effectuate its decree by divesting and reinvesting title to such property and, where deemed necessary, to order a sale of such property and to order the proceeds divided between the parties.

(C) The court may order title 35, chapter 5 to apply to any sale ordered by the court pursuant to this section.

(D) The court, in its discretion, may impose any additional conditions or procedures upon the sale of property in divorce cases as are reasonably designed to ensure that such property is sold for its fair market value.

(b) For purposes of this chapter:

(1)(A) "Marital property" means all real and personal property, both tangible and intangible, acquired by either or both spouses during the course of the marriage up to the date of the final divorce hearing and owned by either or both spouses as of the date of filing of a complaint for divorce, except in the case of fraudulent conveyance in anticipa-

tion of filing, and including any property to which a right was acquired up to the date of the final divorce hearing, and valued as of a date as near as reasonably possible to the final divorce hearing date. In the case of a complaint for legal separation, the court may make a final disposition of the marital property either at the time of entering an order of legal separation or at the time of entering a final divorce decree, if any. If the marital property is divided as part of the order of legal separation, any property acquired by a spouse thereafter is deemed separate property of that spouse. All marital property shall be valued as of a date as near as possible to the date of entry of the order finally dividing the marital property;

(B)(i) "Marital property" includes income from, and any increase in the value during the marriage of, property determined to be separate property in accordance with subdivision (b)(2) if each party substantially contributed to its preservation and appreciation;

(ii) "Marital property" includes the value of vested and unvested pension benefits, vested and unvested stock option rights, retirement, and other fringe benefit rights accrued as a result of employment during the marriage;

(iii) The account balance, accrued benefit, or other value of vested and unvested pension benefits, vested and unvested stock option rights, retirement, and other fringe benefits accrued as a result of employment prior to the marriage, together with the appreciation of the value, shall be "separate property." In determining appreciation for purposes of this subdivision (b)(1)(B)(iii), the court shall utilize any reasonable method of accounting to attribute postmarital appreciation to the value of the premarital benefits, even though contributions have been made to the account or accounts during the marriage, and even though the contributions have appreciated in value during the marriage; provided, however, the contributions made during the marriage, if made as a result of employment during the marriage and the appreciation attributable to these contributions, would be "marital property." When determining appreciation pursuant to this subdivision (b)(1)(B)(iii), the concepts of commingling and transmutation shall not apply;

(iv) Any withdrawals from assets described in subdivision (b)(1)(B)(iii) used to acquire separate assets of the employee spouse shall be deemed to have come from the separate portion of the account, up to the total of the separate portion. Any withdrawals from assets described in subdivision (b)(1)(B)(iii) used to acquire marital assets shall be deemed to have come from the marital portion of the account, up to the total of the marital portion;

(C) "Marital property" includes recovery in personal injury, workers' compensation, social security disability actions, and other similar actions for the following: wages lost during the marriage, reimbursement for medical bills incurred and paid with marital property, and property damage to marital property;

(D) As used in this subsection (b), "substantial contribution" may include, but not be limited to, the direct or indirect contribution of a spouse as homemaker, wage earner, parent or family financial manager, together with such other factors as the court having jurisdiction thereof may determine;

(E) Property shall be considered marital property as defined by this subsection (b) for the sole purpose of dividing assets upon divorce or legal separation and for no other purpose; and assets distributed as marital property will not be considered as income for child support or alimony purposes, except to the extent the asset will create additional income after the division;

(2) "Separate property" means:

(A) All real and personal property owned by a spouse before marriage, including, but not limited to, assets held in individual retirement accounts (IRAs) as that term is defined in the Internal Revenue Code of 1986, compiled in 26 U.S.C., as amended;

(B) Property acquired in exchange for property acquired before the marriage;

(C) Income from and appreciation of property owned by a spouse before marriage except when characterized as marital property under subdivision (b)(1);

(D) Property acquired by a spouse at any time by gift, bequest, devise or descent;

(E) Pain and suffering awards, victim of crime compensation awards, future medical expenses, and future lost wages; and

(F) Property acquired by a spouse after an order of legal separation where the court has made a final disposition of property.

(c) In making equitable division of marital property, the court shall consider all relevant factors including:

(1) The duration of the marriage;

(2) The age, physical and mental health, vocational skills, employability, earning capacity, estate, financial liabilities and financial needs of each of the parties;

(3) The tangible or intangible contribution by one (1) party to the education, training or increased earning power of the other party;

(4) The relative ability of each party for future acquisitions of capital assets and income;

(5)(A) The contribution of each party to the acquisition, preservation, appreciation, depreciation or dissipation of the marital or separate property, including the contribution of a party to the marriage as homemaker, wage earner or parent, with the contribution of a party as homemaker or wage earner to be given the same weight if each party has fulfilled its role;

(B) For purposes of this subdivision (c)(5), dissipation of assets means wasteful expenditures which reduce the marital property available for

equitable distributions and which are made for a purpose contrary to the marriage either before or after a complaint for divorce or legal separation has been filed.

(6) The value of the separate property of each party;

(7) The estate of each party at the time of the marriage;

(8) The economic circumstances of each party at the time the division of property is to become effective;

(9) The tax consequences to each party, costs associated with the reasonably foreseeable sale of the asset, and other reasonably foreseeable expenses associated with the asset;

(10) The amount of social security benefits available to each spouse; and

(11) Such other factors as are necessary to consider the equities between the parties.

(d) The court may award the family home and household effects, or the right to live therein and use the household effects for a reasonable period, to either party, but shall give special consideration to a spouse having physical custody of a child or children of the marriage.

(e)(1) The court may impose a lien upon the marital real property assigned to a party, or upon such party's separate real property, or both, as security for the payment of child support.

(2) The court may impose a lien upon the marital real property assigned to a party as security for the payment of spouse support or payment pursuant to property division.

(f)(1) If, in making equitable distribution of marital property, the court determines that the distribution of an interest in a business, corporation or profession would be contrary to law, the court may make a distributive award of money or other property in order to achieve equity between the parties. The court, in its discretion, may also make a distributive award of money or other property to supplement, facilitate or effectuate a distribution of marital property.

(2) The court may provide that any distributive award payable over a period of time be secured by a lien on specific property.

(g)(1) Nothing in this section shall be construed to prevent the affirmation, ratification and incorporation in a decree of an agreement between the parties regarding the division of property.

(2) Nothing in this section shall affect validity of an antenuptial agreement that is enforceable under § 36-3-501.

(h) If an order of protection issued in or recognized by this state has been in effect or there is a court finding of domestic abuse or any criminal conviction involving domestic abuse within the marriage that is the subject of the proceeding for divorce, the court shall attribute any debt owed for any batterers' intervention or rehabilitation programs to the abuser only.

History.

Acts 1953, ch. 90, § 1 (Williams, § 8446); 1959, ch. 192, § 1; 1983, ch. 414, § 4; T.C.A. (orig. ed.), § 36-825; Acts 1984, ch. 590, § 1; 1986, ch. 722, § 2; 1987, ch. 122, § 1; 1987, ch. 390, § 6; 1988, ch. 682, § 1; 1988, ch. 735, § 1; 1988, ch. 841, §§ 1, 2; 1991, ch. 449, § 1; 2000, ch. 713, §§ 1-9; 2001, ch. 274, § 1; 2002, ch. 651, § 8; 2011, ch. 119, § 1; 2014, ch. 786, § 1; 2015, ch. 202, § 1.

Compiler's Notes.

Acts 1987, ch. 122, § 2 provided that the 1987 amendment by that act, shall apply to all actions for divorce or separate maintenance that are pending on April 9, 1987, or that are filed after April 9, 1987.

Acts 1987, ch. 390, § 7 provided that the 1987 amendment to this section by that act applies to all actions for divorce or separate support and maintenance that are pending on May 17, 1987, or that are filed on or after that date.

Acts 2014, ch. 786, § 2 provided that the act, which added subsection (h), shall apply to divorce actions commenced on or after July 1, 2014.

Acts 2015, ch. 202, § 2 provided that the act, which amended subdivision (b)(1)(B), shall apply to actions for divorce or legal separation filed on or after July 1, 2015.

36-4-122. Costs.

The court may decree costs against either party, and may award execution for the same, or, in case any estate is sequestered, or in the power of the court, or in the hands of a receiver, it may order the costs to be paid out of such property.

History.

Code 1858, § 2477 (deriv. Acts 1831, ch. 20, § 1; 1835-1836, ch. 26, §§ 17, 20, 21); Shan., § 4230; mod. Code 1932, § 8455; T.C.A. (orig. ed.), § 36-829.

36-4-123. Appeals.

Appeals in divorce cases shall be governed by the Tennessee Rules of Appellate Procedure. Pending appeal, orders and decrees of the trial court shall have the effect prescribed by the Tennessee Rules of Civil Procedure.

History.

Code 1958, § 3158; Shan., § 4890; Code 1932, § 9039; Acts 1970, ch. 595, § 1; 1981, ch. 449, § 2(23); T.C.A. (orig. ed.), § 36-830.

36-4-124. Right to remarry.

When a marriage is absolutely annulled, or dissolved, the parties shall severally be at liberty to marry again.

History.

Code 1858, § 2475 (deriv. Acts 1835-1836, ch. 26, § 7); Shan., § 4228; mod. Code, 1932, § 8452; Acts 1970, ch. 347, § 1; T.C.A. (orig. ed.), § 36-831.

36-4-125. Legitimacy of children unaffected by divorce or annulment.

The annulment or dissolution of the marriage shall not in any way affect the legitimacy of the children of the same.

History.

Code 1858, § 2476 (deriv. Acts 1835-1836, ch. 26, § 7); Shan., § 4229; mod. Code 1932, § 8453; T.C.A. (orig. ed.), § 36-832.

36-4-126. Suspension of proceedings to attempt reconciliation — Revocation.

(a) During the pendency of any suit for absolute di-

vorce, limited divorce or separate maintenance, the court having jurisdiction of the matter may, upon the written stipulation of both the husband and wife that they desire to attempt a reconciliation, enter an order suspending any and all orders and proceedings for such time as the court, in its discretion, may determine advisable under the circumstances, so as to permit the parties to attempt such reconciliation without prejudice to their respective rights. During the period of such suspension, the parties may resume living together as husband and wife and their acts and conduct in so doing shall not be determined a condonation of any prior misconduct.

(b) Such suspension may be revoked upon motion of either party by order of the court.

History.
Acts 1965, ch. 329, § 1; T.C.A., § 36-836.

36-4-127. Expunction of divorce records upon reconciliation of parties.

Parties to any divorce proceeding, who have reconciled and dismissed their cause of action, may thereafter file an agreed sworn petition signed by both parties and notarized, requesting expunction of their divorce records. Upon the filing of such petition, the judge shall issue an order directing the clerk to expunge all records pertaining to such divorce proceedings, once all court costs have been paid. The clerk shall receive a fee of fifty dollars ($50.00) for performing such clerk's duties under this section.

History.
Acts 1981, ch. 435, § 1; T.C.A., § 36-838.

36-4-128. Remarriage after spouse's two-year absence — Effect of spouse's return.

(a) If, upon a false rumor, apparently well founded, of the death of one (1) of the parties, who has been absent two (2) whole years, the other party marries again, the party remaining single may, upon returning, insist upon a restoration of conjugal rights or upon a dissolution of the marriage, and the court shall decree accordingly, to wit: that the first marriage shall stand and the second be dissolved, or vice versa.

(b) Such bill or petition shall be filed within one (1) year after the return.

History.
Code 1858, § 2461 (deriv. Acts 1835-1836, ch. 26, § 8); Shan., § 4214; Code 1932, § 8439; T.C.A. (orig. ed.), § 36-833.

36-4-129. Stipulated grounds and/or defenses — Grant of divorce.

(a) In all actions for divorce from the bonds of matrimony or legal separation the parties may stipulate as to grounds and/or defenses.

(b) The court may, upon stipulation to or proof of any ground of divorce pursuant to § 36-4-101, grant a divorce to the party who was less at fault or, if either or both parties are entitled to a divorce or if a divorce is to be granted on the grounds of irreconcilable differences, declare the parties to be divorced, rather than awarding a divorce to either party alone.

History.
Acts 1989, ch. 543, § 1; 1998, ch. 1059, § 5; 2008, ch. 868, § 2.

36-4-130. Mediation — Confidentiality of information and documents.

(a) When the parties to a divorce action mediate the dispute, the mediator shall not divulge information disclosed to the mediator by the parties or by others in the course of mediation. All records, reports, and other documents developed for the mediation are confidential and privileged.

(b) Communications made during a mediation may be disclosed only:

(1) When all parties to the mediation agree, in writing, to waive the confidentiality of the written information;

(2) In a subsequent action between the mediator and a party to the mediation for damages arising out of the mediation;

(3) When statements, memoranda, materials and other tangible evidence are otherwise subject to discovery and were not prepared specifically for use in and actually used in the mediation;

(4) When the parties to the mediation are engaged in litigation with a third party and the court determines that fairness to the third party requires that the fact or substance of an agreement resulting from mediation be disclosed; or

(5) When the disclosure reveals abuse or neglect of a child by one (1) of the parties.

(c) The mediator shall not be compelled to testify in any proceeding, unless all parties to the mediation and the mediator agree in writing.

History.
Acts 1993, ch. 245, § 1; 2007, ch. 519, § 2.

36-4-131. Mediation — Waiver or extension — Domestic abuse.

(a) Except as provided in subsections (b), (c) and (d), in any proceeding for divorce or separate maintenance, the court shall order the parties to participate in mediation.

(b) The court may waive or extend mediation pursuant to subsection (a) for reasons including, but not limited to:

(1) Any factor codified in § 36-6-409(4);

(2) Either party is unable to afford the cost of the mediation, unless the cost is waived or subsidized by the state or if the cost of mediation would be an unreasonable burden on either or both of the parties;

(3) The parties have entered into a written marital dissolution agreement or an agreed order resolving all of the pending issues in the divorce, except as provided in subsection (c);

(4) The parties have participated in a settlement conference presided over by the court or a special master;

(5) The court finds a substantial likelihood that mediation will result in an impasse; or

(6) For other cause found sufficient by the court.

(c) If the ground for the divorce is irreconcilable differences and the parties have filed with the court a properly executed marital dissolution agreement, and if there are minor children of the marriage, a properly executed parenting plan, the court shall not require the parties to attend mediation.

(d)(1) In any proceeding for divorce or separate support and maintenance, if an order of protection issued in or recognized by this state is in effect or there is a court finding of domestic abuse or any criminal conviction involving domestic abuse within the marriage that is the subject of the proceeding for divorce or separate support and maintenance, the court may order mediation or refer either party to mediation, only if:

(A) Mediation is agreed to by the victim of the alleged domestic or family violence;

(B) Mediation is provided by a certified mediator who is trained in domestic and family violence in a specialized manner that protects the safety of the victim; and

(C) The victim is permitted to have in attendance at mediation a supporting person of the victim's choice, including, but not limited to, an attorney or advocate. No victim may provide monetary compensation to a non-attorney advocate for attendance at mediation.

(2) Mediation conducted pursuant to subdivision (b)(1) shall be concluded and a report provided to the court no later than one hundred eighty (180) days from the date the complaint for divorce was filed.

History.
Acts 1997, ch. 350, § 1; 2007, ch. 519, § 3; 2008, ch. 994, § 1.

Compiler's Notes.
Acts 2008, ch. 994, § 2 provided that the act shall apply to any proceeding for divorce or separate maintenance where mediation has not been ordered by a court pursuant to § 36-4-131 prior to July 1, 2008.

36-4-132. Appointment of guardian ad litem.

(a) In an action for dissolution of marriage involving minor children, upon its own motion or upon the motion of either party, the court may appoint a guardian ad litem for any minor child of the marriage.

(b) The reasonable fees or costs of the guardian ad litem shall be borne by the parties and may be assessed by the court as it deems equitable. Such fees or costs may be waived upon motion for an indigent person.

(c) Any guardian ad litem appointed by the court pursuant to this section shall be presumed to be acting in good faith and in so doing shall be immune from any liability that might otherwise be incurred while acting within the scope of such appointment. Such immunity shall apply in all proceedings in which such guardian ad litem may act.

History.
Acts 1998, ch. 1059, § 6; 2000, ch. 736, § 1.

36-4-133. Compliance with notice of insurance termination provisions required.

On and after January 1, 2007, before entering an order or decree for a divorce or a legal separation under this title, the court shall determine that the appropriate spouse has complied with § 56-7-2366, if applicable. If the court determines that the notification process has not been followed, then the court shall consider requiring the insured or covered individual to provide a health care insurance policy for the former spouse.

History.
Acts 2006, ch. 764, § 2.

36-4-134. Notice that the decree does not necessarily affect the ability of a creditor to proceed against a party or a party's property.

(a) Every final decree of divorce granted on any fault ground of divorce and every marital dissolution agreement shall contain a notice that the decree does not necessarily affect the ability of a creditor to proceed against a party or a party's property, even though the party is not responsible under the terms of the decree for an account, any debt associated with an account or any debt. The notice shall also state that it may be in a party's best interest to cancel, close or freeze any jointly held accounts.

(b) Failure to include the notice required by subsection (a) shall not affect the validity of the decree of divorce, legal separation or annulment.

History.
Acts 2009, ch. 157, § 1.

36-4-135. False allegations of sexual abuse in furtherance of litigation.

Whenever a trial court finds that any person knowingly made a false allegation of sexual abuse in furtherance of litigation, in addition to any other penalties provided for by law or rule, the court may hold the accuser in contempt of court and may order the accuser to pay all litigation expenses, including, but not limited to, the reasonable attorney's fees, discretionary costs and other costs incurred by the wrongly accused party in defending against the false allegation.

History.
Acts 2010, ch. 894, § 1.

CHAPTER 5

ALIMONY AND CHILD SUPPORT

Part 1. General Provisions

SECTION.
36-5-101. Decree for support of children — Modification — Delinquencies — Standing to petition — Court costs and attorneys fees — Means of collection — Scientific parentage tests.
36-5-102. Portion of spouse's estate decreed to spouse entitled to alimony or support — Maintenance of minor custodial parent.
36-5-103. Enforcement of decree for alimony and support.
36-5-104. Failure to comply with child support order — Criminal sanctions — Inference of obligor's ability to pay.
36-5-105. Intestacy of plaintiff spouse — Effect on alimony.
36-5-106. Reports pursuant to Fair Credit Reporting Act.
36-5-107. Disposition of incentive payments — Prohibition against agency use of payments for social and recreational purposes.

SECTION.
36-5-108. [Repealed.]
36-5-109. Construction.
36-5-110. Termination of Acts 1985, ch. 477.
36-5-111. Liability for clerk's fee.
36-5-112. Responsible teen parent pilot project.
36-5-113. Plans for payment of child support; work requirements.
36-5-114. Federally required state collection and disbursement unit for child and spousal support.
36-5-115. State registry of support cases.
36-5-116. Establishment of central collection and disbursement unit.
36-5-117. Reimbursement of clerks of court for activities involving child support, central state case registry and the central collection and disbursement system.
36-5-118. Customer service unit—Statewide toll-free telephone line.
36-5-119. Satellite offices.
36-5-120. Payments and identifying information required for support payments made to the centralized collection and disbursement unit.
36-5-121. Decree for support of spouse.
36-5-122. False allegations of sexual abuse in furtherance of litigation.

Part 2. Uniform Reciprocal Enforcement of Support Act [Repealed]

36-5-201 — 36-5-229. [Repealed.]

Part 3. Intercounty Enforcement of Support [Repealed]

36-5-301 — 36-5-324. [Repealed.]

Part 4. Expedited Process for Support

36-5-401. Part definitions.
36-5-402. Commencement and termination of hearings and actions — Magistrates.
36-5-403. Powers of magistrate.
36-5-404. Powers and duties of clerk.
36-5-405. Actions for support.
36-5-406. Promulgation and approval of forms.

Part 5. Assignment of Income for Support

36-5-501. Income withholding.
36-5-502. [Repealed.]
36-5-503. Termination of income assignment.
36-5-504. [Repealed.]

Part 6. Income Withholding to Enforce Support Orders [Repealed]

36-5-601 — 36-5-613. [Repealed.]

Part 7. Enforcement Through License Denial, Revocation and Restriction

36-5-701. Part definitions.
36-5-702. Agency to enforce orders — Notice of noncompliance.
36-5-703. Administrative hearing — Certification of noncompliance.
36-5-704. Stays of action — Issuance of decisions — Costs.
36-5-705. Certification that obligor is in noncompliance.
36-5-706. Denial, suspension or revocation of license — Refusal to reinstate or reissue — Notice.
36-5-707. Effect of compliance by obligors who have been served notice.
36-5-708. Rules authorized to enforce part.
36-5-709. Licensing authorities — Cooperation with department — Agreements.
36-5-710. Modification or amendment of support orders or obligations.
36-5-711. Information about applicants or licensees — Transmittal.
36-5-712. Report to general assembly and governor.
36-5-713. Noncompliance with support order to affect ability to hold other licenses.
36-5-714. Restricted license.

Part 8. Child Support Enforcement Powers of Department

36-5-801. Access to records for child support enforcement.
36-5-802. Administrative orders for parentage tests.
36-5-803. Administrative orders to redirect child support payment.
36-5-804. Administrative orders to direct additional payments to reduce arrearages.
36-5-805. Updating of information of parties to certain administrative actions.
36-5-806. Administrative review of certain administrative orders.
36-5-807. Automated processes and service of documents.
36-5-808. Statewide jurisdiction of department.
36-5-809. Enforcement of out-of-state requests, administrative orders and administrative subpoenas.
36-5-810. Immunity for compliance with requests, orders and subpoenas.
36-5-811. Enforcement of requests for information.
36-5-812. Enforcement of requests, administrative orders and administrative subpoenas.
36-5-813. Liability for fees and costs.
36-5-814. "Financial institution" defined.
36-5-815. Rulemaking authority.
36-5-816. Administrative orders to determine continuing exclusive jurisdiction.

Part 9. Overdue Support

36-5-901. Liens for child support arrearages.
36-5-902. Full faith and credit to liens of other state child support agencies.
36-5-903. Rebuttable presumption as to ownership.
36-5-904. Enforcement of liens.
36-5-905. Enforcement by administrative order of seizure.
36-5-906. Exemptions from sale.
36-5-907. Release of lien.
36-5-908. Department control; real estate and personal property.
36-5-909. Limitation on rights of action.
36-5-910. Definition of financial institution.
36-5-911. Cooperation by state and local agencies.
36-5-912. Enforcement procedures — Rules and regulations for enforcement — Contracts for enforcement procedures.

Part 10. Appeals

36-5-1001. Appeals of administrative actions by the department of human services.
36-5-1002. Scope of administrative review.
36-5-1003. Judicial review of administrative actions.
36-5-1004. Non-interference with department's actions — Injunctive relief.
36-5-1005. Liability for fees and costs.
36-5-1006. Rules and regulations.

Part 11. Employment Records

36-5-1101. Part definitions.
36-5-1102. Reports of new employees.
36-5-1103. Reports for employers with employees in two or more states.
36-5-1104. Time frames for reports by employers.
36-5-1105. Reports on W-4 forms.
36-5-1106. Use of information by department.
36-5-1107. Failure to make necessary reports; penalties.
36-5-1108. Rulemaking authority.

Part 12. Assistance by Other States

36-5-1201. Administrative enforcement in interstate cases.

Part 13. Social Security Number Records

36-5-1301. Inclusion of social security numbers on certain licenses.
36-5-1302. Inclusion of social security numbers in certain records.

Part 14 — 19. [Reserved]

Part 20. Uniform Interstate Family Support Act—Short Title

36-5-2001. Short title.

Part 21. Uniform Interstate Family Support Act — General Provisions

36-5-2101. Definitions.
36-5-2102. State tribunal and support enforcement agency.
36-5-2103. Remedies cumulative.
36-5-2104. Application of parts 21-27 of this chapter to resident of foreign country and foreign support proceeding.

Part 22. Uniform Interstate Family Support Act — Jurisdiction

36-5-2201. Bases for jurisdiction over nonresident.

SECTION.
36-5-2202. Duration of personal jurisdiction.
36-5-2203. Initiating and responding tribunal of state.
36-5-2204. Simultaneous proceedings.
36-5-2205. Continuing, exclusive jurisdiction to modify child support order.
36-5-2206. Continuing jurisdiction to enforce child support order.
36-5-2207. Determination of controlling child support order.
36-5-2208. Child support orders for two or more obligees.
36-5-2209. Credit for payments.
36-5-2210. Application of parts 20-29 of this chapter to nonresident subject to personal jurisdiction.
36-5-2211. Continuing, exclusive jurisdiction to modify spousal support order.

Part 23. Uniform Interstate Family Support Act — Civil Provisions of General Application

36-5-2301. Proceedings under parts 20-29 of this chapter.
36-5-2302. Proceeding by minor parent.
36-5-2303. Application of law of state.
36-5-2304. Duties of initiating tribunal.
36-5-2305. Duties and powers of responding tribunal.
36-5-2306. Inappropriate tribunal.
36-5-2307. Duties of support enforcement agency.
36-5-2308. Duty of attorney general and reporter.
36-5-2309. Private counsel.
36-5-2310. Duties of the department of human services.
36-5-2311. Pleadings and accompanying documents.
36-5-2312. Nondisclosure of information in exceptional circumstances.
36-5-2313. Costs and fees.
36-5-2314. Limited immunity of petitioner.
36-5-2315. Nonparentage as defense.
36-5-2316. Special rules of evidence and procedure.
36-5-2317. Communications between tribunals.
36-5-2318. Assistance with discovery.
36-5-2319. Receipt and disbursement of payments.

Part 24. Uniform Interstate Family Support Act — Establishment of Support Order or Determination of Parentage

36-5-2401. Establishment of support order.
36-5-2402. Proceeding to determine parentage.

Part 25. Uniform Interstate Family Support Act — Enforcement of Order Without Registration

36-5-2501. Employer's receipt of income-withholding order of another state.
36-5-2502. Employer's compliance with income-withholding order of another state.
36-5-2503. Employer's compliance with two or more income-withholding orders.
36-5-2504. Immunity from civil liability.
36-5-2505. Penalties for noncompliance.
36-5-2506. Contest by obligor.
36-5-2507. Administrative enforcement of orders.

Part 26. Uniform Interstate Family Support Act — Registration, Enforcement, and Modification of Support Order

Subpart A. Registration for Enforcement of Support Order

36-5-2601. Registration of order for enforcement.
36-5-2602. Procedure to register order for enforcement.
36-5-2603. Effect of registration for enforcement.
36-5-2604. Choice of law.

Subpart B. Contest of Validity or Enforcement

36-5-2605. Notice of registration of order.
36-5-2606. Procedure to contest validity or enforcement of registered support order.
36-5-2607. Contest of registration or enforcement.
SECTION.
36-5-2608. Confirmed order.

Subpart C. Registration and Modification of Child Support Order of Another State

36-5-2609. Procedure to register child support order of another state for modification.
36-5-2610. Effect of registration for modification.
36-5-2611. Modification of child support order of another state.
36-5-2612. Recognition of order modified in another state.
36-5-2613. Jurisdiction to modify child support order of another state when individual parties reside in this state.
36-5-2614. Notice to issuing tribunal of modification.

Subpart D. Registration and Modification of Foreign Child Support Order

36-5-2615. Jurisdiction to modify child support order of foreign country.
36-5-2616. Procedure to register child support order of foreign country for modification.

Part 27. Support Proceeding under Convention

36-5-2701. Part definitions.
36-5-2702. Applicability.
36-5-2703. Relationship of state department of human services to United States central authority.
36-5-2704. Initiation by department of human services of support proceeding under Convention.
36-5-2705. Direct request.
36-5-2706. Registration of Convention support order.
36-5-2707. Contest of registered Convention support order.
36-5-2708. Recognition and enforcement of registered Convention support order.
36-5-2709. Partial enforcement.
36-5-2710. Foreign support agreement.
36-5-2711. Modification of Convention child support order.
36-5-2712. Personal information — Limitation on use.
36-5-2713. Record in original language — English translation.

Part 28. Uniform Interstate Family Support Act — Interstate Rendition

36-5-2801. Grounds for rendition.
36-5-2802. Conditions of rendition.

Part 29. Uniform Interstate Family Support Act — Miscellaneous Provisions

36-5-2901. Uniformity of application and construction.
36-5-2902. Applicability.
36-5-2903. Severability.

Part 30. Intercounty Enforcement and Modification

36-5-3001. Purposes and construction of part and limitation of scope of part.
36-5-3002. Part definitions.
36-5-3003. Transfer of support or custody cases.
36-5-3004. Procedure to transfer case.
36-5-3005. Duties of the transferor court.
36-5-3006. Duties and powers of transferee clerk and transferee court.
36-5-3007. Contest of transfer.
36-5-3008. Acceptance of transfer.
36-5-3009. Costs and fees.

Part 31. Enforcement Without Transfer of Jurisdiction

36-5-3101. Purpose and construction of part.
36-5-3102. Part definitions.
36-5-3103. Registration of order for enforcement.
36-5-3104. Effect of registration of order.
36-5-3105. Notice of registration of order.
36-5-3106. Procedure to contest validity or enforcement of registered order.
36-5-3107. Contest of registration or enforcement.
36-5-3108. Effect of confirmed order.

SECTION.
36-5-3109. Rights of the department of human services.
36-5-3110. Disbursement of collections.
36-5-3111. Costs.

PART 1

GENERAL PROVISIONS

36-5-101. Decree for support of children — Modification — Delinquencies — Standing to petition — Court costs and attorneys fees — Means of collection — Scientific parentage tests.

(a)(1) Upon dissolution of a marriage, whether dissolved absolutely or by a perpetual or temporary decree of separation, the court may make an order and decree for the suitable support and maintenance of the children by either spouse or out of such spouse's property, according to the nature of the case and the circumstances of the parties, the order or decree to remain in the court's control.

(2) Courts having jurisdiction of the subject matter and of the parties are hereby expressly authorized to provide for the future support of the children, in proper cases, by fixing some definite amount or amounts to be paid in monthly, semimonthly, or weekly installments, or otherwise, as circumstances may warrant, and such awards, if not paid, may be enforced by any appropriate process of the court having jurisdiction, including levy of execution.

(3) In interstate cases, jurisdiction to modify, alter or enforce orders or decrees for the support of children shall be determined in accordance with parts 20-29 of this chapter. In intrastate cases, jurisdiction to modify, alter or enforce orders or decrees for the support of children shall be determined in accordance with parts 30 and 31 of this chapter.

(4) As used in this chapter, "order," where the context requires, includes an order concerning child or medical support issued pursuant to an administrative proceeding in any other state.

(5) In establishing or enforcing any duty of support under this chapter, the court shall give full faith and credit to all paternity determinations of any other state or territory, made pursuant to a voluntary acknowledgment or pursuant to any administrative or judicial process.

(6) A voluntary acknowledgment of paternity that is completed under § 68-3-203(g), § 68-3-302, or § 68-3-305(b), or under similar provisions of another state or government, when certified by the state registrar or other governmental or institutional entity maintaining the record of the acknowledgment, shall be a basis for establishing a support order without requiring any further proceedings to establish paternity.

(7) The state of Tennessee, its officers, employees, agents or contractors, any counties, county officials, the clerks of any court, or any Title IV-D child support enforcement agency shall not be liable, in any case, to compensate any person for repayment of child support paid or for any other costs, as a result of the rescission pursuant to § 24-7-113 of any voluntary acknowledgment, or the rescission of any orders of legitimation, paternity, or support.

(8) When a court having jurisdiction determines child support pursuant to the Tennessee child support guidelines, based on either the actual income or the court's findings of an obligor's ability to earn income, the final child support order shall create an inference in any subsequent proceeding that the obligor has the ability to pay the ordered amount until such time as the obligor files an application with the court to modify the ordered amount.

(9) Where the lump sum amount of retirement or pension benefits or of balances in an individual retirement account, §§ 401(k), 403(b), 457, codified in 26 U.S.C. §§ 401(k), 403(b) and 457, respectively, or any other tax qualified account has been considered by the trial court, and determined to be marital property to be divided, the distributions of such lump sum amounts necessary to complete the division of property, whether distributed in a single payment or by periodic payments, shall not be considered income for the purpose of determining a spouse or ex-spouse's right to receive alimony or child support, but the income generated by the investment of such lump sum awards shall be considered income for such purpose.

(b)(1) Notwithstanding any other law to the contrary, neither the department of human services, nor any Title IV-D child support contractor of the department, nor any recipient of public assistance in this or any other state or territory, nor any applicant for either public assistance in this or any other state or territory or for Title IV-D child support services from the department or any other Title IV-D agency in this or any other state or territory, shall be required to demonstrate to a court or administrative tribunal that the caretaker of the child for whom child support is sought is vested with any more than physical custody of the subject child or children, in order to have standing to petition for child support from the legal parent of the child or children for whom support is sought, or to seek enforcement or modification of any existing orders involving such child or children.

(2) Legal custody of a child to whom a child support obligation is owed shall not be a prerequisite to the initiation of any support action or to the enforcement or modification of any support obligation in such cases, whether or not the obligation has been assigned to this state or any other state or territory by operation of law.

(c)(1) The court shall set a specific amount that is due each month, to be paid in one (1) or more payments as the court directs. In making any decree or order pursuant to this section, the court shall consider § 34-1-102(b). Unless the court finds otherwise, each order made under this section shall contain the current address of the parties.

(2)(A) The order or decree of the court may provide that the payments for the support of such child or children shall be paid either to the clerk of the

court or directly to the spouse, or other person awarded the custody of the child or children; provided, however, that:

(i) The court shall order that all child support payments based upon an income assignment issued by the clerk be paid to the clerk of the court, except as set forth in subdivision (c)(2)(A)(ii), for child support cases that are subject to the provisions for central collection and disbursement pursuant to § 36-5-116; and

(ii) In all Title IV-D child support cases in which payment of child support is to be made by income assignment, or otherwise, and in all cases where payments made by income assignment based upon support orders entered on or after January 1, 1994, that are not Title IV-D support cases, but must be made to the central collection and disbursement unit as provided by § 36-5-116, and, except as may otherwise be allowed by § 36-5-501(a)(2)(B), the court shall only order that the support payments be made to the central collection and disbursement unit pursuant to § 36-5-116. No agreement by the parties in a parenting plan, either temporary or permanent, entered pursuant to chapter 6, part 4 of this title, or any other agreement of the parties or order of the court, except as may otherwise be allowed by § 36-5-501(a)(2)(B), shall alter the requirements for payment to the central collection and disbursement unit as required by § 36-5-116, and any provision of any parenting plan, agreement or court order providing for any other payment procedure contrary to the requirements of § 36-5-116, except as may otherwise be allowed by § 36-5-501(a)(2)(B), whether or not approved by the court, shall be void and of no effect. No credit shall be given by the court, the court clerk or the department of human services, for child support payments required by the support order that are made in contravention of such requirements; provided, however, that the department may make any necessary adjustments to the balances owed to account for changes in the Title IV-D or central collection and disbursement status of the support case.

(B)(i)*(a)* When the court enters an order in which the paternity of a child is determined or support is ordered, enforced or modified for a child, each individual who is a party to any action pursuant to this part shall be immediately required to file with the court and, if the case is a Title IV-D child support case, shall immediately file with the local Title IV-D child support office, for entry into the state registry of support cases, and shall update, as appropriate, the parties' and, for subdivisions (c)(2)(B)(i)(*a*)(*1*)-(B)(i)(*a*)(*3*), the child's or children's:

(1) Full name and any change in name;

(2) Date and place of birth. This information shall be filed with the court as a separate document containing the parties' and the child's or children's names, dates of birth and social security numbers. The document shall be placed in an eight and one-half inch by eleven inch (8½″ x 11″) envelope containing the style of the case and docket number of the case and the document and envelope shall be file stamped by the clerk, and filed under seal in the case file. The document shall also be provided by the parties to the Title IV-D child support office together with the other information required in subdivisions (c)(2)(B)(i)(*a*)(*1*)-(*8*). The social security numbers and other information filed with the clerk shall be available to the clerk of court for processing of documents and legal actions such as, but not limited to, divorce certificates, garnishments, and income assignments. On request, the sealed information shall be made available to the department of human services and any other agency required by law to have access to the information and to other persons or agencies as ordered by the court.

(3) Residential and mailing addresses;

(4) Home telephone numbers;

(5) Driver license number;

(6) The name, address, and telephone number of the person's employer;

(7) The availability and cost of health insurance for the child; and

(8) Gross annual income.

(b) The requirements of subdivision (c)(2)(B)(i)(*a*) may be included in the court's order.

(ii) Each individual who is a party must update changes in circumstances of the individual for the information required by subdivision (c)(2)(B)(i)(*a*) within ten (10) days of the date of such change. At the time of the entry of the first order pertaining to child support after July 1, 1997, clear written notice shall be given to each party of the requirements of this subsection (c), procedures for complying with this subsection (c), and a description of the effect or failure to comply. Such requirement may be noted in the order of the court.

(iii) In any subsequent child support enforcement action, the delivery of written notice as required by Rule 5 of the Tennessee Rules of Civil Procedure, to the most recent residential or employer address shown in the court's records or the Title IV-D agency's records, as required in subdivision (c)(2)(B)(i)(*a*) shall be deemed to satisfy the due process requirements for notice and service of process with respect to that party, if there is a sufficient showing and the court is satisfied that a diligent effort has been made to ascertain the location and whereabouts of the party.

(iv) Upon motion of either party, upon a showing of domestic violence or the threat of such violence, the court may enter an order to with-

hold from public access the address, telephone number, and location of the alleged victim or victims or threatened victims of such circumstances. The clerk of the court shall withhold such information based upon the court's specific order, but may not be held liable for release of such information.

(v) In any subsequent proceeding to modify or enforce support, there shall be a rebuttable presumption that the information provided by the parties, as required by this part, has not changed, unless a party has complied with this section by updating the information with the court and, if the case is a Title IV-D child support case, with the local Title IV-D child support office.

(d)(1) All support payments that have been paid to the clerk of the court shall be distributed by the clerk, as provided in the order of the court, within ten (10) days; provided, that the payments made to the clerk of the court in Title IV-D child support cases shall be distributed and deposited pursuant to the operating agreements under subdivision (d)(3) and subdivision (d)(6), after implementation of the statewide Title IV-D child support computer system in the clerk's county, and after the appropriate notice to the clerk by the department under subdivisions (d)(3) and (6).

(2) In every child support case being processed through the state's central collection and disbursement unit, if unable to provide the information concerning an order through a computer information transfer, the clerk shall send a copy of any new order or modification of such order, prior to or along with the first payment received pursuant to such order, to the department, or its designee, within ten (10) working days.

(3) Clerks participating in the operation of the statewide Title IV-D child support computer system shall be bound by the terms of the agreement and the laws, regulations, and policies and procedures of the Title IV-D child support program for the term of the agreement, unless the agreement is canceled by the department after notice to the clerk and an opportunity to correct any deficiencies caused by failure of the clerk to comply with federal or state regulations or procedures for operation of the system within thirty (30) days of such notice. While participating in the system, the clerks shall be entitled to receive the statutory fee for the collection and handling of child support obligations under the Title IV-D program. Any child support payment subject to distribution through the state's central collection and disbursement unit that has been received by a clerk shall be sent immediately by the clerk to the department or its designee, without the necessity of a court order.

(4) The clerks of all courts involved in the collection of any child support shall cooperate with and provide any reasonable and necessary assistance to the department or its contractors in the transfer of data concerning child support to the statewide Title IV-D child support computer system.

(5) Whenever the clerk has ceased handling Title IV-D child support payments under subdivision (d)(3), and only where the context requires, all provisions in this chapter relating to the duties or actions involving the clerk shall be interpreted to substitute the department or its contractor.

(6) In all cases in which child support payments are subject to processing through the state's central collection and disbursement unit, the clerks shall, upon notice by the department, deposit all receipts of such child support payments on a daily basis to a bank account from which the state of Tennessee shall electronically debit those payments for the purpose of obtaining funds to distribute the child support obligations to the obligee.

(7) In all Title IV-D child support cases, child support payments shall be made by the obligor to the department. No credit shall be given to an obligor for any payments made by the obligor or by another person on behalf of the obligor, directly to an obligee or the obligor's child or children, unless the obligee remits the payment to the department. In the event that a Title IV-D case is instituted subsequent to the establishment of an order of child support, the department shall notify the obligor and obligee and the appropriate clerk of this fact, and all payments of child support in Title IV-D cases shall be made by the obligor to the department, without further order of the court.

(8) When an order provides for the support of two (2) or more children in a case that is subject to enforcement under Title IV-D, and at least one (1) child is a public charge, based upon receipt of temporary assistance pursuant to title 71, chapter 3, part 1, TennCare-medicaid, or foster care or other custodial services from the state of Tennessee, the child support order shall be prorated by the department for purposes of distribution of the child support to the appropriate person or agency providing care or support for the child, without the need for modification of the child support order by the court.

(e)(1)(A) In making the court's determination concerning the amount of support of any minor child or children of the parties, the court shall apply, as a rebuttable presumption, the child support guidelines, as provided in this subsection (e). If the court finds that evidence is sufficient to rebut this presumption, the court shall make a written finding that the application of the child support guidelines would be unjust or inappropriate in that particular case, in order to provide for the best interest of the child or children, or the equity between the parties. Findings that the application of the guidelines would be unjust or inappropriate shall state the amount of support that would have been ordered under the child support guidelines and a justification for the variance from the guidelines.

(B) Notwithstanding this section or any other law or rule to the contrary, if the net income of the obligor exceeds ten thousand dollars ($10,000) per month, then the custodial parent must prove, by a preponderance of the evidence, that child support in excess of the amount provided for in the child support guidelines is reasonably necessary to pro-

vide for the needs of the minor child or children of the parties. In making the court's determination, the court shall consider all available income of the obligor, as required by this chapter, and shall make a written finding that child support in excess of the amount so calculated is or is not reasonably necessary to provide for the needs of the minor child or children of the parties. In determining each party's income for the purpose of applying the child support guidelines, the court shall deduct each party's capital losses from that party's capital gains in each year.

(C) When making retroactive support awards, pursuant to the child support guidelines established pursuant to this subsection (e), in cases where the parents of the minor child are separated or divorced, but where the court has not entered an order of child support, the court shall consider the following factors as a basis for deviation from the presumption in the child support guidelines that child and medical support for the benefit of the child shall be awarded retroactively to the date of the parents' separation or divorce:

(i) Whether the remaining spouse knew or could have known of the location of the child or children who had been removed from the marital home by the abandoning spouse; or

(ii) Whether the abandoning spouse, or other caretaker of the child, intentionally, and without good cause, failed or refused to notify the remaining spouse of the location of the child following removal of the child from the marital home by the abandoning spouse; and

(iii) The attempts, if any, by the abandoning spouse, or other caretaker of the child, to notify the remaining spouse of the location of the child following removal of the child from the marital home by the abandoning spouse.

(D) In cases in which the presumption of the application of the guidelines is rebutted by clear and convincing evidence, the court shall deviate from the child support guidelines to reduce, in whole or in part, any retroactive support. The court must make a written finding that application of the guidelines would be unjust or inappropriate, in order to provide for the best interests of the child or children or the equity between the parties.

(E) Deviations shall not be granted in circumstances where, based upon clear and convincing evidence:

(i) The remaining spouse has a demonstrated history of violence or domestic violence toward the abandoning spouse, the child's caretaker or the child;

(ii) The child is the product of rape or incest of the mother by the father of the child;

(iii) The abandoning spouse has a reasonable apprehension of harm from the remaining spouse, or those acting on the remaining spouse's behalf, toward the abandoning spouse or the child; or

(iv) The remaining spouse, or those acting on the remaining spouse's behalf, has abused or neglected the child.

(F) In making any deviations from awarding child and medical support retroactively to the date of separation or divorce of the parties, the court shall make written findings of fact and conclusions of law to support the basis for the deviation, and shall include in the order the total amount of retroactive child and medical support that would have been paid retroactively to the date of separation or divorce of the parties, had a deviation not been made by the court.

(G) Nothing in this subdivision (e)(1) shall limit the right of the state of Tennessee to recover from the father or the remaining spouse expenditures made by the state for the benefit of the child, or the right, or obligation, of the Title IV-D child support agency to pursue retroactive support for the custodial parent or caretaker of the child, where appropriate.

(H) Any amounts of retroactive support ordered that have been assigned to the state of Tennessee, pursuant to § 71-3-124, shall be subject to the child support distribution requirements of 42 U.S.C. § 657. In such cases, the court order shall contain any language necessary to allow the state to recover the assigned support amounts.

(2) Beginning October 13, 1989, the child support guidelines promulgated by the department, pursuant to the rulemaking provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, shall be the guidelines that courts shall apply as a rebuttable presumption in child support cases.

(3) Child support guidelines shall be reviewed by the department of human services every three (3) years from the date of promulgation. The department shall make recommendations to the supreme court of any revisions needed in order to maintain compliance with the Family Support Act of 1988, and to ensure that application of the guidelines results in determinations of appropriate child support awards. A copy of the recommendations shall also be sent to the civil justice committee of the house of representatives and the health and welfare committee of the senate.

(4)(A) In addition to any other subtractions, calculations of net income under the guidelines shall take into consideration the support of any other children the obligor is legally responsible to provide. The court shall consider children of the obligor who are not included in a decree of child support, but for whom the obligor is legally responsible to provide support and is supporting, for the purposes of reducing the obligor's net income, in calculating the guideline amount, or as a reason for deviation from the guidelines.

(B) In calculating amounts of support for children under the guidelines, the court shall allocate an obligor's financial child support responsibility from the obligor's income among all children of the obligor for whom the obligor is legally responsible to provide support and is supporting, in a manner that gives equitable consideration as defined by the department's child support guidelines, to the chil-

dren for whom support is being set in the case before the court and to any other children for whom the obligor is legally responsible and is supporting. The court shall require that payments, made out of that allocation for all children of the obligor for whom the obligor is legally responsible and is supporting, be made upon such consideration. Guidelines promulgated by the department shall be consistent with this subdivision (e)(4)(B).

(f)(1) Any order for child support shall be a judgment entitled to be enforced as any other judgment of a court of this state, and shall be entitled to full faith and credit in this state and in any other state. Except as provided in subdivision (f)(6), such judgment shall not be subject to modification as to any time period or any amounts due prior to the date that an action for modification is filed and notice of the action has been mailed to the last known address of the opposing parties. If the full amount of child support is not paid by the date when the ordered support is due, the unpaid amount is in arrears, shall become a judgment for the unpaid amounts, and shall accrue interest from the date of the arrearage at the rate of twelve percent (12%) per year. All interest that accumulates on arrearages shall be considered child support. Computation of interest shall not be the responsibility of the clerk.

(2) In addition to the remedies provided in part 5 of this chapter, but not as an alternative to those provisions, if a parent is more than thirty (30) days in arrears, the clerk of the court may, upon written application of the obligee parent, a guardian or custodian of the children, or the department of human services or its contractors in Title IV-D support cases, issue a summons or, in the discretion of the court, an attachment for such parent, setting a bond of not less than two hundred fifty dollars ($250) or, in the discretion of the court, up to the amount of the arrears, for such other proceedings as may be held in the matter. In addition, the court may, at any time, require an obligor parent to give security by bond, with sufficient sureties approved by the court, or, alternatively, in the absence of the judge from the court, approved by the clerk of the court, for payment of past, present, and future support due under the order of support. If the obligor parent thereafter fails to appear or fails without good cause to comply with the order of support, such bonds may be forfeited and the proceeds from the bonds paid to the court clerk and applied to the order of support.

(3) Absent a court order to the contrary, if an arrearage for child support or fees due as court costs exists at the time an order for child support would otherwise terminate, the order of support, or any then existing income withholding arrangement, and all amounts ordered for payment of current support or arrears, including any arrears due for court costs, shall continue in effect in an amount equal to the then existing support order or income withholding arrangement, until the arrearage and costs due are satisfied, and the court may enforce all orders for such arrearages by contempt.

(4) The order of any court or administrative tribunal directing that an obligor pay a sum certain to reduce any support arrearage shall not preclude the use, by the department of human services or its contractors in the Title IV-D child support program, of any other administrative means of collecting the remaining balance of the outstanding arrearage, including, but not limited to, income tax refund intercepts, financial institution collections, enforcement of liens, or any other method authorized by law. The use of any additional administrative means of collection by the department or its contractors in the Title IV-D child support program is expressly authorized to reduce any portion, or all, of the outstanding balance of support as shown by the department's records, and any order of the court or administrative tribunal to the contrary is without any effect whatsoever, except for such appeal as may lie from the implementation of the administrative procedure that is used to reduce the arrearage.

(5)(A) In enforcing any provision of child support, if an obligee, or the department or its contractor in Title IV-D cases, specifically prays for revocation of a license because an obligor is alleged to be in noncompliance with an order of support, or if the court determines on its own motion, or on motion of a party, that any individual party has failed to comply with a subpoena or a warrant in connection with the establishment or enforcement of an order of support, the court may find, specifically, in its order that the obligor is not in compliance with an order of support as defined by part 7 of this chapter, or it may find that an individual party has failed to comply with a subpoena or warrant in connection with the establishment or enforcement of an order of support, and may direct that any or all of the obligor's or individual party's licenses be subject to revocation, denial or suspension by the appropriate licensing authority, pursuant to part 7 of this chapter. The court shall direct the clerk to send a copy of that order to the department of human services to be sent by the department to each licensing authority specified in the order for processing and suspension, denial or revocation pursuant to § 36-5-706 and any other applicable provisions of part 7 of this chapter. Costs related to such order shall be taxed to the obligor or individual party.

(B) If the obligor whose license has been subject to subdivision (f)(5)(A) complies with the order of support, or if the individual party complies with the subpoena or warrant, the court shall enter an order making such a finding, and the clerk shall send an order immediately to the department of human services to be transmitted to each licensing authority specified in the order, which shall then immediately issue, renew or reinstate the obligor's or individual party's license, in accordance with § 36-5-707. Costs related to such order shall be taxed to the obligor or individual party, as the case may be, and shall be paid by the obligor or the individual party prior to sending the order to the department for transmission to the licensing

authority.

(C) The department shall provide available information to the obligee, party or the court in actions under this subdivision (f)(5), concerning the name and address of the licensing authority or authorities of the obligor or individual party, in order to enable the enforcement of this subdivision (f)(5). The obligee or individual party, as the case may be, seeking such information shall pay a fee, as established by the department for the provision of such service. These fees may be taxed as costs to the obligor whose license has been revoked pursuant to this subdivision (f)(5), or to the individual party who has failed to comply with the warrant or subpoena.

(D) If the licensing authority fails to take appropriate action pursuant to the orders of the court under this subdivision (f)(5), the party may seek a further order from the court to direct the licensing authority to take such action, and the party may seek any appropriate court sanctions against the licensing authority.

(E) For purposes of this subdivision (f)(5), "individual party" means a party to the support action who is a person, but does not include a governmental agency, or the contractor or agent of such governmental agency, that is enforcing an order of support. "Party" may include, where the context requires, an individual person, or it may include a governmental agency or contractor or agent of such governmental agency.

(6)(A) With the approval of the court, the obligor and obligee shall have the right to compromise and settle a child support arrearage balance owed directly to the obligee. The authority is given to forgive accrued principal and interest on delinquent child support with the approval of the obligee and shall not include any monies owed to this or any other state. In all Title IV-D cases, the department of human services or its contractors must be a party to the action. Both the obligee and obligor must consent to the compromise and settlement in writing in accordance with the procedures established by the child support agency or court.

(B) Prior to giving consent, the obligee shall be provided with a written explanation of the compromise and settlement and of the obligee's rights with respect to child support arrears owed to the obligee. In no event may an offer of compromise and settlement of any child support arrears owed directly to the obligee be accepted unless the obligee consents to the offer of compromise and settlement in writing.

(C) To be eligible for a compromise and settlement of the child support arrearage balance, the obligor must pay the child support obligation in full as ordered for a minimum of twelve (12) consecutive months immediately preceding the compromise and settlement between the obligor and obligee in order to compromise and settle the remaining balance. If additional child support arrears accrue after a compromise and settlement, such subsequent arrears shall be paid in full and not subject to further compromise and settlement.

(D) A compromise and settlement of a lesser amount than the total principal and interest that is owed shall not be considered against public policy if the compromise and settlement is in the best interest of the child or children.

(E) The program shall operate uniformly across this state and shall take into consideration the needs of the child or children subject to the child support order and the obligor's ability to pay.

(g)(1) Upon application of either party, the court shall decree an increase or decrease of support when there is found to be a significant variance, as defined in the child support guidelines established by subsection (e), between the guidelines and the amount of support currently ordered, unless the variance has resulted from a previously court-ordered deviation from the guidelines and the circumstances that caused the deviation have not changed. Any support order subject to enforcement under Title IV-D may be modified in accordance with § 36-5-103(f).

(2) The necessity to provide for the child's health care needs shall also be a basis for modification of the amount of the order, regardless of whether a modification in the amount of child support is necessary.

(3) The court shall not refuse to consider a modification of a prior order and decree as it relates to future payments of child support because the party is in arrears under that order and decree, unless the arrearage is a result of intentional action by the party.

(4)(A) Notwithstanding subdivision (g)(4)(B) and § 36-5-103(f), for the purposes of this chapter, the birth or adoption of another child for whom an obligor is legally responsible to support and is supporting shall constitute a substantial and material change of circumstances for seeking a review of the existing order to determine if the addition of such child, and any credits applicable for the addition of such child under the department's child support guidelines, would result in a significant variance under such guidelines. If the significant variance is demonstrated by the review, the amount of an existing child support order may be modified by the court.

(B) For purposes of this chapter, the significant variance established by the department of human services pursuant to the child support guidelines shall provide a lower threshold for modification of child support orders for persons whose adjusted gross incomes are within low income categories established by the department's child support guidelines. The significant variance involving low income persons shall be established by rule of the department at no more than seven and one half percent (7 ½ %) of the difference between the current child support order and the amount of the proposed child support order.

(5)(A) In Title IV-D child support cases that the department of human services is enforcing, the department shall provide a child support obligor notice ninety (90) days prior to the eighteenth

birthday of a child or children for whom the obligor is paying child support, as such birthday is indicated by the department's records.

(B) If the following conditions are met, then the obligor may seek termination of the order of support and may also request that the department, as required by federal law, assist in seeking termination of the order:

(i) The department's records demonstrate that the child for whom an order of support in a Title IV-D child support case has been entered has reached eighteen (18) years of age and has graduated from high school, or that the class of which the child is a member when the child reached eighteen (18) years of age has graduated from high school, the obligor has otherwise provided the department with written documentation of such facts, or the obligor has provided the department with written documentation that a child for whom the obligor is required to pay support has died or has married;

(ii) No other special circumstances exist, including, but not limited to, the circumstances provided for in subsection (k) regarding disabled children, that require the obligation to continue;

(iii) The obligor does not owe arrearages to the obligee parent, any guardian or custodian of the child, the department of human services, any other agency of the state of Tennessee, or any other Title IV-D agency of any state;

(iv) The costs of court have been paid; and

(v) There are no other children for whom the obligor is required to pay child support.

(C)(i) If the conditions of subdivisions (g)(5)(B)(i)-(v) exist in the Title IV-D case, as shown by the department's records, or such conditions exist based upon the written documentation provided by the obligor and verified by the department, then the department shall immediately temporarily suspend the order of support for the child who has reached majority. If the existing court order was the result of a deviation from the child support guidelines, the department shall immediately seek from the court termination of the support order for such child, and shall provide the obligee with notice of the filing of the petition to terminate such order.

(ii) If the existing order was not the result of a deviation from the child support guidelines, the department shall give notice to the obligee, and to the other obligor, of the temporary suspension of the order, based upon verification of the status of the case pursuant to subdivision (g)(5)(B), of its intent to permanently terminate the support order by an administrative order, which the department may issue for such purpose, and of the opportunity for a hearing upon the issue of permanent termination of the order.

(iii) If the obligee contests the temporary suspension of the order of support under the circumstances of subdivisions (g)(5)(B)(i)-(v) and prevails following entry of the court or administrative order, the obligor shall pay the support amounts and any other arrearages or court costs not paid as a result of the temporary suspension of the order. The administrative order shall be filed with the clerk of the court having jurisdiction of the case.

(D)(i) If the conditions of subdivisions (g)(5)(B)(i)-(iv) are met in the Title IV-D case, but there are other children for whom the obligor is still obligated to support, the department shall immediately conduct a review of the support order and shall seek the support order's adjustment, if appropriate under the child support guidelines for such children. The obligor shall continue to make child support payments, in accordance with the existing order, until the court or department modifies the order pursuant to this subdivision (g)(5)(D).

(ii) If the existing court order was the result of a deviation from the child support guidelines, the department shall seek modification of the support order from the court, and shall provide the obligee and the obligor with notice of the filing of the petition to modify such order.

(iii) If the existing order was not the result of a deviation from the child support guidelines, and the department reviews the order and determines that the order should be modified pursuant to such guidelines, then the department shall notify the parties of the department's intent to modify the support order by an administrative order, which the department may issue for such purpose, and shall notify the parties of the opportunity for a hearing on the issue of modification of the order.

(iv) The support order shall be modified as established by order of the court or the department, as required pursuant to the child support guidelines. If the modified payment amount is lower than the payment amount required prior to the modification, then the obligor shall be given credit for such amount against future payments of support for the remaining children under the order. If the modified payment amount is higher than the payment amount required prior to the modification, then the obligor shall pay the higher ordered amount from the date of entry of the order. The administrative order shall be filed with the clerk of the court having jurisdiction of the case.

(E) The department's review and adjustment process, and the administrative hearing process outlined in this subdivision (g)(5), shall comply with any other due process requirements for notice to the obligor and obligee as may otherwise be required by this chapter.

(h)(1) The court may direct the acquisition or maintenance of health insurance covering each child of the marriage and may order either party to pay all, or each party to pay a pro rata share of, the health care costs not paid by insurance proceeds. In no event shall eligibility for or receipt of medicaid or Tenn-

Care-Medicaid by the custodial parent be considered to meet the need to provide for the child's health care needs in the order, if reasonable and affordable health insurance is available.

(2) In any case in which the court enters an order of support enforced under Title IV-D of the Social Security Act, compiled in 42 U.S.C. § 651 et seq., the court shall enter an order providing for health care coverage to be provided for the child or children.

(3) Section 36-5-501(a)(3) shall apply with respect to enrollment of a child in the noncustodial parent's employer-based health care plan.

(i) The court may direct either or both parties to designate the children as beneficiaries under any existing policies insuring the life of either party, and maintenance of existing policies insuring the life of either party, or the purchase and maintenance of life insurance and designation of beneficiaries.

(j) Nothing in this section shall be construed to prevent the affirmation, ratification and incorporation in a decree of an agreement between the parties as to child support. In any such agreement, the parties must affirmatively acknowledge that no action by the parties shall be effective to reduce child support after the due date of each payment, and that they understand that court approval must be obtained before child support may be reduced, unless such payments are automatically reduced or terminated under the terms of the agreement.

(k)(1) Except as provided in subdivision (k)(2), the court may continue child support beyond a child's minority for the benefit of a child who is handicapped or disabled, as defined by the Americans with Disabilities Act, compiled in 42 U.S.C. § 12101 et seq., until such child reaches twenty-one (21) years of age.

(2) Provided, that such age limitation shall not apply if such child is severely disabled and living under the care and supervision of a parent, and the court determines that it is in the child's best interest to remain under such care and supervision and that the obligor is financially able to continue to pay child support. In such cases, the court may require the obligor to continue to pay child support for such period as it deems in the best interest of the child; provided, however, that, if the severely disabled child living with a parent was disabled prior to this child attaining eighteen (18) years of age and if the child remains severely disabled at the time of entry of a final decree of divorce or legal separation, then the court may order child support regardless of the age of the child at the time of entry of the decree.

(3) In so doing, the court may use the child support guidelines.

(*l*)(1) The court may, in its discretion, at any time pending the suit, upon motion and after notice and hearing, make any order that may be proper to compel a spouse to pay any sums necessary to enable the other spouse to prosecute or defend the suit and to provide for the custody and support of the minor children of the parties during the pendency of the suit, and to make other orders as it deems appropriate. In making any order under this subsection (*l*), the court shall consider the financial needs of each spouse and the children, and the financial ability of each spouse to meet those needs and to prosecute or defend the suit.

(2) In any Title IV-D case, if the court grants relief, whether in whole or in part, to the department of human services or the department's Title IV-D contractor, or to any applicant for Title IV-D child support services, the court shall not tax any court costs against the department, the Title IV-D contractor or any applicant for child support services. The court shall not award attorney fees against the department, the Title IV-D contractor or any applicant for child support services, unless there is a clearly established violation of Rule 11 of the Tennessee Rules of Civil Procedure or for other contemptuous or other sanctionable conduct. This subdivision (*l*)(2) is not intended to limit the discretion of the courts to tax costs to the individual parties on non-Title IV-D issues, such as custody or visitation.

(m) No provision, finding of fact or conclusion of law in a final decree of divorce or annulment or other declaration of invalidity of a marriage that provides that the husband is not the father of a child born to the wife during the marriage or within three hundred (300) days of the entry of the final decree, or that names another person as the father of such child, shall be given preclusive effect, unless scientific tests to determine parentage are first performed and the results of the test that exclude the husband from parentage of the child or children, or that establish paternity in another person, are admitted into evidence. The results of such parentage testing shall only be admitted into evidence in accordance with the procedures established in § 24-7-112.

History.

Code 1858, § 2468 (deriv. Acts 1835-1836, ch. 26, §§ 10, 19); Shan., § 4221; mod. Code 1932, § 8446; Acts 1949, ch. 53, § 1; mod. C. Supp. 1950, § 8446; Acts 1970, ch. 425, § 1; 1979, ch. 187, § 1; 1979, ch. 339, § 1; 1980, ch. 691, § 1; 1983, ch. 352, § 1; 1983, ch. 414, § 1; T.C.A. (orig. ed.), § 36-820; Acts 1984, ch. 818, §§ 1-3; 1985, ch. 477, §§ 5-7, 17; 1986, ch. 890, § 17; 1987, ch. 39, § 1; 1988, ch. 671, § 1; 1989, ch. 206, § 1; 1989, ch. 489, § 4; 1991, ch. 447, § 1; 1992, ch. 824, § 1; 1993, ch. 243, §§ 1, 2; 1993, ch. 286, § 1; 1994, ch. 926, § 1; 1994, ch. 987, §§ 1-5; 1994, ch. 988, §§ 8, 9; 1995, ch. 504, § 2; 1996, ch. 892, § 16; 1997, ch. 551, §§ 7, 19, 22, 25, 41, 51-53, 66; 1998, ch. 1098, §§ 13-15, 72; 1999, ch. 303, § 1; 2000, ch. 922, §§ 5-9; 2001, ch. 447, §§ 3, 14, 20; 2002, ch. 651, §§ 1-3; 2003, ch. 305, § 1; 2003, ch. 361, § 2; 2003, ch. 373, § 1; 2004, ch. 549, §§ 1, 2; 2004, ch. 714, § 1; 2004, ch. 906, § 1; 2005, ch. 287, § 1; 2007, ch. 91, § 1; 2007, ch. 187, §§ 4-6; 2007, ch. 502, §§ 1, 3; 2008, ch. 868, § 3; 2011, ch. 119, § 2; 2013, ch. 236, § 22; 2015, ch. 200, §§ 1, 2.

Compiler's Notes.

Provisions relating to alimony may now be found in § 36-5-121, pursuant to amendments by Acts 2005, ch. 287.

The Family Support Act of 1988, referred to in this section, is codified throughout U.S.C. Title 42.

Acts 2003, ch. 361, § 4 provided the act shall apply to any pending case in which the judgment of the trial court has not become final by June 17, 2003.

Acts 2003, ch. 305, § 1 was corrected due to a codification error, where provisions originally added to the end of subdivision (d)(1)(D) were moved to the end of the second sentence. The act was resigned by the governor; although the act was originally effective June 1, 2003, the resigned act become effective August 8, 2003.

36-5-102. Portion of spouse's estate decreed to spouse entitled to alimony or support — Maintenance of minor custodial parent.

(a) In cases where the court orders alimony or child support in accordance with § 36-5-101 and § 36-5-121, the court may decree to the spouse who is entitled to such alimony or child support such part of the other spouse's real and personal estate as it may think proper. In doing so, the court may have reference and look to the property that either spouse received by the other at the time of the marriage, or afterwards, as well as to the separate property secured to either by marriage contract or otherwise.

(b) In addition to child support, a judge may require the noncustodial adult parent, who is not the legal spouse of the custodial parent, to pay an amount for the maintenance and support of the custodial parent if the custodial parent of the child is a minor. Such amount shall be determined by the court based on the noncustodial parent's ability to pay and shall be in addition to any court-ordered child support. Any order requiring the non-custodial parent to pay an additional amount for the maintenance and support of the custodial parent shall continue to be effective after the custodial parent reaches eighteen (18) years of age if the custodial parent is in high school. Such order shall continue until the custodial parent marries or graduates from high school or until the class of which the custodial parent is a member when the custodial parent attains eighteen (18) years of age graduates, whichever occurs first. As used in this subsection (b), "maintenance and support of the custodial parent" may also include counseling and other special medical services needed by the custodial parent.

History.

Code 1858, § 2469 (deriv. Acts 1841-1842, ch. 133, § 2); Shan., § 4222; Code 1932, § 8447; Acts 1979, ch. 339, § 2; T.C.A. (orig. ed.), § 36-821; Acts 1997, ch. 134, § 1; 1998, ch. 1018, § 1; 2005, ch. 287, § 3.

36-5-103. Enforcement of decree for alimony and support.

(a)(1) In addition to the remedies in part 5 of this chapter, the court shall enforce its orders and decrees by requiring the obligor to post a bond or give sufficient personal surety under § 36-5-101(f)(2) to secure past, present, and future support, unless the court finds that the payment record of the obligor parent, the availability of other remedies and other relevant factors make the bond or surety unnecessary.

(2) The court may enforce its orders and decrees by sequestering the rents and profits of the real estate of the obligor against whom such order or decree was issued, if such obligor has any, and such obligor's personal estate and choses in action, and by appointing a receiver thereof, and from time to time causing the same to be applied to the use of the obligee and the children, or by such other lawful means the court deems necessary to assure compliance with its orders, including, but not limited to, the imposition of a lien against the real and personal property of the obligor.

(b) In intrastate cases, jurisdiction to modify, alter or enforce orders or decrees for the support of children shall be determined in accordance with the provisions of parts 30 and 31 of this chapter.

(c) The plaintiff spouse may recover from the defendant spouse, and the spouse or other person to whom the custody of the child, or children, is awarded may recover from the other spouse reasonable attorney fees incurred in enforcing any decree for alimony and/or child support, or in regard to any suit or action concerning the adjudication of the custody or the change of custody of any child, or children, of the parties, both upon the original divorce hearing and at any subsequent hearing, which fees may be fixed and allowed by the court, before whom such action or proceeding is pending, in the discretion of such court.

(d) No state court order shall preclude the department of human services from implementing federal requirements for the interception of federal income tax refunds of an obligor for the payment of arrearages of child support.

(e) The commissioner of human services is expressly authorized to issue an administrative order of income assignment to the commissioner of labor and workforce development against any wages or wage benefits to which an obligor is entitled. Such administrative order shall be based upon and issued pursuant to an order from a court of competent jurisdiction or pursuant to state or local law, shall be deemed to be legal process in the nature of a garnishment pursuant to 42 U.S.C. § 659(i)(5), and shall direct the payment of child or spousal support by an obligor parent.

(1) Administrative orders of income assignment issued pursuant to the authority of this part may, in the discretion of the commissioner of human services, be delivered to a representative of the commissioner for the purpose of execution, and such representative shall have the power and authority to levy and execute such administrative order.

(2) The administrative order of income assignment authorized by this section may be directed to, and effectively served upon, the commissioner of labor and workforce development by electronically transmitted data to compel the assignment of unemployment benefits in order to satisfy the legal obligation of obligor parents to provide child support payments. The transmission of any such order by the commissioner of human services shall be certification by the commissioner of the existence of the underlying court order and that the procedural requirements for notice to the obligor parent as required by part 5 of this chapter have been satisfied. The administrative order shall show the amount to be deducted from the obligor's unemployment compensation benefits by the department of labor and workforce development so as to comply with the underlying court order, and with any applicable statutes, rules, regulations, or inter-departmental agreements and, when necessary, the order shall contain the last known address

of the obligor parent.

(3) The state child support enforcement computer system records shall be the official records of child support orders and child support-related spousal support orders and payment records for purposes of this subsection (e).

(4) If it is determined that the department of labor and workforce development has erroneously or wrongfully withheld benefits from an individual and delivered such benefits to the department of human services pursuant to a commissioner's order of income assignment, the department of human services will pay the correct amount to the individual to correct the erroneous payment.

(f)(1)(A) Every three (3) years, upon request of the custodial or noncustodial parent, or any other caretaker of the child, or, if there is an assignment of support pursuant to title 71, chapter 3, part 1, upon the request of the department or upon the request of the custodial or noncustodial parent, or of any other caretaker of the child, then, in any support order subject to enforcement under Title IV-D of the Social Security Act, compiled in 42 U.S.C. § 651 et seq., the department shall review, and, if appropriate, seek an adjustment of the order in accordance with child support guidelines established pursuant to § 36-5-101(e) without a requirement for proof or showing of any other change in circumstances. If, at the time of the review, there is a "significant variance", as defined by the department's child support guidelines, between the current support order and the amount that would be ordered under the department's child support guidelines, the department shall seek an adjustment of the order.

(B) In the case of a request for review that is made between three-year cycles, the department shall review, and, if the requesting party demonstrates to the department that there has been a substantial change in circumstances, the department shall seek an adjustment to the support order in accordance with the guidelines established pursuant to § 36-5-101(e). For purposes of this subsection (f), a "substantial change in circumstances" shall be a "significant variance", as defined by the department's child support guidelines, between the amount of the current order and the amount that would be ordered under the department's child support guidelines.

(C) The review and adjustment in subdivisions (f)(1)(A) and (f)(1)(B) may be conducted by the court, or by the department by issuance of an administrative order by the department or its contractors.

(2) As an alternative to the method described in subdivision (f)(1) for review and adjustment, the child support order may be reviewed, and the order may be adjusted by an administrative order issued by the department or its contractors by:

(A) Applying a cost-of-living adjustment to the order in accordance with a formula developed by the department; or

(B) Using automated methods, including automated comparisons with wage data to identify orders eligible for review, conduct the review, identify orders eligible for adjustment, and apply the appropriate adjustment to the orders eligible for adjustment based upon a threshold developed by the department.

(3) The methods for adjustment of orders of support by issuance of an administrative order pursuant to this section shall be promulgated in the department's rules.

(4) The department shall give written notice to the obligor and obligee that a review of the order of support has been initiated.

(5) The department shall give written notice to the obligor and obligee of the review findings. If the department elects to seek the adjustment of the support order by issuance of an administrative order instead of by judicial order, notice of the proposed administrative adjustment to the order of support shall be sent to the last known addresses of the obligor and obligee thirty (30) calendar days prior to the issuance of the administrative order adjusting the order of support pursuant to the same procedures for service of administrative orders described in § 36-5-807.

(6)(A) The obligor and obligee shall have the right to contest the proposed administrative adjustment to the order of support within thirty (30) days of the mailing date of the notice of the proposed administrative adjustment to the order of support by filing a motion for a hearing on the proposed adjustment with the court having jurisdiction to modify the order of support and by providing notice of the hearing to the department by copy of such motion.

(B) The review by the court shall be completed within timeframes established by federal law.

(C) If the obligor or obligee contests the proposed administrative adjustment pursuant to the procedure in this subsection (f), no further administrative appeal to the department shall be available, and further appeal of the modified support order entered by the court shall be made pursuant to the Tennessee Rules of Appellate Procedure.

(7) If the obligor or obligee does not contest the proposed administrative adjustment to the order of support within thirty (30) calendar days of the mailing date of the notice of the proposed adjustment pursuant to subdivision (f)(6), the department shall issue the administrative order adjusting the order of support.

(8) A copy of an administrative order of adjustment of the child support order shall be sent to the clerk of the court that has jurisdiction of the child support order that has been administratively adjusted and it shall be filed in the court record. A copy of the order shall be sent to the obligor and the obligee by the department by general mail at the last known addresses shown in the department's records.

(9) If an order of support is adjusted by administrative order of the department pursuant to subdivi-

sion (f)(7), the obligor and obligee shall have the right to administratively appeal the adjustment by requesting the appeal to the department as provided in part 10 of this chapter. The obligor or obligee may request a stay of the administrative order pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The appeal from any decision resulting from the administrative appeal shall be to the court having jurisdiction of the support order and shall be subject to the scope of review as provided pursuant to § 36-5-1003.

(10) Notice of the right to request a review, and, if appropriate, adjust the child support order shall be sent to the obligor and the obligee by the department at least every three (3) years for a child subject to an order being enforced pursuant to Title IV-D of the Social Security Act. The notice may be included in the order.

(11) The requirement for review and adjustment may be delayed if the best interests of the child require. Such interests would include the threat of physical or emotional harm to the child if the review and adjustment were to occur or the threat of severe physical or emotional harm to the child's custodial parent or caretaker.

(g) Judgments for child support payments for each child subject to the order for child support pursuant to this part shall be enforceable without limitation as to time.

History.

Code 1858, § 2470 (deriv. Acts 1835-1836, ch. 26, § 10); Shan., § 4223; Code 1932, § 8448; mod. C. Supp. 1950, § 8448; Acts 1957, ch. 21, § 1; 1965, ch. 229, §§ 1, 2; 1979, ch. 187, § 2; 1979, ch. 339, § 3; T.C.A. (orig. ed.), § 36-822; Acts 1985, ch. 477, § 8; 1987, ch. 421, §§ 1, 2; 1994, ch. 987, § 6; 1995, ch. 504, § 3; 1997, ch. 551, §§ 8, 28, 45; 1998, ch. 1098, § 16; 1999, ch. 520, § 36; 2001, ch. 447, § 4; 2004, ch. 728, § 1.

Compiler's Notes.

Acts 1998, ch. 1098, § 16 added a second sentence to (f)(4) which read: "No fee shall be charged for the filing of the order; provided, however, if Senate Bill 3303/House Bill 3305 is enacted and the cost reimbursement provisions are implemented as provided therein, the provisions of this sentence shall be void." The bill was enacted as Acts 1998, ch. 1048, so the second sentence was not codified.

36-5-104. Failure to comply with child support order — Criminal sanctions — Inference of obligor's ability to pay.

(a) Any person, ordered to provide support and maintenance for a minor child or children, who fails to comply with the order or decree, may, in the discretion of the court, be punished by imprisonment in the county workhouse or county jail for a period not to exceed six (6) months.

(b) No arrest warrant shall issue for the violation of any court order of support if such violation occurred during a period of time in which the obligor was incarcerated in any penal institution and was otherwise unable to comply with the order.

(c) In addition to the sanction provided in subsection (a), the court shall have the discretion to require an individual who fails to comply with the order or decree of support and maintenance to remove litter from the state highway system, public playgrounds, public parks, or other appropriate locations for any prescribed period or to work in a recycling center or other appropriate location for any prescribed period of time in lieu of or in addition to any of the penalties otherwise provided; provided, however, that any person sentenced to remove litter from the state highway system, public playgrounds, public parks, or other appropriate locations or to work in a recycling center shall be allowed to do so at a time other than such person's regular hours of employment.

(d) In any proceeding to enforce child support, the court may apply an inference that the obligor had the ability to pay the ordered child support as set forth in § 36-5-101(a)(8).

History.

Acts 1961, ch. 201, § 1; 1978, ch. 882, § 1; T.C.A., § 36-835; Acts 2003, ch. 189, § 1; 2007, ch. 502, § 2.

36-5-105. Intestacy of plaintiff spouse — Effect on alimony.

(a)(1) If the bonds of matrimony have been dissolved at the suit of the plaintiff spouse, the defendant spouse shall not be entitled to any part of the real or personal estate of the plaintiff spouse in case of such plaintiff's intestacy.

(2) Any entitlement a spouse may have to alimony shall be decided on the basis of factors set forth in § 36-5-121.

(b) However, when the cause of divorce is irreconcilable differences under § 36-4-103, subsection (a) shall not apply if the parties have entered into a written marital dissolution agreement wherein the plaintiff consents to the payment to the defendant of alimony, either in lump sum form or periodic payments; provided, that such marital dissolution agreement is approved by the court granting the decree of divorce.

History.

Acts 1983, ch. 414, § 6; T.C.A., § 36-840; Acts 1987, ch. 390, § 5; 2005, ch. 287, § 4.

36-5-106. Reports pursuant to Fair Credit Reporting Act.

(a) The department of human services or any of its Title IV-D child support contractors shall report periodically to consumer reporting agencies, as defined in the Fair Credit Reporting Act, codified in 15 U.S.C. § 1681a(f), the name of any noncustodial parent, of which the department or its Title IV-D contractors has a record, who is either current in payments of support or who is delinquent in the payment of support and the amount of the current obligation or arrears owed by such parent. Such information shall only be furnished to an entity that furnishes evidence to the department of human services that it meets the requirements to be defined as a consumer reporting agency pursuant to the Fair Credit Reporting Act.

(b) For purposes of this section, "delinquent" means any occasion on which the full amount of ordered support ordered for or on behalf of a minor child, or for a spouse or former spouse of the obligor with whom the

child is living to the extent the spousal support would be included for the purposes of 42 U.S.C. § 654(4), is not paid by the due date for arrears as defined in § 36-5-101(f)(1) unless an income assignment is in effect and the payor of income is paying pursuant to § 36-5-501(g).

(c) Reports of delinquent support and the amount of the arrears shall be made only after the noncustodial parent has been notified of the intended action at the last record address required by §§ 36-5-101(c)(2)(B)(i), 36-5-805, 36-2-311, and 37-1-151(b)(4)(C)-(F) or such other address as may be known to the department, and the noncustodial parent is afforded an opportunity for an administrative hearing before the department to contest the accuracy of such information. The noncustodial parent shall file a written request for appeal of the intended actions as provided by part 10 of this chapter.

History.
Acts 1985, ch. 477, § 18; 1994, ch. 987, § 7; 1997, ch. 551, § 21; 2001, ch. 447, § 5.

Compiler's Notes.
The Fair Credit Reporting Act, referred to in this section, is compiled at 15 U.S.C. § 1681 et seq.
Title IV-D of the Social Security Act, referred to in this section, is compiled in 42 U.S.C. § 651 et seq.

36-5-107. Disposition of incentive payments — Prohibition against agency use of payments for social and recreational purposes.

(a) In the event that, pursuant to federal requirements, the department of human services adopts a plan requiring political subdivisions to pass incentive payments through to agencies actually participating in the IV-D program of the Social Security Act, 42 U.S.C. §§ 651-665, any incentive payment made to a political subdivision that the department designates to be passed through to such an agency shall be appropriated by the political subdivision to the use and benefit of the designated agency.

(b)(1) Except in districts where existing non-child support obligations for rent and payroll already exceed this figure, at least seventy percent (70%) of the federal incentive payments distributed by the department and disbursed by the executive director of the district attorneys general conference as provided in § 8-7-602 shall be utilized to encourage and improve the cost-effectiveness of child support enforcement efforts.

(2) In those districts where existing non-child support rent and payroll obligations already exceed thirty percent (30%) of the incentive payment expenditures for that district, one hundred percent (100%) of the federal incentive funds shall be utilized to encourage and improve the cost-effectiveness of child support enforcement efforts.

(3) Notwithstanding the requirements in subdivisions (b)(1) and (2), such funds may be appropriated by the general assembly for other purposes consistent with applicable federal requirements, to the extent that such appropriation is specifically set forth in the general appropriations act. Further, such funds shall be disbursed only for goods and services for which state funds may properly be disbursed and within limitations imposed on state disbursements including, but not limited to, state travel regulations.

(4) This subsection (b) shall not be construed or implemented in any manner that jeopardizes the receipt of federal funding pursuant to the Social Security Act, 42 U.S.C. §§ 651-665.

(c) An agency that participates in the IV-D program, and that receives federal incentive payments from the department as a result of such participation, shall not utilize any portion of the incentive payments for the social or recreational benefit of the agency's officers, employees, agents, or the family members of the officers, employees or agents.

History.
Acts 1985, ch. 477, § 19; 1990, ch. 974, §§ 2, 3, 5.

Compiler's Notes.
Acts 1985, ch. 477, § 1 provided that Acts 1985, ch. 477 may be cited as the "Child Support Enforcement Act of 1985."

36-5-108. [Repealed.]

History.
Acts 1985, ch. 477, § 20; repealed by Acts 2012, ch. 673, § 3, effective July 1, 2012.

Compiler's Notes.
Former § 36-5-108 concerned the reallocation of staff and funding of aid to families with dependent children (AFDC).

36-5-109. Construction.

The provisions of Acts 1985, ch. 477, are declared to be remedial in nature and all provisions of that act shall be liberally construed to effectuate its purpose.

History.
Acts 1985, ch. 477, § 22.

Compiler's Notes.
For codification of Acts 1985, ch. 477, see Disposition of Acts Table in Volume 13.

36-5-110. Termination of Acts 1985, ch. 477.

(a) If any provision of the federal law that mandates any provision of Acts 1985, ch. 477, is declared to be unconstitutional by the supreme court of the United States, any such provision of such act shall cease to be effective one (1) year from the date of such supreme court decision.

(b) Enactment of Acts 1985, ch. 477, is dependent on the availability of federal funding for its implementation, and if, at any time, such federal funding becomes unavailable, such act is thereby rendered repealed, null and void, and of no effect.

History.
Acts 1985, ch. 477, §§ 23, 24.

Compiler's Notes.
For codification of Acts 1985, ch. 477, see Disposition of Acts Table in Volume 13.

36-5-111. Liability for clerk's fee.

In all cases where payments for child support are made through or administered by the court clerk, the decree or order setting the child support must state that the party responsible for paying such support shall be responsible for the clerk's fee, as stated in § 8-21-403, and the amount thereof.

History.
Acts 1985, ch. 379, § 1.

36-5-112. Responsible teen parent pilot project.

(a) Notwithstanding title 71, chapter 3, part 1, or any other law to the contrary, the department shall establish and implement the responsible teen parent pilot project. The pilot project shall be established in at least one (1) county within each of the three (3) grand divisions. Acting in consultation with the department of education and department of labor and workforce development, the council of juvenile and family court judges, the district attorneys general conference, the department of human services shall develop policies and procedures whereby child support obligations of project participants may be adjusted or deferred; provided, that the participants engage in one (1) or more of the following activities:

(1) Attending school and making satisfactory progress toward high school graduation;

(2) Attending preparatory classes and making satisfactory progress toward receipt of a general equivalency diploma;

(3) Participating in approved job training programs and making satisfactory progress toward job placement; or

(4) Participating in approved parenting skills training courses and making satisfactory progress toward mastery of the subject matter of such courses.

(b) Participation in the responsible teen parent pilot program shall be restricted to persons who:

(1) Are under twenty-one (21) years of age;

(2) Are non-custodial parents of children who are receiving, or who have recently received, aid to families with dependent children benefits;

(3) Are unable to provide adequate support for such children due to unemployment or underemployment;

(4) Pay a minimum, specified amount of child support; and

(5) Visit their children at least once each week unless such visitation is restricted by court order.

(c) In accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, the department of human services, acting in consultation with the department of education, department of labor and workforce development, the council of juvenile and family court judges, and the district attorneys general conference, shall promulgate such rules as may be necessary to implement the responsible teen parent pilot project in an efficient and effective manner. Such rules shall include, but shall not be limited to, policies and procedures for:

(1) Identifying teen parents who would be eligible to participate in these programs in the pilot counties;

(2) Pursuing the establishment of paternity in all cases involving teen parenthood within the pilot counties;

(3) Pursuing the establishment and enforcement of support orders in such cases;

(4) Selecting project participants;

(5) Monitoring project participants;

(6) Determining adjustments or deferral of child support obligations for project participants;

(7) Selecting approved job training programs; and

(8) Determining the minimum amount of child support that must be paid by project participants throughout their enrollment in the pilot project.

(d) The department of human services shall gather and compile data to evaluate the efficiency and effectiveness of the pilot project in promoting responsible parenting and in encouraging near- and long-term fulfillment of child support obligations. On or before December 31 each year, the department of human services, acting in consultation with the department of education, department of labor and workforce development, the council of juvenile and family court judges, and the district attorneys general conference, shall report to the judiciary committee of the senate and the civil justice committee of the house of representatives concerning implementation of the pilot project and shall include any recommendations pertaining thereto.

(e) Within each of the pilot counties, the department of human services and the juvenile court or the district attorney general shall jointly undertake a public awareness campaign to periodically inform and remind teens that:

(1) Teen parents have a legal obligation to financially support their children, and that such obligation continues for eighteen (18) years following the birth of a child;

(2) The legal obligation of support exists regardless of a teen parent's gender or marital status; and

(3) The legal obligation of support will be enforced and the means with which the department may enforce the obligation.

(f) This section shall not be construed or applied in any manner that jeopardizes or reduces the availability of federal funding resources for state administered public assistance programs.

History.
Acts 1989, ch. 568, §§ 1, 2; T.C.A. (orig. ed.), § 71-3-128; Acts 1996, ch. 950, § 20; 1999, ch. 520, § 36; 2011, ch. 410, § 3(c); 2012, ch. 861, § 1; 2013, ch. 236, § 21.

Compiler's Notes.
For the Preamble to the act concerning the prohibition against establishment of a special committee if there is a standing committee on the same subject, please refer to Acts 2011, ch. 410.

36-5-113. Plans for payment of child support; work requirements.

(a)(1) In any case in which a child is receiving assistance under a state program funded under Title IV-A of the Social Security Act, 42 U.S.C. § 601 et seq., including, but not limited to, temporary assis-

tance as provided under title 71, and the payment of support for such child is overdue, then the department of human services may issue an administrative order to direct an individual who owes overdue support to such a child to pay the overdue support in accordance with a plan for payment of all overdue support.

(2) The plan shall require the obligor to pay the overdue amount in full, or by monthly installments that are calculated to reduce the overdue amount by a reasonable payment over a reasonable period of time. The order may be enforced by either the court with jurisdiction of the support order or by the department pursuant to §§ 36-5-811 or 36-5-812, or by any other remedies available for the collection or enforcement of current support.

(b) The department may also order the individual who is not incapacitated and who is subject to a plan requiring payment of the overdue support for a child receiving assistance under a state program funded under Title IV-A of the Social Security Act, including, but not limited to, temporary assistance as provided under title 71, to engage in work activities as required under § 71-3-104.

(c) A copy of the order issued pursuant to this section shall be filed with the court.

(d) An order issued by the department pursuant to this part may be appealed as provided in part 10 of this chapter.

(e) For purposes of this section, "overdue" support is defined as any occasion on which the full amount of support ordered for or on behalf of a minor child, or for a spouse or former spouse of the obligor with whom the child is living to the extent the spousal support would be included for the purposes of 42 U.S.C. § 654(4), is not paid by the due date for arrears as defined in § 36-5-101(f)(1), unless an income assignment is in effect and the payer of income is paying pursuant to § 36-5-501(g).

History.
Acts 1997, ch. 551, § 48; 1998, ch. 1098, § 17.

Compiler's Notes.
Acts 1998, ch. 1098, § 17 contained a second sentence in (c) which read: "No fee shall be charged for the filing of the order; provided, however, if Senate Bill 3303/House Bill 3305 is enacted and the cost reimbursement provisions are implemented as provided therein, the provisions of this sentence shall be void." The bill was enacted as Acts 1998, ch. 1048, so the second sentence was not codified.

36-5-114. Federally required state collection and disbursement unit for child and spousal support.

(a)(1) This section is intended to outline a flexible waiver application procedure for the federally required centralized collection and disbursement of child and spousal support established pursuant to 42 U.S.C. § 654b. Wherever the terminology "collection and disbursement" is used in this section, or in other sections of law using that terminology, it is the legislative intent that the use of such term in the conjunctive shall not be construed to prevent the department of human services from seeking waivers and the state of Tennessee from implementing any procedures, permitted by federal law, regulations, or interpretations of such law or regulations or such waivers, that may allow for alternate methods or processes for either collection or disbursement of child and spousal support by the clerks of the courts of this state.

(2)(A) If the federal law, or regulations or the interpretation of such law or regulations, are repealed or modified so that centralized collection and disbursement are no longer mandated by federal law, and such repeal or modification occurs before the implementation of the centralized collection system, either directly by department itself or before the execution of a contract by the department with a contractor for the operation of such system, the provisions of state law addressing such a centralized system for the collection and disbursement of child and spousal support shall be null and void.

(B) Should the federal requirement of a centralized system be repealed or modified after implementation by the department of the federally required centralized collection and disbursement system, either directly by the department or by the department through a contractor, the provisions of law relative to the federally required centralized collection and disbursement system shall remain in effect, but the commissioner of human services shall, at the request of and in conjunction with the clerks of the court, develop a plan for transition of the collection and disbursement functions to the clerks of the court, which shall include proposed legislation that may be necessary to return the collection and disbursement process to the clerks of court. The plan shall be submitted to the chairs of the civil justice committee of the house of representatives and the judiciary committee of the senate prior to the beginning of the next session of the general assembly after the repeal or modification of the federal requirements, but in no event later than ninety (90) days after the repeal or modification of the federal requirements.

(3) Nothing herein shall impair the validity of a contract that has been executed by the state of Tennessee or the department with any person or entity for the operation of the federally required centralized collection and disbursement system before the repeal or modification of the federal centralized collection and disbursement requirement.

(b)(1) If a waiver is available under federal law or regulations that would enable the clerks of the court to continue to collect or disburse child and spousal support, the commissioner shall, at the request of the state court clerks conference, consult with the clerks of the court to determine the feasibility of implementing the provisions of such a waiver, and shall make application to the United States department of health and human services for such a waiver; provided, that if the department has contracted for the operation of the central collection and disbursement system at the time federal law and regulations, or the

interpretation of such, have changed, then the provisions of this subdivision (b)(1) shall be subject to the contract terms.

(2) In the event the waiver is granted that permits the clerks of court to perform services in the central collection and disbursement system, the clerks of court may enter into a contract, as permitted by state and federal law, with a third party to perform any of the functions required by federal law or required under such a waiver. If such a contract is appropriate, the president of the state court clerks conference, upon authorization of the board of directors of the state court clerks conference, shall have authority to bind the members of the conference to the terms of the contract. The contract may provide for any contractor to retain or distribute all or part of the clerks' fees authorized by § 8-21-403, if permitted by federal regulations. Under any plan, the collection and disbursement of child and spousal support shall be conducted in such a manner as will not adversely affect either compliance with federal regulations or federal funding for the Title IV-A block grant program and the Title IV-D child support program.

History.
Acts 1997, ch. 551, § 69; 1998, ch. 1048, § 1; 2013, ch. 236, § 21.

Compiler's Notes.
Title IV-A of the Social Security Act, referred to in this section, is compiled in 42 U.S.C. § 601 et seq.
Title IV-D of the Social Security Act, referred to in this section, is compiled in 42 U.S.C. § 651 et seq.

36-5-115. State registry of support cases.

(a) For the purposes of this section, "support order" means an order in which there is a judgment, decree, or order, whether temporary, final, or subject to modification, that is issued by a court of competent jurisdiction or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the state that issued the order and which order, judgment, or decree provides for monetary support, health care, arrearages, or reimbursement, and which may include related costs and fees, interest, penalties, income withholding, attorneys fees, and other relief.

(b) All cases of support for which services are being provided pursuant to Title IV-D of the Social Security Act, compiled in 42 U.S.C. § 651 et seq., and all support orders that are established or modified on or after October 1, 1998, regardless of whether such orders result from cases being enforced pursuant to Title IV-D of the Social Security Act, shall be contained in an automated state registry of support cases and support orders to be operated by the department of human services under such conditions, and containing such data elements, as are required by the secretary of the United States department of health and human services pursuant to 42 U.S.C. § 654a.

(c)(1)(A) The clerk of a court who had opted out of the statewide child support computer system prior to March 1, 1998, and who maintains the records of support orders described in subsection (b) in non-Title IV-D cases, shall send a facsimile copy of the order, any necessary data elements required by the secretary of the United States department of health and human services, and any additional updated information regarding such data elements on the support case at such time as it is supplied to the clerk by the parties to the case, to the department or its contractor on a daily basis on a line and facsimile machine provided for such purpose by the department of human services. The machine shall be provided if the clerk's office does not have a facsimile machine as determined by the department through an equipment assessment. Line charges shall be the responsibility of the department either through use of a toll-free line or pursuant to the cost reimbursement requirements of § 36-5-117.

(B) As an alternative to provision by the clerk of the order and information as required by subdivision (c)(1)(A) by use of a facsimile machine, for those clerks who opted out of the statewide child support enforcement system pursuant to the former provisions of § 36-5-101(a), upon the request of the clerk, the department shall conduct a computer needs assessment of the clerk's office. Based upon the assessment, the department shall provide either adequate computer equipment and Tennessee Child Support Enforcement System (TCSES) software to permit the transfer of information required by the federal case registry provisions, or if the clerk has an existing computer system that is the same system as a clerk that is currently interfacing with the department of human services' TCSES system, that clerk shall be given the same opportunity to interface with the TCSES system, with the costs of any modifications required to transmit the required data elements or to otherwise meet the requirements of federal law needed for the interfacing system to be the responsibility of the department of human services.

(2) For clerks who operate under TCSES or under the TCSES interfacing system, including the model interfacing systems, the department will absorb the costs of modifications of the computer system necessary to receive and transmit information required by the federal law for the operation of the central case registry. For cases that are not subject to enforcement by the department pursuant to Title IV-D of the Social Security Act, these clerks shall transmit to the department or its contractor on a daily basis on TCSES, or the TCSES interfacing system, including the model interfacing system, the necessary data elements for the support case registry required by the secretary of the United States department of health and human services and any additional updated information regarding such data elements at such time as it is supplied to the clerk.

(d) The clerks' costs for services of this section shall be paid according to the reimbursement process established pursuant to § 36-5-117.

History.
Acts 1998, ch. 1048, § 2.

36-5-116. Establishment of central collection and disbursement unit.

(a)(1) Effective October 1, 1999, the department of human services shall become the central collection and disbursement unit for the state as required by 42 U.S.C. § 654b. All orders in Title IV-D support cases, and all orders for income assignments that have directed support to be paid to the clerk of any court, and that are subject to 42 U.S.C. § 654b, shall be deemed to require that the support be sent to the central collection and disbursement unit, any order of the court notwithstanding.

(2) When the department or its contractor acts as the central collection and disbursement unit, then, notwithstanding any law to the contrary, the fee paid by the obligor for the collection and disbursement of child support pursuant to § 8-21-403 shall be paid to the department with respect to payments collected or disbursed by the central system. The processing of such fees shall be conducted in such a manner as will not adversely affect compliance with federal law or regulations and will not adversely affect federal funding for the Title IV-A block grant program and the Title IV-D child support program; provided, the department may by rules promulgated pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, reduce the fee provided in § 8-21-403 with respect to cases under the centralized collection and disbursement unit.

(b)(1) Each clerk shall submit to the department, in the manner described in subsection (c), on a daily basis on the day the order is entered, the information required to permit the department to process all payments for child and spousal support that are required by federal law to be collected and disbursed by the federally mandated state collection and disbursement unit, and such other information necessary to update the processing of information for collection and disbursement, if contained in the court records.

(2) The clerks' services for providing such information shall be paid by the department according to the reimbursement process established by § 36-5-117.

(c) The clerks of court who have opted out and those clerks who operate a Tennessee child support enforcement system (TCSES) or TCSES interface computer system, including the model interface system, shall have the same options as contained in § 36-5-115(c) for transmitting data required for the processing of information relative to the collection and disbursement of child and spousal support as required by this section. The clerk must, however, choose the same method of transmission of data for both the central case registry and the central collection data transmission.

(d)(1) Following implementation of the federally required central collection and disbursement unit, each clerk shall remain responsible for receipt of all support payments not subject to the requirements of the centralized collection and disbursement system.

(2) Payments received by the clerk for support cases that are not Title IV-D cases or that are not otherwise subject to the requirements of a central collection or disbursement system shall not be included in the cost reimbursement and shall be subject to the fees permitted by § 8-21-403 or such other fees permitted by law. Payments that are received by the clerk in cases subject to the central collection and disbursement system shall be distributed to the centralized collection and disbursement system; provided, that the clerks shall be reimbursed the costs of such services pursuant to § 36-5-117.

(e)(1) By August 31, 2002, and to the extent required by federal law, the department of human services shall provide a monthly notice to the custodial parent or other caretaker of the child who receives child support payments from the central collection and disbursement unit established by this section, when a child support payment is received or distributed by the department during the reporting month.

(2) The recipients of monthly notices shall include:

(A) Current Families First recipients;

(B) Former Families First recipients, to include former Aid to Families with Dependent Children (AFDC) recipients;

(C) Any other persons who are recipients of Title IV-D child support services from the department; and

(D) Any other persons who receive payments from the central collection and disbursement unit.

(3) The notice to each custodial parent or other caretaker shall include, in an easily understood format, the following information relative to the child support payments:

(A) Custodial parent's or other caretaker's name;

(B) Non-custodial parent's name;

(C) TCSES case number;

(D) Court docket number;

(E) The amount of the current child support payment or payments issued to the custodial parent or other caretaker of the child;

(F) The date on which the child support payment or payments were issued to the custodial parent or other caretaker of the child;

(G) The total of all child support payments issued to date during the current year;

(H) Information regarding the right to administrative review and appeal;

(I) Understandable, case-specific information regarding negative numbers and adjustments related to the collection, distribution and disbursement of child support that are shown on the notice of collection in the cases subject to this subsection (e);

(J) The date the child support payment or payments were received;

(K) The toll-free number for accessing child support customer service; and

(L) Where available, the following additional information shall be provided:

(i) The custodial parent's or other caretaker's

member identification number;

(ii) The court location of the court in which the order is established;

(iii) The court-ordered child support amount for both current child support and for amounts of child support that are in arrears; and

(iv) The date of the court order in effect.

(4) In addition, for current or former recipients of Families First, the following information shall be provided to the custodial parent or caretaker of the child:

(A) Any information required by federal law or regulation;

(B) The federal rules for distribution of child support as they may be related to the specific category of either current Families First or former Families First recipients;

(C) The unmet need amount for current Families First recipients;

(D) The category, specifically either current Families First or former Families First, and a reason for any disparity between the amount received and the amount disbursed to the custodial parent or caretaker that is related to the category;

(E) The toll-free telephone number to call with questions about the unmet need amount for current Families First recipients;

(F) The amount of child support received that was treated as current child support;

(G) The amount of child support received that was treated as past due child support;

(H) A message keyed to the appearance of a collection of child support arrears from a federal income tax refund offset involving the non-custodial parent;

(I) The toll-free telephone numbers for both the IV-D child support and the IV-A Families First programs to facilitate inquiry for any questions or concerns; and

(J) General explanatory information.

(5) By April 1, 2002, child support payments sent to the custodial parent or other caretaker of the child by the central collection and disbursement unit shall include with each payment warrant, where available, the following information regarding the payment or payments:

(A) The custodial parent's or other caretaker's name and TCSES member identification number;

(B) The non-custodial parent's name;

(C) The payment warrant number;

(D) TCSES case identification number associated with each support payment included in the payment warrant;

(E) Court name and docket number from which each support payment on the payment warrant originated;

(F) The date on which the payment warrant was issued; and

(G) The total of all payments issued to date during the current year.

(6) The department may include any additional information on the notices or with the payments under this subsection (e) as it may determine necessary or helpful to the custodial parent or other caretaker of the child.

(f) If, due to the fault of the department of human services fiscal services unit, a properly identified current payment of child support that has an order properly entered into TCSES is not disbursed within two (2) weeks of receipt of the payment by the department, the custodial parent may request, and the department shall promptly pay, an additional payment as provided for in this subsection (f). Such additional payment from the department shall be in an amount not to exceed ten percent (10%) of the amount actually paid toward current support that was delayed by the action of the fiscal services unit, or fifty dollars ($50.00), whichever is less. Such ten percent (10%) payment shall be derived from the department's budget without additional appropriation. Any cost incurred by the department to implement this subsection (f) shall be paid from the statutory fees paid to the department.

History.

Acts 1998, ch. 1048, § 3; 2000, ch. 909, § 2; 2000, ch. 922, § 41; 2002, ch. 674, § 1.

Compiler's Notes.

Acts 2000, ch. 909, § 3 provided that the act shall apply to any pending child support order owed under a court or administrative order that is subject to centralized collection and disbursement.

Acts 2002, ch. 674, § 4 provided that funding for that act shall be by existing resources of the department of human services.

Title IV-A of the Social Security Act, referred to in this section, is compiled in 42 U.S.C. § 601 et seq.

Title IV-D of the Social Security Act, referred to in this section, is compiled in 42 U.S.C. § 651 et seq.

36-5-117. Reimbursement of clerks of court for activities involving child support, central state case registry and the central collection and disbursement system.

(a)(1) Notwithstanding any law to the contrary, and in lieu of any other fees or costs set forth by law that would otherwise be applicable to cases enforced by the department of human services or its contractors pursuant to Title IV-D of the Social Security Act, compiled in 42 U.S.C. § 651 et seq., and for activity related to the collection and disbursement of support in cases subject to 42 U.S.C. § 654b, and for their activities required pursuant to § 36-5-115, the clerks of court shall be reimbursed by the department to the maximum extent permitted under federal law and regulations for the actual costs of providing services for which federal financial participation is available for child and spousal support cases being enforced pursuant to, or otherwise subject to, the requirements of the Title IV-D child support program.

(2) Nothing in this section shall alter the method for payment of court costs in Title IV-D support cases or in non-Title IV-D support cases by private parties, if otherwise permitted by federal law or regulations.

(b) The actual costs shall be set according to the determination by the comptroller of the treasury pursuant to federal regulations relative to allowable and

reimbursable costs under the Title IV-D child support enforcement program and for which federal financial participation is available.

(c)(1) The comptroller of the treasury shall conduct a study of the actual costs of the activities described for reimbursement pursuant to this section, and shall make a determination of the amount of funds generated by the collection of the fee on the collection of child support pursuant to § 8-21-403.

(2) When determining actual costs for services that shall be reimbursed, the comptroller of the treasury shall consider that such services shall include, but are not limited to, filing costs, issuance of process or subpoenas, entry of orders, provision of copies, transmission of data, mailing costs, customer service activities, billing, auditing, electronic fund transfer costs, accounting activities, space, storage and personnel costs, equipment and materials costs, and any other reasonably related expenses that are not otherwise provided by the state of Tennessee or the federal government, or by a litigant, and that are allowable costs for federal financial participation.

(d) The comptroller of the treasury shall review the costs for the clerks to provide such services on a biennial basis and shall report this to the departments of human services and finance and administration in order for the departments to adjust the costs as permitted by federal law and regulations and for which federal financial participation is available.

(e) The cost reimbursement process section shall be implemented upon the implementation of the centralized collection and disbursement system, but in no circumstance later than October 1, 1999. Reimbursement to the clerks of court under the cost reimbursement process shall be made on a monthly basis by electronic fund transfer. Reimbursement of such costs shall be made pursuant to a contract, if required by federal law or regulations, by the department with each clerk who performs such child or spousal support services as may be required by Title IV-D of the Social Security Act. Notwithstanding any law to the contrary, the clerk of the court shall have authority to contract with the department as may be required pursuant to this subsection (e).

(f) Notwithstanding any provision of law to the contrary, upon implementation of the reimbursement process described in this section, any provision of law that would otherwise exempt the department or its contractors from the payment of costs for cases subject to Title IV-D requirements involving child or spousal support services or as otherwise required pursuant to 42 U.S.C. § 654b, shall be superseded by the cost reimbursement provisions of this section, and all costs associated with services provided by the clerks of court to the department or its contractors will be paid according to the cost reimbursement provisions of this section; provided, that the provisions of this subsection (f) negating such exemptions shall not apply to any exemptions from costs or fees required by federal law or regulations or any uniform act.

History.
Acts 1998, ch. 1048, § 4.

36-5-118. Customer service unit—Statewide toll-free telephone line.

Notwithstanding the provisions of this part or any other law to the contrary, if the department of human services serves as the central collection and disbursement unit for the state, then the department must establish, advertise and maintain a customer service unit and a statewide toll-free telephone line for the express purpose of receiving and responding to citizen inquiries and complaints concerning child support collections and disbursements. Notwithstanding any law to the contrary, if a contractor of the department serves as the central collection and disbursement unit for the state, then the contractor must establish, advertise and maintain a customer service unit and a statewide toll-free telephone line for the express purpose of receiving and responding to citizen inquiries and complaints concerning child support collections and disbursements.

History.
Acts 1998, ch. 1048, § 5.

36-5-119. Satellite offices.

Notwithstanding the provisions of this part or any other law to the contrary, the department of human services shall vigorously investigate and determine the feasibility of securing the necessary waivers required to permit establishment of satellite offices for the state's central collection and disbursement unit. Such satellite offices would be established only in those counties that account for a substantial percentage of total child support collections within the state. Such satellite offices would locally collect and/or disburse child support and/or would provide a locally based customer service unit for residents of such county.

History.
Acts 1998, ch. 1048, § 6.

36-5-120. Payments and identifying information required for support payments made to the centralized collection and disbursement unit.

(a) All payments to the centralized collection and disbursement unit by either the obligor parent or a payer on behalf of the obligor parent shall include the following information:

(1) The name and social security number of the obligor parent; and

(2) The code identifier for the court for which the payment is being made and the docket number of the case in which the support order was entered.

(b) As an alternative to compliance with subsection (a), an employer or other payer of support on behalf of an obligor parent may submit a payment document provided by the department of human services on which the employer or other payer shall include the amount of income withholding on each affected em-

ployee or other payee, and, if appropriate, shall provide the name and address of any new employer of an affected employee or payee if known to the employer or other payer.

(c) As an alternative to subsection (a), a self-employed obligor parent, or an obligor parent whose employer or other payer of income is unknown to the department, may submit a payment coupon provided by the department to the parent with the payment due.

(d) Any payment made to the centralized collection and disbursement unit that does not comply with the requirements of subsections (a)-(c) shall be subject to a penalty.

(e)(1) If, after prior warning notification by the department of failure to provide the information with the payments as required by this section, any employer or other payer of income fails or refuses to comply with the requirements of this section, the violator shall be subject to a civil penalty of one hundred dollars ($100) per individual for whom the required information is not provided upon the first failure to comply, two hundred dollars ($200) per individual for the second failure to comply and five hundred dollars ($500) per individual for each occurrence thereafter. The warning notification shall specifically state the information required to be submitted and the information omitted by the employer or other payer of income, shall provide a telephone number for questions, and shall set forth the penalties for failure to comply, referencing statutory authority.

(2) If, after prior warning notification by the department of failure to provide the information with the payments as required by this section, any obligor fails or refuses to comply with the requirements of this section, the violator shall be subject to a civil penalty of one hundred dollars ($100) or the amount equaling twenty-five percent (25%) of the obligor's monthly support obligation, whichever is less, for the first failure to provide the required information; two hundred dollars ($200) or the amount equaling fifty percent (50%) of the obligor's monthly obligation, whichever is less, for the second failure to comply; and five hundred dollars ($500) or the obligor's monthly support obligation, whichever is less, for each occurrence thereafter. The warning notification shall specifically state the information required to be submitted and the information omitted by the obligor, shall provide a telephone number for questions, and shall set forth the penalties for failure to comply, referencing statutory authority.

(3) Any employer, payer of income or obligor who conspires not to provide the information required by this section or who conspires to provide false or incomplete information shall each be subject to a civil penalty of five hundred dollars ($500).

(4) These penalties shall be assessed by the commissioner of human services after written notice to the violator. The notice shall provide fifteen (15) days from the mailing date of such notice to file a written request to the department for appeal of the civil penalty.

(5) If an appeal is timely filed with the department by the employer, payer of income or obligor, the department shall set an administrative hearing on the issue of the assessment pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, relative to contested case hearings.

(6) Failure to timely appeal the assessment of the civil penalty shall be final and conclusive of the correctness of the assessment.

(7) Any amount found owing shall be due and payable not later than fifteen (15) days after the mailing date of the determination.

(8)(A) Failure to pay an assessment shall result in a lien against the real or personal property of the employer, payer of income or the obligor in favor of the department. If the violator fails to pay an assessment when it becomes final, the department may collect the amount of the civil penalty by any available administrative enforcement procedures or by court action.

(B) The non-prevailing party shall be liable for all court costs and litigation taxes of the proceedings and shall be liable to the department for the cost of any private, contract or government attorney representing the state and for the time of any of its Title IV-D or contractor staff utilized in litigating the assessment.

(9) Any appeal of the action of the commissioner pursuant to this section shall be made in conformity with § 36-5-1003.

History.

Acts 2000, ch. 909, § 1; 2002, ch. 674, § 2.

Compiler's Notes.

Acts 2000, ch. 909, § 3 provided that the act shall apply to any pending child support order owed under a court or administrative order that is subject to centralized collection and disbursement.

Acts 2002, ch. 674, § 4 provided that funding for that act shall be by existing resources of the department of human services.

Title IV-D of the Social Security Act, referred to in this section, is compiled in 42 U.S.C. § 651 et seq.

36-5-121. Decree for support of spouse.

(a) In any action for divorce, legal separation or separate maintenance, the court may award alimony to be paid by one spouse to or for the benefit of the other, or out of either spouse's property, according to the nature of the case and the circumstances of the parties. The court may fix some definite amount or amounts to be paid in monthly, semimonthly or weekly installments, or otherwise, as the circumstances may warrant. Such award, if not paid, may be enforced by any appropriate process of the court having jurisdiction including levy of execution. Further, the order or decree shall remain in the court's jurisdiction and control, and, upon application of either party, the court may award an increase or decrease or other modification of the award based upon a showing of a substantial and material change of circumstances; provided, that the award is subject to modification by the court based on the type of alimony awarded, the terms of the court's decree or the terms of the parties' agreement.

(b) The court may, in its discretion, at any time pending the final hearing, upon motion and after notice and hearing, make any order that may be proper to compel a spouse to pay any sums necessary for the support and maintenance of the other spouse, to enable such spouse to prosecute or defend the suit of the parties and to make other orders as it deems appropriate. Further, the court may award such sum as may be necessary to enable a spouse to pay the expenses of job training and education. In making any order under this subsection (b), the court shall consider the financial needs of each spouse and the financial ability of each spouse to meet those needs and to prosecute or defend the suit.

(c)(1) Spouses have traditionally strengthened the family unit through private arrangements whereby one (1) spouse focuses on nurturing the personal side of the marriage, including the care and nurturing of the children, while the other spouse focuses primarily on building the economic strength of the family unit. This arrangement often results in economic detriment to the spouse who subordinated such spouse's own personal career for the benefit of the marriage. It is the public policy of this state to encourage and support marriage, and to encourage family arrangements that provide for the rearing of healthy and productive children who will become healthy and productive citizens of our state.

(2) The general assembly finds that the contributions to the marriage as homemaker or parent are of equal dignity and importance as economic contributions to the marriage. Further, where one (1) spouse suffers economic detriment for the benefit of the marriage, the general assembly finds that the economically disadvantaged spouse's standard of living after the divorce should be reasonably comparable to the standard of living enjoyed during the marriage or to the post-divorce standard of living expected to be available to the other spouse, considering the relevant statutory factors and the equities between the parties.

(d)(1) The court may award rehabilitative alimony, alimony in futuro, also known as periodic alimony, transitional alimony, or alimony in solido, also known as lump sum alimony or a combination of these, as provided in this subsection (d).

(2) It is the intent of the general assembly that a spouse, who is economically disadvantaged relative to the other spouse, be rehabilitated, whenever possible, by the granting of an order for payment of rehabilitative alimony. To be rehabilitated means to achieve, with reasonable effort, an earning capacity that will permit the economically disadvantaged spouse's standard of living after the divorce to be reasonably comparable to the standard of living enjoyed during the marriage, or to the post-divorce standard of living expected to be available to the other spouse, considering the relevant statutory factors and the equities between the parties.

(3) Where there is relative economic disadvantage and rehabilitation is not feasible, in consideration of all relevant factors, including those set out in subsection (i), the court may grant an order for payment of support and maintenance on a long-term basis or until death or remarriage of the recipient, except as otherwise provided in subdivision (f)(2)(B).

(4) An award of alimony in futuro may be made, either in addition to an award of rehabilitative alimony, where a spouse may be only partially rehabilitated, or instead of an award of rehabilitative alimony, where rehabilitation is not feasible. Transitional alimony is awarded when the court finds that rehabilitation is not necessary, but the economically disadvantaged spouse needs assistance to adjust to the economic consequences of a divorce, legal separation or other proceeding where spousal support may be awarded, such as a petition for an order of protection.

(5) Alimony in solido may be awarded in lieu of or in addition to any other alimony award, in order to provide support, including attorney fees, where appropriate.

(e)(1) Rehabilitative alimony is a separate class of spousal support, as distinguished from alimony in solido, alimony in futuro, and transitional alimony. To be rehabilitated means to achieve, with reasonable effort, an earning capacity that will permit the economically disadvantaged spouse's standard of living after the divorce to be reasonably comparable to the standard of living enjoyed during the marriage, or to the post-divorce standard of living expected to be available to the other spouse, considering the relevant statutory factors and the equities between the parties.

(2) An award of rehabilitative alimony shall remain in the court's control for the duration of such award, and may be increased, decreased, terminated, extended, or otherwise modified, upon a showing of a substantial and material change in circumstances. For rehabilitative alimony to be extended beyond the term initially established by the court, or to be increased in amount, or both, the recipient of the rehabilitative alimony shall have the burden of proving that all reasonable efforts at rehabilitation have been made and have been unsuccessful.

(3) Rehabilitative alimony shall terminate upon the death of the recipient. Rehabilitative alimony shall also terminate upon the death of the payor, unless otherwise specifically stated.

(f)(1) Alimony in futuro, also known as periodic alimony, is a payment of support and maintenance on a long term basis or until death or remarriage of the recipient. Such alimony may be awarded when the court finds that there is relative economic disadvantage and that rehabilitation is not feasible, meaning that the disadvantaged spouse is unable to achieve, with reasonable effort, an earning capacity that will permit the spouse's standard of living after the divorce to be reasonably comparable to the standard of living enjoyed during the marriage, or to the post-divorce standard of living expected to be available to the other spouse, considering the relevant statutory factors and the equities between the parties.

(2)(A) An award of alimony in futuro shall remain in the court's control for the duration of such award, and may be increased, decreased, terminated, extended, or otherwise modified, upon a showing of substantial and material change in circumstances.

(B) In all cases where a person is receiving alimony in futuro and the alimony recipient lives with a third person, a rebuttable presumption is raised that:

(i) The third person is contributing to the support of the alimony recipient and the alimony recipient does not need the amount of support previously awarded, and the court should suspend all or part of the alimony obligation of the former spouse; or

(ii) The third person is receiving support from the alimony recipient and the alimony recipient does not need the amount of alimony previously awarded and the court should suspend all or part of the alimony obligation of the former spouse.

(3) An award for alimony in futuro shall terminate automatically and unconditionally upon the death or remarriage of the recipient. The recipient shall notify the obligor immediately upon the recipient's remarriage. Failure of the recipient to timely give notice of the remarriage shall allow the obligor to recover all amounts paid as alimony in futuro to the recipient after the recipient's marriage. Alimony in futuro shall also terminate upon the death of the payor, unless otherwise specifically stated.

(g)(1) Transitional alimony means a sum of money payable by one (1) party to, or on behalf of, the other party for a determinate period of time. Transitional alimony is awarded when the court finds that rehabilitation is not necessary, but the economically disadvantaged spouse needs assistance to adjust to the economic consequences of a divorce, legal separation or other proceeding where spousal support may be awarded, such as a petition for an order of protection.

(2) Transitional alimony shall be nonmodifiable unless:

(A) The parties otherwise agree in an agreement incorporated into the initial decree of divorce or legal separation, or order of protection;

(B) The court otherwise orders in the initial decree of divorce, legal separation or order of protection; or

(C) The alimony recipient lives with a third person, in which case a rebuttable presumption is raised that:

(i) The third person is contributing to the support of the alimony recipient and the alimony recipient does not need the amount of support previously awarded, and the court should suspend all or part of the alimony obligation of the former spouse; or

(ii) The third person is receiving support from the alimony recipient and the alimony recipient does not need the amount of alimony previously awarded and the court should suspend all or part of the alimony obligation of the former spouse.

(3) Transitional alimony shall terminate upon the death of the recipient. Transitional alimony shall also terminate upon the death of the payor, unless otherwise specifically stated in the decree.

(4) The court may provide, at the time of entry of the order to pay transitional alimony, that the transitional alimony shall terminate upon the occurrence of other conditions, including, but not limited to, the remarriage of the party receiving transitional alimony.

(h)(1) Alimony in solido, also known as lump sum alimony, is a form of long term support, the total amount of which is calculable on the date the decree is entered, but which is not designated as transitional alimony. Alimony in solido may be paid in installments; provided, that the payments are ordered over a definite period of time and the sum of the alimony to be paid is ascertainable when awarded. The purpose of this form of alimony is to provide financial support to a spouse. In addition, alimony in solido may include attorney fees, where appropriate.

(2) A final award of alimony in solido is not modifiable, except by agreement of the parties only.

(3) Alimony in solido is not terminable upon the death or remarriage of the recipient or the payor.

(i) In determining whether the granting of an order for payment of support and maintenance to a party is appropriate, and in determining the nature, amount, length of term, and manner of payment, the court shall consider all relevant factors, including:

(1) The relative earning capacity, obligations, needs, and financial resources of each party, including income from pension, profit sharing or retirement plans and all other sources;

(2) The relative education and training of each party, the ability and opportunity of each party to secure such education and training, and the necessity of a party to secure further education and training to improve such party's earnings capacity to a reasonable level;

(3) The duration of the marriage;

(4) The age and mental condition of each party;

(5) The physical condition of each party, including, but not limited to, physical disability or incapacity due to a chronic debilitating disease;

(6) The extent to which it would be undesirable for a party to seek employment outside the home, because such party will be custodian of a minor child of the marriage;

(7) The separate assets of each party, both real and personal, tangible and intangible;

(8) The provisions made with regard to the marital property, as defined in § 36-4-121;

(9) The standard of living of the parties established during the marriage;

(10) The extent to which each party has made such tangible and intangible contributions to the marriage as monetary and homemaker contributions, and tangible and intangible contributions by a party to the education, training or increased earning power of the other party;

(11) The relative fault of the parties, in cases where the court, in its discretion, deems it appropriate to do so; and

(12) Such other factors, including the tax consequences to each party, as are necessary to consider the equities between the parties.

(j) Where the lump sum amount of retirement or pension benefits or of balances in an individual retirement account, §§ 401(k), 403(b), 457, codified in 26 U.S.C. §§ 401(k), 403(b) and 457, respectively, or any other tax qualified account has been considered by the trial court, and determined to be marital property to be divided, the distributions of such lump sum amounts necessary to complete the division of property, whether distributed in a single payment or by periodic payments, shall not be considered income for the purpose of determining a spouse or ex-spouse's right to receive alimony or child support, but the income generated by the investment of such lump sum awards shall be considered income for such purpose.

(k) The court may direct a party to pay the premiums for insurance insuring the health care costs of the other party, in whole or in part, for such duration as the court deems appropriate.

(*l*) To secure the obligation of one party to pay alimony to or for the benefit of the other party, the court may direct a party to designate the other party as the beneficiary of, and to pay the premiums required to maintain, any existing policies insuring the life of a party, or to purchase and pay the premiums required to maintain such new or additional life insurance designating the other party the beneficiary of the insurance, or a combination of these, as the court deems appropriate.

(m) The order or decree of the court may provide that the payments for the support of such spouse shall be paid either to the clerk of the court or directly to the spouse, or, in Title IV-D cases, the order or decree of the court shall provide that payments shall be paid to the central collections and disbursement unit, pursuant to § 36-5-116.

(n) Nothing in this section shall be construed to prevent the affirmation, ratification and incorporation in a decree of an agreement between the parties as to support and maintenance of a party.

(o) Any order of alimony that has been reduced to judgment shall be entitled to be enforced as any other judgment of a court of this state and shall be entitled to full faith and credit in this state and in any other state.

History.
Acts 2005, ch. 287, § 2; 2011, ch. 119, § 3.

Compiler's Notes.
Title IV-D of the Social Security Act, referred to in this section, is compiled in 42 U.S.C. § 651 et seq.

36-5-122. False allegations of sexual abuse in furtherance of litigation.

Whenever a trial court finds that any person knowingly made a false allegation of sexual abuse in furtherance of litigation, in addition to any other penalties provided for by law or rule, the court may hold the accuser in contempt of court and may order the accuser to pay all litigation expenses, including, but not limited to, reasonable attorney's fees, discretionary costs and other costs incurred by the wrongly accused party in defending against the false allegation.

History.
Acts 2010, ch. 894, § 2.

PART 2

UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT [REPEALED]

36-5-201 — 36-5-229. [Repealed.]

Compiler's Notes.
Former §§ 36-5-201 — 36-5-229 (Acts 1953, ch. 188, §§ 1-27 (Williams §§ 9720.29 — 9720.55); 1955, ch. 106, § 1; 1959, ch. 214, §§ 1, 2, 4, 5; 1977, ch. 146, § 1; 1978, ch. 666, § 1; 1979, ch. 110, § 1; 1981, ch. 329, §§ 1-3; 1982, ch. 812, § 1; 1983, ch. 92, §§ 1 and 2; T.C.A. (orig. ed), §§ 36-90 — 36-929; Acts 1985, ch. 477, § 15; Acts 1988, ch. 938, § 1; Acts 1992, ch. 1013, § 1; Acts 1994, ch. 988, § 10), the Uniform Reciprocal Enforcement of Support Act, were repealed by Acts 1997, ch. 551, § 3, effective January 1, 1998. For similar subject matter, now see part 20 of this chapter, the Uniform Interstate Family Support Act.

PART 3

INTERCOUNTY ENFORCEMENT OF SUPPORT [REPEALED]

36-5-301 — 36-5-324. [Repealed.]

Compiler's Notes.
Former part 3, §§ 36-5-301 — 36-5-324 (Acts 1955, ch. 266, §§ 1-24; 1965, ch. 37, § 1; impl. am. Acts 1975, ch. 219, § 1; T.C.A., §§ 36-1001 — 36-1024; Acts 1985, ch. 377, §§ 1, 2; 1985, ch. 477, § 15; 1988, ch. 938, § 2; 1989, ch. 286, § 6), concerning intercounty enforcement, was repealed by Acts 1997, ch. 551, § 4. For new provisions, see part 30 of this chapter.

PART 4

EXPEDITED PROCESS FOR SUPPORT

36-5-401. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Child" means a person entitled to support from such person's parents by virtue of such person's minority or who is entitled to support as provided in § 34-1-102(b);

(2) "Magistrate" means a duly licensed attorney who has been actively engaged in the practice of law for a period of not less than two (2) years appointed by court authority to set and enforce child support, to review the administrative hearing decisions of the department of human services pursuant to § 36-5-1003 and to administer expedited process as set out in this part;

(3) "Petitioner" means a person or governmental entity seeking to be awarded or to enforce support for a child, or seeking to modify a previous child support order;

(4) "Respondent" means a person from whom child support is sought or a person in opposition to modification of a prior order; and

(5) "Support" or "order of support" means child support and support for a spouse or ex-spouse if the obligor is responsible for the support of a child residing with the spouse or ex-spouse.

History.

Acts 1985, ch. 477, § 13; 2000, ch. 922, § 10; Acts 2009, ch. 235, § 1.

Compiler's Notes.

Acts 2009, ch. 235, § 1 directed the code commission to revise appropriate references from "child support referees" and "juvenile referees" to "child support magistrates" and "juvenile magistrates" in the code as supplements are published and volumes are replaced.

36-5-402. Commencement and termination of hearings and actions — Magistrates.

(a)(1) Hearings in all child support cases that are not being enforced pursuant to the provisions of Title IV-D of the Social Security Act, compiled in 42 U.S.C. § 651 et seq., shall be heard within a reasonable period of time, not to exceed forty-five (45) days of the service of process in each county in the state.

(2) Hearings in all Title IV-D support cases that seek to establish or enforce support shall be heard within the time frames established by federal child support regulations. The department of human services shall send notice of the time frames as they may be amended to the administrative director of the courts, who shall send such notice to all courts of the state with child or spousal support jurisdiction. The administrative director of the courts shall send such notice to the courts within thirty (30) days of the date of notice from the department, and the time frames shall then become effective thirty (30) days after the date of the notice from the administrative director of the courts and shall apply to all actions to establish or enforce support initiated on or after July 1, 1995.

(b) The presiding judge of each judicial district shall provide for expedited support hearings in one (1) of the following manners:

(1)(A) The presiding judge of each judicial district, after conferring with the other judges and chancellors in the presiding judge's judicial district, shall certify to the supreme court and the administrative director of the courts the number of magistrates, if any, needed to serve each county in the district. Such certification shall include such information as may be required by the supreme court and the administrative director of the courts. The supreme court and the administrative director of the courts shall determine the number of magistrates, if any, needed for each such district, and the magistrates shall be selected and appointed by the presiding judge and shall serve at the presiding judge's pleasure. In counties having a metropolitan form of government and in counties having a population of not less than three hundred thirty-five thousand (335,000) nor more than three hundred thirty-six thousand (336,000), according to the 1990 federal census or any subsequent federal census, the magistrate or magistrates shall be selected and appointed by and serve at the pleasure of the trial court judge who hears more than fifty percent (50%) of the child support and domestic relations cases in such judicial district; provided, that this sentence does not apply to any sitting magistrate in such counties as of July 1, 1994. In determining the number of magistrates for each district, the supreme court and the administrative director of the courts shall provide for as many magistrates as are needed to provide hearings in all child support cases within the time schedule set out in subsection (a).

(B) In the event a judicial district has in effect on or before October 1, 1985, a system for the appointment of magistrates or masters to hear support cases that satisfies the requirements of the federal child support enforcement amendments of 1984 (P.L. 98-378), or subsequent federal legislation, and the regulations promulgated pursuant thereto, such district shall not be required to comply with the foregoing provisions of this part so long as such preexisting system remains in effect. Any law to the contrary notwithstanding, all magistrates or masters appointed pursuant to such system in circuit or chancery court shall be appointed by the presiding judge, with the concurrence of the other judges and chancellors in the district and shall serve at the pleasure of the appointing authority.

(2) In lieu of requesting a magistrate, the presiding judge may, with the agreement of all judges having child support jurisdiction in a particular county or counties, enter into agreements with juvenile courts to set, enforce, and modify support orders as provided in this part. In the event such an agreement is entered into, the juvenile court shall have jurisdiction over all support cases in such county, except as may otherwise be provided in the agreement, any contrary provision of law notwithstanding.

(3) If a judicial district does not recommend the need for magistrates or if the supreme court and the administrative director of the courts do not approve such recommendation, the supreme court, the administrative director of the courts and the presiding judges of such districts shall provide such information to the commissioner of human services as may be required by the secretary of health and human services for the granting of a waiver in accordance with the federal child support enforcement amendments of 1984 (P.L. 98-378), or subsequent federal legislation, and the regulations promulgated pursuant thereto. In the event the secretary does not grant a waiver for one (1) or more judicial districts, or in the event a waiver is revoked, the supreme court and the administrative director of the courts shall proceed to appoint a magistrate in accordance with subdivision (b)(1)(A) or take such other action as may be required to comply with federal law.

(4) The presiding judge shall prescribe which county or counties within the district that a magistrate will serve. All other terms and conditions of the

appointment, including, but not limited to, compensation to be paid and reimbursement of expenses and whether the position shall be full time or part time, shall be prescribed by rule of the supreme court, which is hereby granted such rulemaking authority with regard to the accomplishment of the purposes of this part as it deems appropriate in the public interest. The compensation to be paid to the magistrates shall be not less than nor more than ninety thousand dollars ($90,000). On and after July 1, 2008, the base salaries of magistrates appointed pursuant to this section shall be annually adjusted to reflect any actual percentage pay increases provided to all state employees generally, as provided for in the general appropriations act. Adjustments to annual salary increases as provided for in this subdivision (b)(4) are not to be made on the basis of any class compensation efforts, class compression efforts, or any other method of salary adjustments.

(c) If by July 1, 1986, the presiding judge fails to comply with the provisions of subsection (b), the judge will be deemed to have delegated this responsibility to the supreme court and the administrative director of the courts, and the supreme court shall immediately appoint a magistrate to serve in accordance with this section, if necessary.

(d) The administrative director of the courts shall have authority to enter into contracts with the Tennessee state IV-D office of child support enforcement to obtain funding for compensation for the magistrate, support staff and other expenses necessary to provide for the performance of duties required in this part and required in part 5 of this chapter. Such contracts shall be subject to availability of funds.

(e) The appointment of magistrates in juvenile court that may be necessary to meet the provisions of this section shall be governed by title 37, chapter 1.

History.

Acts 1985, ch. 477, § 13; 1986, ch. 890, § 11; 1993, ch. 66, §§ 45-48; 1994, ch. 801, §§ 1, 2; 1995, ch. 504, § 4; 2006, ch. 984, § 1; 2008, ch. 894, § 1; 2009, ch. 235, § 1.

Compiler's Notes.

Public Law 98-378, referred to in this section, is codified primarily at 42 U.S.C. §§ 602, 603, 606, 651 et seq. and at 26 U.S.C. §§ 6103 and 6402.

For table of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

Title IV-D of the Social Security Act, referred to in this section, is compiled in 42 U.S.C. § 651 et seq.

Acts 2009, ch. 235, § 1 directed the code commission to revise appropriate references from "child support referees" and "juvenile referees" to "child support magistrates" and "juvenile magistrates" in the code as supplements are published and volumes are replaced.

36-5-403. Powers of magistrate.

The magistrate shall have the same authority and power as a circuit court judge to issue any and all process and in conducting hearings and other proceedings in accordance with this part; provided, that all final orders of a magistrate must be reviewed by a judge as provided in § 36-5-405.

History.

Acts 1985, ch. 477, § 13; Acts 2009, ch. 235, § 1.

Compiler's Notes.

Acts 2009, ch. 235, § 1 directed the code commission to revise appropriate references from "child support referees" and "juvenile referees" to "child support magistrates" and "juvenile magistrates" in the code as supplements are published and volumes are replaced.

36-5-404. Powers and duties of clerk.

The office of the clerk of the court shall provide a sufficient supply of the forms provided for in § 36-5-406. These forms shall be limited to use in causes filed under this part and they shall be made available to all who request assistance in filing a petition. The office of the clerk shall also assist a person who is not represented by counsel by filling in the name of the court on the petition and testimony or shall refer the person to the proper IV-D agency within the county.

History.

Acts 1985, ch. 477, § 13.

Compiler's Notes.

Title IV-D of the Social Security Act, referred to in this section, is compiled in 42 U.S.C. § 651 et seq.

36-5-405. Actions for support.

(a) Any person seeking to set, enforce, modify or terminate support may commence such an action by filing a petition and testimony in the form prescribed by § 36-5-406 with the office of the clerk.

(b) When a petition is filed, the clerk shall designate a hearing date on the notice prescribed in this part or, in the alternative, shall designate a hearing date on the summons to be served by the sheriff if the petitioner elects to proceed by having the sheriff serve process to initiate this proceeding. The hearing date shall be within thirty (30) days of the date the petition is filed. If process is served by certified mail, the clerk shall then send a copy of the completed petition, testimony, and notice to respondent by certified mail, return receipt requested. The clerk shall give a copy of completed notice, petition, and testimony to petitioner.

(c) If the return receipt is not received by the hearing date, and the respondent fails to appear, then the magistrate shall direct the clerk to reissue the petition with a new notice of hearing and may direct service as set out in subsection (b), or may direct service by issuance of a summons to be served by the sheriff or process server, designated by the magistrate. If a petition is for contempt, either the magistrate or the judge may issue an attachment for the arrest of the respondent with a bond.

(d) If the respondent fails to appear after service and if the return receipt does bear the signature of respondent, the magistrate may grant the relief sought in the petition by default. If a petition is for contempt, either the magistrate or the judge may issue an attachment for the arrest of the respondent with a bond.

(e) If respondent does appear, the magistrate may enter a consent order if the parties reach an agreement and the magistrate finds the agreement to be reasonable.

(f) If the respondent appears and the parties do not agree, the magistrate shall hear testimony and issue an order granting such relief as the magistrate finds appropriate.

(g) Upon the conclusion of the hearing in each case, the magistrate shall transmit to the judge all papers relating to the case, along with the magistrate's findings and recommendations in writing. A magistrate's decision on a preliminary matter, not dispositive of the ultimate issue in the case, shall be final and not reviewable by the judge.

(h) Any party may, within five (5) days thereafter, excluding nonjudicial days, file a request for a hearing by the judge of the court having jurisdiction. The judge may, on the judge's own motion, order a rehearing of any matter heard before a magistrate, and shall allow a hearing if a request for such is filed as herein prescribed. Unless the judge orders otherwise, any recommendation of the magistrate shall be in effect pending rehearing or approval by the court.

(i) If a hearing before the judge is not requested, the findings and recommendations of the magistrate become the final decree of the court when confirmed by an order of the judge.

(j) There shall be no litigation tax and the clerk shall not refuse to file a petition for a party proceeding under this part for failure to pay a filing fee. When a party is unable to pay the filing fee, such party shall be required to take and subscribe to in writing the pauper's oath set out in § 20-12-127, and such affidavit shall be attached to such party's petition.

(k) Any party may appeal a final order entered under this section to the court of appeals. Any such appeal shall be governed by the applicable provisions of the Tennessee Rules of Appellate Procedure.

History.
Acts 1985, ch. 477, § 13; 1986, ch. 890, §§ 5, 10, 16; 2000, ch. 922, §§ 11, 12; Acts 2009, ch. 235, § 1.

Compiler's Notes.
Acts 2009, ch. 235, § 1 directed the code commission to revise appropriate references from "child support referees" and "juvenile referees" to "child support magistrates" and "juvenile magistrates" in the code as supplements are published and volumes are replaced.

36-5-406. Promulgation and approval of forms.

The department of human services has the authority by regulation to promulgate forms, which shall be available for use pursuant to this part. Such forms shall be promulgated pursuant to the rulemaking provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, and shall be approved by the judicial council prior to becoming effective.

History.
Acts 1985, ch. 477, § 13; 1986, ch. 890, § 14.

PART 5

ASSIGNMENT OF INCOME FOR SUPPORT

36-5-501. Income withholding.

(a)(1) For any order of child support issued, modified, or enforced on or after July 1, 1994, the court shall order an immediate assignment of the obligor's income, including, but not necessarily limited to: wages, salaries, commissions, bonuses, workers' compensation, disability, payments pursuant to a pension or retirement program, profit sharing, interest, annuities, and other income due or to become due to the obligor. The order of assignment shall issue regardless of whether support payments are in arrears on the effective date of the order. The court's order, shall include an amount sufficient to satisfy an accumulated arrearage, if any, within a reasonable time. The order may also include an amount to pay any medical expenses that the obligor owing the support is obligated or ordered to pay. Withholding shall not exceed fifty percent (50%) of the employee's income after FICA, withholding taxes, and a health insurance premium that covers the child, are deducted. The order shall also include an amount necessary to cover the fee due the clerk of the court or the department, if appropriate. In the event the court does not order an immediate assignment pursuant to subdivision (a)(2), every order shall be enforceable by income assignment as provided in this chapter.

(2)(A) Income assignment under this subsection (a) shall not be required:

(i) If, in cases involving the modification of support orders, upon proof by one party, there is a written finding of fact in the order of the court that there is good cause not to require immediate income assignment and the proof shows that the obligor has made timely payment of previously ordered support. "Good cause" shall only be established upon proof that the immediate income assignment would not be in the best interests of the child. The court shall, in its order, state specifically why such assignment will not be in the child's best interests; or

(ii) If there is a written agreement by both parties that provides for alternative arrangements. Such agreement must be reviewed by the court and entered in the record.

(B) If the case is being enforced under Title IV-D of the Social Security Act, compiled in 42 U.S.C. § 651 et seq., and is subject to an assignment of support due to receipt of public assistance, the department of human services or its contractor must be notified of the request for exemption under subdivisions (a)(2)(A)(i) and (ii) and may present evidence for purposes of subdivision (a)(2)(A)(i), or must agree in order to permit exemption from income withholding as otherwise permitted pursuant to subdivision (a)(2)(A)(ii).

(3)(A) Unless a court or administrative order stipulates that alternative health care coverage to employer-based coverage is to be provided for a child subject to a Title IV-D child support order, in any case in which a noncustodial parent is required by a court or administrative order to provide health care coverage for such a child, and the employer of the noncustodial parent is known to the department, the department shall use any federally-required medical support notices to pro-

vide notice to the employer of the requirement for employer-based health care coverage for such child through the child's parent who has been ordered to provide health care coverage for such child. The department shall send the federal medical support notice to any employer of a noncustodial parent subject to such an order within two (2) business days of the entry of such employee who is an obligor in a Title IV-D case into the directory of new hires under part 11 of this chapter.

(B) Within twenty (20) business days after the date of the medical support notice, the employer of a noncustodial parent subject to an order for health care coverage for the child shall transfer the notice to the appropriate plan providing such health care coverage for which the child is eligible. The employer shall withhold from the noncustodial parent's compensation any employee contributions necessary for coverage of the child and shall send any amount withheld directly to the health care plan to provide such health care coverage for the child. If the employee contests the withholding of such employee contributions, the employer shall initiate withholding until the contest is resolved. The employee/obligor shall have the right to contest the withholding order issued pursuant to subdivision (a)(3) based upon a mistake of fact according to the provisions for appeal provided pursuant to part 10 of this chapter.

(C)(i) An employer shall notify the department promptly whenever the noncustodial parent's employment is terminated.

(ii) The department shall promptly notify the employer when there is no longer a current order for medical support in effect for which the department is responsible.

(D) The liability of the noncustodial parent for employee contributions to the health care plan necessary to enroll the child in the plan shall be subject to all available enforcement mechanisms under this title or any other provision of law.

(E) Upon receipt of the notice required by this subdivision (a)(3) that appears regular on its face and that has been appropriately completed, the notice is deemed a qualified medical child support order under 29 U.S.C. § 1169(a)(5)(C)(i). The health insurance plan administrator of a participant under a group health plan who is the noncustodial parent of the child for whom the notice was received pursuant to this subdivision (a)(3), shall, within forty (40) business days:

(i) Notify the state Title IV-D agency of any state or territory that issued the notice with respect to whether coverage is available for such child under the terms of the plan, and, if so, whether such child is covered under the plan and either the effective date of the coverage or, if necessary, any steps to be taken by the custodial parent, or official of a state or political subdivision thereof substituted for the name of the child pursuant to 29 U.S.C. § 1169(a)(3)(A), to effectuate coverage. The department or its contractors, in consultation with the custodial parent, must promptly select from available plan options when the plan administrator reports that there is more than one (1) option available under the employer's plan; provided, however, if such response is not made to the plan administrator within twenty (20) business days, and if the plan has a default option for coverage, the plan administrator shall enroll the child in that default option. If there is no default option, the plan administrator may call the office of the department or contractor that sent the notice and seek direction as to the child's enrollment in the available plans;

(ii) Provide the custodial parent or such substituted official a description of the coverage available and any forms or documents necessary to effectuate such coverage and permit the custodial parent or substituted official to file claims;

(iii) Send the explanation of benefit statements to the custodial parent, substituted official and the employee;

(iv) Send the reimbursement to the custodial parent, legal guardian or substituted official for expenses paid by the custodial parent, legal guardian or substituted official for which the child may be eligible under the plan;

(v) Nothing in subdivision (a)(3)(E) shall be construed as requiring a group health plan, upon receipt of a medical support notice, to provide benefits under the plan, or eligibility for benefits, under the terms of the plan in addition to, or different from, those provided immediately before receipt of such notice, except as may otherwise be required by the provisions of title 56, chapter 7, part 23.

(b)(1)(A) In all cases in which the court has ordered immediate income assignment, the clerk of the court, or the department of human services or its contractor in Title IV-D cases, shall immediately issue an income assignment to an employer once the employer of an obligor has been identified.

(B) In all cases in which an immediate assignment of income has not been previously ordered, or in which an obligor who is ordered to pay child support in which an immediate income assignment was not required pursuant to subdivision (a)(2), and when the obligor becomes in arrears as defined in this subdivision (b)(1) as reflected in the records of the clerk of court, if the support is paid through the clerk's office or in the records of the department of human services, then the clerk of the court, or the department or its contractor in Title IV-D child support cases shall, without the necessity of an affidavit of the obligee, issue an order of income assignment to the employer of the obligor, if known, or at such time as the employer's name and whereabouts are made known to the clerk or the department or its contractor. No court order expressly authorizing an income assignment shall be required under this subdivision (b)(1)(B).

(C) The order of assignment issued by the department or its contractor pursuant to subdivi-

sions (b)(1)(A) and (B) shall include an amount sufficient to satisfy an accumulated arrearage within a reasonable time without further order of the court. The order shall also include an amount to pay any medical expenses that the obligor owing the support is obligated or ordered to pay. Withholding shall not exceed fifty percent (50%) of the employee's income after FICA, withholding taxes, and a health insurance premium that covers the child, are deducted. The order shall also include an amount necessary to cover the fee due the clerk of the court, if appropriate.

(D) In all other cases in which the child support payments were ordered to be paid directly to a parent or guardian or custodian of the child or children, and the child support payments are in arrears as defined in this subdivision (b)(1), the parent, guardian or custodian may, by affidavit filed with the clerk, or, the department or its contractor in Title IV-D child support cases, request that an order of income assignment be sent by the clerk of the court, or by the department, to the employer, if known, or at such time as the employer's name and whereabouts are made known to the clerk, the department or its contractor. No court order expressly authorizing an income assignment shall be required under this subdivision (b)(1).

(E) The order of assignment issued by the clerk or the department or its contractor pursuant to subdivision (b)(1)(D) shall include an amount sufficient to satisfy an accumulated arrearage within a reasonable time. The order may also include an amount to pay any medical expenses that the obligor owing the support is obligated or ordered to pay. Withholding shall not exceed fifty percent (50%) of the employee's income after FICA, withholding taxes, and a health insurance premium that covers the child, are deducted. The order shall also include an amount necessary to cover the fee due the clerk of the court, if appropriate.

(F) An income assignment pursuant to this subsection (b) shall be mandatory even if subsequent to the issuance of the order of assignment the obligor pays the amount of arrearage in part or in full as long as current support or arrearages are still owed.

(G) For purposes of this part, "arrears" means any occasion on which the full amount of ordered support ordered for or on behalf of a minor child, or for a spouse or former spouse of the obligor with whom the child is living to the extent the spousal support would be included for the purposes of 42 U.S.C. § 654a(e)(4), is not paid by the due date for arrears as defined in § 36-5-101(f)(1) unless an income assignment is in effect and the payor of income is paying pursuant to subsection (g).

(H) Clerks of court are authorized to issue an order of income assignment to the employer of the obligor and to institute the process to assign income when the obligor fails to pay court costs, but shall not have priority over the income assignment for child or spousal support.

(2) When an order of income assignment has been issued pursuant to subdivision (b)(1)(B) or (b)(1)(D), the clerk, or the department in Title IV-D cases, shall send a notice to the obligor within two (2) business days of the issuance of the order of income assignment being sent to the obligor's employer. If the assignment is made pursuant to subdivisions (b)(1)(B) or (b)(1)(D), the notice must be sent to the address of the obligor, if known, or to the obligor at the address of the employer of the obligor if the obligor's address is unknown.

(3) In addition to any other required or pertinent information, all notices of assignment sent to the obligor who resides in this state pursuant to this section shall include:

(A) The amount of money owed by the obligor, including both current support and arrears;

(B) The amount of income withholding, except where otherwise ordered by the court, that shall be applied for current support, the amount that shall be applied for arrearages and the amount to be applied for alimony. The amount withheld shall be an amount reasonably sufficient to satisfy an accumulated arrearage within a reasonable time;

(C) Notice that the obligor has the right to a hearing before the court, or, in Title IV-D cases, an administrative review by the department of human services. The administrative hearing shall be conducted pursuant to the provisions of part 10 of this chapter; and

(D) Notice that the obligor must request the hearing by notifying the clerk, or the department in Title IV-D cases, within fifteen (15) days of the date of the notice, or the date of personal service, if used.

(4) Orders of income assignment issued by the department of human services or its contractors shall be filed with the court.

(5)(A) In all Title IV-D child or spousal support cases in which payment of such support is to be made by income assignment, and in all cases where payments made by income assignment based upon support orders entered on or after January 1, 1994, that are not Title IV-D support cases but must be made to the central collection and disbursement unit as provided by § 36-5-116, the court, the clerk of court, or the department or its contractors shall only order that the support payments be made by income assignment to the central collection and disbursement unit pursuant to § 36-5-116. No agreement by the parties in a parenting plan, either temporary or permanent, entered pursuant to chapter 6, part 4 of this title, or any other agreement of the parties or order of the court, except as may otherwise be allowed by subdivision (a)(2)(B), shall alter the requirements for payment by income assignment to the central collection and disbursement unit as required by § 36-5-116, and any provision of any parenting plan, agreement or court order providing for any other payment procedure contrary to the require-

ments of § 36-5-116, whether or not approved by the court, except as may otherwise be allowed by subdivision (a)(2)(B), shall be void and of no effect. No credit shall be given by the court, the court clerk or the department of human services for child or spousal support payments required by the support order that are made in contravention of such requirements; provided, however, the department may make any necessary adjustments to the balances owed to account for changes in the Title IV-D or central collection and disbursement status of the support case.

(B) The payment of child support through the centralized collection and disbursement unit established pursuant to § 36-5-116 does not establish the case as a Title IV-D case unless the case otherwise meets the criteria of § 71-3-124 for a case, in which the department of human services will provide child support services to an assignor of support rights or to any person who has otherwise applied for such services.

(6)(A) If the obligor is self-employed, or if the obligor is a partner, member, owner or officer of a partnership, limited liability company, corporation or other association or business entity from which the obligor receives compensation in the form of wages, salary, commissions, bonuses or otherwise, then the court may order the obligor, or the business entity of which the obligor is a partner, member, owner or officer, if applicable, to establish a bank account for the sole purpose of complying with the order issued pursuant to subsection (a). The order issued pursuant to subsection (a) shall specify the amount of the obligor's compensation that is to be deposited into the account and the frequency by which the deposits are to be made, whether weekly, biweekly or monthly. Within ten (10) days of the issuance of the order pursuant to subsection (a), the obligor or business entity shall provide the department with written authorization for the department's central collection and disbursement unit to receive from the account, by automatic bank withdrawal, the amount ordered by the court to be deposited into the account. Failure to either deposit the required amount into the account or to authorize automatic withdrawal of the required amount by the department's central collection and disbursement unit is failure to comply with a child support order, which shall be punishable as civil contempt.

(B) As used in subdivision (b)(6)(A), "self-employed" means earning one's livelihood directly from one's own business, trade or profession rather than as a specified salary or wages from an employer.

(c)(1) In the event the obligor requests a hearing in cases not being enforced pursuant to Title IV-D regarding the withholding as provided in subdivisions (b)(1)(B) within fifteen (15) days of the date of the notice, or the date of personal service, if used, the clerk shall promptly docket the case with the magistrate or court as provided by part 4 of this chapter, shall give notice to all parties, and shall take any other action as is necessary to ensure that the time limits provided in subsection (d) are met.

(2) If the withholding was issued by the department or its contractor in Title IV-D cases and the obligor requests an administrative hearing as permitted by part 10 of this chapter, the department shall promptly schedule the case for a hearing, shall give notice to all parties, and shall take any other action as is necessary to ensure that the time limits provided in subsection (d) are met.

(d) In all cases in which the obligor requests a hearing or administrative review, the magistrate or court, or the department, shall conduct a hearing and make a determination, and the clerk or department shall notify the obligor and the employer of the decision within forty-five (45) days of the date of the order provided in subdivision (b)(1).

(e) The obligor may contest the results of the department's administrative review by requesting a judicial review as provided in part 10 of this chapter.

(f) The amount to be withheld under the income assignment withheld for support may not be in excess of fifty percent (50%) of the income due after FICA, withholding taxes, and a health insurance premium that covers the child are deducted.

(g)(1) The assignment or any subsequent modification is binding upon any employer, person or corporation, including successive employers, fourteen (14) days after mailing or other transmission or personal service of the order from the clerk of the court, or from the department by administrative order of income assignment, pursuant to this section. The employer, person or corporation has a fiduciary duty to send amounts withheld for payment of a child support obligation to the clerk or the department's central collection and disbursement unit as directed in the income assignment order, or, if based upon a direct withholding from another state pursuant to the Uniform Interstate Family Support Act, compiled in parts 20-29 of this chapter, to the other state as directed by that order of assignment. The amount shall be sent by the employer, person or corporation within (7) days of the date the person obligated to pay support is paid, the date the person is to be paid or the date the amount due such person is to be credited. The order is binding until further notice.

(2) The employer, person, corporation or institution shall provide notice to the clerk, the department, or the entity in the other state to which the withheld income was to be sent of termination of employment or income payments to the employee. Any employer, person, corporation or institution that files for bankruptcy or ceases to operate as a business shall provide notice to the clerk or the department of the bankruptcy or cessation of business upon filing bankruptcy or at least ten (10) days prior to ceasing to operate as a business. Any notice provided pursuant to this subsection (g) shall include the names of all the affected employees subject to an income assignment, the last known address of each of those employees, and the name and address of the new employer or source of income of each of those employees,

if known.

(3) Failure of any employer, person, corporation or institution to pay income withheld to the clerk or clerks, to the department, its contractor, or other entity, or Title IV-D child support agency in any other state that issued the order, as may be directed by the income assignment order, is a breach of a fiduciary duty to the obligor. Any action alleging breach of fiduciary duties by an employer, person, corporation or institution pursuant to this section shall be brought within one (1) year from the date of the breach or violation; provided, that, in the event the alleged breach or violation is not discovered or reasonably should have been discovered within the one-year period, the period of limitation shall be one (1) year from the date the alleged breach or violation was discovered or reasonably should have been discovered. In no event shall an action be brought more than three (3) years after the date on which the breach or violation occurred, except where there is fraudulent concealment on the part of the defendant, in which case the action shall be commenced within one (1) year after the alleged breach or violation is, or should have been, discovered.

(h) For any order of alimony in solido, in futuro or rehabilitative issued, modified or enforced on or after April 24, 2002, the court may order immediate assignment of the obligor's income, including, but not necessarily limited to: wages, salary, commissions, bonuses, workers' compensation, disability, payments pursuant to a pension or retirement program, profit sharing, interest, annuities and other income due or to become due to the obligor. The order of assignment shall issue regardless of whether support payments are in arrears on the effective date of the order. The court's order may include an amount sufficient to satisfy an accumulative arrearage, if any, within a reasonable time. Withholding shall not exceed fifty percent (50%) of the employee's income after FICA, withholding taxes, and a health insurance premium that covers the child, if any, are deducted. The order shall also include an amount necessary to cover the fee due the clerk of the court, if appropriate.

(i) It is unlawful for an employer to use the assignment as a basis for discharge or any disciplinary action against the employee. Compliance by an employer, other person, institution or corporation with the order shall operate as a discharge of the liability of such employer, other person, institution or corporation to the affected individual as to that portion of the income so affected. An employer shall be subject to a fine for a Class C misdemeanor if the income assignment is used as a basis to refuse to employ a person or to discharge the obligor/employee or for any disciplinary action against the obligor/employee or if the employer fails to withhold from the obligor's income or to pay such amounts to the clerk or to the department as may be directed by the withholding order.

(j)(1) An assignment under this section shall take priority over any other assignment or garnishment of wages, as described in title 26, chapter 2, or salary, commissions or other income, except those deductions made mandatory by law or hereafter made mandatory.

(2)(A) If the employer, person, corporation or institution receives more than one (1) order of income assignment against an individual, the employer, person, corporation or institution must comply by giving first priority to all orders for amounts due for current support due a child, second to all orders for amounts due for arrearages due a child, third to all orders for amounts due for current support due a spouse, and fourth to all orders for amounts due for arrearages due a spouse, and must honor all withholdings to the extent the total amount withheld from wages does not exceed fifty percent (50%) of the employee's wages after FICA, withholding taxes, and a health insurance premium that covers the child are deducted.

(B) Any employer, person or entity receiving an order for income withholding from another state or territory shall apply the income withholding law of the state of the obligor's principal place of employment in determining:

(i) The employer's fee for processing an income withholding order;

(ii) The maximum amount permitted to be withheld from the obligor's income;

(iii) The time periods within which the employer must implement the income withholding order and forward the child support payment;

(iv) The priorities for withholding and allocating income withheld for multiple child support obligees; and

(v) Any withholding terms and conditions not specified in the order.

(C) The "principal place of employment" for an obligor who is employed in this state and for whom an income withholding order has been received in this state from another state or territory shall be deemed to be this state, and the provisions set forth in the requirements of this section regarding income withholding shall apply to the determinations made in subdivisions (j)(2)(B)(i)-(v).

(3)(A) If any employer, person, or other entity receives any income assignment for current support against an individual that would cause the deduction from any two (2) or more assignments for current support to exceed fifty percent (50%) of the individual's income after FICA, withholding taxes, and a health insurance premium that covers the child are deducted, then the allocation of all current support ordered withheld by all income assignments they receive against that individual shall be determined by the employer, person, or entity as follows:

(i) The employer, person, or other entity shall determine the total dollar amount of the assignments for current support it has received involving the obligor to whom it owes any wages, salaries, commissions, bonuses, workers' compensation, disability, payments pursuant to a pension or retirement program, profit sharing, interest, annuities, and other income due or to become due to the obligor;

(ii) Each individual assignment shall then be calculated as a percentage of the total obtained pursuant to subdivision (j)(3)(A)(i);

(iii) The employer, person, or entity shall then allocate the available income of the obligor, subject to the limits described in this subsection (j), based on the percentage computation pursuant to subdivision (j)(3)(A)(ii) and shall, as directed by the order of income assignment, pay the amounts withheld from the obligor's income, to the clerk or clerks, or to the department, its contractor, or other entity or Title IV-D child support agency in any other state that issued such order.

(B) In the event all current support obligations are met from the assignments and support arrearages exist in more than one (1) case and there is not sufficient income to pay all ordered support arrearages, then the support arrearages shall be allocated on the same basis as set forth in subdivision (j)(3)(A).

(C) The obligor shall be responsible for seeking any modifications to the existing orders for support.

(4) An employer, person, corporation or institution may make one (1) payment to the clerk of the court, the department, its contractor or other entity in another state so long as the employer separately identifies the portion of the single payment attributable to each individual obligor parent, and, if amounts are included that represent withholdings for more than one (1) pay period, so long as the amounts representing each pay period are separately identified.

(k)(1) "Employer, person, corporation or institution," as used in this section, includes the federal government, the state and any political subdivision thereof and any other business entity that has in its control funds due to be paid to a person who is obligated to pay child support.

(2) "Spousal support" for purposes of enforcement of child support by the department of human services under the Title IV-D child support program means a legally enforceable obligation assessed against an individual for the support of a spouse or former spouse who is living with a child or children who are receiving child support services from the department and for whom the individual also owes support. Income assignments pursuant to this part that are enforced as part of the Title IV-D services provided by the department shall apply to spousal support obligations as defined in this subdivision (k)(2).

(*l*) Any employer, person, corporation or institution that is ordered to pay an income assignment on behalf of an individual may charge the obligor parent an amount of up to five percent (5%) not to exceed five dollars ($5.00) per month for such service.

(m) The notices and orders required to be issued pursuant to this section shall be transmitted to any party or person by any method chosen by the court or the department, including, but not limited to: certified mail, return receipt requested, regular mail, electronic mail, facsimile transmission, or by personal service, and may be generated by computer or on paper. The notices and orders required by this section need not be entered in the minutes of the court. If a notice or order is returned or otherwise not deliverable, then service shall be had by any alternative method chosen by the court or the department, as listed in this subsection (m). Before taking action against an employer or other payor for failure to comply with this part, the court or department shall ensure that service of the notice or order was made by certified mail or by personal service. Electronically reproduced signatures shall be effective to issue any orders or notices pursuant to this section.

(n) There shall be no litigation tax imposed on proceedings pursuant to this part.

(o)(1) The department of human services shall have authority to establish mandatory rules, forms and any necessary standards and procedures to implement income assignments, which shall be used by all the courts and by the department pursuant to this part. The department of human services may implement the use of such forms at any time after July 1, 1997, by emergency rule following approval by the attorney general and reporter. Permanent rules implementing the forms shall be promulgated pursuant to the rulemaking provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(2) Prior to the filing of a notice of rulemaking for permanent rules pursuant to this subsection (o), the rules shall be sent by the department for review by an advisory group composed of two (2) representatives of the state court clerks' conference appointed by the president of the state court clerks' conference; two (2) representatives of the judges of courts that have child support responsibilities, one (1) of whom will be appointed by the chief justice of the supreme court and one (1) of whom will be appointed by the president of the council of juvenile and family court judges; a representative of the administrative office of the courts; and two (2) representatives of the department of human services designated by the commissioner. Nothing contained herein shall be construed to prevent the department from filing any notice of rulemaking prior to or at the time the proposed permanent rules are sent to the advisory group where the department determines that immediate filing of the notice without prior review by the advisory group is necessary to meet any requirements relative to the potential expiration of emergency rules or to comply with any federal statutory or regulatory requirements or any federal policy directives.

(p) If any employer, person, corporation or institution fails or refuses to comply with the requirements of this section, then that employer, person, corporation or institution is liable for any amounts up to the accumulated amount that should have been withheld. In addition, that employer, person, corporation or institution may be subject to a civil penalty to be assessed and distributed pursuant to the requirements of this subsection (p).

(1) Upon the first failure to comply with an order of income assignment, that employer, person, corporation or institution may be subject to a civil penalty of one hundred dollars ($100) per obligor for whom an order of income assignment was received, two hundred dollars ($200) per obligor for the second failure to comply and five hundred dollars ($500) per obligor for each occurrence thereafter.

(2) The civil penalty, when assessed and collected by the department of human services, shall be prorated among the children for whom the income assignment order was issued and with which the employer, person, corporation or institution failed to comply. If there are multiple income assignments for an obligor, the prorated amounts of the civil penalty shall be distributed to the children in the proportion that each order for which the income assignment was issued is to the total amount of all income assignments with which the employer, person, corporation or institution failed to comply.

(3) The civil penalty amount received by the children shall not reduce in any manner the amount of support owed by the obligor parent, but shall be received in addition to all ordered child support.

(q)(1) Penalties authorized by this section shall be assessed by the commissioner of human services after written notice to the employer, person, corporation or institution. The notice shall provide fifteen (15) days from the mailing date of the notice for the employer, person, corporation or institution to file a written request to the department for appeal of the civil penalty. If an appeal is timely filed with the department, the department shall set an administrative hearing on the issue of the assessment pursuant to the provisions of the Uniform Administrative Procedures Act, relative to contested case hearings. Failure to timely appeal the assessment of the civil penalty shall be final and conclusive of the correctness of the assessment.

(2) Any amount found owing shall be due and payable not later than fifteen (15) days after the mailing date of the determination. Failure to pay an assessment shall result in a lien against the real or personal property of the employer, person, corporation or institution in favor of the department. If an assessment is not paid when it becomes final, the department may collect the amount of the civil penalty by any available administrative enforcement procedures or by court action. The non-prevailing party shall be liable for all court costs and litigation taxes of the proceedings and shall be liable to the department for the cost of any private, contract or government attorney representing the state and for the time of any of its Title IV-D or contractor staff utilized in litigating the assessment.

(3) Any appeal of the action of the commissioner pursuant to this section shall be made in conformity with § 36-5-1003.

History.

Acts 1985, ch. 477, § 14; 1986, ch. 890, §§ 2-4, 6, 9; 1987, ch. 306, §§ 15, 16; 1990, ch. 789, §§ 1, 2; 1994, ch. 987, §§ 8-13; 1995, ch. 504, §§ 5-7; 1997, ch. 551, § 17; 1998, ch. 1098, §§ 18-24; 2000, ch. 922, §§ 13-16; 2001, ch. 447, §§ 6, 15; 2002, ch. 651, §§ 4, 5; 2004, ch. 735, §§ 1-3; 2005, ch. 152, § 1; 2007, ch. 312, §§ 1, 2; 2007, ch. 442, § 1; 2009, ch. 235, § 1; 2009, ch. 566, § 12.

Compiler's Notes.

Title IV-D of the Social Security Act, referred to in this section, is compiled in 42 U.S.C. §§ 651 et seq.

Acts 2009, ch. 235, § 1 directed the code commission to revise appropriate references from "child support referees" and "juvenile referees" to "child support magistrates" and "juvenile magistrates" in the code as supplements are published and volumes are replaced.

Acts 2009, ch. 566, § 12 provided that the Tennessee code commission is directed to change all references to public necessity rules, wherever such references appear in this code, to emergency rules, as sections are amended and volumes are replaced.

36-5-502. [Repealed.]

Compiler's Notes.

Former § 36-5-502 (Acts 1985, ch. 477, § 14; 1986, ch. 890, § 13), concerning promulgation and approval of forms, was repealed by Acts 1997, ch. 551, § 18.

36-5-503. Termination of income assignment.

(a) The following procedures shall apply to termination of income assignment:

(1) Any party or its agents or assignees may seek termination of an order under this section if there are no arrearages owed by the obligor to the obligee parent, any guardian or custodian of the child, the department of human services or any other agency of the state of Tennessee, or any other Title IV-D agency of any state, the costs of court have been paid, and there are no longer any children to whom the obligor parent is obligated to pay support because:

(A) Of the marriage of the child or children;

(B) Of the death of the child or children;

(C) The child or children have reached majority and have graduated from high school, or the class of which the child is a member when the child attains eighteen (18) years of age graduates, whichever occurs later, and no other special circumstances requiring the obligation continue to exist.

(2) If there are children to whom the obligor is still obligated to pay support, though a change of circumstances has occurred as a result of the discontinuation of the obligation to at least one (1) child, the obligor may not seek termination of the income assignment order, but must seek modification of the support order. Upon obtaining modification of the support order, the clerk of court or the department or its contractors shall issue a modified income assignment;

(3) Parties seeking a change of custody, pursuant to § 36-6-101, may not seek termination under this provision but must request termination by the trial court if there is a change in custody ordered;

(4) The clerk of the court or the department of human services or its contractor in Title IV-D cases shall send the order and notice of termination of income assignment to the obligor parent, obligee parent, and employer, person, corporation, or institution upon the decision to terminate or not to terminate; and

(5)(A) In Title IV-D cases, when the department of human services or its contractor is informed or otherwise determines that the conditions of subdivision (a)(1) have been met, then the department or its contractor shall administratively terminate or modify the income assignment order to reflect the change in circumstances pursuant to the child support guidelines in accordance with this section. In all other circumstances, modification or termination of an income assignment shall be obtained by court order.

(B) In cases where an income assignment order may be terminated or modified by administrative order, the department or its contractor shall notify both the obligor, or other payer, and the obligee of the proposed action with respect to the termination or modification action. The notice shall give both the obligor and the obligee fifteen (15) days in which to appeal the proposed action, pursuant to the appeal provisions of part 10 of this chapter.

(b) Each parent or other individual having custody of a child who is receiving support payments under an income assignment order shall notify the clerk, or the department of human services or its contractor in Title IV-D cases, at such time as any of the following occur:

(1) A child for whom support is being paid dies;

(2) A child for whom support is being paid marries;

(3) A child for whom support is being paid reaches such child's eighteenth birthday if the child is not in high school on that date; or

(4) A child for whom support is being paid graduates from high school, or the class of which the child is a member graduates if the child does not graduate with the class, if the child is eighteen (18) years of age prior to the date such child graduates.

(c)(1) The obligor parent may also seek termination or modification of a support order when the whereabouts of the obligee parent and child or children are unknown and the clerk of the court, or the department of human services or its contractor in Title IV-D cases, has been unable to forward past payments, and all arrearages owed to the state as a result of the custodian's receipt of public assistance have been paid.

(2) The obligor parent may either file a motion for termination or seek modification of the child support order when support payments equal to the amount due within one (1) month have been returned to the office of the clerk, or to the department or its contractor in Title IV-D cases, and all reasonable means to locate the obligee parent and child or children have been exhausted. The clerk of the court, or the department or its contractor in Title IV-D cases, shall notify the obligor parent that such payments have been returned to the clerk, or to the department or its contractor in Title IV-D cases. The obligor parent must submit an affidavit verifying that such obligor parent has exhausted reasonable efforts to locate the obligee parent and child or children.

(d) When a motion to terminate is filed, the clerk of the court shall proceed to set a hearing and serve the parties as provided in § 36-5-405. Upon receipt of a notice from the custodial parent or individual in accordance with subsection (b), or based upon the department's own records, the clerk or the department or its contractor in Title IV-D cases shall determine whether the income assignment order includes support for any other child or children and whether there are any accumulated arrearages due that have not been satisfied. If there are no other children and no arrearages, the clerk, or the department or its contractor in Title IV-D cases, after notification to the parties, shall notify the employer, person, corporation or institution withholding support that the income assignment is terminated. If there are other children and/or accumulated arrearages, the clerk or the department or its contractor in Title IV-D cases, after notification to the parties, shall send a new notice to the employer, person, corporation or institution withholding support specifying the correct amount to be withheld as a result of the change in circumstances.

(e) If the obligor parent wishes to file a motion for termination or to seek modification of the support order, such obligor parent must complete and file an affidavit affirming that such obligor parent has contacted a reasonable number of relatives and friends of the obligee parent and all lack any knowledge regarding the whereabouts of the obligee parent and child or children, and that such obligor parent has made other reasonable efforts to locate the obligee parent and child or children including:

(1) Mailing a letter to the obligee parent's last known address requesting a new mailing address;

(2) Checking the telephone directory and directory assistance for a listing of the obligee parent;

(3) Contacting the obligee parent's last attorney of record and inquiring as to whether the attorney can provide a current address;

(4) Contacting the obligee parent's last known place of employment (if known) and inquiring as to whether a current address may be provided by the employer; and

(5) Contacting the department of human services and inquiring if its records contain a current address of the obligee parent.

History.

Acts 1985, ch. 477, § 14; 1994, ch. 987, § 14; 2000, ch. 922, §§ 17-21; 2004, ch. 906, §§ 2, 3.

Compiler's Notes.

Title IV-D of the Social Security Act, referred to in this section, is compiled in 42 U.S.C. § 651 et seq.

36-5-504. [Repealed.]

Compiler's Notes.

Former § 36-5-504 (Acts 1985, ch. 477, § 14), concerning promulgation and adoption of forms, was repealed by Acts 1986, ch. 890, § 12.

PART 6

INCOME WITHHOLDING TO ENFORCE SUPPORT ORDERS [REPEALED]

36-5-601 — 36-5-613. [Repealed.]

Compiler's Notes.

Former part 6, §§ 36-5-601 — 36-5-613 (Acts 1987, ch. 306, §§ 2-14, 17), concerning income withholding to enforce support orders, was repealed by Acts 1998, ch. 1098, § 25, effective May 19, 1998.

PART 7

ENFORCEMENT THROUGH LICENSE DENIAL, REVOCATION AND RESTRICTION

36-5-701. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Arrears" means any child support or spousal support associated with a child support order owed under a court or administrative order that is delinquent pursuant to § 36-5-501(b)(1), or any interest owed on those arrears;

(2) "Commissioner" means the commissioner of human services;

(3) "Department" means the department of human services;

(4) "License" means a license, certification, registration, permit, approval or other similar document issued to an individual evidencing admission to or granting authority to engage in a profession, trade, occupation, business, or industry, to hunt or fish, or to operate any motor vehicle or other conveyance, but does not include a license to practice law unless the supreme court establishes guidelines pursuant to § 36-5-713 making this part applicable to such license;

(5) "Licensee" means any individual holding a license, certification, registration, permit, approval, or other similar document evidencing admission to, or granting authority to engage in a profession, trade, occupation, business, or industry, to hunt or fish, or to operate any motor vehicle or other conveyance, but "licensee" does not include an attorney only with respect to the attorney's license to practice law unless the supreme court establishes guidelines pursuant to § 36-5-713 making this part applicable to such license;

(6) "Licensing authority" means the board, commission, or agency, including the department of safety, that has been established by statute or state regulation to oversee the issuance and regulation of any license. Excluded from this definition is the supreme court, unless the supreme court acts in accordance with § 36-5-713, and any licensing authority established solely by the action and authority of a county or municipal government;

(7) "Not in compliance with an order of support" means that the obligor is five hundred dollars ($500) or more in arrears and the arrears are ninety (90) days or more past due;

(8) "Obligee" means any individual to whom a duty of support is owed or any state or political subdivision to whom such duty has been assigned or that is collecting support on behalf of an obligee;

(9) "Obligor" means any individual owing a duty of support;

(10) "Order of support" means any judgment or order for the support of dependent children issued by any court of this state or another state, including an order in a final decree of divorce, or any order issued in accordance with an administrative procedure established by state law in this or another state that affords substantial due process and is subject to judicial review; and

(11) "Restricted license" means a license that allows a person to operate a motor vehicle for the limited purposes of going to and from and working at the person's regular place of employment and going to and from the person's school and does not include a commercial driver license of any kind.

History.

Acts 1996, ch. 892, § 2; 2014, ch. 852, § 1.

36-5-702. Agency to enforce orders — Notice of noncompliance.

(a)(1) In Title IV-D child support enforcement cases pursuant to this part, the department shall be deemed to be the agent of the court to enforce, on behalf of the court, the court's order of support that is in arrears by using the license revocation, denial, suspension or restriction procedures provided in this part.

(2) If the court's records maintained by the court clerk on the statewide Title IV-D child support computer system, or the department's records of court ordered support if the court clerk elected, pursuant to the former provisions of § 36-5-101(a)(4)(C)(iii), not to participate in the statewide Title IV-D child support computer system, show that the obligor is in arrears and is not in compliance with an order of support, the department may serve upon an obligor a notice that informs the obligor of the department's intention to submit the obligor's name to the appropriate licensing authority as a licensee who is not in compliance with an order of support.

(b) The notice shall state that:

(1) The obligor may request an administrative hearing to contest the issue of compliance or contact the department to make an arrangement for the payment of the arrears that is satisfactory to the department, which may include eligibility for a restricted license pursuant to § 36-5-714;

(2) A request for a hearing must be made in writing and must be received by the department within twenty (20) days of service, or within twenty (20) days of service the obligor must contact the department or the local IV-D agency and pay the arrears or make an arrangement with the department for the payment of the arrears that is satisfactory to the department;

(3) If the obligor requests a hearing within twenty (20) days of service, the department shall stay the proceedings to certify the obligor to any appropriate licensing authority for noncompliance with an order of support pending a decision after a hearing. If the obligor contacts the department to make an arrangement for the payment of the arrears that is satisfactory to the department within such twenty (20) days, the department shall stay the proceedings to certify the obligor to any appropriate licensing authority for noncompliance with an order of support in accordance with the agreement entered into between the obligor and the department as provided in § 36-5-703(d);

(4) The proceedings will be dismissed if the obligor pays the arrears;

(5) If the obligor is not in compliance with an order of support and does not either request a hearing or make a satisfactory arrangement for payment with the department within twenty (20) days of service, the department may certify the obligor to any appropriate licensing authority for noncompliance with a court order of support; and

(6) If the department certifies the obligor to a licensing authority for noncompliance with an order of support, the licensing authority, notwithstanding any other law to the contrary, must deny a renewal request, revoke the obligor's license, refuse to issue or reinstate a license or issue a restricted license, as the case may be, until the obligor provides the licensing authority with a release from the department that states the obligor is in compliance with the obligor's order of support.

(c) The notice to the obligor shall include the address and telephone number of the office of the department or its contractor that issues the notice and a statement of the need to obtain a release from that office as provided in § 36-5-707 in order to allow the obligor's license to be issued, renewed or reinstated. The notice shall be served by certified mail, return receipt requested, or by personal service with an affidavit of service completed by an authorized process server.

History.
Acts 1996, ch. 892, § 3; 2014, ch. 852, §§ 2-4.

Compiler's Notes.
Title IV-D of the Social Security Act, referred to in this section, is compiled in 42 U.S.C. § 651 et seq.

36-5-703. Administrative hearing — Certification of noncompliance.

(a) An obligor may request an administrative hearing upon receiving the notice described in § 36-5-702 to contest the department's intention to issue a finding of noncompliance to a licensing authority. The request for hearing must be made in writing and must be received by the department within twenty (20) days of the date the notice is served upon the obligor as shown by the return receipt or by the return on personal service.

(b) If a hearing is requested, the department shall conduct the hearing in accordance with title 4, chapter 5, part 3 of the Uniform Administrative Procedures Act, except that, notwithstanding any law to the contrary, the appeal of the department's administrative order based upon the hearing pursuant to this part shall be made by the obligor in accordance with the jurisdictional and judicial review provisions of § 36-5-1003; provided, that notwithstanding any law or rule to the contrary, the sworn certificate of the department, or its agent, or the Title IV-D agency of another state, regarding the issues in subdivisions (c)(1) and (2), shall be admissible in evidence and shall constitute a rebuttable presumption of the obligor's status.

(c) The only issues for consideration at the administrative hearings shall be:

(1) Whether the licensee is an obligor required to pay child support under an order of support;

(2) Whether the obligor is not in compliance with the order of support; and

(3) Whether good cause exists in that case as to whether the sanctions of this part should be imposed.

(d)(1) The department may enter into a consent order with the obligor, which is filed with the court, for payment of an arrearage owed by the obligor. Upon entry of such consent order by the court, the proceedings under this part shall be further stayed, unless there is noncompliance with such consent order as shown by the records pursuant to subdivision (d)(2). In the event of such noncompliance the stay shall cease and the procedures of subdivision (d)(2) shall be followed. Entry of such consent order shall constitute a waiver of the obligor's right to any hearing on the issue of noncompliance with an order of support based upon the notice of noncompliance for which the consent order has been entered.

(2) If the payment records of the clerk of the court or the department show that the obligor remains in arrears and is not in compliance with the consent order for repayment of the child support arrearage pursuant to subdivision (d)(1), the court, through the department, shall, in accordance with § 36-5-705, forthwith certify to each licensing authority that licenses the obligor that the obligor is not in compliance with an order of support.

History.
Acts 1996, ch. 892, § 4; 1998, ch. 1098, § 69; 2000, ch. 922, § 22.

Compiler's Notes.
Title IV-D of the Social Security Act, referred to in this section, is compiled in 42 U.S.C. § 651 et seq.

36-5-704. Stays of action — Issuance of decisions — Costs.

(a) If an obligor timely requests a hearing to contest the issue of compliance, or files a motion to modify support or requests that the support obligation be amended as provided in § 36-5-710, the department shall stay the action and may not certify the name of the obligor to any licensing authority for noncompliance with an order of support until the department issues a written decision after a hearing that finds the obligor is not in compliance with an order of support or until the motion to modify or request to amend is decided, as the case may be; provided, that after a

decision by the department has been made in the form of a final order as provided in § 4-5-315, there will be no further stay unless a reviewing court issues a stay.

(b) The department shall issue its decision after hearing without undue delay. The department's administrative order must inform the obligor that a petition for judicial review of the department's decision must be filed within sixty (60) days of the date of the administrative order in accordance with the jurisdictional and judicial review provisions of § 36-5-1003. The department shall send an attested copy of the decision to the obligor by regular mail to the obligor's most recent address of record and to any attorney representing the obligor in connection with the hearing under this part.

(c) Notwithstanding any law to the contrary, the department is authorized to assess costs to the obligor of the unsuccessful appeal of notice of noncompliance. The department may, by motion in the court with jurisdiction over the support order, recover such costs against the obligor and the court shall direct the obligor to pay such costs to the department.

(d) Any hearings held pursuant to this part shall be held at the department of human services' office nearest the obligor's home.

History.
Acts 1996, ch. 892, § 5; 1996, ch. 892, §§ 5, 15; 1998, ch. 1098, § 70.

36-5-705. Certification that obligor is in noncompliance.

(a) The department shall certify in writing or by electronic data exchange to each licensing authority that licenses the obligor that an obligor is not in compliance with an order of support if:

(1) The obligor does not timely request a hearing upon service of notice issued under § 36-5-702 and is not in compliance with an order of support twenty-one (21) days after service of the notice provided for in § 36-5-702;

(2) The obligor has not entered into a written agreement satisfactory to the department for payment of the arrearage within twenty (20) days after service of the notice in § 36-5-702 or within such longer period as may be agreed to by the department, or having entered into such a written agreement has failed to comply with such agreement;

(3) The department issues a decision after a hearing that finds the obligor is not in compliance with an order of support; or

(4) A court, upon a petition for judicial review of the department's decision after its issuance of a stay of that decision pending its ruling, enters a judgment that upholds the department's finding that the obligor is not in compliance with an order of support.

(b) The department shall certify in writing or by electronic data exchange to the department of safety that an obligor is not in compliance with an order of support but is eligible for a restricted license if the department enters into an agreement that includes eligibility for a restricted license, pursuant to § 36-5-714.

History.
Acts 1996, ch. 892, § 6; 2014, ch. 852, § 5.

36-5-706. Denial, suspension or revocation of license — Refusal to reinstate or reissue — Notice.

(a) Notwithstanding any other law, rule or regulation to the contrary, the certification from the department under § 36-5-705 shall be a basis for the denial, suspension or revocation of a license, for refusal to issue or reinstate a license by a licensing authority or for the issuance of a restricted license.

(b) The licensing authority shall notify, without undue delay, by regular mail, an obligor certified from the department under § 36-5-705, that:

(1) The obligor's application for the issuance, renewal or reinstatement of a license has been denied;

(2) The obligor's current license has been suspended or revoked because the obligor's name has been certified by the department as an obligor who is not in compliance with an order of support; or

(3) The obligor's current driver license has been revoked because the obligor's name has been certified by the department as an obligor who is not in compliance with an order of support but eligible for a restricted license. The notice shall include information on the process for obtaining a restricted license and paying any restricted license fee required by the department of human services.

(c) A notice of suspension must specify the reason and statutory grounds for the suspension and the effective date of the suspension and may include any other notices prescribed by the licensing authority. The notice must also inform the individual that in order to apply for issuance, renewal or reinstatement of the license, the individual must obtain a release from the department of human services in accordance with § 36-5-707.

(d) A notice to the obligor by the licensing authority to revoke, restrict, deny, suspend, or refuse to renew or reinstate a license after receipt of the notice of noncompliance from the department shall not be appealable under title 4, chapter 5, part 3 of the Uniform Administrative Procedures Act.

History.
Acts 1996, ch. 892, § 7; 2014, ch. 852, §§ 6-8.

36-5-707. Effect of compliance by obligors who have been served notice.

(a) When an obligor who is served notice under § 36-5-702 complies with the order of support, the department shall provide the licensing authority with written or electronic data exchange confirmation that the obligor is in compliance with the order and issue a release to the obligor.

(b)(1) Upon receipt of the written confirmation of reasonable or full compliance, the licensing authority shall issue or extend the obligor's license, or withdraw any denial, revocation, restriction or suspension of the obligor's license; provided, that all other applicable licensing requirements are met by the

obligor. If all other applicable licensing requirements are met by the obligor, the obligor shall not, however, be required to be re-tested or re-certified for a license that was valid and that was held in good standing by the obligor, or for which the obligor had been determined otherwise eligible by the licensing authority to receive, prior to the revocation, restriction or suspension or denial of such license pursuant to this part, and which license was revoked, restricted, suspended or denied solely pursuant to this part.

(2) If, subsequent to the revocation, restriction, suspension or denial of the license, and prior to the date on which the next periodic licensing would be due, the license is restored or issued by the licensing authority due to reasonable or full compliance, the obligor shall not be required to pay a new periodic license fee for the period remaining before the next periodic licensing fee would be due; provided, that the licensing authority may impose a reasonable reinstatement fee not to exceed five dollars ($5.00) for processing of the restoration or issuance of the license at any time.

History.
Acts 1996, ch. 892, § 8; 2014, ch. 852, §§ 9, 10.

36-5-708. Rules authorized to enforce part.

The department shall have authority to adopt any necessary rules to implement and enforce the requirements of this part in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

History.
Acts 1996, ch. 892, § 9.

36-5-709. Licensing authorities — Cooperation with department — Agreements.

The various licensing authorities shall cooperate with the department in any manner necessary to effectuate this part, and the department and the various licensing authorities shall enter into any necessary agreements to carry out the purposes of this part.

History.
Acts 1996, ch. 892, § 10.

36-5-710. Modification or amendment of support orders or obligations.

Nothing in this part prohibits an obligor from filing a motion to modify support with the court or from requesting the department to amend a support obligation established by an administrative decision.

History.
Acts 1996, ch. 892, § 11.

36-5-711. Information about applicants or licensees — Transmittal.

(a) On or before July 1, 1996, or as soon thereafter as economically feasible and at least annually thereafter, all licensing authorities subject to this part shall provide to the department on magnetic tape or other machine-readable format the information herein specified or enter into an agreement with the commissioner for the transfer of or the access of the department to such data, according to standards established by the department, about applicants for licensure and all current licensees including licensees whose licenses are currently suspended, restricted or revoked but are subject to reinstatement upon the occurrence of an event or expiration of a period of time. The information provided must include, if available, the following:

(1) Name;
(2) Date of birth;
(3) Address of record;
(4) Federal employer identification number or social security number;
(5) Physical description;
(6) Type of license;
(7) Effective date of license or renewal;
(8) Expiration date of license; and
(9) Active or inactive status of the license.

(b) If it is not feasible to provide the information on magnetic tape or in a machine-readable format, the information shall be provided in the format agreed upon by the commissioner and the licensing authority.

History.
Acts 1996, ch. 892, § 12; 2014, ch. 852, § 11.

36-5-712. Report to general assembly and governor.

In furtherance of the public policy of increasing collection of child support, the department shall report the following to the general assembly and the governor on January 31, 1998, and annually thereafter:

(1) The number of obligors identified as licensees subject to this part;
(2) The number of obligors identified by the department under this part who are not in compliance with an order of support; and
(3) The number of actions taken by the department under this part and the results of those actions.

History.
Acts 1996, ch. 892, § 13.

36-5-713. Noncompliance with support order to affect ability to hold other licenses.

(a) In addition to other qualifications for licensure or registration and conditions for continuing eligibility to hold a license as prescribed by law, rule or regulation issued under the provisions of titles 43, 44, 45, 55, 56, 62, 63, 68, 70 or 71, for an individual to engage in a profession, trade, occupation, business, or industry, to hunt or fish, or to operate any motor vehicle or other conveyance, applicants for licensure, certification or registration, and licensees renewing their licenses, and existing licensees, must not then be subject to a certification that the licensee is not in compliance with an order of support.

(b) The supreme court is encouraged to establish guidelines to suspend the license of an attorney who

fails to comply with the requirements of §§ 36-5-701 — 36-5-707.

History.
Acts 1996, ch. 892, § 14.

36-5-714. Restricted license.

(a) If the obligor attempts to enter into a satisfactory arrangement with the department for the payment of arrears, the department may permit the obligor to be eligible for a restricted license for the purpose of driving to and from and working at the obligor's regular place of employment and going to and from the obligor's school.

(b) In order to be eligible for a restricted license pursuant to subsection (a), the obligor shall:

(1) Be employed for at least thirty (30) hours per week;

(2) Have a place of employment or school that is located more than one (1) mile from the obligor's place of residence;

(3) Show that the employment or educational endeavor can reasonably be expected to contribute to bringing the obligor into compliance with the support order in a timely manner;

(4) Enter into a payment plan that is satisfactory to the department; and

(5) Pay the restricted license fee required by subsection (f).

(c) If at any time the department finds the obligor is no longer in compliance with the requirements of the agreement, the obligor shall be subject to license revocation pursuant to this part.

(d) Nothing in this section shall prohibit a licensing authority from denying, suspending or revoking any license other than a license to operate a motor vehicle when an obligor is found eligible to receive a restricted license.

(e) Any time an obligor, who is eligible for a restricted license due to an agreement with the department, operates a motor vehicle, the obligor shall maintain in the obligor's possession the agreement stating the restrictions to be placed on the license. An obligor who operates a motor vehicle without the agreement in the obligor's possession or outside the restrictions imposed by the agreement shall be considered to be driving while the obligor's driver license is revoked pursuant to § 55-50-504.

(f) The department shall charge a restricted license fee, not to exceed thirty dollars ($30.00), the proceeds of which shall be used to implement this section. The department shall annually review the fees collected pursuant to this subsection (f) and the costs of implementation to determine the need for a reduction or increase in the fee. The commissioner is authorized to promulgate rules to effectuate the purposes of this subsection (f). All such rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

History.
Acts 2014, ch. 852, § 12.

PART 8

CHILD SUPPORT ENFORCEMENT POWERS OF DEPARTMENT

36-5-801. Access to records for child support enforcement.

(a) For the purpose of establishing paternity, or for the establishment, modification or enforcement of orders of support under the child support program established under Title IV-D of the Social Security Act, compiled in 42 U.S.C. § 651 et seq., the department of human services shall have the authority to:

(1) Subpoena, by an administrative subpoena issued by the commissioner, by any authorized representative of the commissioner, or by any contractor of the department, any financial or other information needed to establish, modify, or enforce an order of support;

(2) Require all entities in the state, including, but not limited to, for-profit, non-profit and governmental employers, to provide promptly, in response to a request or administrative subpoena from the department, its Title IV-D contractor, or by the Title IV-D agency or contractor of any other state, information on the employment, compensation, and benefits of any individual employed by such entity as an employee or as a contractor;

(3)(A) Obtain upon request, or by administrative subpoena if necessary, and notwithstanding any other law to the contrary, access, including automated access if available, to the following records of any state or local agency:

(i) Vital statistics, including records of voluntary acknowledgments, marriages, births, deaths and divorces;

(ii) State and local tax records and revenue records, including information about the residence address, employer of any individual, and the individual's income and assets;

(iii) Records of real and titled personal property;

(iv) Records of occupational and professional licenses, and records concerning the ownership and control of corporations, partnerships, and other business entities;

(v) Employment security records;

(vi) All records of any state or local agency administering any form of public assistance;

(vii) Records relating to the registration and titling of motor vehicles;

(viii) Records of state, county, or municipal correctional agencies;

(4) Obtain pursuant to an administrative subpoena, and notwithstanding any other law to the contrary, access to certain records held by private

entities with respect to individuals who owe or are owed support or against or with respect to whom a support obligation is sought, consisting of the names and addresses of such individuals and the names and addresses of the employers of such individuals, as appearing in customer records of public utilities, including all electric, gas, telephone and water companies and cable television companies;

(5) Obtain upon request, and by administrative subpoena if necessary, and notwithstanding any other law to the contrary, information, including, but not limited to, information on assets and liabilities held by any financial institution regarding any individuals who owe, are owed or against or with respect to whom a support obligation is owed; and

(6)(A) Notwithstanding any other law to the contrary, the department of human services, and any of its Title IV-D child support contractors, or the Title IV-D agency of any other state or territory, or any of their Title IV-D child support contractors and any federal agency conducting activities under Title IV-D of the Social Security Act, shall have access to any information maintained by any agency of the state of Tennessee that maintains any system used to locate any individual for any purpose relating to registration of any motor vehicles or law enforcement activities.

(B) For purposes of this subdivision (a)(6), "system" shall be defined as any automated, computerized or electronic system used by any state law enforcement agency, or any state agency that otherwise maintains any records of motor vehicles, in which any information relative to the location or address of any individual persons are maintained by such agencies.

(C) The department of human services shall have rulemaking authority to prescribe the information required by this subdivision (a)(6).

(b) No administrative subpoena shall issue to individuals or entities, other than the obligor or obligee, pursuant to this part without prior review and approval of the necessity for its issuance by a licensed attorney employed by the department or its contractor.

(c) A request or administrative subpoena pursuant to this section may be contested by filing an appeal pursuant to part 10 of this chapter.

History.
Acts 1997, ch. 551, § 11.

36-5-802. Administrative orders for parentage tests.

For the purpose of establishing paternity orders of support under the child support program established under Title IV-D of the Social Security Act, compiled in 42 U.S.C. § 651, et seq.:

(1)(A) The department of human services shall have the authority to issue an administrative order by the commissioner, authorized representative of the commissioner or the department's contractor directed to one (1) or more persons to order the genetic testing of the child, the mother and the putative father or fathers for the purpose of paternity establishment without the necessity of filing a paternity action;

(B) If the department orders such tests, it shall pay the costs of such tests and may recoup such costs from the putative father upon establishment of the putative father's paternity of the child in question or upon establishment of an order of support of the child for whom paternity has been established;

(2) The department may obtain additional testing by administrative order in any case in which an original test is contested upon request of and payment of the costs of such tests by the contestant. The party requesting the tests, other than the department, shall make advance payment for such tests;

(3) The department may obtain additional tests at its request and may direct the parties by administrative order to attend and to undergo such tests. The department may recoup the costs of such tests it obtains at its request from the putative father upon establishment of the putative father's paternity of the child in question or upon establishment of an order of support of the child for whom paternity has been established.

History.
Acts 1997, ch. 551, § 11; 1998, ch. 1098, § 26.

36-5-803. Administrative orders to redirect child support payment.

(a) The commissioner's authorized representative, or the department's Title IV-D contractor, is authorized to issue an administrative order to direct the obligor or other payor in Title IV-D child support cases to change the payee to the clerk or to the department. Notice of the order shall be provided by the department to the obligor and the obligee.

(b) A copy of the administrative order issued pursuant to this section shall be sent to the clerk of the court that issued the original order and the administrative order shall be entered in the court record.

History.
Acts 1997, ch. 551, § 11; 1998, ch. 1098, § 27.

Compiler's Notes.
Acts 1998, ch.1098, § 27 added a second sentence to subsection (b) which read: "No fee shall be charged for the filing of the order; provided, however, if Senate Bill 3303/House Bill 3305 is enacted and the cost reimbursement provisions are implemented as provided therein, the provisions of this sentence shall be void." The bill was enacted as Acts 1998, ch. 1048, so the second sentence was not codified.

Title IV-D of the Social Security Act, referred to in this section, is compiled in 42 U.S.C. § 651 et seq.

36-5-804. Administrative orders to direct additional payments to reduce arrearages.

(a) For the purpose of securing overdue support, the commissioner, or the commissioner's duly authorized representatives or the department's Title IV-D contractor, shall have the authority to enter an administrative order to add an amount to the monthly support order

which will reduce the arrearage by payment of a reasonable amount toward the reduction of the arrearage over a reasonable period of time.

(b) A copy of the administrative order issued pursuant to this section shall be sent to the clerk of the court which issued the original order and the administrative order shall be entered in the court record.

History.
Acts 1997, ch. 551, § 11; 1998, ch. 1098, § 28.

Compiler's Notes.
Acts 1998, ch. 1098, § 28 added a second sentence to (b) which read "No fee shall be charged for the filing of the order; provided, however, if Senate Bill 3303/House Bill 3305 is enacted and the cost reimbursement provisions are implemented as provided therein, the provisions of this sentence shall be void." The bill was enacted as Acts 1998, ch. 1048, so the second sentence was not codified.

Title IV-D of the Social Security Act, referred to in this section, is compiled in 42 U.S.C. § 651 et seq.

36-5-805. Updating of information of parties to certain administrative actions.

(a) Each individual who is a party to any action pursuant to §§ 36-5-802, 36-5-803 and 36-5-804, or § 36-5-103(f), shall be required, and the department shall order the party to file with the local Title IV-D child support office, upon entry of an order by the department, for entry into the state registry of support cases, and to update, as appropriate, the parties' and, for subdivisions (a)(1)-(3), the child's or children's:

(1) Full name and any change in name;

(2) Social security number and date and place of birth;

(3) Residential and mailing addresses;

(4) Home telephone numbers;

(5) Driver license number;

(6) The name, address, and telephone number of the person's employer;

(7) The availability and cost of health insurance for the child; and

(8) Gross annual income.

(b) Any update must be made within ten (10) days of the date of a change in circumstances of the person and the order shall give notice of this requirement.

(c) In any subsequent child support enforcement action, the delivery of written notice as required by Tennessee Rule of Civil Procedure 5 to the most recent residential or employer address shown in the department's records or the Title IV-D agency's records as required in subsection (a) shall be deemed to satisfy due process requirements for notice and service of process with respect to that party if there is a sufficient showing that a diligent effort has been made to ascertain the location and whereabouts of the party.

History.
Acts 1997, ch. 551, § 11; 1998, ch. 1098, §§ 29-31.

Compiler's Notes.
Title IV-D of the Social Security Act, referred to in this section, is compiled in 42 U.S.C. § 651 et seq.

36-5-806. Administrative review of certain administrative orders.

The persons against whom the administrative orders in §§ 36-5-802, 36-5-803 and 36-5-804 were issued shall have a right to administratively appeal such orders pursuant to part 10 of this chapter.

History.
Acts 1997, ch. 551, § 11.

36-5-807. Automated processes and service of documents.

(a) To the maximum extent feasible, the department's automated child support enforcement system shall be utilized to carry out the expedited procedures of this part and the system may be used for the issuance and service of any requests, administrative orders, or subpoenas necessary to enforce child support obligations and such automated service shall be effective for all purposes in this part. Electronically reproduced signatures shall be effective to issue any orders or subpoenas pursuant to this part.

(b) Notwithstanding subsection (a), any requests, administrative orders or administrative subpoenas required to be issued pursuant to this part may be transmitted to any party or person by any method chosen by the department, including but not limited to: certified mail, return receipt requested, regular mail, electronic mail, facsimile transmission, or by personal service, and may be generated by computer or on paper.

(c) If an administrative order or administrative subpoena is returned or otherwise not deliverable, then service shall be had by any alternative method chosen by the department, as listed in subsection (b). Before taking action against an individual or entity for failure to comply with this part, the department shall ensure that service of the administrative order, administrative subpoena, or request, was confirmed by certified mail or by personal service.

History.
Acts 1997, ch. 551, § 11.

36-5-808. Statewide jurisdiction of department.

The department's authority and jurisdiction in issuing requests, administrative orders, or subpoenas pursuant to any administrative authority granted by law shall be statewide over all persons or entities in cases subject to its administrative procedures.

History.
Acts 1997, ch. 551, § 11.

36-5-809. Enforcement of out-of-state requests, administrative orders and administrative subpoenas.

(a) Administrative orders, subpoenas or requests of child support enforcement agencies of other states or territories seeking to conduct any of the activities

provided in this part shall receive full faith and credit and shall be enforceable against persons or entities in this state.

(b) The administrative orders, subpoenas, and requests issued by such agencies may be enforced upon their behalf, upon their request, by the department or its Title IV-D contractors pursuant to the requirements of § 36-5-811 or § 36-5-812.

History.
Acts 1997, ch. 551, § 11; 1998, ch. 1098, §§ 32, 33.

Compiler's Notes.
Title IV-D of the Social Security Act, referred to in this section, is compiled in 42 U.S.C. § 651 et seq.

36-5-810. Immunity for compliance with requests, orders and subpoenas.

All persons or entities complying with any requests, administrative orders, or administrative subpoenas issued pursuant to this part shall be absolutely immune from any liability, civil or criminal, for compliance with the terms of such requests, administrative orders or administrative subpoenas. Nothing herein shall be construed to mean, however, that such immunity applies to any person's civil or criminal liability for support or for failing to provide support as directed by any tribunal's judicial or administrative order, or by law or by regulation.

History.
Acts 1997, ch. 551, § 11.

36-5-811. Enforcement of requests for information.

(a) Failure to comply with a request for information under § 36-5-801(a) may be enforced by the department by the imposition of a civil penalty of one hundred dollars ($100.00) for the failure to respond to such request.

(b) Such penalties shall be assessed by the commissioner of human services after written notice that provides fifteen (15) days to file a written request for appeal. An appeal shall be conducted by the department as provided in the Uniform Administrative Procedures Act, title 4, chapter 5, part 3.

(c) Failure to timely appeal the assessment of the civil penalty shall be final and conclusive of the correctness of the penalty.

(d) Any amount found owing shall be due and payable not later than fifteen (15) days after the date of transmission of the determination.

(e) Failure to pay an assessment shall result in a lien in favor of the department against the real and personal property of the person or entity to whom or which the request was directed and shall be enforced by original attachment issued by any court having jurisdiction of the monetary amounts assessed in the county where the person resides or where the entity is located.

History.
Acts 1997, ch. 551, § 11.

36-5-812. Enforcement of requests, administrative orders and administrative subpoenas.

(a) The department may enforce an administrative order or subpoena, or the civil penalties authorized in § 36-5-811, by filing a motion for such purpose in the chancery, circuit, juvenile court, or other domestic relations court, having jurisdiction over the support order, or at the option of the department or its Title IV-D contractor, in the county of the residence of the person or of the location of the entity against whom the request, administrative order or administrative subpoena was issued.

(b) The court may enforce any of its orders pursuant to this section by contempt orders.

(c) The department may also enforce such administrative orders, subpoenas or requests by directing the revocation, denial, or suspension of any license, as defined in § 36-5-701, of any person or entity.

(d) Such enforcement methods shall be cumulative, and not exclusive, of any other remedies provided by law for the enforcement of any orders by the court or by the department.

History.
Acts 1997, ch. 551, § 11; 1998, ch. 1098, § 34.

Compiler's Notes.
Title IV-D of the Social Security Act, referred to in this section, is compiled in 42 U.S.C. § 651 et seq.

36-5-813. Liability for fees and costs.

The individual or entity to whom or to which the request, administrative order or administrative subpoena is issued pursuant to this part and that is enforced by the court pursuant to § 36-5-812 shall be liable for all court costs of the proceedings and shall be liable to the department for the cost of any private, contract or government attorney representing the state and for the time of any of its Title IV-D contractor staff utilized in litigating the administrative order or administrative subpoena.

History.
Acts 1997, ch. 551, § 11.

Compiler's Notes.
Title IV-D of the Social Security Act, referred to in this section, is compiled in 42 U.S.C. § 651 et seq.

36-5-814. "Financial institution" defined.

As used in this part, unless the context otherwise requires, "financial institution" means:

(1) A depository institution, as defined in Section 3(c) of the Federal Deposit Insurance Act, codified at 12 U.S.C. § 1813(c);

(2) An institution-affiliated party, as defined in Section 3(u) of such Act, codified at 12 U.S.C. § 1813(u), including for purposes of § 36-5-810;

(3) Any federal credit union or state credit union as defined in Section 101 of the Federal Credit Union Act, codified at 12 U.S.C. § 1752, including, for purposes of § 36-5-810, an institution-affiliated party of such a credit union, as defined in Section 206 of such Act, codified at 12 U.S.C. § 1786; or

(4) Any benefit association, insurance company, safe deposit company, money-market mutual fund, securities broker/dealer, or similar entity authorized to conduct business in this state.

History.
Acts 1997, ch. 551, § 11.

36-5-815. Rulemaking authority.

The department shall have authority to promulgate rules to implement any provisions of this part pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

History.
Acts 1997, ch. 551, § 11.

36-5-816. Administrative orders to determine continuing exclusive jurisdiction.

(a) The department, when acting as the tribunal of the state pursuant to § 36-5-2102 and parts 20-29 of this chapter, in the administrative establishment or enforcement of support, shall have authority to issue an administrative order to determine which state would have continuing exclusive jurisdiction for modification of orders in any interstate cases pursuant to the Uniform Interstate Family Support Act, compiled in parts 20-29 of this chapter.

(b) The determination made pursuant to subsection (a) may be appealed as provided pursuant to part 10 of this chapter.

History.
Acts 1998, ch. 1098, § 35.

Compiler's Notes.
Acts 1998, ch. 1098, § 35, enacting this section, contained a third sentence in (a) which read: "No fee shall be charged for the filing of the order; provided, however, if Senate Bill 3303/House Bill 3305 is enacted and the cost reimbursement provisions are implemented as provided therein, the provisions of this sentence shall be void." The bill was enacted as Acts 1998, ch. 1048, so the third sentence was not codified.

PART 9

OVERDUE SUPPORT

36-5-901. Liens for child support arrearages.

(a)(1) In any case of child or spousal support enforced by the department of human services or its contractors under Title IV-D of the Social Security Act, compiled in 42 U.S.C. § 651 et seq., in which overdue support is owed by an obligor who resides or owns property in this state, a lien shall arise by operation of law against all real and personal property, tangible or intangible, then owned or subsequently acquired by the obligor against whom the lien arises for the amounts of overdue support owed or the amount of penalties, costs or fees as provided in this chapter. The personal or real property, tangible or intangible, of the obligor that is subjected to the lien required by this part shall include all existing property at the time of the lien's perfection, or acquired thereafter, even if a prior order for overdue support or arrears only specifies a certain amount of overdue support or arrears that was owed by the obligor at the time of such order.

(2) "Overdue support" is defined, for purposes of this part, as any occasion on which the full amount of ordered support for or on behalf of a minor child, or for a spouse or former spouse of the obligor with whom the child is living to the extent spousal support would be included for the purposes of 42 U.S.C. § 654(4), is not paid by the due date for arrears as defined in § 36-5-101(f)(1) unless an income assignment is in effect and the payer of income is paying pursuant to § 36-5-101(g). "Overdue support" shall include all amounts of support that are in arrears as defined in § 36-5-101(f)(1) and that remain unpaid by the obligor at the time the lien is perfected or that become due as arrears subsequent to the perfection of the lien.

(b)(1)(A) The commissioner may cause a notice of such lien on real property or upon any personal property to be recorded or filed, as appropriate in the appropriate place for the filing of a judgment lien or security interest in the property. This notice may be filed by automated means where feasible. The department shall not be required to pay the fee for filing the notice of lien at the time the notice is filed, but shall be given credit and billed once each month for the notices that it files pursuant to this subsection (b).

(B) In addition to the notice perfected pursuant to subdivision (b)(1)(A), a notice of lien may be sent by any appropriate means, including by any automated means, by the commissioner or any authorized representative of the department, to any person or entity that holds or that may hold any assets payable or due to be paid or transferred to an obligor of overdue support to notify the person or entity of the existence of a lien for overdue support. The receipt of such notice by that person or entity shall be adequate notice of the department's lien upon the obligor's assets of any kind that are held by the person or entity or that may come into that person's or entity's possession or control. Subject to the priorities of subsections (c) and (d), or the subordination of these liens to orders or judgments pursuant to § 36-5-905(c)(1)(A) and (c)(1)(B), and subject to any exemptions allowed by § 36-5-906, payment or transfer to the obligor or other persons or entities of the funds, property, or other assets of any kind that are encumbered by the lien subsequent to the receipt of such notice, shall make the person or entity liable to the department to the extent of the

overdue support, up to the value of the transferred assets, in an action in the circuit or chancery court of the county in which the order of support is being enforced.

(2) Upon request, the department shall disclose the specific amount of liability at a given date to any interested party.

(3)(A) The department may cause a notice of lien to be filed or recorded and to be effective in any county in this state against all real or personal property of the obligor by provision by the state of Tennessee of a computer terminal arrangement in the office of the register of deeds or other state or local agency where the information regarding the existence, amount and date of the lien or security interest involving an obligor is made available to anyone who may be researching a title to real property or who may be seeking the status of any security interests or liens affecting any real or personal property held by an obligor. The cost for provision of the computer terminal arrangement, if used pursuant to this subdivision (b)(3)(A), shall be paid by the department of human services.

(B) In the alternative, the department may, upon agreement by the secretary of state, develop a central site for recordation of all notices of liens on all property, real or personal, that would be subject to the lien provisions of this part and the department and the secretary of state shall have authority to promulgate any rules necessary pursuant to the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to implement such central recordation site.

(C) In addition, or in conjunction with or as an alternative to the methods described in subdivision (b)(3)(A) or (b)(3)(B), the department may cause the filing or recordation of liens against all real or personal property of the obligor by placing such notice on a site accessible on the Internet. If the methods described in subdivision (b)(3)(A) or (b)(3)(B) are used, and if the Internet process authorized pursuant to this subdivision (b)(3)(C) is also made available, the dates shown on the department's computer record and displayed in the appropriate office of recordation as provided in subdivision (b)(3), (b)(3)(A) or (b)(3)(B) and those displayed on the Internet site shall be the same.

(D) The date noted in the department's computer record and that is displayed in the appropriate office of recordation as provided in subdivision (b)(3)(A) or (b)(3)(B), or that is displayed on the Internet site as provided in subdivision (b)(3)(C), will serve for purposes of perfection as the recording or filing date of the lien. The recording or filing provided by this subdivision (b)(3) shall serve as notice to anyone who may be researching a title to real property or who may be seeking the status of any security interests or liens affecting any real or personal property held by an obligor and shall become the date of recordation of the notice of lien for all purposes of this part.

(E) If any of the systems or procedures described in this subdivision (b)(3) is provided by the department, the automated lien shall be effective for all purposes to give notice to persons who may be affected by the existence of such lien in the same manner as the recordation of notice in the lien book maintained by the register of deeds or in the records of any state or local agency maintaining such records.

(F) Prior to the implementation of this subdivision (b)(3), the department shall promulgate rules establishing procedures for the use of the automated system and shall, in addition to the other requirements of the Uniform Administrative Procedures Act, for notice, provide specific notice to the state clerks of court conference, registers of deeds, and the Tennessee Bar Association.

(4) Nothing herein shall require the department to file a notice of lien for the seizure of an obligor's assets held by a state or local agency, by a court or administrative tribunal, by a lottery, by a financial institution or by a public or private retirement fund pursuant to § 36-5-904(1)-(3) or to obtain any income withholding from any employer or other payor of income as otherwise permitted under part 5 of this chapter.

(c) The lien of the department for child support arrearages shall be superior to all liens and security interests created under Tennessee law except:

(1) County and municipal ad valorem taxes and special assessments upon real estate by county and municipal governments;

(2) Deeds of trust that are recorded prior to the recordation of notice of the department's lien;

(3) Security interests created pursuant to Article 9 of the Uniform Commercial Code, compiled in title 47, chapter 9, that require filing for perfection and that are properly filed prior to recordation of the notice of the department's lien;

(4) Security interests perfected under the Uniform Commercial Code without filing, as provided in title 47, chapter 9, that are properly perfected prior to recordation of the notice of the department's lien;

(5) The lien or security interest of a financial institution against an obligor's interest in a deposit account at that institution for any indebtedness to the institution, including but not limited to, that institution's security interest in accounts pledged for loans, its rights under the Uniform Commercial Code or by contract to charge back uncollected deposits, revoke settlements or take other action against the account, its right to recover overdrafts and fees, and its right of offset for mature indebtedness;

(6) Other security interests in deposit accounts at a financial institution when such interests are reflected in the records of that financial institution prior to the receipt of an administrative order of seizure;

(7) Other liens recorded prior to the recordation of the department's lien, or concerning which a judicial proceeding was initiated prior to recordation of the department's lien;

(8) Vendors' liens on real estate provided for in title 66, chapter 10 that are recorded prior to the

recordation of notice of the department's lien; and

(9) The tax liens of the department of revenue filed pursuant to title 67 prior to the department's child support lien.

(d)(1)(A) Nothing in this section shall be interpreted to give the department priority over any deed of trust or any security interest perfected under the Uniform Commercial Code prior to the filing of the notice of the department's child support lien, irrespective of when such child support lien arises.

(B) "Filing" for purposes of this subsection (d) means that the department has recorded its notice of lien pursuant to subsection (b) by filing a document to record its notice of lien in the appropriate office for such recordation or that it has effectively recorded its lien pursuant to the automated recordation method permitted by subdivision (b)(3).

(2) No lien for child support arrearages shall be perfected against a motor vehicle unless such lien is physically noted on the certificate of title of such motor vehicle.

(3) Nothing in this part shall be deemed to give the department any priority over any possessory lien including, but not limited to, mechanics' and materialmen's liens pursuant to title 66, chapter 11, part 1; artisans liens pursuant to title 66, chapter 14; or garagekeepers' and towing firm liens pursuant to title 66, chapter 19, part 1.

(e) The notice of lien required to be filed or recorded under subsection (b), or any renewal thereof, shall be effective until the obligation is paid.

History.
Acts 1997, ch. 551, § 12; 1998, ch. 1098, § 36; 2000, ch. 846, § 32; 2000, ch. 922, § 23; 2001, ch. 447, §§ 16, 17.

Compiler's Notes.
Title IV-D of the Social Security Act, referred to in this section, is compiled in 42 U.S.C. § 651 et seq.

36-5-902. Full faith and credit to liens of other state child support agencies.

(a) Full faith and credit shall be accorded to liens arising in any other state or territory for cases of child or spousal support enforced by the Title IV-D child support enforcement agency of the other state or territory as a result of the circumstances of § 36-5-901(a) for all overdue support, as defined in the other state or territory, when that other state or territory agency or other entity complies with the procedural rules relative to the recording, filing or serving of liens that arise within this state.

(b) The department of human services may enforce the liens arising pursuant to this section by any means available for enforcement of its liens.

History.
Acts 1997, ch. 551, § 12.

Compiler's Notes.
Title IV-D of the Social Security Act, referred to in this section, is compiled in 42 U.S.C. § 651 et seq.

36-5-903. Rebuttable presumption as to ownership.

(a) There shall be a rebuttable presumption concerning property that is subject to this part, except where otherwise clearly noted by the evidence of title or otherwise, or where by law ownership of property is otherwise clearly stated, that at least one-half of all real or tangible personal property that is titled to or in the possession of the obligor is owned by the obligor who is subject to the lien provisions of this part.

(b) All jointly held accounts in any financial institution shall be rebuttably presumed to be available in whole to the obligor.

History.
Acts 1997, ch. 551, § 12.

36-5-904. Enforcement of liens.

In cases where there is an arrearage of child or spousal support in a Title IV-D child support case or in which a lien arises pursuant to § 36-5-901, the department is authorized, without further order of a court, to secure the assets of the obligor to satisfy the current obligation and the arrearage by:

(1) Intercepting or seizing periodic or lump-sum payments or benefits due the obligor:

(A) From a state or local agency;

(B) From judgments of any judicial or administrative tribunal, settlements approved by any judicial or administrative tribunal, and lottery winnings;

(2) By attaching or seizing assets of the obligor or other person or entity held in financial institutions as defined in § 36-5-910;

(3) By attaching public and private retirement funds; and

(4) By imposing liens in accordance with § 36-5-901, and, in appropriate cases, by forcing the sale of the obligor's legal or equitable interest in property and by distribution of the proceeds of such sale.

History.
Acts 1997, ch. 551, § 12; 1998, ch. 1098, § 37.

Compiler's Notes.
Title IV-D of the Social Security Act, referred to in this section, is compiled in 42 U.S.C. § 651 et seq.

36-5-905. Enforcement by administrative order of seizure.

(a) The department may enforce the lien provided by this part by issuance of an administrative order to any person or entity directing the seizure or sale of any assets of an obligor. The order shall direct the person or entity to hold, subject to any due process procedures provided the obligor, all assets of any kind of the obligor who is subject to the order pending the outcome of the administrative due process procedures. The order shall be based upon and issued pursuant to an existing judicial or administrative order that has previously established support under which an arrearage, due to overdue support, as defined in § 36-5-901, has occurred.

(b) Upon receipt of the administrative order, whether electronically or otherwise, the person or entity that has or may have the assets of the obligor shall immediately seize, hold, and encumber such assets, as directed by the department, pending further direction from the department as to the disposition of the assets or pending any further orders of any court of competent jurisdiction. The person or entity may place such funds as it has that belong to the obligor in an escrow account for such purpose and may take any other steps deemed reasonable to preserve any real or personal property.

(c)(1) All administrative orders for seizure or sale shall be subject to and subordinate to:

(A) Any order of a United States Bankruptcy Court;

(B) An attachment or execution under any judicial process in effect at the time of the administrative seizure order, pending modification of such court's orders; or

(C) A priority under § 36-5-901(c).

(2) If the assets of the obligor are known by the person or entity that received such administrative order to be subject to any orders of the United States Bankruptcy Court, or to any attachment, execution or existing lien, the person or entity shall, within ten (10) days after receipt of the administrative order, notify the department at the address contained in the order. With respect to deposit accounts of the obligor, the depository financial institution shall inform the department of the unencumbered balances of such accounts.

(d) Upon receipt of direction from the department that all due process procedures have been completed or were waived in any manner, and subject to subsection (c) and subject to the priority for the department's liens as described in § 36-5-901(c), the person or entity shall pay or deliver to the department, pursuant to its direction, the assets of the obligor that are held or that come into the possession or control of the person or entity and that are necessary to comply with the terms of the department's administrative order.

(e)(1) There shall be no requirement of advance judicial notice or hearing prior to the seizure of the obligor's property by administrative order, but the department of human services shall promulgate rules to provide procedures for the seizure of any property subject to the lien arising under this part and to provide post-enforcement procedures to permit the obligor to contest the seizure of any property pursuant to this part and part 10 of this chapter.

(2) Such rules shall not permit the final disposition of any property seized under the lien enforcement procedures until the exhaustion of administrative and judicial remedies as provided in this part and shall make the disposition subject to the lien priorities of § 36-5-901.

(3)(A) A notice shall be sent to the obligor against whom the administrative order for seizure or sale of assets is directed by mail within five (5) days of the issuance of such administrative seizure order of the fact that such assets have been the subject of an administrative order and that they have been seized or are subject to sale and are being held, may be conveyed to the department or may be sold, subject to the right to an administrative hearing to contest the seizure or sale of such assets.

(B) The notice shall specify the sum demanded and shall contain, in the case of personal property, an account of the property actually seized and, in the case of real property, a description with reasonable certainty of the property seized. In the case of assets in a financial institution, it shall be sufficient to notify the obligor of the seizure of any assets of the obligor that may be held by any institution to which the order is directed.

(f) A final order of seizure or sale of the obligor's property pursuant to this part shall be effective to convey and vest title in the department or in the purchaser and shall be evidence of title for all purposes. The commissioner or the commissioner's agent may convey title to personal property by certificate of title or may execute a deed conveying title to real property to the purchaser in accordance with regulations as may be prescribed by the commissioner.

(g) All persons or entities complying with any administrative order issued pursuant to this section shall be absolutely immune from any liability, civil or criminal, for compliance with the terms of such order or attempted compliance in good faith with such order.

History.
Acts 1997, ch. 551, § 12; 1998, ch. 1098, § 38.

36-5-906. Exemptions from sale.

(a) **Enumeration.** There shall be exempt from sale of personal property subject to lien pursuant to this part:

(1) **Wearing Apparel, School Books and Family Bible.** Such items of wearing apparel and such school books as are necessary for the obligor or for members of the obligor's family, and the family bible or other book containing the family's religious beliefs;

(2) **Fuels, Provisions, Furniture, And Personal Effects.** If the obligor is the head of the family, so much of the fuel, provisions, furniture, and personal effects in the obligor's household, and of the arms for personal use, livestock, and poultry of the obligor, as does not exceed five thousand dollars ($5,000) in value;

(3) **Books And Tools Of A Trade, Business, Or Profession.** So many of the books and tools necessary for the trade, business or profession of the obligor as do not exceed in the aggregate two thousand five hundred dollars ($2,500) in value.

(b) **Appraisal.** The agent of the department seizing property of the type described in subsection (a) shall appraise and set aside to the owner the amount of such property declared to be exempt. If the obligor objects at the time of the seizure to the valuation fixed by the agent making the seizure, the commissioner or the commissioner's agent shall summon three (3) disinterested individuals who shall make the valuation.

(c) **No Other Property Exempt.** Notwithstanding any other law of the state of Tennessee, no property or

rights to property shall be exempt from levy other than the property specifically made exempt by subsection (a).

History.
Acts 1997, ch. 551, § 12.

36-5-907. Release of lien.

(a) At any time after the child support obligation has been paid, the person holding title to the property on which the lien is placed may request the department to release the lien. If the department does not release the lien within sixty (60) days of the request, it shall be liable for court costs in any action to remove the lien.

(b) The department may cause the issuance of releases of liens by filing or recording such release of lien with the register of deeds or any other appropriate state or local office as provided under any method authorized pursuant to § 36-5-901 for the filing of notices of liens, or the department may supply copies of such release of liens by the department to any person or entity requesting a release for filing or recording of the release by that person or entity.

(c) The release may be conveyed by any electronic means or by facsimile transmission. If a facsimile transmission is utilized pursuant to this subsection (c), it shall be supplemented by a copy of suitable quality if such facsimile's quality is not adequate for purposes of recording by the register or other appropriate official.

History.
Acts 1997, ch. 551, § 12; 1998, ch. 1098, § 39.

36-5-908. Department control; real estate and personal property.

The commissioner or the commissioner's agent shall have charge of all real estate or personal property that is or shall become the property of the department by seizure or judgment under any provision of this or any other title, or that has been or shall be assigned, set off, or conveyed by purchase or otherwise to the department in payment of child support obligations, debts or penalties arising thereunder, or that has been or shall be vested in the department by mortgage or other security for the payment of such obligations, or that has been redeemed by the department, and of all trusts created for the use of the department in payment of such debts due the department.

History.
Acts 1997, ch. 551, § 12.

36-5-909. Limitation on rights of action.

No action may be maintained against any officer or employee of the state, or former officer or employee or the officer's or employee's personal representative, with respect to any acts for which an action could be maintained under this part.

History.
Acts 1997, ch. 551, § 12.

36-5-910. Definition of financial institution.

As used in this part, "financial institution" shall mean:

(1) A depository institution, as defined in Section 3(c) of the Federal Deposit Insurance Act, codified at 12 U.S.C. § 1813(c);

(2) An institution-affiliated party, as defined in Section 3(u) of such act, codified at 12 U.S.C. § 1813(u);

(3) Any Federal credit union or state credit union as defined in Section 101 of the Federal Credit Union Act, codified at 12 U.S.C. § 1752, including an institution-affiliated party of such a credit union, as defined in Section 206 of such Act, codified at 12 U.S.C. § 1786;

(4) Any benefit association, insurance company, safe deposit company, money-market mutual fund, securities broker/dealer, or similar entity authorized to conduct business in this state.

History.
Acts 1997, ch. 551, § 12.

36-5-911. Cooperation by state and local agencies.

All state and local agencies shall cooperate with the department of human services to carry out this part. Nothing in this section shall be construed to require or permit the shifting of the costs for provision of computer terminal hardware or software pursuant to § 36-5-901(b)(3) from the state of Tennessee to any local government.

History.
Acts 1997, ch. 551, § 12.

36-5-912. Enforcement procedures — Rules and regulations for enforcement — Contracts for enforcement procedures.

(a) Except where otherwise stated in this part, and to the extent not in conflict with this part, the department shall have the same rights and duties given to the department of revenue pursuant to title 67, chapter 1, part 14 to enforce the liens established by this part against real or tangible personal property.

(b) The department has rulemaking authority to implement this part and shall promulgate any rules pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, that are necessary to implement any provisions of the enforcement procedures described in this part or those procedures adapted for the department's use pursuant to title 67, chapter 1, part 14 that relate to the rights and duties necessary to seize and dispose of property subject to the liens imposed in this part to the extent those rights and

duties comport with this part and with state and federal laws administering the child support program established pursuant to Title IV-D of the Social Security Act, compiled in 42 U.S.C. § 651 et seq.

(c) The department may contract with the department of revenue, or any other state agency or with any private contractor, to provide services related to the seizure and disposition of property subject to the liens established by this part.

History.
Acts 1997, ch. 551, § 12.

PART 10

APPEALS

36-5-1001. Appeals of administrative actions by the department of human services.

(a) An appeal that is permitted by state or federal law or regulations for actions of the department of human services relative to Title IV-D child support services involving the following actions of the department shall be processed as provided in subsections (b) and (c) and §§ 36-5-1002 — 36-5-1006:

(1) A request for information or records, an administrative order or an administrative subpoena issued pursuant to part 8 of this chapter;

(2) An income withholding order pursuant to part 5 of this chapter;

(3) Notice of enrollment of a child for health care coverage upon a change of employers or as otherwise authorized pursuant to §§ 36-5-101(h)(2), 36-2-319, 36-5-501(a)(3) or 37-1-151;

(4) Review and adjustment of child support orders pursuant to § 36-5-103;

(5) The enforcement by administrative orders of liens for child support pursuant to part 9 of this chapter;

(6) Income tax refund intercepts pursuant to 45 CFR 303.72;

(7) Credit information reports pursuant to § 36-5-106;

(8) Distributions of support collections;

(9) Review of administrative orders for payments of overdue support made pursuant to §§ 36-2-322, 36-5-113, and 37-1-151(e) and orders to engage in work activities pursuant to those sections;

(10) Review of orders for administrative determination of continuing exclusive jurisdiction pursuant to § 36-5-813;

(11) Review of civil penalties for failure to provide proper information for the distribution of child support payments pursuant to § 36-5-120; and

(12) Review of income assignment orders for medical coverage entered pursuant to § 36-5-501(a)(3).

(b) Except as otherwise stated in subsections (c) and the following sections of this part, the hearings in subsection (a) shall be conducted pursuant to the provisions for contested case hearings as provided in the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3.

(c) The person seeking administrative review of the department's actions pursuant to subsection (a) shall file a written request with the department for an administrative hearing within fifteen (15) calendar days of the date of the notice of an administrative action pursuant to this part as defined by the department.

History.
Acts 1997, ch. 551, § 16; 1998, ch. 1098, § 40; 2000, ch. 922, §§ 24, 25, 39; 2002, ch. 873, § 1.

Compiler's Notes.
Acts 2002, ch. 873, § 2(a) provided that for any case to which the provisions of former subdivision (c)(2), as it existed immediately prior to September 1, 2002, would have applied, any new requests for appeals and reviews of any Title IV-D child support administrative actions of the department of human services, as otherwise permitted by the administrative appeal and review provisions of this part made either to the juvenile court in counties having a population of not less than eight hundred twenty-six thousand (826,000) and not more than eight hundred twenty-seven thousand (827,000) according to the 1990 federal census, or to the department, on, and after, September 1, 2002, shall be under the jurisdiction of the department; provided, however, that any requests that have been made by an appellant to the juvenile courts in such counties in which the appellant has sought, prior to September 1, 2002, an appeal and review of any Title IV-D child support administrative actions of the department, shall continue to be conducted by such juvenile courts according to the law existing under this part and former subdivision (c)(2) as those provisions existed immediately preceding September 1, 2002.

Acts 2002, ch. 873, § 2(b) provided that the department shall hear and determine such appeals under the contested case provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3 and under the provisions of this part.

Title IV-D of the Social Security Act, referred to in this section, is compiled in 42 U.S.C. § 651 et seq.

36-5-1002. Scope of administrative review.

(a) Notwithstanding any other law to the contrary, the scope of administrative review of the orders at the administrative hearing provided by § 36-5-1001 shall be limited to a determination of the correct identity of the person or persons or entity or entities to whom or to which the administrative action is directed, to whether there is a mistake of fact involving the action, and, is further limited to the following specific issues set forth in the following subdivisions:

(1) An administrative subpoena for records or request for information or records, pursuant to part 8 of this chapter, shall be modified or overturned by the hearing officer only upon a showing by clear and convincing evidence of arbitrary or capricious action in the issuance of the administrative subpoena or request, or if there is clear and convincing evidence that the best interests of the child or the child's caretaker would be jeopardized by the execution of the administrative subpoena or request, or if there is clear and convincing evidence that compliance with the request or administrative subpoena would constitute a clear violation of law;

(2) Review of administrative orders for parentage tests pursuant to § 36-5-802 shall be limited to a determination of whether the department's order was arbitrary or capricious;

(3) Review of administrative orders pursuant to § 36-5-803 to redirect child support is limited to whether the case upon which the redirection order

has been issued is a Title IV-D case;

(4) Review of administrative orders pursuant to § 36-5-804 to direct additional payments of child support shall be limited to a determination of whether the order is a reasonable amount that would eliminate the arrearage within a reasonable amount of time;

(5) Review of income assignment orders pursuant to § 36-5-501 is limited to:

(A) For the issuance of the initial order or income assignment:

(i) The correct identity of the individual subject to the order; and

(ii) A mistake of fact;

(B) For the issuance of an income assignment due to a delinquency pursuant to § 36-5-501(b)(1)(B) or (D):

(i) The amount of support not paid; or

(ii) The timeliness of the support paid;

(C) For the addition of an amount ordered pursuant to § 36-5-501(b)(1)(C) to satisfy accumulated arrears, if the court has not already determined the amount of arrears, the reasonableness of the amount ordered paid on the arrears and, in the case of accumulated arrears, the period of time over which support is ordered to be paid;

(D) For the addition of an amount ordered pursuant to § 36-5-501(b)(1)(C) for medical support, if the court has not already determined the amount of medical support, the reasonableness of the amount of medical support ordered; and

(E) For termination of an income assignment, that the conditions of § 36-5-503 have been met;

(6) Review of enrollment of a child for health insurance coverage in employer-based health coverage pursuant to § 36-5-501(a)(3) following issuance of an order to require the noncustodial parent to provide such coverage shall be limited to a mistake of fact;

(7) Review of the adjustment of child support orders pursuant to § 36-5-103 shall be limited to a determination of the appropriate application of the methods of adjustment of the order of support pursuant to § 36-5-103 that have been utilized by the department based on the income of the parties and based upon any circumstances which should permit deviation from the amount and that is justified by the application of those methods;

(8)(A) Review of the enforcement by administrative orders of liens for child support pursuant to part 9 of this chapter shall be limited to:

(i) The correct amount of the obligation;

(ii) The extent of the obligor's interest in the assets; and

(iii) Whether good cause exists not to seize, sell, distribute or otherwise dispose of all or a part of such assets.

(B) Upon review pursuant to the standards of subdivision (8)(A), the hearing officer may direct that there is a mistake as to the identity or interest of the person whose assets have been seized and dismiss the order, or may direct that all or only a portion of the assets be disposed of, or that there be some other order for the disposition of the assets of the obligor in order to satisfy the child support arrearage.

(C) The department's hearing officer or the reviewing court may grant any relief of preliminary or temporary nature relative to the obligor's assets as may be appropriate under the circumstances pending the entry of the final order;

(9) Review of income tax refund intercepts shall be conducted pursuant to the department's existing rules or as they may be further amended;

(10) Review of reports of credit status shall be limited to the extent of the amount of current support and amount of arrears to be reported to the credit bureau;

(11)(A) Administrative review of the distribution of collections shall not be conducted until such time as the party seeking redress has contacted the customer service unit in the department's state office for a conciliation process in which the customer service unit shall have thirty (30) days to resolve the issues. If the issues have not been resolved within thirty (30) days of the initiation of such effort, the customer service unit shall notify the person who sought conciliation and the person shall have the right to seek administrative review pursuant to this part;

(B) Review of distribution actions of the department shall be limited to a determination of the adequacy of efforts to resolve the issues pursuant to subdivision (11)(A) and the amount of support that is properly credited to the appellant;

(12) Review of an administrative order for payment of an overdue child support obligation made pursuant to §§ 36-2-322, 36-5-113 and 37-1-151(e) shall be limited to a determination of whether the order is a reasonable amount that would eliminate the arrearage within a reasonable period of time; or, for orders pursuant to §§ 36-2-322, 36-5-113 and 37-1-151(e) that direct the individual to engage in work activities as set forth in § 71-3-104, the appeal shall be limited to a determination of whether there is good cause to excuse the person's participation in those activities. "Good cause" for the work activities determination shall be limited to the availability to the individual of the ordered activities, or the individual's capability to participate in those activities due to disability or other circumstances effectively preventing the individual's participation;

(13) The appeal of an order to determine continuing exclusive jurisdiction pursuant to § 36-5-816 shall be limited to the correct application of the procedures for such determination pursuant to parts 20-29 of this chapter; and

(14) Review of a civil penalty for failure to comply with § 36-5-120 shall be limited to whether there is good cause for failure to comply with that section.

(b) The hearing officer may not forgive any support arrearages upon review of any of the department's administrative orders.

(c)(1) The record of child or spousal support as certified by the clerk of the court or as shown by the

department's child support computer system shall be admissible without further foundation testimony and shall constitute a rebuttable presumption as to the amount of support that is in arrears and that is owed by the obligor in any review pursuant to this part. "Spousal support," as used in this part, means a legally enforceable obligation assessed against an individual for the support of a spouse or former spouse who is living with a child or children for whom the individual also owes support.

(2) If submitted to the opposing party ten (10) days prior to the administrative hearing, the affidavit of a keeper or custodian of any other records, including, but not limited to, the records of any financial institution or the department of human services or any other government or private entity, concerning any matter before the hearing officer shall be admitted by the hearing officer unless an objection thereto is submitted five (5) days prior to the hearing. If an objection is filed and is upheld by the hearing officer, the hearing officer shall continue the case to permit the taking of any further testimony that may be necessary to resolve the issues.

(3) In order to expedite the review of these matters, the hearing officer shall have discretion to take testimony of any party or witness by telephone or video or other electronic technology, and documents may, in the hearing officer's discretion, be submitted by facsimile transmission or by any other electronic technology.

History.
Acts 1997, ch. 551, § 16; 1998, ch. 1098, §§ 41-43; 2000, ch. 922, §§ 26, 27, 40; 2001, ch. 447, §§ 7, 8.

Compiler's Notes.
Title IV-D of the Social Security Act, referred to in this section, is compiled in 42 U.S.C. § 651 et seq.

36-5-1003. Judicial review of administrative actions.

(a) Notwithstanding any other law to the contrary, the judicial review of the administrative hearing decisions of the department of human services pursuant to this part shall be conducted by the court having jurisdiction of the support order as otherwise provided by § 4-5-322.

(b) If any administrative action of the department pursuant to this part is not based upon an existing order of support or paternity, the party seeking judicial review shall file the petition for review of the department's actions in the chancery court of the county of the person's residence, or the county where an entity was served with an administrative subpoena or was notified of a request for information. If the department is enforcing any order of a Title IV-D agency of any other state and there has been no assumption of jurisdiction of the support order by a Tennessee court, the petition for judicial review shall be filed in the county of the residence of the person in Tennessee against whom the request, administrative order or administrative subpoena is issued or the county where an entity was served with an administrative order, administrative subpoena or was notified of a request for information. No judicial review may result in the forgiveness of any support arrearages.

(c) The judicial review shall be limited to the review of the record of the department's hearing as otherwise provided in § 4-5-322.

History.
Acts 1997, ch. 551, § 16.

Compiler's Notes.
Title IV-D of the Social Security Act, referred to in this section, is compiled in 42 U.S.C. § 651 et seq.

36-5-1004. Non-interference with department's actions — Injunctive relief.

No person or entity who has been served with an administrative order, administrative subpoena, or request for information or records shall take any measures to defeat the administrative action of the department during the pendency of the review of such action by the administrative hearing officer or by the reviewing court, and the department or its contractor may seek injunctive relief to prevent any actions that would defeat its administrative actions.

History.
Acts 1997, ch. 551, § 16.

36-5-1005. Liability for fees and costs.

The individual or entity to whom or to which the administrative order, administrative subpoena or request is issued pursuant to this part and that is enforced by the reviewing court shall be liable for all costs of the court proceedings and shall be liable to the department for the cost of any private, contract or government attorney representing the state and for the time of any of its Title IV-D state office staff or contractor staff utilized in litigating the administrative order, administrative subpoena or request.

History.
Acts 1997, ch. 551, § 16.

Compiler's Notes.
Title IV-D of the Social Security Act, referred to in this section, is compiled in 42 U.S.C. § 651 et seq.

36-5-1006. Rules and regulations.

The department shall have authority to promulgate rules and regulations pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to implement this part.

History.
Acts 1997, ch. 551, § 16.

PART 11

EMPLOYMENT RECORDS

36-5-1101. Part definitions.

As used in this part, unless the context requires otherwise:

(1) "Business day" means a day on which state offices are open for regular business;

(2) "Commissioner" means the commissioner of human services or the commissioner's duly authorized representative;

(3) "Department" means the department of human services or its contractor or other designee;

(4) "Directory of new hires" means an automated directory of information, supplied by employers on each newly hired or re-hired employee, which is maintained by the department of human services;

(5) "Employee" means an individual who is an employee within the meaning of Chapter 24 of the Internal Revenue Code of 1986, compiled in 26 U.S.C. § 3401 et seq., but does not include an employee of a federal or state agency performing intelligence or counterintelligence functions, if the head of that agency has determined that reporting pursuant to the requirements of this part with respect to the employee could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission;

(6) "Employer" has the meaning given such term in § 3401(d) of the Internal Revenue Code of 1986, codified as 26 U.S.C. § 3401(d), and includes any governmental entity and any labor organization;

(7) "Labor organization" has the meaning given such term in § 2(5) of the National Labor Relations Act, codified as 29 U.S.C. § 152(5), and includes any entity, also known as a "hiringhall", that is used by the organization and an employer to carry out requirements of § 8(f)(3) of such Act, codified as 29 U.S.C. § 158(f)(3), of an agreement between the organization and the employer; and

(8) "Title IV-D agency" means the agency designated pursuant to Title IV, Part D of the Social Security Act, compiled in 42 U.S.C. § 651 et seq., to provide services to children and families to establish and enforce child support obligations. In Tennessee, the department of human services is the Title IV-D agency.

History.
Acts 1997, ch. 551, § 1.

36-5-1102. Reports of new employees.

Effective October 1, 1997, each employer shall furnish to the department a report that contains the name, address, hire date and social security number of each newly hired employee, and the name, address, and identifying number of the employer assigned under § 6109 of the Internal Revenue Code of 1986, codified as 26 U.S.C. § 6109.

History.
Acts 1997, ch. 551, § 1; 2001, ch. 447, § 9.

36-5-1103. Reports for employers with employees in two or more states.

An employer that has employees who are employed in two (2) or more states and that transmits reports magnetically or electronically may comply with § 36-5-1102 by designating one (1) state in which such employer has employees to which the employer will transmit the report described in § 36-5-1102 and by transmitting such report to such state. Any employer that transmits reports pursuant to this section shall notify the secretary of the United States department of health and human services, in writing, as to which state such employer designates for the purpose of sending reports under this section.

History.
Acts 1997, ch. 551, § 1.

36-5-1104. Time frames for reports by employers.

The report provided by § 36-5-1102 shall be made not later than twenty (20) days after the date the employer hires the employee, or, in the case of an employer transmitting reports magnetically or electronically, by two (2) monthly transmissions, if necessary, not less than twelve (12) nor more than sixteen (16) days apart.

History.
Acts 1997, ch. 551, § 1; 1998, ch. 1098, § 44.

36-5-1105. Reports on W-4 forms.

Each report required by § 36-5-1102 shall be made on a W-4 form, or at the option of the employer, an equivalent form, containing the same data as required on the W-4 form. The report may be transmitted to the department by first class mail, magnetically or electronically in a format approved by the department.

History.
Acts 1997, ch. 551, § 1.

36-5-1106. Use of information by department.

(a) The department shall use the information received pursuant to § 36-5-1102 to locate individuals for purposes of establishing paternity and establishing, modifying and enforcing child support obligations and may disclose such information to any agent of the department that is under contract with the department to carry out such purposes.

(b) The commissioner of human services shall make available information collected pursuant to this part to state or local agencies or their contractors, or agents in this state or their counterparts in any other state or territory who determine financial or medical assistance as permitted under § 1137(b) of the Social Security Act, codified as 42 U.S.C. § 1320b-7(b), as it may be amended; to any state program operated under a plan approved under Titles I, X, and XIV of the Social Security Act, compiled in 42 U.S.C. §§ 301 et seq., 1201 et seq., and 1351 et seq., respectively; to any agencies administering the worker's compensation program of a state or territory; to any agencies administering the Tennessee Lawful Employment Act, compiled in title 50, chapter 1, part 7; and to the Title IV-D agency in this state, its local offices and its contractors, whether public or private, and the Title IV-D agency's counterparts in other states or territories, their local offices

and their contractors, whether public or private, for use in locating absent parents, and for use in establishing, enforcing and modifying child support orders; and to the federal government as required by statute or regulation. The department may charge a fee to cover the costs of the provision of such information to any other state or local government entities that may be conducting eligibility determinations or who are conducting programs under this subsection (b).

(c) No further disclosures shall be made except as authorized pursuant to this section or § 71-1-131. Disclosure in violation of this section shall be a Class C misdemeanor.

History.
Acts 1997, ch. 551, § 1; 2016, ch. 828, § 20.

Compiler's Notes.
Acts 2016, ch. 828, § 22 provided that the act, which amended this section, shall apply to violations occurring on July 1, 2016.

36-5-1107. Failure to make necessary reports; penalties.

(a) If, after prior notification by the department of human services of failure to make the necessary reports required by this part, any employer fails or refuses to comply with the requirements of this part, the employer shall be subject to a civil penalty of twenty dollars ($20.00) for each employee who is not reported.

(b) Any employer and employee who conspire not to provide the report required by this part or who conspire to provide a false or incomplete report shall each be subject to a civil penalty of four hundred dollars ($400).

(c) Such penalties shall be assessed by the commissioner of human services after written notice that provides fifteen (15) days from the mailing date of such notice to file a written request for appeal.

(d) If an appeal is timely filed with the department, the employer or employee shall be entitled to an administrative hearing before the department on the issue of the assessment pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5 relative to contested case hearings.

(e) Failure to timely appeal the assessment of the civil penalty shall be final and conclusive of the correctness of the assessment.

(f) Any amount found owing shall be due and payable not later than fifteen (15) days after the mailing date of the determination.

(g)(1) Failure to pay an assessment shall result in a lien against the real or personal property of the employer or the employee in favor of the department and shall be enforced by original attachment issued by the court in the county where the employer is located, or where the employee resides by any court having jurisdiction of the monetary amounts assessed.

(2) The employer or employee shall be liable for all court costs and litigation taxes of the proceedings and shall be liable to the department for the cost of any private, contract or government attorney representing the state and for the time of any of its Title IV-D or contractor staff utilized in litigating the assessment.

(h) Any appeal of the action of the commissioner pursuant to this section shall be made in conformity with § 4-5-322.

History.
Acts 1997, ch. 551, § 1; 1998, ch. 1098, § 45.

Compiler's Notes.
Title IV-D of the Social Security Act, referred to in this section, is compiled in 42 U.S.C. § 651 et seq.

36-5-1108. Rulemaking authority.

The department has authority to promulgate rules pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, that it determines are necessary for the implementation of this part, and it is specifically authorized to utilize emergency rules to implement this part, effective June 23, 1997, subject to prior approval of the emergency rules by the attorney general and reporter.

History.
Acts 1997, ch. 551, § 1; 2009, ch. 566, § 12.

Compiler's Notes.
Acts 2009, ch. 566, § 12 provided that the Tennessee code commission is directed to change all references to public necessity rules, wherever such references appear in this code, to emergency rules, as sections are amended and volumes are replaced.

PART 12

ASSISTANCE BY OTHER STATES

36-5-1201. Administrative enforcement in interstate cases.

(a) The department of human services, as the Title IV-D child support enforcement agency of this state, shall use high-volume automated administrative enforcement, to the same extent as used for intrastate cases, in response to a request made by another state to enforce support orders, and shall promptly report the results of such enforcement procedure to the requesting state.

(b) The agencies of this or any state that enforce child support may, by electronic or other means, transmit to another state or to this state a request for assistance in enforcing support orders through high-volume, automated administrative enforcement, which request:

(1) Shall include such information as will enable the state to which the request is transmitted to compare the information about the cases to the information in the data bases of the state receiving the request; and

(2) Shall constitute a certification by the requesting state:

(A) Of the amount of support under an order the payment of which is in arrears; and

(B) That the requesting state has complied with all procedural due process requirements applicable to each case.

(c) If the department provides assistance to another state with respect to a case, or if another state seeks assistance from the department pursuant to this section, neither state shall consider the case to be transferred to the caseload of such other state.

(d) The department shall maintain records of:

(1) The number of such requests for assistance received by the department;

(2) The number of cases for which the department collected support in response to such a request; and

(3) The amount of such collected support.

(e) In this part, the term "high-volume automated administrative enforcement" in interstate cases means, on request of another state, the identification by the department, through automated data matches with financial institutions and other entities where assets may be found, of assets owned by persons who owe child support in other states, and the seizure of such assets by the department, through levy or other appropriate means.

History.
Acts 1997, ch. 551, § 15; 1998, ch. 1098, § 46; 2001, ch. 447, § 10.

Compiler's Notes.
Title IV-D of the Social Security Act, referred to in this section, is compiled in 42 U.S.C. § 651 et seq.

PART 13

SOCIAL SECURITY NUMBER RECORDS

36-5-1301. Inclusion of social security numbers on certain licenses.

(a) Notwithstanding any other law to the contrary, all applications for professional licenses, driver licenses, occupational licenses, hunting and fishing licenses or recreational licenses, or marriage licenses issued by any agency or any political subdivision of the state of Tennessee on and after July 1, 1997, shall contain the social security number of each applicant.

(b) If the agency or office maintaining the records described in subsection (a) allows the use of a number other than the social security number on the face of the license document, and the social security number obtained on the application is kept on file with the agency or office, the agency or office shall so advise the applicant.

(c) All agencies maintaining records as required by subsection (a) shall make such records accessible to the department of human services or its contractors or agents enforcing Title IV-D of the Social Security Act, compiled in 42 U.S.C. § 651 et seq., and to the extent possible, in electronic or magnetic automated formats.

History.
Acts 1997, ch. 551, § 29; 1998, ch. 1098, §§ 47, 48.

36-5-1302. Inclusion of social security numbers in certain records.

Notwithstanding any other law to the contrary, the social security number of any individual who is subject to a divorce decree, order of support issued by any court, any order of paternity or legitimation, or any voluntary acknowledgment of paternity shall be placed in the records relating to such matter.

History.
Acts 1997, ch. 551, § 29.

PARTS 14–19

[RESERVED]

PART 20

UNIFORM INTERSTATE FAMILY SUPPORT ACT—SHORT TITLE

36-5-2001. Short title.

Parts 20-29 of this chapter shall be known and may be cited as the "Uniform Interstate Family Support Act."

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

PART 21

UNIFORM INTERSTATE FAMILY SUPPORT ACT — GENERAL PROVISIONS

36-5-2101. Definitions.

As used in parts 20-29 of this chapter, unless the context otherwise requires:

(1) "Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent;

(2) "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state or foreign country;

(3) "Convention" means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, concluded at The Hague on November 23, 2007;

(4) "Duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support;

(5) "Foreign country" means a country, including a political subdivision thereof, other than the United States, that authorizes the issuance of support orders

and:

(A) Which has been declared under the law of the United States to be a foreign reciprocating country;

(B) Which has established a reciprocal arrangement for child support with this state as provided in § 36-5-2308;

(C) Which has enacted a law or established procedures for the issuance and enforcement of support orders which are substantially similar to the procedures under parts 20-29 of this chapter; or

(D) In which the Convention is in force with respect to the United States;

(6) "Foreign support order" means a support order of a foreign tribunal;

(7) "Foreign tribunal" means a court, administrative agency, or quasi-judicial entity of a foreign country which is authorized to establish, enforce, or modify support orders or to determine parentage of a child. The term includes a competent authority under the Convention;

(8) "Home state" means the state or foreign country in which a child lived with a parent or a person acting as parent for at least six (6) consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six (6) months old, the state or foreign country in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period;

(9) "Income" includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this state;

(10) "Income-withholding order" means an order or other legal process directed to an obligor's employer or other debtor, as provided for in part 5 of this chapter, to withhold support from the income of the obligor;

(11) "Initiating tribunal" means the tribunal of a state or foreign country from which a petition or comparable pleading is forwarded or in which a petition or comparable pleading is filed for forwarding to another state or foreign country;

(12) "Issuing foreign country" means the foreign country in which a tribunal issues a support order or a judgment determining parentage of a child;

(13) "Issuing state" means the state in which a tribunal issues a support order or a judgment determining parentage of a child;

(14) "Issuing tribunal" means the tribunal of a state or foreign country that issues a support order or renders a judgment determining parentage of a child;

(15) "Law" includes decisional and statutory law and rules and regulations having the force of law;

(16) "Obligee" means:

(A) An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order or a judgment determining parentage of a child has been issued;

(B) A foreign country, state, or political subdivision of a state to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee in place of child support;

(C) An individual seeking a judgment determining parentage of the individual's child; or

(D) A person that is a creditor in a proceeding under part 27 of this chapter;

(17) "Obligor" means an individual, or the estate of a decedent that:

(A) Owes or is alleged to owe a duty of support;

(B) Is alleged but has not been adjudicated to be a parent of a child;

(C) Is liable under a support order; or

(D) Is a debtor in a proceeding under part 27 of this chapter;

(18) "Outside this state" means a location in another state or a country other than the United States, whether or not the country is a foreign country;

(19) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity;

(20) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(21) "Register" means to file in a tribunal of this state a support order or judgment determining parentage of a child issued in another state or a foreign country;

(22) "Registering tribunal" means a tribunal in which a support order or judgment determining parentage of a child is registered;

(23) "Responding state" means a state in which a petition or comparable pleading for support or to determine parentage of a child is filed or to which a petition or comparable pleading is forwarded for filing from another state or a foreign country;

(24) "Responding tribunal" means the authorized tribunal in a responding state or foreign country;

(25) "Spousal support order" means a support order for a spouse or former spouse of the obligor;

(26) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession under the jurisdiction of the United States. The term includes an Indian nation or tribe;

(27) "Support enforcement agency" means a public official, governmental entity, or private agency authorized to:

(A) Seek enforcement of support orders or laws relating to the duty of support;

(B) Seek establishment or modification of child support;

(C) Request determination of parentage of a child;

(D) Attempt to locate obligors or their assets; or

(E) Request determination of the controlling child support order;

(28) "Support order" means a judgment, decree, order, decision, or directive, whether temporary, final, or subject to modification, issued in a state or foreign country for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrearages, retroactive support, or reimbursement for financial assistance provided to an individual obligee in place of child support. The term may include related costs and fees, interest, income withholding, automatic adjustment, reasonable attorney's fees, and other relief; and

(29) "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage of a child.

History.
Acts 2010, ch. 901, § 1; 2016, ch. 664, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2102. State tribunal and support enforcement agency.

(a) The chancery, circuit, juvenile, and any courts exercising domestic relations jurisdiction under any enactment of the general assembly, and the department of human services when, pursuant to a state or federal law, the department is acting in its capacity as the Title IV-D child support enforcement agency of the state of Tennessee to carry out administrative support establishment or support enforcement actions or when adjudicating administrative appeals involving the Title IV-D child support program, are the tribunals of this state.

(b) The department of human services is the support enforcement agency of this state.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2103. Remedies cumulative.

(a) Remedies provided by parts 20-29 of this chapter are cumulative and do not affect the availability of remedies under other law, or the recognition of a foreign support order on the basis of comity.

(b) Parts 20-29 of this chapter do not:

(1) Provide the exclusive method of establishing or enforcing a support order under the law of this state; or

(2) Grant a tribunal of this state jurisdiction to render judgment or issue an order relating to child custody or visitation in a proceeding under parts 20-29 of this chapter.

History.
Acts 2010, ch. 901, § 1; 2011, ch. 55, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2104. Application of parts 21-27 of this chapter to resident of foreign country and foreign support proceeding.

(a) A tribunal of this state shall apply parts 21-26 of this chapter and, as applicable, part 27 of this chapter, to a support proceeding involving:

(1) A foreign support order;

(2) A foreign tribunal; or

(3) An obligee, obligor, or child residing in a foreign country.

(b) A tribunal of this state that is requested to recognize and enforce a support order on the basis of comity may apply the procedural and substantive provisions of parts 21-26 of this chapter.

(c) Part 27 of this chapter applies only to a support proceeding under the Convention. In such a proceeding, if a provision of part 27 of this chapter is inconsistent with parts 21-26 of this chapter, then part 27 of this chapter controls.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

PART 22

UNIFORM INTERSTATE FAMILY SUPPORT ACT — JURISDICTION

36-5-2201. Bases for jurisdiction over nonresident.

(a) In a proceeding to establish or enforce a support order or to determine parentage of a child, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

(1) The individual is personally served with notice within this state;

(2) The individual submits to the jurisdiction of this state by consent in a record, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;

(3) The individual resided with the child in this state;

(4) The individual resided in this state and provided prenatal expenses or support for the child;

(5) The child resides in this state as a result of the acts or directives of the individual;

(6) The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;

(7) The individual asserted parentage of a child in the putative father registry maintained in this state by the department of children's services; or

(8) There is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

(b) The bases of personal jurisdiction set forth in subsection (a) or in any other law of this state may not be used to acquire personal jurisdiction for a tribunal of this state to modify a child support order of another state unless the requirements of § 36-5-2611 are met, or, in the case of a foreign support order, unless the requirements of § 36-5-2615 are met.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2202. Duration of personal jurisdiction.

Personal jurisdiction acquired by a tribunal of this state in a proceeding under parts 20-26 of this chapter or other law of this state relating to a support order continues as long as a tribunal of this state has continuing, exclusive jurisdiction to modify its order or continuing jurisdiction to enforce its order as provided by §§ 36-5-2205, 36-5-2206 and 36-5-2211.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2203. Initiating and responding tribunal of state.

Under parts 20-26 of this chapter, a tribunal of this state may serve as an initiating tribunal to forward proceedings to a tribunal of another state, and as a responding tribunal for proceedings initiated in another state or a foreign country.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2204. Simultaneous proceedings.

(a) A tribunal of this state may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a pleading is filed in another state or a foreign country only if:

(1) The petition or comparable pleading in this state is filed before the expiration of the time allowed in the other state or the foreign country for filing a responsive pleading challenging the exercise of jurisdiction by the other state or the foreign country;

(2) The contesting party timely challenges the exercise of jurisdiction in the other state or the foreign country; and

(3) If relevant, this state is the home state of the child.

(b) A tribunal of this state may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state or a foreign country if:

(1) The petition or comparable pleading in the other state or foreign country is filed before the expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of

jurisdiction by this state;

(2) The contesting party timely challenges the exercise of jurisdiction in this state; and

(3) If relevant, the other state or foreign country is the home state of the child.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2205. Continuing, exclusive jurisdiction to modify child support order.

(a) A tribunal of this state that has issued a child support order consistent with the law of this state has and shall exercise continuing, exclusive jurisdiction to modify its child support order if the order is the controlling order and:

(1) At the time of the filing of a request for modification this state is the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

(2) Even if this state is not the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued, the parties consent in a record or in open court that the tribunal of this state may continue to exercise jurisdiction to modify its order.

(b) A tribunal of this state that has issued a child support order consistent with the law of this state may not exercise continuing, exclusive jurisdiction to modify the order if:

(1) All of the parties who are individuals file consent in a record with the tribunal of this state that a tribunal of another state that has jurisdiction over at least one of the parties who is an individual or that is located in the state of residence of the child may modify the order and assume continuing, exclusive jurisdiction; or

(2) Its order is not the controlling order.

(c) If a tribunal of another state has issued a child support order pursuant to the Uniform Interstate Family Support Act or a law substantially similar to that Act which modifies a child support order of a tribunal of this state, tribunals of this state shall recognize the continuing, exclusive jurisdiction of the tribunal of the other state.

(d) A tribunal of this state that lacks continuing, exclusive jurisdiction to modify a child support order may serve as an initiating tribunal to request a tribunal of another state to modify a support order issued in that state.

(e) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2206. Continuing jurisdiction to enforce child support order.

(a) A tribunal of this state that has issued a child support order consistent with the law of this state may serve as an initiating tribunal to request a tribunal of another state to enforce:

(1) The order if the order is the controlling order and has not been modified by a tribunal of another state that assumed jurisdiction pursuant to the Uniform Interstate Family Support Act; or

(2) A money judgment for arrears of support and interest on the order accrued before a determination that an order of a tribunal of another state is the controlling order.

(b) A tribunal of this state having continuing jurisdiction over a support order may act as a responding tribunal to enforce the order.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2207. Determination of controlling child support order.

(a) If a proceeding is brought under parts 20-29 of this chapter and only one (1) tribunal has issued a child support order, the order of that tribunal controls and must be recognized.

(b) If a proceeding is brought under parts 20-29 of this chapter and two (2) or more child support orders have been issued by tribunals of this state, another state, or a foreign country with regard to the same obligor and same child, a tribunal of this state having personal jurisdiction over both the obligor and individual obligee shall apply the following rules and by order shall determine which order controls and must be

recognized:

(1) If only one (1) of the tribunals would have continuing, exclusive jurisdiction under parts 20-29 of this chapter, the order of that tribunal controls and must be so recognized;

(2) If more than one (1) of the tribunals would have continuing, exclusive jurisdiction under parts 20-29 of this chapter:

(A) An order issued by a tribunal in the current home state of the child controls; but

(B) If an order has not been issued in the current home state of the child, the order most recently issued controls.

(3) If none of the tribunals would have continuing, exclusive jurisdiction under parts 20-29 of this chapter, the tribunal of this state shall issue a child support order, which controls.

(c) If two (2) or more child support orders have been issued for the same obligor and same child, upon request of a party who is an individual or that is a support enforcement agency, a tribunal of this state having personal jurisdiction over both the obligor and the obligee who is an individual shall determine which order controls under subsection (b). The request may be filed with a registration for enforcement or registration for modification pursuant to part 26, or may be filed as a separate proceeding.

(d) A request to determine which is the controlling order must be accompanied by a copy of every child support order in effect and the applicable record of payments. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

(e) The tribunal that issued the controlling order under subsection (a), (b), or (c) has continuing jurisdiction to the extent provided in § 36-5-2205 or § 36-5-2206.

(f) A tribunal of this state that determines by order which is the controlling order under subdivision (b)(1) or (b)(2) or subsection (c), or that issues a new controlling order under subdivision (b)(3), shall state in that order:

(1) The basis upon which the tribunal made its determination;

(2) The amount of prospective support, if any; and

(3) The total amount of consolidated arrears and accrued interest, if any, under all of the orders after all payments made are credited as provided by § 36-5-2209.

(g) Within thirty (30) days after issuance of an order determining which is the controlling order, the party obtaining the order shall file a certified copy of it in each tribunal that issued or registered an earlier order of child support. A party or support enforcement agency obtaining the order that fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.

(h) An order that has been determined to be the controlling order, or a judgment for consolidated arrears of support and interest, if any, made pursuant to this section must be recognized in proceedings under parts 20-29 of this chapter.

History.

Acts 2010, ch. 901, § 1.

Compiler's Notes.

Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2208. Child support orders for two or more obligees.

In responding to registrations or petitions for enforcement of two (2) or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one (1) of which was issued by a tribunal of another state or a foreign country, a tribunal of this state shall enforce those orders in the same manner as if the orders had been issued by a tribunal of this state.

History.

Acts 2010, ch. 901, § 1.

Compiler's Notes.

Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2209. Credit for payments.

A tribunal of this state shall credit amounts collected for a particular period pursuant to any child support order against the amounts owed for the same period under any other child support order for support of the same child issued by a tribunal of this state, or another state, or a foreign country.

History.

Acts 2010, ch. 901, § 1.

Compiler's Notes.

Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2210. Application of parts 20-29 of this chapter to nonresident subject to personal jurisdiction.

A tribunal of this state exercising personal jurisdiction over a nonresident in a proceeding under parts 20-29 of this chapter, under other law of this state relating to a support order, or recognizing a foreign support order may receive evidence from outside this state pursuant to § 36-5-2316, communicate with a tribunal outside this state pursuant to § 36-5-2317, and obtain discovery through a tribunal outside this state pursuant to § 36-5-2318. In all other respects, parts 23-26 do not apply, and the tribunal shall apply the procedural and substantive law of this state.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."
The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2211. Continuing, exclusive jurisdiction to modify spousal support order.

(a) A tribunal of this state issuing a spousal support order consistent with the law of this state has continuing, exclusive jurisdiction to modify the spousal support order throughout the existence of the support obligation.

(b) A tribunal of this state may not modify a spousal support order issued by a tribunal of another state or a foreign country having continuing, exclusive jurisdiction over that order under the law of that state or foreign country.

(c) A tribunal of this state that has continuing, exclusive jurisdiction over a spousal support order may serve as:

(1) An initiating tribunal to request a tribunal of another state to enforce the spousal support order issued in this state; or

(2) A responding tribunal to enforce or modify its own spousal support order.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."
The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

PART 23

UNIFORM INTERSTATE FAMILY SUPPORT ACT — CIVIL PROVISIONS OF GENERAL APPLICATION

36-5-2301. Proceedings under parts 20-29 of this chapter.

(a) Except as otherwise provided in parts 20-29 of this chapter, this part applies to all proceedings under parts 20-29 of this chapter.

(b) An individual petitioner or a support enforcement agency may initiate a proceeding authorized under parts 20-29 of this chapter by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state or a foreign country which has or can obtain personal jurisdiction over the respondent.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."
The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2302. Proceeding by minor parent.

A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor's child.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."
The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2303. Application of law of state.

Except as otherwise provided in parts 20-29 of this chapter, a responding tribunal of this state shall:

(1) Apply the procedural and substantive law generally applicable to similar proceedings originating in this state and may exercise all powers and provide all remedies available in those proceedings; and

(2) Determine the duty of support and the amount payable in accordance with the law and support guidelines of this state.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."
The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2304. Duties of initiating tribunal.

(a) Upon the filing of a petition authorized by parts 20-29 of this chapter an initiating tribunal of this state shall forward the petition and its accompanying documents:

(1) To the responding tribunal or appropriate support enforcement agency in the responding state; or

(2) If the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

(b) If requested by the responding tribunal, a tribunal of this state shall issue a certificate or other document and make findings required by the law of the responding state. If the responding tribunal is in a foreign country, upon request the tribunal of this state shall specify the amount of support sought, convert that amount into the equivalent amount in the foreign currency under applicable official or market exchange rate as publicly reported, and provide any other documents necessary to satisfy the requirements of the responding foreign tribunal.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."
The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2305. Duties and powers of responding tribunal.

(a) When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly pursuant to § 36-5-2301(b), it shall cause the petition or pleading to be filed and notify the petitioner where and when it was filed.

(b) A responding tribunal of this state, to the extent not prohibited by other law, may do one (1) or more of the following:

(1) Establish or enforce a support order, modify a child support order, determine the controlling child support order, or determine parentage of a child;

(2) Order an obligor to comply with a support order, specifying the amount and the manner of compliance;

(3) Order income withholding;

(4) Determine the amount of any arrearages, and specify a method of payment;

(5) Enforce orders by civil or criminal contempt, or both;

(6) Set aside property for satisfaction of the support order;

(7) Place liens and order execution on the obligor's property;

(8) Order an obligor to keep the tribunal informed of the obligor's current residential address, electronic-mail address, telephone number, employer, address of employment, and telephone number at the place of employment;

(9) Issue an attachment pro corpus or capias for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the attachment pro corpus in any local and state computer systems for criminal warrants;

(10) Order the obligor to seek appropriate employment by specified methods;

(11) Award reasonable attorney's fees and other fees and costs; and

(12) Grant any other available remedy.

(c) A responding tribunal of this state shall include in a support order issued under parts 20-29 of this chapter or in the documents accompanying the order, the calculations on which the support order is based.

(d) A responding tribunal of this state may not condition the payment of a support order issued under parts 20-29 of this chapter upon compliance by a party with provisions for visitation.

(e) If a responding tribunal of this state issues an order under parts 20-29 of this chapter, the tribunal shall send a copy of the order to the petitioner and the respondent and to the initiating tribunal, if any.

(f) If requested to enforce a support order, arrears, or judgment or modify a support order stated in a foreign currency, a responding tribunal of this state shall convert the amount stated in the foreign currency to the equivalent amount in dollars under the applicable official or market exchange rate as publicly reported.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."
The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2306. Inappropriate tribunal.

If a petition or comparable pleading is received by an inappropriate tribunal of this state, the tribunal shall forward the pleading and accompanying documents to an appropriate tribunal of this state or another state and notify the petitioner where and when the pleading was sent.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."
The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2307. Duties of support enforcement agency.

(a) A support enforcement agency of this state, upon request, shall provide services to a petitioner in a proceeding under parts 20-26 of this chapter.

(b) A support enforcement agency of this state that is providing services to the petitioner shall:

(1) Take all steps necessary to enable an appropriate tribunal of this state, another state, or a foreign country to obtain jurisdiction over the respondent;

(2) Request an appropriate tribunal to set a date, time, and place for a hearing;

(3) Make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;

(4) Within two (2) days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of notice in a record from an initiating, responding, or registering tribunal, send a copy of the notice to the petitioner;

(5) Within two (2) days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of communication in a record from the respondent or the respondent's attorney, send a copy of the communication to the petitioner; and

(6) Notify the petitioner if jurisdiction over the respondent cannot be obtained.

(c) A support enforcement agency of this state that requests registration of a child support order in this state for enforcement or for modification shall make reasonable efforts:

(1) To ensure that the order to be registered is the controlling order; or

(2) If two (2) or more child support orders exist and the identity of the controlling order has not been determined, to ensure that a request for such a determination is made in a tribunal having jurisdiction to do so.

(d) A support enforcement agency of this state that requests registration and enforcement of a support order, arrears, or judgment stated in a foreign currency shall convert the amounts stated in the foreign currency into the equivalent amounts in dollars under the applicable official or market exchange rate as publicly reported.

(e) A support enforcement agency of this state shall issue or request a tribunal of this state to issue a child support order and an income-withholding order that redirect payment of current support, arrears, and interest if requested to do so by a support enforcement agency of another state pursuant to § 36-5-2319.

(f) Parts 20-29 of this chapter do not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."
The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2308. Duty of attorney general and reporter.

(a) If the attorney general and reporter determines that the support enforcement agency is neglecting or refusing to provide services to an individual, the attorney general and reporter may order the agency to perform its duties under parts 20-29 of this chapter or may provide those services directly to the individual.

(b) The attorney general and reporter may determine that a foreign country has established a reciprocal arrangement for child support with this state and take appropriate action for notification of the determination.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."
The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2309. Private counsel.

An individual may employ private counsel to represent the individual in proceedings authorized by parts 20-29 of this chapter.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."
The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2310. Duties of the department of human services.

(a) The department of human services is the state information agency under parts 20-29 of this chapter.

(b) The state information agency shall:

(1) Compile and maintain a current list, including addresses, of the tribunals in this state which have jurisdiction under parts 20-29 of this chapter and any support enforcement agencies in this state and transmit a copy to the state information agency of every other state;

(2) Maintain a register of names and addresses of tribunals and support enforcement agencies received from other states;

(3) Forward to the appropriate tribunal in the county in this state in which the obligee who is an individual or the obligor resides, or in which the obligor's property is believed to be located, all documents concerning a proceeding under parts 20-29 of this chapter received from another state or a foreign country; and

(4) Obtain information concerning the location of the obligor and the obligor's property within this state not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses, and social security.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."
The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2311. Pleadings and accompanying documents.

(a) In a proceeding under parts 20-29 of this chapter, a petitioner seeking to establish a support order, to determine parentage of a child, or to register and modify a support order of a tribunal of another state or a foreign country must file a petition. Unless otherwise ordered under § 36-5-2312, the petition or accompanying documents must provide, so far as known, the name, residential address, and social security numbers of the obligor and the obligee or the parent and alleged parent, and the name, sex, residential address, social security number, and date of birth of each child for whose benefit support is sought or whose parentage is to be determined. Unless filed at the time of registration, the petition must be accompanied by a copy of any support order known to have been issued by another tribunal. The petition may include any other information that may assist in locating or identifying the respondent.

(b) The petition must specify the relief sought. The petition and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."
The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2312. Nondisclosure of information in exceptional circumstances.

If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of specific identifying information, that information must be sealed and may not be disclosed to the other party or the public. After a hearing in which a tribunal takes into consideration the health, safety, or liberty of the party or child, the tribunal may order disclosure of information that the tribunal determines to be in the interest of justice.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided

that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2313. Costs and fees.

(a) The petitioner may not be required to pay a filing fee or other costs.

(b) If an obligee prevails, a responding tribunal of this state may assess against an obligor filing fees, reasonable attorney's fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or responding state or foreign country, except as provided by other law. Attorney's fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs, and expenses.

(c) The tribunal shall order the payment of costs and reasonable attorney's fees if it determines that a hearing was requested primarily for delay. In a proceeding under part 26 of this chapter, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

History.

Acts 2010, ch. 901, § 1.

Compiler's Notes.

Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2314. Limited immunity of petitioner.

(a) Participation by a petitioner in a proceeding under parts 20-29 of this chapter before a responding tribunal, whether in person, by private attorney, or through services provided by the support enforcement agency, does not confer personal jurisdiction over the petitioner in another proceeding.

(b) A petitioner is not amenable to service of civil process while physically present in this state to participate in a proceeding under parts 20-29 of this chapter.

(c) The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under parts 20-29 of this chapter committed by a party while physically present in this state to participate in the proceeding.

History.

Acts 2010, ch. 901, § 1.

Compiler's Notes.

Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2315. Nonparentage as defense.

A party whose parentage of a child has been previously determined by or pursuant to law may not plead nonparentage as a defense to a proceeding under parts 20-29 of this chapter.

History.

Acts 2010, ch. 901, § 1.

Compiler's Notes.

Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2316. Special rules of evidence and procedure.

(a) The physical presence of a nonresident party who is an individual in a tribunal of this state is not required for the establishment, enforcement, or modification of a support order or the rendition of a judgment determining parentage of a child.

(b) An affidavit, a document substantially complying with federally mandated forms, or a document incorporated by reference in any of them, which would not be excluded under the hearsay rule if given in person, is admissible in evidence if given under penalty of perjury by a party or witness residing outside this state.

(c) A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it, and is admissible to show whether payments were made.

(d) Copies of bills for testing for parentage of a child, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least ten (10) days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.

(e) Documentary evidence transmitted from outside this state to a tribunal of this state by telephone,

telecopier, or other electronic means that do not provide an original record may not be excluded from evidence on an objection based on the means of transmission.

(f) In a proceeding under parts 20-29 of this chapter, a tribunal of this state shall permit a party or witness residing outside this state to be deposed or to testify under penalty of perjury by telephone, audiovisual means, or other electronic means at a designated tribunal or other location. A tribunal of this state shall cooperate with other tribunals in designating an appropriate location for the deposition or testimony.

(g) If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

(h) A privilege against disclosure of communications between spouses does not apply in a proceeding under parts 20-29 of this chapter.

(i) The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under parts 20-29 of this chapter.

(j) A voluntary acknowledgment of paternity, certified as a true copy, is admissible to establish parentage of the child.

History.
Acts 2010, ch. 901, § 1; 2016, ch. 664, § 2.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2317. Communications between tribunals.

A tribunal of this state may communicate with a tribunal outside this state in a record or by telephone, electronic mail, or other means, to obtain information concerning the laws, the legal effect of a judgment, decree, or order of that tribunal, and the status of a proceeding. A tribunal of this state may furnish similar information by similar means to a tribunal outside this state.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2318. Assistance with discovery.

A tribunal of this state may:

(1) Request a tribunal outside this state to assist in obtaining discovery; and

(2) Upon request, compel a person over which it has jurisdiction to respond to a discovery order issued by a tribunal outside this state.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2319. Receipt and disbursement of payments.

(a) A support enforcement agency or tribunal of this state shall disburse promptly any amounts received pursuant to a support order, as directed by the order. The agency or tribunal shall furnish to a requesting party or tribunal of another state or a foreign country a certified statement by the custodian of the record of the amounts and dates of all payments received.

(b) If neither the obligor, nor the obligee who is an individual, nor the child resides in this state, upon request from the support enforcement agency of this state or another state, the support enforcement agency of this state or a tribunal of this state shall:

(1) Direct that the support payment be made to the support enforcement agency in the state in which the obligee is receiving services; and

(2) Issue and send to the obligor's employer a conforming income-withholding order or an administrative notice of change of payee, reflecting the redirected payments.

(c) The support enforcement agency of this state receiving redirected payments from another state pursuant to a law similar to subsection (b) shall furnish to a requesting party or tribunal of the other state a certified statement by the custodian of the record of the amount and dates of all payments received.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

PART 24

UNIFORM INTERSTATE FAMILY SUPPORT ACT — ESTABLISHMENT OF SUPPORT ORDER OR DETERMINATION OF PARENTAGE

36-5-2401. Establishment of support order.

(a) If a support order entitled to recognition under parts 20-29 of this chapter has not been issued, a responding tribunal of this state with personal jurisdiction over the parties may issue a support order if:

(1) The individual seeking the order resides outside this state; or

(2) The support enforcement agency seeking the order is located outside this state.

(b) The tribunal may issue a temporary child support order if the tribunal determines that such an order is appropriate and the individual ordered to pay is:

(1) A presumed father of the child;

(2) Petitioning to have his paternity adjudicated;

(3) Identified as the father of the child through genetic testing;

(4) An alleged father who has declined to submit to genetic testing;

(5) Shown by clear and convincing evidence to be the father of the child;

(6) An acknowledged father as provided by this title;

(7) The mother of the child; or

(8) An individual who has been ordered to pay child support in a previous proceeding and the order has not been reversed or vacated.

(c) Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to § 36-5-2305.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2402. Proceeding to determine parentage.

A tribunal of this state authorized to determine parentage of a child may serve as a responding tribunal in a proceeding to determine parentage of a child brought under parts 20-29 of this chapter or a law or procedure substantially similar to parts 20-29 of this chapter.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

PART 25

UNIFORM INTERSTATE FAMILY SUPPORT ACT — ENFORCEMENT OF ORDER WITHOUT REGISTRATION

36-5-2501. Employer's receipt of income-withholding order of another state.

An income-withholding order issued in another state may be sent by or on behalf of the obligee, or by the support enforcement agency, to the person considered as the obligor's employer pursuant to part 5 of this chapter without first filing a petition or comparable pleading or registering the order with a tribunal of this state.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2502. Employer's compliance with income-withholding order of another state.

(a) Upon receipt of an income-withholding order, the obligor's employer shall immediately provide a copy of the order to the obligor.

(b) The employer shall treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this state.

(c) Except as otherwise provided in subsection (d) and § 36-5-2503, the employer shall withhold and distribute the funds as directed in the withholding order by complying with terms of the order which specify:

(1) The duration and amount of periodic payments of current child support, stated as a sum certain;

(2) The person designated to receive payments and the address to which the payments are to be forwarded;

(3) Medical support, whether in the form of periodic cash payment, stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment;

(4) The amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sums certain; and

(5) The amount of periodic payments of arrearages and interest on arrearages, stated as sums certain.

(d) An employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:

(1) The employer's fee for processing an income-withholding order;

(2) The maximum amount permitted to be withheld from the obligor's income; and

(3) The times within which the employer must implement the withholding order and forward the child support payment.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2503. Employer's compliance with two or more income-withholding orders.

If an obligor's employer receives two (2) or more income-withholding orders with respect to the earnings of the same obligor, the employer satisfies the terms of the orders if the employer complies with the law of the state of the obligor's principal place of employment to establish the priorities for withholding and allocating income withheld for two (2) or more child support obligees.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2504. Immunity from civil liability.

An employer that complies with an income-withholding order issued in another state in accordance with this part is not subject to civil liability to an individual or agency with regard to the employer's withholding of child support from the obligor's income.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2505. Penalties for noncompliance.

An employer that willfully fails to comply with an income-withholding order issued in another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this state.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2506. Contest by obligor.

(a) An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in this state by registering the order in a tribunal of this state and filing a contest to that order as provided in part 26, or otherwise contesting the order in the same manner as if the order had been issued by a tribunal of this state.

(b) The obligor shall give notice of the contest to:

(1) A support enforcement agency providing services to the obligee;

(2) Each employer that has directly received an income-withholding order relating to the obligor; and

(3) The person designated to receive payments in the income-withholding order or, if no person is designated, to the obligee.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts

2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2507. Administrative enforcement of orders.

(a) A party or support enforcement agency seeking to enforce a support order or an income-withholding order, or both, issued in another state or a foreign support order may send the documents required for registering the order to a support enforcement agency of this state.

(b) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this state to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to parts 20-29 of this chapter.

History.

Acts 2010, ch. 901, § 1.

Compiler's Notes.

Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

PART 26

UNIFORM INTERSTATE FAMILY SUPPORT ACT — REGISTRATION, ENFORCEMENT, AND MODIFICATION OF SUPPORT ORDER

A.

REGISTRATION FOR ENFORCEMENT OF SUPPORT ORDER

36-5-2601. Registration of order for enforcement.

A support order or income-withholding order issued in another state or a foreign support order may be registered in this state for enforcement.

History.

Acts 2010, ch. 901, § 1.

Compiler's Notes.

Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2602. Procedure to register order for enforcement.

(a) Except as otherwise provided in § 36-5-2706, a support order or income-withholding order of another state or a foreign support order may be registered in this state by sending the following records to the appropriate tribunal in this state:

(1) A letter of transmittal to the tribunal requesting registration and enforcement;

(2) Two (2) copies, including one (1) certified copy, of the order to be registered, including any modification of the order;

(3) A sworn statement by the person requesting registration or a certified statement by the custodian of the records showing the amount of any arrearage;

(4) The name of the obligor and, if known:

(A) The obligor's address and social security number;

(B) The name and address of the obligor's employer and any other source of income of the obligor; and

(C) A description and the location of property of the obligor in this state not exempt from execution; and

(5) Except as otherwise provided in § 36-5-2312, the name and address of the obligee and, if applicable, the person to whom support payments are to be remitted.

(b) On receipt of a request for registration, the registering tribunal shall cause the order to be filed as an order of a tribunal of another state or a foreign support order, together with one (1) copy of the documents and information, regardless of their form.

(c) A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of this state may be filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought.

(d) If two (2) or more orders are in effect, the person requesting registration shall:

(1) Furnish to the tribunal a copy of every support order asserted to be in effect in addition to the documents specified in this section;

(2) Specify the order alleged to be the controlling order, if any; and

(3) Specify the amount of consolidated arrears, if any.

(e) A request for a determination of which is the controlling order may be filed separately or with a request for registration and enforcement or for registration and modification. The person requesting registration shall give notice of the request to each party whose rights may be affected by the determination.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."
The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2603. Effect of registration for enforcement.

(a) A support order or income-withholding order issued in another state or a foreign support order is registered when the order is filed in the registering tribunal of this state.

(b) A registered support order issued in another state or a foreign country is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state.

(c) Except as otherwise provided in parts 20-29 of this chapter, a tribunal of this state shall recognize and enforce, but may not modify, a registered support order if the issuing tribunal had jurisdiction.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."
The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2604. Choice of law.

(a) Except as otherwise provided in subsection (d), the law of the issuing state or foreign country governs:

(1) The nature, extent, amount, and duration of current payments under a registered support order;

(2) The computation and payment of arrearages and accrual of interest on the arrearages under the support order; and

(3) The existence and satisfaction of other obligations under the support order.

(b) In a proceeding for arrears under a registered support order, the statute of limitation of this state, or of the issuing state or foreign country, whichever is longer, applies.

(c) A responding tribunal of this state shall apply the procedures and remedies of this state to enforce current support and collect arrears and interest due on a support order of another state or a foreign country registered in this state.

(d) After a tribunal of this state or another state determines which is the controlling order and issues an order consolidating arrears, if any, a tribunal of this state shall prospectively apply the law of the state or foreign country issuing the controlling order, including its law on interest on arrears, on current and future support, and on consolidated arrears.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."
The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

B.

CONTEST OF VALIDITY OR ENFORCEMENT

36-5-2605. Notice of registration of order.

(a) When a support order or income-withholding order issued in another state or a foreign support order is registered, the registering tribunal of this state shall notify the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(b) A notice must inform the nonregistering party:

(1) That a registered support order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(2) That a hearing to contest the validity or enforcement of the registered order must be requested within twenty (20) days after notice unless the registered order is under § 36-5-2707;

(3) That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages; and

(4) Of the amount of any alleged arrearages.

(c) If the registering party asserts that two (2) or more orders are in effect, a notice must also:

(1) Identify the two (2) or more orders and the order alleged by the registering party to be the controlling order and the consolidated arrears, if any;

(2) Notify the nonregistering party of the right to a determination of which is the controlling order;

(3) State that the procedures provided in subsection (b) apply to the determination of which is the controlling order; and

(4) State that failure to contest the validity or enforcement of the order alleged to be the controlling order in a timely manner may result in confirmation that the order is the controlling order.

(d) Upon registration of an income-withholding order for enforcement, the support enforcement agency or the registering tribunal shall notify the obligor's employer pursuant to part 5 of this chapter.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."
The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2606. Procedure to contest validity or enforcement of registered support order.

(a) A nonregistering party seeking to contest the validity or enforcement of a registered support order in this state shall request a hearing within the time required by § 36-5-2605. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to § 36-5-2607.

(b) If the nonregistering party fails to contest the validity or enforcement of the registered support order in a timely manner, the order is confirmed by operation of law.

(c) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered support order, the registering tribunal shall schedule the matter for hearing and give notice to the parties of the date, time, and place of the hearing.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."
The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2607. Contest of registration or enforcement.

(a) A party contesting the validity or enforcement of a registered support order or seeking to vacate the registration has the burden of proving one (1) or more of the following defenses:

(1) The issuing tribunal lacked personal jurisdiction over the contesting party;

(2) The order was obtained by fraud;

(3) The order has been vacated, suspended, or modified by a later order;

(4) The issuing tribunal has stayed the order pending appeal;

(5) There is a defense under the law of this state to the remedy sought;

(6) Full or partial payment has been made;

(7) The statute of limitation under § 36-5-2604 precludes enforcement of some or all of the alleged arrearages; or

(8) The alleged controlling order is not the controlling order.

(b) If a party presents evidence establishing a full or partial defense under subsection (a), a tribunal may stay enforcement of the registered support order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered support order may be enforced by all remedies available under the law of this state.

(c) If the contesting party does not establish a defense under subsection (a) to the validity or enforcement of a registered support order, the registering tribunal shall issue an order confirming the order.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."
The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2608. Confirmed order.

Confirmation of a registered support order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

C.

REGISTRATION AND MODIFICATION OF CHILD SUPPORT ORDER OF ANOTHER STATE

36-5-2609. Procedure to register child support order of another state for modification.

A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in this state in the same manner provided in §§ 36-5-2601 — 36-5-2608 if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."
The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2610. Effect of registration for modification.

A tribunal of this state may enforce a child support order of another state registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this state, but the registered support order may be modified only if the requirements of § 36-5-2611 or § 36-5-2613 have been met.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."
The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2611. Modification of child support order of another state.

(a) If § 36-5-2613 does not apply, upon petition a tribunal of this state may modify a child support order issued in another state which is registered in this state if, after notice and hearing, the tribunal finds that:

(1) The following requirements are met:

(A) Neither the child, nor the obligee who is an individual, nor the obligor resides in the issuing state;

(B) A petitioner who is a nonresident of this state seeks modification; and

(C) The respondent is subject to the personal jurisdiction of the tribunal of this state; or

(2) This state is the state of residence of the child, or a party who is an individual is subject to the personal jurisdiction of the tribunal of this state, and all of the parties who are individuals have filed consents in a record in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction.

(b) Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state and the order may be enforced and satisfied in the same manner.

(c) A tribunal of this state may not modify any aspect of a child support order that may not be modified under the law of the issuing state, including the duration of the obligation of support. If two or more tribunals have issued child support orders for the same obligor and same child, the order that controls and must be so recognized under § 36-5-2207 establishes the aspects of the support order which are nonmodifiable.

(d) In a proceeding to modify a child support order, the law of the state that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor's fulfillment of the duty of support established by that order precludes imposition of a further obligation of support by a tribunal of this state.

(e) On the issuance of an order by a tribunal of this state modifying a child support order issued in another state, the tribunal of this state becomes the tribunal having continuing, exclusive jurisdiction.

(f) Notwithstanding subsections (a)-(e) and § 36-5-2201(b), a tribunal of this state retains jurisdiction to modify an order issued by a tribunal of this state if:

(1) One party resides in another state; and

(2) The other party resides outside the United States.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."
The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2612. Recognition of order modified in another state.

If a child support order issued by a tribunal of this state is modified by a tribunal of another state which assumed jurisdiction pursuant to the Uniform Interstate Family Support Act, a tribunal of this state:

(1) May enforce its order that was modified only as to arrears and interest accruing before the modification;

(2) May provide appropriate relief for violations of its order which occurred before the effective date of the modification; and

(3) Shall recognize the modifying order of the other state, upon registration, for the purpose of enforcement.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2613. Jurisdiction to modify child support order of another state when individual parties reside in this state.

(a) If all of the parties who are individuals reside in this state and the child does not reside in the issuing state, a tribunal of this state has jurisdiction to enforce and to modify the issuing state's child support order in a proceeding to register that order.

(b) A tribunal of this state exercising jurisdiction under this section shall apply the provisions of parts 21 and 22 of this chapter and the procedural and substantive law of this state to the proceeding for enforcement or modification. Parts 23, 24, 25, 27 and 28 of this chapter do not apply.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2614. Notice to issuing tribunal of modification.

Within thirty (30) days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows the earlier order has been registered. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the modified order of the new tribunal having continuing, exclusive jurisdiction.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

D.

REGISTRATION AND MODIFICATION OF FOREIGN CHILD SUPPORT ORDER

36-5-2615. Jurisdiction to modify child support order of foreign country.

(a) Except as otherwise provided in § 36-5-2711, if a foreign country lacks or refuses to exercise jurisdiction to modify its child support order pursuant to its laws, a tribunal of this state may assume jurisdiction to modify the child support order and bind all individuals subject to the personal jurisdiction of the tribunal whether or not the consent to modification of a child support order otherwise required of the individual pursuant to § 36-5-2611 has been given or whether the individual seeking modification is a resident of this state or of the foreign country.

(b) An order issued by a tribunal of this state modifying a foreign child support order pursuant to this section is the controlling order.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services

files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2616. Procedure to register child support order of foreign country for modification.

A party or support enforcement agency seeking to modify, or to modify and enforce, a foreign child support order not under the Convention may register that order in this state under §§ 36-5-2601—36-5-2608 if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or at another time. The petition must specify the grounds for modification.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

PART 27

SUPPORT PROCEEDING UNDER CONVENTION

36-5-2701. Part definitions.

In this part:

(1) "Application" means a request under the Convention by an obligee or obligor, or on behalf of a child, made through a central authority for assistance from another central authority;

(2) "Central authority" means the entity designated by the United States or a foreign country described in § 36-5-2101(5)(D) to perform the functions specified in the Convention;

(3) "Convention support order" means a support order of a tribunal of a foreign country described in § 36-5-2101(5)(D);

(4) "Direct request" means a petition filed by an individual in a tribunal of this state in a proceeding involving an obligee, obligor, or child residing outside the United States;

(5) "Foreign central authority" means the entity designated by a foreign country described in § 36-5-2101(5)(D) to perform the functions specified in the Convention;

(6) "Foreign support agreement":

(A) Means an agreement for support in a record that:

(i) Is enforceable as a support order in the country of origin;

(ii) Has been:

(a) Formally drawn up or registered as an authentic instrument by a foreign tribunal; or

(b) Authenticated by, or concluded, registered, or filed with a foreign tribunal; and

(iii) May be reviewed and modified by a foreign tribunal; and

(B) Includes a maintenance arrangement or authentic instrument under the Convention; and

(7) "United States central authority" means the secretary of the United States department of health and human services.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2702. Applicability.

This part applies only to a support proceeding under the Convention. In such a proceeding, if a provision of this part is inconsistent with parts 21-26, this part controls.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2703. Relationship of state department of human services to United States central authority.

The department of human services of this state is recognized as the agency designated by the United States central authority to perform specific functions under the Convention.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided

that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2704. Initiation by department of human services of support proceeding under Convention.

(a) In a support proceeding under this part, the department of human services of this state shall:

(1) Transmit and receive applications; and

(2) Initiate or facilitate the institution of a proceeding regarding an application in a tribunal of this state.

(b) The following support proceedings are available to an obligee under the Convention:

(1) Recognition or recognition and enforcement of a foreign support order;

(2) Enforcement of a support order issued or recognized in this state;

(3) Establishment of a support order if there is no existing order, including, if necessary, determination of parentage of a child;

(4) Establishment of a support order if recognition of a foreign support order is refused under § 36-5-2708(b)(2), (4), or (9);

(5) Modification of a support order of a tribunal of this state; and

(6) Modification of a support order of a tribunal of another state or a foreign country.

(c) The following support proceedings are available under the Convention to an obligor against which there is an existing support order:

(1) Recognition of an order suspending or limiting enforcement of an existing support order of a tribunal of this state;

(2) Modification of a support order of a tribunal of this state; and

(3) Modification of a support order of a tribunal of another state or a foreign country.

(d) A tribunal of this state may not require security, bond, or deposit, however described, to guarantee the payment of costs and expenses in proceedings under the Convention.

History.

Acts 2010, ch. 901, § 1.

Compiler's Notes.

Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2705. Direct request.

(a) A petitioner may file a direct request seeking establishment or modification of a support order or determination of parentage of a child. In the proceeding, the law of this state applies.

(b) A petitioner may file a direct request seeking recognition and enforcement of a support order or support agreement. In the proceeding, §§ 36-5-2706 — 36-5-2713 apply.

(c) In a direct request for recognition and enforcement of a Convention support order or foreign support agreement:

(1) A security, bond, or deposit is not required to guarantee the payment of costs and expenses; and

(2) An obligee or obligor that in the issuing country has benefited from free legal assistance is entitled to benefit, at least to the same extent, from any free legal assistance provided for by the law of this state under the same circumstances.

(d) A petitioner filing a direct request is not entitled to assistance from the department of human services.

(e) This part does not prevent the application of laws of this state that provide simplified, more expeditious rules regarding a direct request for recognition and enforcement of a foreign support order or foreign support agreement.

History.

Acts 2010, ch. 901, § 1.

Compiler's Notes.

Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2706. Registration of Convention support order.

(a) Except as otherwise provided in this part, a party who is an individual or a support enforcement agency seeking recognition of a Convention support order shall register the order in this state as provided in part 26.

(b) Notwithstanding §§ 36-5-2311 and 36-5-2602(a), a request for registration of a Convention support order must be accompanied by:

(1) A complete text of the support order or an abstract or extract of the support order drawn up by the issuing foreign tribunal, which may be in the form recommended by the Hague Conference on Private International Law;

(2) A record stating that the support order is enforceable in the issuing country;

(3) If the respondent did not appear and was not represented in the proceedings in the issuing country, a record attesting, as appropriate, either that the respondent had proper notice of the proceedings and an opportunity to be heard or that the respondent had proper notice of the support order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal;

(4) A record showing the amount of arrears, if any,

and the date the amount was calculated;

(5) A record showing a requirement for automatic adjustment of the amount of support, if any, and the information necessary to make the appropriate calculations; and

(6) If necessary, a record showing the extent to which the applicant received free legal assistance in the issuing country.

(c) A request for registration of a Convention support order may seek recognition and partial enforcement of the order.

(d) A tribunal of this state may vacate the registration of a Convention support order without the filing of a contest under § 36-5-2707 only if, acting on its own motion, the tribunal finds that recognition and enforcement of the order would be manifestly incompatible with public policy.

(e) The tribunal shall promptly notify the parties of the registration or the order vacating the registration of a Convention support order.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2707. Contest of registered Convention support order.

(a) Except as otherwise provided in this part, §§ 36-5-2605—36-5-2608 apply to a contest of a registered Convention support order.

(b) A party contesting a registered Convention support order shall file a contest not later than thirty (30) days after notice of the registration, but if the contesting party does not reside in the United States, the contest must be filed not later than sixty (60) days after notice of the registration.

(c) If the nonregistering party fails to contest the registered Convention support order by the time specified in subsection (b), the order is enforceable.

(d) A contest of a registered Convention support order may be based only on grounds set forth in § 36-5-2708. The contesting party bears the burden of proof.

(e) In a contest of a registered Convention support order, a tribunal of this state:

(1) Is bound by the findings of fact on which the foreign tribunal based its jurisdiction; and

(2) May not review the merits of the order.

(f) A tribunal of this state deciding a contest of a registered Convention support order shall promptly notify the parties of its decision.

(g) A challenge or appeal, if any, does not stay the enforcement of a Convention support order unless there are exceptional circumstances.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2708. Recognition and enforcement of registered Convention support order.

(a) Except as otherwise provided in subsection (b), a tribunal of this state shall recognize and enforce a registered Convention support order.

(b) The following grounds are the only grounds on which a tribunal of this state may refuse recognition and enforcement of a registered Convention support order:

(1) Recognition and enforcement of the order is manifestly incompatible with public policy, including the failure of the issuing tribunal to observe minimum standards of due process, which include notice and an opportunity to be heard;

(2) The issuing tribunal lacked personal jurisdiction consistent with § 36-5-2201;

(3) The order is not enforceable in the issuing country;

(4) The order was obtained by fraud in connection with a matter of procedure;

(5) A record transmitted in accordance with § 36-5-2706 lacks authenticity or integrity;

(6) A proceeding between the same parties and having the same purpose is pending before a tribunal of this state and that proceeding was the first to be filed;

(7) The order is incompatible with a more recent support order involving the same parties and having the same purpose if the more recent support order is entitled to recognition and enforcement under parts 20-29 of this chapter in this state;

(8) Payment, to the extent alleged arrears have been paid in whole or in part;

(9) In a case in which the respondent neither appeared nor was represented in the proceeding in the issuing foreign country:

(A) If the law of that country provides for prior notice of proceedings, the respondent did not have proper notice of the proceedings and an opportunity to be heard; or

(B) If the law of that country does not provide for prior notice of the proceedings, the respondent did not have proper notice of the order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal; or

(10) The order was made in violation of § 36-5-2711.

(c) If a tribunal of this state does not recognize a Convention support order under subdivision (b)(2),

(b)(4), or (b)(9):

(1) The tribunal may not dismiss the proceeding without allowing a reasonable time for a party to request the establishment of a new Convention support order; and

(2) The governmental entity shall take all appropriate measures to request a child support order for the obligee if the application for recognition and enforcement was received under § 36-5-2704.

History.
Acts 2010, ch. 901, § 1; 2016, ch. 664, § 3.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2709. Partial enforcement.

If a tribunal of this state does not recognize and enforce a Convention support order in its entirety, it shall enforce any severable part of the order. An application or direct request may seek recognition and partial enforcement of a Convention support order.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2710. Foreign support agreement.

(a) Except as otherwise provided in subsections (c) and (d), a tribunal of this state shall recognize and enforce a foreign support agreement registered in this state.

(b) An application or direct request for recognition and enforcement of a foreign support agreement must be accompanied by:

(1) A complete text of the foreign support agreement; and

(2) A record stating that the foreign support agreement is enforceable as an order of support in the issuing country.

(c) A tribunal of this state may vacate the registration of a foreign support agreement only if, acting on its own motion, the tribunal finds that recognition and enforcement would be manifestly incompatible with public policy.

(d) In a contest of a foreign support agreement, a tribunal of this state may refuse recognition and enforcement of the agreement if it finds:

(1) Recognition and enforcement of the agreement is manifestly incompatible with public policy;

(2) The agreement was obtained by fraud or falsification;

(3) The agreement is incompatible with a support order involving the same parties and having the same purpose in this state, another state, or a foreign country if the support order is entitled to recognition and enforcement under parts 20-29 of this chapter in this state; or

(4) The record submitted under subsection (b) lacks authenticity or integrity.

(e) A proceeding for recognition and enforcement of a foreign support agreement must be suspended during the pendency of a challenge to or appeal of the agreement before a tribunal of another state or a foreign country.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2711. Modification of Convention child support order.

(a) A tribunal of this state may not modify a Convention child support order if the obligee remains a resident of the foreign country where the support order was issued unless:

(1) The obligee submits to the jurisdiction of a tribunal of this state, either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity; or

(2) The foreign tribunal lacks or refuses to exercise jurisdiction to modify its support order or issue a new support order.

(b) If a tribunal of this state does not modify a Convention child support order because the order is not recognized in this state, § 36-5-2708(c) applies.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."

The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2712. Personal information — Limitation on use.

Personal information gathered or transmitted under this part may be used only for the purposes for which it was gathered or transmitted.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."
The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2713. Record in original language — English translation.

A record filed with a tribunal of this state under this part must be in the original language and, if not in English, must be accompanied by an English translation.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."
The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

PART 28

UNIFORM INTERSTATE FAMILY SUPPORT ACT — INTERSTATE RENDITION

36-5-2801. Grounds for rendition.

(a) For purposes of this part, "governor" includes an individual performing the functions of governor or the executive authority of a state covered by parts 20-29 of this chapter.

(b) The governor of this state may:

(1) Demand that the governor of another state surrender an individual found in the other state who is charged criminally in this state with having failed to provide for the support of an obligee; or

(2) On the demand by the governor of another state, surrender an individual found in this state who is charged criminally in the other state with having failed to provide for the support of an obligee.

(c) A provision for extradition of individuals not inconsistent with parts 20-29 of this chapter applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled therefrom.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."
The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2802. Conditions of rendition.

(a) Before making a demand that the governor of another state surrender an individual charged criminally in this state with having failed to provide for the support of an obligee, the governor of this state may require a prosecutor of this state to demonstrate that at least sixty (60) days previously the obligee had initiated proceedings for support pursuant to parts 20-29 of this chapter or that the proceeding would be of no avail.

(b) If, under parts 20-29 of this chapter or a law substantially similar to parts 20-29 of this chapter, the governor of another state makes a demand that the governor of this state surrender an individual charged criminally in that state with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the governor may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(c) If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the governor may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the governor may decline to honor the demand if the individual is complying with the support order.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."
The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

PART 29

UNIFORM INTERSTATE FAMILY SUPPORT ACT — MISCELLANEOUS PROVISIONS

36-5-2901. Uniformity of application and construction.

In applying and construing this uniform act, codified in parts 20-29 of this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."
The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2902. Applicability.

Parts 20-29 of this chapter apply to proceedings begun on or after the effective date of this act to establish a support order or determine parentage of a child or to register, recognize, enforce, or modify a prior support order, determination, or agreement, whenever issued or entered.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."
The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

36-5-2903. Severability.

If any provision of parts 20-29 of this chapter or their application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of parts 20-29 of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of parts 20-29 of this chapter are severable.

History.
Acts 2010, ch. 901, § 1.

Compiler's Notes.
Part 20, § 36-5-2001 (Acts 1997, ch. 551, § 2), concerning the short title for title 36, ch. 5, parts 20-29, was repealed and reenacted by Acts 2010, ch. 901, § 1, upon completion of the provisions in § 2 of the act. Acts 2010, ch. 901, § 2, as amended by Acts 2016, ch. 664, § 4, provided that: "This act shall take effect when the department of human services files a notice with the secretary of state who shall publish the notice in the Tennessee Administrative Register on the secretary of state's web site, citing the effective date, which shall occur no later than April 1, 2016, the public welfare requiring it."
The date published by the secretary of state in the Tennessee Administrative Register was March 31, 2016.

PART 30

INTERCOUNTY ENFORCEMENT AND MODIFICATION

36-5-3001. Purposes and construction of part and limitation of scope of part.

(a) The purpose of this part is to provide procedures for the intercounty enforcement and modification of child support and child custody cases and shall be liberally construed to effectuate its purposes.

(b) The provisions for transfer in this part shall not apply to cases in any court regarding petitions for dependency and neglect, delinquency, unruly behavior, terminations of parental rights or adoptions pursuant to this title and title 37.

History.
Acts 1997, ch. 551, § 5.

36-5-3002. Part definitions.

As used in this part, unless the context clearly requires otherwise:

(1) "Child's county" means the county in which the child who is subject to a support or custody order resides;

(2) "Clerk" means the clerk of the transferor or transferee court, or the clerk of any court who has been designated by either of those courts to collect support payments for such court;

(3) "Court" means, except as provided in § 36-5-3001(b), a juvenile, circuit, or chancery court or other court of this state with jurisdiction to enter support or custody orders;

(4) "Department" means the department of human services or its contractor or designee;

(5) "Filing" means the initiation of judicial action by the completion of a motion or petition seeking to order the alteration of a legal status through the act of sending or bringing the motion or petition to the office of the clerk of the court;

(6) "Issuing county" means the county in which a court issues a support or custody order or that renders a judgment determining parentage or to which a support or custody order has been previously transferred;

(7) "Issuing court" means the court that issues a support or custody order or renders a judgment determining parentage or to which a support or custody order has been previously transferred;

(8) "Obligor's county" means the county in which the obligor or non-custodial parent resides;

(9) "Request" means a statement of a requesting party seeking transfer of a custody or child support

case to the court of another county;

(10) "Requesting party" means custodial parent, non-custodial parent or, in Title IV-D child support cases, the department or its contractor;

(11) "Service of process" means the act of bringing or sending notice of the filing of a motion or petition to the attention of the opposing party by delivery of a copy of the motion or pleading to the opposing party;

(12) "Transfer" means the process by which the transferor court, upon request, moves the case to a court where the child resides thereby conferring jurisdiction on the transferee court;

(13) "Transferee court" means the court that assumes jurisdiction upon a transfer of a case; and

(14) "Transferor court" means the court from which a case is transferred to another court.

History.
Acts 1997, ch. 551, § 5; 2000, ch. 922, § 30.

Compiler's Notes.
Title IV-D of the Social Security Act, referred to in this section, is compiled in 42 U.S.C. § 651 et seq.

36-5-3003. Transfer of support or custody cases.

(a)(1) Except as provided in § 36-5-3001(b), a case that includes child support or custody provisions may be transferred between counties in this state without the need for any additional filing by the party seeking transfer by the filing of a request by the requesting party if:

(A) The requesting party has served the non-requesting party with the filing seeking the transfer; and

(B) The nonrequesting part has not filed an objection within fifteen (15) days from the date the notice of the filing was mailed.

(2) If the non-requesting party files an objection pursuant to subdivision (a)(1)(B), the objection shall be in the form of a motion for review of the request in the transferor court. If an objection has been filed, the transferor court shall determine whether there is good cause for the transfer. If the court finds good cause for the transfer, it shall transfer the case.

(b) Upon receipt of a request, the case must be transferred by the clerk of the issuing court, without order of the court, to a court of competent jurisdiction in the county where the child or children reside if each of the following applies:

(1) Neither the child or children, custodial parent/obligee, nor the noncustodial parent/obligor currently reside in the issuing county;

(2) The child or children who are subject to the support or custody order currently reside in the county to which the case is to be transferred and have resided there for at least six (6) months; and

(3) No objection has been filed pursuant to subdivision (a)(2).

(c) A case may also be transferred for modification of support or custody to any court of competent jurisdiction in the county in which the non-custodial parent/obligor resides in this state with no six-month residency period if both the child or children subject to the support or custody order and the custodial parent/obligee reside outside this state and the custodial parent/obligee does not object after the provision of notice pursuant to § 36-5-3004. If objection is made, or if the requesting party does not seek immediate transfer without the six (6) month residency period, the requesting party may obtain transfer for modification of the order by demonstrating that the custodial parent/obligee and the child or children have resided outside this state for at least six (6) months. A transfer pursuant to this subsection (c) shall be initiated by written request of the requesting party or department pursuant to the provisions of this part.

(d) If the case has been transferred pursuant to this part, the fact that one of the parties or the child returns to the transferor county does not, by that fact alone, confer jurisdiction upon the previous transferor court. A transfer to the original issuing court requires compliance with the procedures of this part.

(e)(1) "Custodial parent" for purposes of this part means the person with whom the child resides a majority of the time in a situation where there is an order of joint custody or where there exist parenting plans pursuant to chapter 6, part 4 of this title that address issues of custody.

(2) "Custodial parent" for purposes of this part also includes, in addition to a biological or legal parent having legal custody of a child, an individual to whom legal custody of the child or children has been given by a court of competent jurisdiction.

History.
Acts 1997, ch. 551, § 5; 1998, ch. 1098, § 50; 2000, ch. 922, § 31; 2016, ch. 668, § 1.

Compiler's Notes.
Acts 2016, ch. 668, § 3, provided that the act, which amended this section, shall apply to requests for transfer filed on or after July 1, 2016.

36-5-3004. Procedure to transfer case.

A case may be transferred by the clerk of the issuing court following a request by a requesting party sending the request for the transfer to the clerk of the transferor court. The request shall include the following information:

(1)(A) A sworn statement by the party or the department seeking transfer that, to the best of the requesting party's or the department's knowledge, neither the child or children, the custodial parent/obligee nor the non-custodial parent/obligor resides in the transferor county, and that the child or children currently reside in the transferee county and the child or children have resided in the transferee county for at least six (6) months; or

(B) That the non-custodial parent/obligor resides in the county to which the case is to be transferred and that the custodial parent/obligee and the child or children reside outside this state:

(i) And the requesting party seeks an immediate transfer of the case without the six-month residency period if the custodial parent/obligee does not object; or

(ii) That the child or children and the custodial parent/obligee have resided outside this state for at least six (6) months;

(2) The issuing court's docket number of the case to be transferred;

(3) The name of the other party and, if known, the other party's address and social security number;

(4) The name of the court and address of the clerk of the court to whom the case is to be transferred;

(5) The name and address, if known, of the employer of the obligor if the order has been or may be subject to an income assignment;

(6) That the request for transfer can be contested by the nonrequesting party within fifteen (15) days of the date the notice was mailed by filing a motion for review of the request in the transferor court;

(7) Certification by the requesting party or the department that a copy of the request with the information in subdivisions (1)-(6) has been mailed to the nonrequesting party; and

(8) A copy of a notice, with the address of the nonrequesting party, to be sent by the clerk of the transferor court or the department in Title IV-D child support cases to the nonrequesting party in the event that the case is transferred, which states that the case has been transferred and that all child support payments of the obligor are to be sent, as appropriate, to the clerk of the transferee court or to the department of human services, as the case may be.

History.

Acts 1997, ch. 551, § 5; 1998, ch. 1098, § 51; 2000, ch. 922, §§ 32, 33; 2016, ch. 668, § 2.

Compiler's Notes.

Acts 2016, ch. 668, § 3, provided that the act, which amended this section, shall apply to requests for transfer filed on or after July 1, 2016.

Title IV-D of the Social Security Act, referred to in this section, is compiled in 42 U.S.C. § 651 et seq.

36-5-3005. Duties of the transferor court.

(a) If no request for contest of the request for transfer is filed within fifteen (15) days pursuant to § 36-5-3004(6), or if the contest of the transfer is denied by the transferor court, the clerk of the transferor court shall, within fifteen (15) days thereafter:

(1) Remove from the court file the original pleadings, orders and any other filed documents, or make certified copies of such documents;

(2) Prepare a certified, complete child support payment record, unless the case is being enforced by the department of human services pursuant to Title IV-D of the Social Security Act, compiled in 42 U.S.C. § 651 et seq., in which situation the department's child support computer system, if operative for the transferor and transferee court at the time of the transfer, shall be used as the child support payment record and the clerk shall not be required to prepare the certified child support payment record;

(3)(A) Mail the originals, or certified copies of the originals, of all documents and, if necessary, the certified child support payment record, to the clerk of the court of the transferee court. The computer record, if operative, shall be used as the official record of the child support obligation;

(B) Mail the notice supplied pursuant to § 36-5-3004(8) to the non-requesting party. The department shall mail the notice in Title IV-D child support cases.

(b) The clerk of the transferor court shall not be required to maintain the copies of the original pleadings or other original documents in the record, but may do so if certified copies are sent.

(c) Upon receipt of the transferred documents and assignment of a docket number by the transferee court, the jurisdiction of the transferor court is terminated.

History.

Acts 1997, ch. 551, § 5; 1998, ch. 1098, § 52; 2000, ch. 922, § 34.

36-5-3006. Duties and powers of transferee clerk and transferee court.

(a) A transferee court, upon receipt of the transferred documents from the transferor court shall assign a docket number to the case and establish a case file, and shall create a child support payment record, unless the case is being enforced under Title IV-D of the Social Security Act, compiled in 42 U.S.C. § 651 et seq., in which case the department's child support computer system, if operative for the transferor and transferee court at the time of the transfer, shall be used as the child support payment record and the clerk shall not be required to create a separate child support payment record.

(b) A transferred order of child support or custody is enforceable and modifiable in the same manner and is subject to the same procedures as if the order had been originally issued by the transferee court.

(c)(1) Upon receipt of the certified payment record from the transferor court, the transferee court shall admit the certified copy as evidence of payments made or not made. Testimony of the record keeper from the transferor court shall not be required. If the case is being enforced under Title IV-D of the Social Security Act the department's child support computer system, if operative for the transferor and transferee court at the time of the transfer, shall be used as the child support payment record, and no further evidence of the record keeper shall be required.

(2) The certified copy of the custody and parental access or visitation orders shall be admitted as evidence of the current custodial and parental access or visitation status of the child without testimony of the record keeper of the transferor court.

History.

Acts 1997, ch. 551, § 5.

36-5-3007. Contest of transfer.

(a) A party may contest the transfer of the case by filing a motion in the transferor court for that purpose within fifteen (15) days of the mailing date of the notice from the requesting party. Unless it is shown by the

nonrequesting party that notice of the request for transfer was not received, failure to contest the transfer request within the fifteen-day period waives an objection to the transfer request.

(b) The contest of the transfer shall be limited to whether:

(1) One (1) party or the child or children continue to reside in the transferor county;

(2) The child or children have resided in the transferee county for at least six (6) months; or

(3) In the case of a request for transfer alleging the child or children are residing outside this state:

(A) The noncustodial parent/obligor resides in the county to which the case is to be transferred; or

(B)(i) If the child or children have not resided outside this state for at least six (6) months, the custodial parent/obligee objects to the transfer; or

(ii) The child or children and their custodial parent/obligee have resided outside this state for at least six (6) months.

History.
Acts 1997, ch. 551, § 5; 1998, ch. 1098, §§ 53, 54; 2000, ch. 922, § 35.

36-5-3008. Acceptance of transfer.

The transferee court shall accept the transfer and shall not have the discretion to refuse the transfer.

History.
Acts 2000, ch. 922, § 36.

Compiler's Notes.
Former § 36-5-3008, concerning costs and fees, was transferred to § 36-5-3009 in 2000.

36-5-3009. Costs and fees.

(a) When a transfer request is made by the department of human services or its contractors, the fee and all taxes shall be waived for the department or its contractors.

(b) Costs of court and for making copies and for providing certifications, fees and taxes shall be adjudged by the transferee court for both the clerks of the transferor court and the transferee court against the non-custodial parent/obligor and shall be apportioned between each clerk as to the costs, fees and taxes due for each clerk.

(c) The clerk shall file any request for transfer and carry out the requirements of this part, even without receiving the appropriate fee for such request. If not paid, such sum shall be added to the cost bill to be assessed by the transferee court.

History.
Acts 1997, ch. 551, § 5; 1998, ch. 1098, § 55; T.C.A. § 36-5-3008; Acts 2000, ch. 922, § 36; 2005, ch. 429, §§ 7, 8.

Compiler's Notes.
Former § 36-5-3008 was transferred to this location in 2000.

PART 31

ENFORCEMENT WITHOUT TRANSFER OF JURISDICTION

36-5-3101. Purpose and construction of part.

The purpose of this part is to provide a procedure for the enforcement of support obligations arising under the law against an obligor without a transfer of jurisdiction to modify the order. This part shall be liberally construed to effectuate its purposes.

History.
Acts 1997, ch. 551, § 6.

36-5-3102. Part definitions.

As used in this part, unless the context otherwise clearly requires:

(1) "Clerk" means the clerk of the original or registering court, or the clerk of any court who has been designated by either of those courts to collect support payments for such court;

(2) "Court" means a juvenile, circuit, or chancery court or other court of this state with jurisdiction to enter support or custody orders;

(3) "Department" means the department of human services or its contractor;

(4) "Issuing court" means the court that entered the order sought to be enforced in the registering court;

(5) "Nonrequesting party" means the party against whom a registered order is sought to be enforced;

(6) "Obligee" means an individual or agency to whom a support obligation is owed by an obligor;

(7) "Obligor" means an individual against whom a support order has been entered; and

(8) "Registering court" means the court in which a support order is registered for enforcement only.

History.
Acts 1997, ch. 551, § 6.

36-5-3103. Registration of order for enforcement.

(a) A support order issued by a court of this state may be registered in the county in this state where the child or children reside, for enforcement purposes only. If the case is a Title IV-D support case, at the option of the department, it may be enforced in the county of the residence of the obligor. The order may be modified in this state in a court other than the issuing court only if transferred pursuant to part 30 of this chapter. A support order issued by a court in one county may be registered in another county by the person or agency seeking only enforcement of the original order against a support obligor by sending the following documents and information to the appropriate court in the registering county:

(1) One (1) certified copy of all orders to be registered, including any modification of an order;

(2) A letter or transmittal document that includes the following information:

(A) The name of the obligor, and if known:

(i) The obligor's address and social security number;

(ii) The name and address of the obligor's employer and any other source of income of the obligor; and

(B) The name and address of the obligee and, if applicable, the agency or person to whom support payments are to be paid.

(3) A sworn statement by the party seeking registration or a certified statement of the clerk of the court or custodian of the records showing the amount of any arrearage being sought to be enforced unless the case is being enforced by the department of human services pursuant to Title IV-D of the Social Security Act, compiled in 42 U.S.C. § 651 et seq., in which situation the department's child support computer system, if operative for the transferor and transferee court at the time of the transfer, shall be used as the child support payment record and the clerk or custodian shall not be required to prepare the certified statement of the child support payment record.

(4) A copy of a notice, with the address of the nonrequesting party, to be sent by the clerk of the registering court or the department in Title IV-D child support cases to the nonrequesting party pursuant to § 36-5-3105, that states:

(A) That a registered order is enforceable as of the date of registration in the same manner as an order issued by a court of the registering county;

(B) That a hearing to contest the validity or enforcement of the registered order must be requested to the registering court within fifteen (15) days after the date of mailing of the notice;

(C) That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order by operation of law, will result in enforcement of the order and the alleged arrearages, and will preclude further contest of that order with respect to any matter that could have been asserted;

(D) The amount of any alleged arrearages; and

(E) That, if the registered order is confirmed by operation of law or by court order, all payments made under the order shall be made to the clerk of the registering court or to the department of human services, or another clerk, as appropriate.

(b) On receipt of a request for registration, the registering court shall cause the order to be filed, together with one (1) copy of the documents and information, regardless of their form.

(c) A petition seeking a remedy that must be affirmatively sought may be filed at the same time as the request for registration or may be filed later.

(d) All payments received by the issuing court after the order has been registered shall be sent by the clerk of the issuing court to the clerk of the registering court, or the department of human services if the clerk of the registering court is not participating in the child support enforcement system, without credit being given to the obligor by the clerk of the issuing court.

History.
Acts 1997, ch. 551, § 6; 1998, ch. 1098, § 56.

36-5-3104. Effect of registration of order.

(a) A support order issued in another county is registered for enforcement pursuant to this part when the order is filed in the registering court and the requirements of § 36-5-3103(a) are met.

(b) A registered order originally issued in another county is enforceable in the same manner and is subject to the same procedures as an order issued by a court of the registering county.

(c) Except as otherwise provided in this part, a court of the registering county shall recognize and enforce, but may not modify, a registered order.

History.
Acts 1997, ch. 551, § 6.

36-5-3105. Notice of registration of order.

When a support order issued in another county is registered, the registering court or the department in Title IV-D child support cases shall send the notice required by § 36-5-3103(a)(4) to the nonregistering party within two (2) days of the registration.

History.
Acts 1997, ch. 551, § 6.

Compiler's Notes.
Title IV-D of the Social Security Act, referred to in this section, is compiled in 42 U.S.C. § 651 et seq.

36-5-3106. Procedure to contest validity or enforcement of registered order.

(a) A nonregistering party seeking to contest the validity or enforcement of a registered order pursuant to this part shall request a hearing within fifteen (15) days after the date of mailing of the notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages.

(b) If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.

(c) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering court shall schedule the matter

for hearing and give notice to the parties of the date, time and place of the hearing.

History.
Acts 1997, ch. 551, § 6.

36-5-3107. Contest of registration or enforcement.

(a) A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

(1) The registered order was obtained by fraud;

(2) The registered order has been vacated, suspended, or modified by a later order;

(3) The issuing court has stayed the registered order pending appeal; or

(4) The statement of arrears is incorrect.

(b) If a party presents evidence establishing a full or partial defense under subsection (a), the court where the order is registered may stay enforcement of the registered order until the issues have been resolved by the court that issued the order. Any uncontested portion of the registered order may be enforced by all remedies available pursuant to law.

(c) If a contesting party does not establish a defense pursuant to subsection (a) regarding the validity or enforcement of the order, the registering court shall issue an order confirming the order. An order confirming registration of the order is not required if no contest to the registration is made.

History.
Acts 1997, ch. 551, § 6.

36-5-3108. Effect of confirmed order.

Unless it is shown by the nonrequesting party that notice of the request for transfer was not received, confirmation of an order by operation of law or following a hearing precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

History.
Acts 1997, ch. 551, § 6.

36-5-3109. Rights of the department of human services.

Whenever the department of human services is acting upon any application for Title IV-D services, whether by assignment of rights of support pursuant to § 71-3-124 or otherwise, it shall have the same right to invoke this part as the obligee who has made application for such services.

History.
Acts 1997, ch. 551, § 6; 1998, ch. 1098, § 57.

Compiler's Notes.
Title IV-D of the Social Security Act, referred to in this section, is compiled in 42 U.S.C. § 651 et seq.

36-5-3110. Disbursement of collections.

In cases not subject to the centralized collection and disbursement unit pursuant to § 36-5-116, when the clerk of the court of the registering county collects the support that has been enforced by the court of the registering county pursuant to this part, the clerk shall send the support amount, less the statutory fee of the clerk, directly to the obligee, but the clerk shall not send the support amount to the issuing court from which the original order was issued and that was registered for enforcement pursuant to this part.

History.
Acts 1997, ch. 551, § 6; 2000, ch. 922, § 37.

36-5-3111. Costs.

(a) When an order is registered by the department of human services or its contractors, the fee shall be waived for the department or its contractors.

(b) The respondent shall be liable for the costs of the issuing court and the registering court together with the required filing fee, upon the court finding the respondent liable for the failure to pay the support as required by the registered order. The costs shall be apportioned between the clerks of the issuing court and the registering court according to their fees, costs and the taxes due.

(c) The clerk shall file any request for registration and carry out the requirements of this part, even without receiving the appropriate fee for such request. If not paid, such sum shall be added to the cost bill to be assessed by the registering court.

History.
Acts 1997, ch. 551, § 6; 2005, ch. 429, §§ 9, 10.

CHAPTER 6

CHILD CUSTODY AND VISITATION

Part 1. General Custody Provisions

SECTION.
36-6-101. Decree for custody and support of child — Enforcement — Juvenile court jurisdiction — Presumption of parental fitness — Educational seminars.
36-6-102. Custody, visitation and inheritance rights denied to parent convicted of rape where child conceived from crime — Exception — Child support obligation.
36-6-103. Child's medical records.
36-6-104. Copy of child's school records — Furnishing to noncustodial or nonresident parents.
36-6-105. Schools or day care centers — Change in physical custody of child.
36-6-106. Child custody.
36-6-107. Mediation in cases involving domestic abuse.
36-6-108. Parental relocation.
36-6-109. Notice of hearing.
36-6-110. Rights of non-custodial parents.
36-6-111. Stay of interlocutory or final judgment.
36-6-112. Parent alleging abuse.
36-6-113. [Repealed.]
36-6-114. False allegations of sexual abuse in furtherance of litigation.
36-6-115. Requirements to be met by parent for return of child removed from custody due to parent's drug abuse.

SECTION.
36-6-116. Temporary injunctions upon service of complaint other than complaint for divorce or legal separation.

Part 2. Uniform Child Custody Jurisdiction and Enforcement Act

36-6-201. Short title.
36-6-202. Construction and purpose.
36-6-203. Evidentiary use of official comments.
36-6-204. Official comments to be included in this part.
36-6-205. Part definitions.
36-6-206. Applicability to adoption or emergency medical care proceedings.
36-6-207. Native American children.
36-6-208. Foreign countries — Human rights.
36-6-209. Binding nature of state court decisions.
36-6-210. Priority of jurisdictional question in proceedings.
36-6-211. Requirements for notice.
36-6-212. Personal jurisdiction over a party — Immunity from jurisdiction for unrelated matters.
36-6-213. Communication among courts and parties — Records of communications.
36-6-214. Testimony of witnesses residing out of state — Acceptance of electronically transmitted documents as evidence.
36-6-215. Request for hearing in, or evidence from another state — Holding hearings or obtaining evidence for other states — Expenses — Preservation of records.
36-6-216. Jurisdiction to make custody determination.
36-6-217. Continuing jurisdiction of state courts — Jurisdiction to modify own decrees.
36-6-218. Jurisdiction to modify foreign decrees.
36-6-219. Temporary emergency jurisdiction — Order enforcement — Communication with foreign courts.
36-6-220. Notice and opportunity to be heard — Joinder and intervention.
36-6-221. Proceedings already commenced in another state.
36-6-222. Declining jurisdiction — Inconvenient forum.
36-6-223. Unjustifiable conduct of a party.
36-6-224. Information in first pleading or affidavit — Stay — Continuing duty to inform court — Sealing records.
36-6-225. Order to appear before court — Orders to ensure safety — Payment of expenses.
36-6-226. Enforcement of international orders under the Hague Convention.
36-6-227. Recognition and enforcement of foreign decrees.
36-6-228. Temporary order of enforcement.
36-6-229. Registration of foreign decrees — Duties of registering court — Contesting validity of registered decree.
36-6-230. Enforcement and modification of registered decrees.
36-6-231. Proceeding for enforcement of registered decree when modification procedures are pending in another state.
36-6-232. Verification and contents of petition for enforcement — Order for respondent to appear.
36-6-233. Service of petition and order.
36-6-234. Order for immediate physical custody — Fees, costs and expenses — Party refusal to testify — Husband and wife communications as evidence.
36-6-235. Warrant for physical custody — Conditional placement.
36-6-236. Award of prevailing party fees, costs and expenses.
36-6-237. Full faith and credit for foreign orders.
36-6-238. Appeals.
36-6-239. Powers of prosecutors or public officials.
36-6-240. Law enforcement officer powers.
36-6-241. Respondent liability for costs and expenses incurred by prosecutors, public officials and law enforcement officers.
36-6-242. Uniformity of construction among states.
36-6-243. Actions commenced before June 14, 1999.

Part 3. Visitation

36-6-301. Visitation.
36-6-302. Grandparents' visitation rights.
36-6-303. Visitation rights of stepparents.
36-6-304. Exposure of child to nudist colony prohibited.
36-6-305. Mediation in cases involving domestic abuse.
36-6-306. Visitation rights of grandparents.
36-6-307. Determination of best interests of child for grandparent visitations.
SECTION.
36-6-308. [Repealed.]

Part 4. Parenting Plans

36-6-401. Findings.
36-6-402. Part definitions.
36-6-403. Requirement of and procedure for determining temporary parenting plan.
36-6-404. Requirement of and procedure for determining permanent parenting plan.
36-6-405. Modifying permanent parenting plans.
36-6-406. Restrictions in temporary or permanent parenting plans.
36-6-407. Allocation of parenting responsibilities.
36-6-408. Parent educational seminar.
36-6-409. Procedures and restrictions applicable to dispute resolution.
36-6-410. Designation of custody for the purpose of other state and federal statutes.
36-6-411. Juvenile court jurisdiction.
36-6-412. Gender.
36-6-413. Funding.
36-6-414. Evaluation.

Part 5. Parent Visitation

36-6-501. Part definitions.
36-6-502. Compliance with visitation orders; enforcement.
36-6-503. Petition to court for intentional violation by parent — Serving notice.
36-6-504. Determination of contesting the court's intention.
36-6-505. Requesting hearing for noncompliance.
36-6-506. Determining noncompliance of visitation.
36-6-507. Denial, suspension or revocation of a license.
36-6-508. Compliance with order; release from the court.
36-6-509. Authorities cooperating with the court.
36-6-510. Filing of motions.
36-6-511. Qualifications for licensure or registration; eligibility.

Part 6. Uniform Child Abduction Prevention Act

36-6-601. Short title.
36-6-602. Part definitions.
36-6-603. Cooperation and communication among courts.
36-6-604. Actions for abduction prevention measures.
36-6-605. Jurisdiction.
36-6-606. Contents of petition.
36-6-607. Factors to determine risk of abduction.
36-6-608. Provisions and measures to prevent abduction.
36-6-609. Warrant to take physical custody of child.
36-6-610. Duration of abduction prevention order.
36-6-611. Uniformity of application and construction.
36-6-612. Relation to Electronic Signatures in Global and National Commerce Act.

PART 1

GENERAL CUSTODY PROVISIONS

36-6-101. Decree for custody and support of child — Enforcement — Juvenile court jurisdiction — Presumption of parental fitness — Educational seminars.

(a)(1) In a suit for annulment, divorce or separate maintenance, where the custody of a minor child or minor children is a question, the court may, notwithstanding a decree for annulment, divorce or separate maintenance is denied, award the care, custody and control of such child or children to either of the parties to the suit or to both parties in the instance of joint custody or shared parenting, or to some suitable person, as the welfare and interest of the child or children may demand, and the court may decree that suitable

support be made by the natural parents or those who stand in the place of the natural parents by adoption. Such decree shall remain within the control of the court and be subject to such changes or modification as the exigencies of the case may require.

(2)(A)(i) Except as provided in this subdivision (a)(2)(A), neither a preference nor a presumption for or against joint legal custody, joint physical custody or sole custody is established, but the court shall have the widest discretion to order a custody arrangement that is in the best interest of the child. Unless the court finds by clear and convincing evidence to the contrary, there is a presumption that joint custody is in the best interest of a minor child where the parents have agreed to joint custody or so agree in open court at a hearing for the purpose of determining the custody of the minor child. For the purpose of assisting the court in making a determination whether an award of joint custody is appropriate, the court may direct that an investigation be conducted. The burden of proof necessary to modify an order of joint custody at a subsequent proceeding shall be by a preponderance of the evidence.

(ii) Unless the court finds by clear and convincing evidence to the contrary, there is a presumption that custody shall not be awarded to a parent who has been convicted of a criminal offense under title 39, chapter 13, part 5, against a child less than eighteen (18) years of age.

(iii) Subdivision (a)(2)(A)(ii) shall apply only to persons who are convicted on or after July 1, 2006. Subdivision (a)(2)(A)(ii) and this subdivision (a)(2)(A)(iii) shall not be construed to prevent a parent from being granted visitation with the child; provided, however, that any visitation shall be supervised.

(iv) If it is determined by the court, based upon a prior order or reliable evidence, that a parent has willfully abandoned a child for a period of eighteen (18) months, as the term is used in § 36-6-406(a)(1), then, unless the court finds by clear and convincing evidence to the contrary, the abandoning parent's residential time, as provided in the permanent or temporary parenting plan or other court order, shall be limited. This subdivision (a)(2)(A)(iv) shall not be construed to prevent such a parent from being granted limited visitation with the child. Nothing in this subdivision (a)(2)(A)(iv) shall be construed to apply to children in the legal custody of the department of children's services.

(v) If prior to awarding joint legal custody, joint physical custody, or sole custody, the court finds one (1) parent is under indictment for the offense of aggravated child abuse under § 39-15-402, child sexual abuse under § 37-1-602, or severe child sexual abuse under § 36-1-113(g)(11), the court shall not award the parent under indictment any type of custody during the pendency of the indictment unless the presumption created by § 36-6-112(c)(2) is overcome; provided, however, that the court may grant the parent supervised visitation with the child. If the court finds that a parent to whom some form of custody has been ordered is indicted for one (1) of the offenses set out in this subdivision (a)(1)(A)(v), that finding shall constitute a material change in circumstance for the purpose of modifying any existing child custody orders.

(B) If the issue before the court is a modification of the court's prior decree pertaining to custody, the petitioner must prove by a preponderance of the evidence a material change in circumstance. A material change of circumstance does not require a showing of a substantial risk of harm to the child. A material change of circumstance may include, but is not limited to, failures to adhere to the parenting plan or an order of custody and visitation or circumstances that make the parenting plan no longer in the best interest of the child.

(i) In each contested case, the court shall make such a finding as to the reason and the facts that constitute the basis for the custody determination.

(ii) Nothing contained within this subdivision (a)(2) shall interfere with the requirement that parties to an action for legal separation, annulment, absolute divorce or separate maintenance incorporate a parenting plan into the final decree or decree modifying an existing custody order.

(iii) Nothing in this subsection (a) shall imply a mandatory modification to the child support order.

(C) If the issue before the court is a modification of the court's prior decree pertaining to a residential parenting schedule, then the petitioner must prove by a preponderance of the evidence a material change of circumstance affecting the child's best interest. A material change of circumstance does not require a showing of a substantial risk of harm to the child. A material change of circumstance for purposes of modification of a residential parenting schedule may include, but is not limited to, significant changes in the needs of the child over time, which may include changes relating to age; significant changes in the parent's living or working condition that significantly affect parenting; failure to adhere to the parenting plan; or other circumstances making a change in the residential parenting time in the best interest of the child.

(3) Except when the court finds it not to be in the best interests of the affected child, each order pertaining to the custody or possession of a child arising from an action for absolute divorce, divorce from bed and board or annulment shall grant to each parent the rights listed in subdivisions (a)(3)(A)(i)-(vi) during periods when the child is not in that parent's possession or shall incorporate such rights by reference to a prior order. Other orders pertaining to custody or possession of a child may contain the rights listed in subdivisions (a)(3)(A)(i)-(vi).

(A) The referenced rights are as follows:

(i) The right to unimpeded telephone conversations with the child at least twice a week at reasonable times and for reasonable durations. The parent exercising parenting time shall furnish the other parent with a telephone number where the child may be reached at the days and time specified in a parenting plan or other court order or, where days and times are not specified, at reasonable times;

(ii) The right to send mail to the child which the other parent shall not destroy, deface, open or censor. The parent exercising parenting time shall deliver all letters, packages and other material sent to the child by the other parent as soon as received and shall not interfere with their delivery in any way, unless otherwise provided by law or court order;

(iii) The right to receive notice and relevant information as soon as practicable but within twenty-four (24) hours of any hospitalization, major illness or injury, or death of the child. The parent exercising parenting time when such event occurs shall notify the other parent of the event and shall provide all relevant healthcare providers with the contact information for the other parent;

(iv) The right to receive directly from the child's school any educational records customarily made available to parents. Upon request from one (1) parent, the parent enrolling the child in school shall provide to the other parent as soon as available each academic year the name, address, telephone number and other contact information for the school. In the case of children who are being homeschooled, the parent providing the homeschooling shall advise the other parent of this fact along with the contact information of any sponsoring entity or other entity involved in the child's education, including access to any individual student records or grades available online. The school or homeschooling entity shall be responsible, upon request, to provide to each parent records customarily made available to parents. The school may require a written request which includes a current mailing address and may further require payment of the reasonable costs of duplicating such records. These records include copies of the child's report cards, attendance records, names of teachers, class schedules, and standardized test scores;

(v) Unless otherwise provided by law, the right to receive copies of the child's medical, health or other treatment records directly from the treating physician or healthcare provider. Upon request from one (1) parent, the parent who has arranged for such treatment or health care shall provide to the other parent the name, address, telephone number and other contact information of the physician or healthcare provider. The keeper of the records may require a written request including a current mailing address and may further require payment of the reasonable costs of duplicating such records. No person who receives the mailing address of a requesting parent as a result of this requirement shall provide such address to the other parent or a third person;

(vi) The right to be free of unwarranted derogatory remarks made about such parent or such parent's family by the other parent to or in the presence of the child;

(vii) The right to be given at least forty-eight (48) hours' notice, whenever possible, of all extracurricular school, athletic, church activities and other activities as to which parental participation or observation would be appropriate, and the opportunity to participate in or observe them. The parent who has enrolled the child in each such activity shall advise the other parent of the activity and provide contact information for the person responsible for its scheduling so that the other parent may make arrangements to participate or observe whenever possible, unless otherwise provided by law or court order;

(viii) The right to receive from the other parent, in the event the other parent leaves the state with the minor child or children for more than forty-eight (48) hours, an itinerary which shall include the planned dates of departure and return, the intended destinations and mode of travel and telephone numbers. The parent traveling with the child or children shall provide this information to the other parent so as to give that parent reasonable notice; and

(ix) The right to access and participation in the child's education on the same bases that are provided to all parents including the right of access to the child during lunch and other school activities; provided, that the participation or access is legal and reasonable; however, access must not interfere with the school's day-to-day operations or with the child's educational schedule.

(B) Any of the foregoing rights may be denied in whole or in part to one or both parents by the court upon a showing that such denial is in the best interests of the child. Nothing herein shall be construed to prohibit the court from ordering additional rights where the facts and circumstances so require.

(C) All parenting plans submitted to the court by one (1) party only shall contain the notarized signature of that party. All parenting plans submitted to the court by both parties jointly shall contain the notarized signature of both parties.

(4) Notwithstanding any common law presumption to the contrary, a finding under former § 36-6-106(a)(8), that child abuse, as defined in § 39-15-401 or § 39-15-402, or child sexual abuse, as defined in § 37-1-602, has occurred within the family shall give rise to a rebuttable presumption that it is detrimental to the child and not in the best interests of the child to award sole custody, joint legal or joint physical custody to the perpetrator of such abuse.

(b) Notwithstanding any provision of this section to the contrary, the party, or parties, or other person awarded custody and control of such child or children shall be entitled to enforce the provisions of the court's decree concerning the suitable support of such child or children in the appropriate court of any county in this state in which such child or children reside; provided, that such court shall have divorce jurisdiction, if service of process is effectuated upon the obligor within this state. Jurisdiction to modify or alter such decree shall remain in the exclusive control of the court that issued such decree.

(c) Nothing in this chapter shall be construed to alter, modify or restrict the exclusive jurisdiction of the juvenile court pursuant to § 37-1-103.

(d) It is the legislative intent that the gender of the party seeking custody shall not give rise to a presumption of parental fitness or cause a presumption or constitute a factor in favor or against the award of custody to such party.

(e)(1) In an action for dissolution of marriage involving minor children, or in a post-judgment proceeding involving minor children, if the court finds, on a case by case basis, that it would be in the best interest of the minor children, the court may on its own motion, or on the motion of either party, order the parties, excluding the minor children, to attend an educational seminar concerning the effects of the dissolution of marriage on the children. The program may be divided into sessions, which in the aggregate shall not exceed four (4) hours in duration. The program shall be educational in nature and not designed for individual therapy.

(2) The fees or costs of the educational sessions under this section, which shall be reasonable, shall be borne by the parties and may be assessed by the court as it deems equitable. Fees may be waived upon motion for indigent persons.

(3) No court shall deny the granting of a divorce from the bonds of matrimony for failure of a party or both parties to attend the educational session. Refusal to attend the educational session may be punished by contempt and may be considered by the court as evidence of the parent's lack of good faith in proceedings under part 4 of this chapter.

History.

Code 1932, § 8454; Acts 1971, ch. 438, § 1; 1973, ch. 387, § 1; 1979, ch. 187, § 3; T.C.A. (orig. ed.), § 36-828; Acts 1985, ch. 382, §§ 1, 2; 1987, ch. 145, § 9; 1987, ch. 266, § 1; 1994, ch. 818, § 1; 1996, ch. 1046, § 1; 1997, ch. 208, § 1; 1997, ch. 351, § 1; 1998, ch. 1059, § 7; 1998, ch. 1095, § 1; 1999, ch. 250, § 1; 2000, ch. 751, § 1; 2000, ch. 885, § 1; 2002, ch. 616, § 1; 2002, ch. 859, § 1; 2003, ch. 245, § 1; 2004, ch. 759, §§ 1, 2; 2006, ch. 652, § 1; 2006, ch. 979, § 1; 2014, ch. 617, §§ 2, 3; 2015, ch. 238, § 2.

Compiler's Notes.

For the Preamble to the act concerning domestic relations, please refer to Acts 2014, ch. 617.

Section 36-6-106(a), referred to in this section, was rewritten by Acts 2014 ch. 617, § 4, effective July 1, 2014. There are no current provisions comparable to subdivision (a)(8) in this section as rewritten.

Acts 2015, ch. 238, § 3 provided that the act, which added (a)(2)(A)(v), shall apply to persons who are indicted for an applicable offense committed on or after July 1, 2015.

36-6-102. Custody, visitation and inheritance rights denied to parent convicted of rape where child conceived from crime — Exception — Child support obligation.

(a) Except as provided in subsection (b), any person who has been convicted of aggravated rape pursuant to § 39-13-502, rape pursuant to § 39-13-503, or rape of a child pursuant to § 39-13-522, from which crime a child was conceived shall not have custody or visitation rights, or the rights of inheritance with respect to that child.

(b) The other parent of the child may waive the protection afforded under subsection (a) regarding visitation and request that the court grant reasonable visitation rights with the child if paternity has been acknowledged.

(c) Unless waived by the other parent and, if contributing toward support of the child, the department of human services, a court shall establish a child support obligation against the father of the child pursuant to chapter 5, part 1 of this title.

History.

Acts 2015, ch. 167, § 1.

Compiler's Notes.

Former § 36-6-102 (Acts 1983, ch. 297, § 1; T.C.A., § 36-828; Acts 1988, ch. 670, § 1; 1994, ch. 969, §§ 1, 2), concerning custody preference of child, was repealed by Acts 1995, ch. 428, § 1, effective June 12, 1995. For new law, see § 36-6-106.

Act 2015, ch. 167, § 2 provided that the act, which enacted this section, shall apply to custody determinations made on or after July 1, 2015.

36-6-103. Child's medical records.

(a)(1) A copy of a child's medical records shall be furnished by the treating physician or treating hospital upon a written request by any of the following:

(A) The noncustodial parent;

(B) In the case of parents having joint custody of a child, the parent with whom the child is not residing; or

(C) In the case of a child in the custody of a legal guardian, then either parent.

(2) Such request must contain the current address of the requesting party.

(3) Upon receiving such a request, the treating physician or hospital shall send a copy of the medical records to the requesting party unless furnished with a court order closing the records.

(4) All expenses for records shall be paid by the requesting party.

(b) Any judge having jurisdiction over the custody of such child may close the medical records of the child to the requesting parent upon a showing that the best

interests of the child will be harmed if the records are released.

History.
Acts 1987, ch. 237, § 1; 1989, ch. 381, § 1.

36-6-104. Copy of child's school records — Furnishing to noncustodial or nonresident parents.

(a) Any parent who does not have custody of a child, or in the case of parents having joint custody of a child, the parent not residing with the child, or in the case of a child in the custody of a legal guardian, both parents, may request, in writing, that a copy of the child's report card, notice of school attendance, names of teachers, class schedules, standardized test scores and any other records customarily available to parents be furnished directly to such noncustodial or nonresident parent, and such request shall be accompanied by the parent's or parents' current mailing address, and the local education agency (LEA) shall send a copy of the report card, notice of school attendance, names of teachers, class schedules, standardized test scores and any other records customarily available to parents to such address.

(b) The LEA shall provide proof of a child's graduation from high school to the department of human services, the department's contractor, or either of the child's parents within twenty (20) business days of the department's, the department's contractor, or the parent's or parents' written request for such proof. The LEA shall not include any information that would violate any provisions protecting the child's privacy, or § 36-5-101(c)(2)(B)(iv).

(c) Any judge having jurisdiction over the custody of such a child may, upon a showing of good cause, deny any information concerning the residence of the child to the noncustodial or nonresident parent.

History.
Acts 1986, ch. 579, § 1; 1987, ch. 372, §§ 1, 2; 1997, ch. 351, § 2; 2004, ch. 906, § 4.

36-6-105. Schools or day care centers — Change in physical custody of child.

No school official shall permit a change in the physical custody of a child at such official's school or day care center unless:

(1) The person seeking custody of the child presents the school official with a certified copy of a valid court order from a Tennessee court placing custody of such child in such person; and

(2) The person seeking custody gives the school official reasonable advance notice of such person's intent to take custody of such child at such official's school or day care center.

History.
Acts 1992, ch. 963, § 1.

Compiler's Notes.
Acts 1992, ch. 963, § 2 provided that this section applies to each order changing child custody on or after July 1, 1992.

36-6-106. Child custody.

(a) In a suit for annulment, divorce, separate maintenance, or in any other proceeding requiring the court to make a custody determination regarding a minor child, the determination shall be made on the basis of the best interest of the child. In taking into account the child's best interest, the court shall order a custody arrangement that permits both parents to enjoy the maximum participation possible in the life of the child consistent with the factors set out in this subsection (a), the location of the residences of the parents, the child's need for stability and all other relevant factors. The court shall consider all relevant factors, including the following, where applicable:

(1) The strength, nature, and stability of the child's relationship with each parent, including whether one (1) parent has performed the majority of parenting responsibilities relating to the daily needs of the child;

(2) Each parent's or caregiver's past and potential for future performance of parenting responsibilities, including the willingness and ability of each of the parents and caregivers to facilitate and encourage a close and continuing parent-child relationship between the child and both of the child's parents, consistent with the best interest of the child. In determining the willingness of each of the parents and caregivers to facilitate and encourage a close and continuing parent-child relationship between the child and both of the child's parents, the court shall consider the likelihood of each parent and caregiver to honor and facilitate court ordered parenting arrangements and rights, and the court shall further consider any history of either parent or any caregiver denying parenting time to either parent in violation of a court order;

(3) Refusal to attend a court ordered parent education seminar may be considered by the court as a lack of good faith effort in these proceedings;

(4) The disposition of each parent to provide the child with food, clothing, medical care, education and other necessary care;

(5) The degree to which a parent has been the primary caregiver, defined as the parent who has taken the greater responsibility for performing parental responsibilities;

(6) The love, affection, and emotional ties existing between each parent and the child;

(7) The emotional needs and developmental level of the child;

(8) The moral, physical, mental and emotional fitness of each parent as it relates to their ability to parent the child. The court may order an examination of a party under Rule 35 of the Tennessee Rules of Civil Procedure and, if necessary for the conduct of the proceedings, order the disclosure of confidential mental health information of a party under § 33-3-105(3). The court order required by § 33-3-105(3) must contain a qualified protective order that limits the dissemination of confidential protected mental health information to the purpose of the litigation

pending before the court and provides for the return or destruction of the confidential protected mental health information at the conclusion of the proceedings;

(9) The child's interaction and interrelationships with siblings, other relatives and step-relatives, and mentors, as well as the child's involvement with the child's physical surroundings, school, or other significant activities;

(10) The importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment;

(11) Evidence of physical or emotional abuse to the child, to the other parent or to any other person. The court shall, where appropriate, refer any issues of abuse to juvenile court for further proceedings;

(12) The character and behavior of any other person who resides in or frequents the home of a parent and such person's interactions with the child;

(13) The reasonable preference of the child if twelve (12) years of age or older. The court may hear the preference of a younger child upon request. The preference of older children should normally be given greater weight than those of younger children;

(14) Each parent's employment schedule, and the court may make accommodations consistent with those schedules; and

(15) Any other factors deemed relevant by the court.

(b) Notwithstanding any law to the contrary, the court has jurisdiction to make an initial custody determination regarding a minor child or may modify a prior order of child custody upon finding that the custodial parent has been convicted of or found civilly liable for the intentional and wrongful death of the child's other parent or legal guardian.

(c) As used in this section, "caregiver" has the meaning ascribed to that term in § 37-5-501.

(d) Nothing in subsections (a) and (c) shall be construed to affect or diminish the constitutional rights of parents that may arise during and are inherent in custody proceedings.

(e) The disability of a parent seeking custody shall not create a presumption for or against awarding custody to such a party but may be a factor to be considered by the court.

(f) If the petitioner knows whether a child has ever been adjudicated by a court as a dependent and neglected or abused child or whether any party to the action has ever been adjudicated by a court as the perpetrator of dependency and neglect or abuse of a minor child, any petition regarding child custody shall include an affirmative statement setting out all applicable adjudications. If an adjudication has occurred as a result of a child protective services investigation, the court may order the department of children's services to disclose information regarding the investigation to protect the child from abuse or neglect consistent with § 37-1-612(h). The court shall consider any such information as a factor in determining the child's best interest.

History.

Acts 1995, ch. 428, § 2; 1998, ch. 1003, § 1; 1998, ch. 1095, §§ 2, 3; 2000, ch. 683, § 2; 2007, ch. 245, §§ 1-3; 2011, ch. 433, § 1; 2012, ch. 897, § 1; 2013, ch. 220, § 1; 2013, ch. 385, § 1; 2014, ch. 617, § 4; 2016, ch. 1074, § 1.

Compiler's Notes.

Acts 2000, ch. 683, § 4 provided that subsection (b) shall apply to all proceedings and petitions pending on May 8, 2000, and all arising on or after May 8, 2000.

Acts 2012, ch. 897, § 2 provided that the act, which amended subdivision (a)(10), shall apply to all custody determinations on or after July 1, 2012.

For the Preamble to the act concerning custody determinations involving disabled parents, please refer to Acts 2013, ch. 385.

For the Preamble to the act concerning domestic relations, please refer to Acts 2014, ch. 617.

Acts 2016, ch. 1074, § 2 provided that the act, which amended this section, shall apply to custody determinations made on or after July 1, 2016.

36-6-107. Mediation in cases involving domestic abuse.

(a) In any proceeding concerning the custody of a child, if an order of protection issued in or recognized by this state is in effect or if there is a court finding of domestic abuse or any criminal conviction involving domestic abuse within the marriage that is the subject of the proceeding for divorce or separate support and maintenance, the court may order mediation or refer either party to mediation only if:

(1) Mediation is agreed to by the victim of the alleged domestic or family violence;

(2) Mediation is provided by a certified mediator who is trained in domestic and family violence in a specialized manner that protects the safety of the victim; and

(3) The victim is permitted to have in attendance at mediation a supporting person of the victim's choice, including, but not limited to, an attorney or advocate. No victim may provide monetary compensation to a non-attorney advocate for attendance at mediation.

(b) Where the court makes findings of child abuse or child sexual abuse under former § 36-6-106(a)(8), the court may only award visitation under circumstances that guarantee the safety of the child. In order to guarantee the safety of the child, the court may order:

(1) That all visits be supervised by a responsible adult or agency, the costs to be primarily borne by the perpetrating parent;

(2) That the perpetrating parent attend and complete a program of counseling or other intervention as a precondition to visitation;

(3) That overnight visitation be prohibited until such time that the perpetrating parent has completed court ordered counseling or intervention, or otherwise demonstrated a change in circumstances that guarantees the safety of the child;

(4) That the address of the child and the non-perpetrating parent be kept confidential; and

(5) Any other conditions the court deems necessary and proper to guarantee the safety of the child.

History.
Acts 1997, ch. 350, § 2; 1998, ch. 1095, § 4.

Compiler's Notes.
Section 36-6-106(a), referred to in this section, was rewritten by Acts 2014 ch. 617, § 4, effective July 1, 2014. There are no current provisions comparable to subdivision (a)(8) in this section as rewritten.

36-6-108. Parental relocation.

(a) After custody or co-parenting has been established by the entry of a permanent parenting plan or final order, if a parent who is spending intervals of time with a child desires to relocate outside the state or more than fifty (50) miles from the other parent within the state, the relocating parent shall send a notice to the other parent at the other parent's last known address by registered or certified mail. Unless excused by the court for exigent circumstances, the notice shall be mailed not later than sixty (60) days prior to the move. The notice shall contain the following:

(1) Statement of intent to move;

(2) Location of proposed new residence;

(3) Reasons for proposed relocation; and

(4) Statement that the other parent may file a petition in opposition to the move within thirty (30) days of receipt of the notice.

(b) Unless the parents can agree on a new visitation schedule, the relocating parent shall file a petition seeking to alter visitation. The court shall consider all relevant factors, including those factors enumerated within subsection (d). The court shall also consider the availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent. The court shall assess the costs of transporting the child for visitation and determine whether a deviation from the child support guidelines should be considered in light of all factors including, but not limited to, additional costs incurred for transporting the child for visitation.

(c) If the parents are actually spending substantially equal intervals of time with the child and the relocating parent seeks to move with the child, the other parent may, within thirty (30) days of receipt of notice, file a petition in opposition to removal of the child. No presumption in favor of or against the request to relocate with the child shall arise. The court shall determine whether or not to permit relocation of the child based upon the best interests of the child. The court shall consider all relevant factors including those factors found in § 36-6-106(a)(1)–(15).

(d)(1) If the parents are not actually spending substantially equal intervals of time with the child and the parent spending the greater amount of time with the child proposes to relocate with the child, the other parent may, within thirty (30) days of receipt of the notice, file a petition in opposition to removal of the child. The other parent may not attempt to relocate with the child unless expressly authorized to do so by the court pursuant to a change of custody or primary custodial responsibility. The parent spending the greater amount of time with the child shall be permitted to relocate with the child unless the court finds:

(A) The relocation does not have a reasonable purpose;

(B) The relocation would pose a threat of specific and serious harm to the child that outweighs the threat of harm to the child of a change of custody; or

(C) The parent's motive for relocating with the child is vindictive in that it is intended to defeat or deter visitation rights of the non-custodial parent or the parent spending less time with the child.

(2) Specific and serious harm to the child includes, but is not limited to, the following:

(A) If a parent wishes to take a child with a serious medical problem to an area where no adequate treatment is readily available;

(B) If a parent wishes to take a child with specific educational requirements to an area with no acceptable education facilities;

(C) If a parent wishes to relocate and take up residence with a person with a history of child or domestic abuse or who is currently abusing alcohol or other drugs;

(D) If the child relies on the parent not relocating who provides emotional support, nurturing and development such that removal would result in severe emotional detriment to the child;

(E) If the custodial parent is emotionally disturbed or dependent such that the custodial parent is not capable of adequately parenting the child in the absence of support systems currently in place in this state, and such support system is not available at the proposed relocation site; or

(F) If the proposed relocation is to a foreign country whose public policy does not normally enforce the visitation rights of non-custodial parents, that does not have an adequately functioning legal system or that otherwise presents a substantial risk of specific and serious harm to the child.

(e) If the court finds one (1) or more of the grounds designated in subsection (d), the court shall determine whether or not to permit relocation of the child based on the best interest of the child. If the court finds it is not in the best interests of the child to relocate as defined herein, but the parent with whom the child resides the majority of the time elects to relocate, the court shall consider all relevant factors including those factors found in § 36-6-106(a)(1)–(15).

(f) The court shall consider the availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent. The court shall assess the costs of transporting the child for visitation, and determine whether a deviation from the child support guidelines should be considered in light of all factors including, but not limited to, additional costs incurred for transporting the child for visitation.

(g) Nothing in this section shall prohibit either parent from petitioning the court at any time to address issues, such as, but not limited to, visitation, other than a change of custody related to the move. In the event no petition in opposition to a proposed relocation is filed within thirty (30) days of receipt of the notice, the parent proposing to relocate with the child shall be permitted to do so.

(h) It is the legislative intent that the gender of the parent who seeks to relocate for the reason of career, educational, professional, or job opportunity, or otherwise, shall not be a factor in favor or against the relocation of such parent with the child.

(i) Either parent in a parental relocation matter may recover reasonable attorney fees and other litigation expenses from the other parent in the discretion of the court.

(j) This section shall also apply to a parent who is subject to an injunction pursuant to § 36-6-116 or § 36-4-106(d)(5).

History.
Acts 1998, ch. 910, § 1; 2007, ch. 187, § 7; 2013, ch. 352, § 1; 2014, ch. 617, §§ 5, 6; 2016, ch. 734, § 2; 2016, ch. 814, § 1.

Compiler's Notes.
Acts 2013, ch. 352, § 2 provided that the act, which amended this section, shall only apply to relocations occurring on or after July 1, 2013.

For the Preamble to the act concerning domestic relations, please refer to Acts 2014, ch. 617.

36-6-109. Notice of hearing.

IF a parent or other suitable person is awarded sole or joint custody of a child by a court pursuant to this chapter; AND

IF such parent or person is subsequently arrested, confined or otherwise detained by law enforcement officials or a court of competent jurisdiction; AND

IF, as a result of the arrest, confinement or detainment of such parent or person, such child temporarily comes to the care and custody of the department of children's services or any public or private agency, institution or home providing shelter care as defined in § 37-1-102; THEN

Prior to the hearing required by § 37-1-114, such department, agency, institution or home must undertake reasonable efforts to provide adequate notice of the time, place and purpose of such hearing to any other parent or person awarded joint custody or visitation rights by the court at the time the custody of the child was initially established.

History.
Acts 1998, ch. 1006, § 1.

36-6-110. Rights of non-custodial parents.

Except when the juvenile court or other appropriate court finds it not in the best interests of the affected child, upon petition by a noncustodial, biological parent whose parental rights have not been terminated, the court shall grant the rights set forth in § 36-6-101(a)(3)(A).

History.
Acts 1998, ch. 1087, § 1; 2011, ch. 119, § 4.

36-6-111. Stay of interlocutory or final judgment.

Notwithstanding any law to the contrary, in all actions that award, change, or affect the custody of a minor child, an interlocutory, or final judgment by any court in this state shall not be stayed after entry, unless otherwise ordered by that court and upon such terms as to bond or otherwise as it deems proper to secure the other party.

History.
Acts 2004, ch. 647, § 1.

36-6-112. Parent alleging abuse.

(a) This section shall be known and may be cited as the "Protective Parent Reform Act."

(b) If a parent makes a good faith allegation based on a reasonable belief supported by facts that the child is the victim of child abuse, child neglect, or the effects of domestic violence, and if that parent acts lawfully and in good faith in response to that reasonable belief to protect the child or seek treatment for the child, then that parent shall not be deprived of custody, visitation, or contact with the child, or restricted in custody, visitation, or contact, based solely on that belief or the reasonable actions taken based on that belief.

(c)(1) If an allegation that a child is abused is supported by a preponderance of the evidence, then the court shall consider such evidence of abuse in determining the visitation arrangement that is in the best interest of the child, and the court shall not place a child in the custody of a parent who presents a substantial risk of harm to that child.

(2) A parent is presumed to present a substantial risk of harm to the child if the parent is under indictment for the offense of aggravated child abuse under § 39-15-402, child sexual abuse under § 37-1-602, or severe child sexual abuse under § 36-1-113(g)(11). The parent shall remain a risk of harm during the pendency of the indictment; provided, however, that the court may grant the parent supervised visitation with the child.

History.
Acts 2004, ch. 781, § 1; 2006, ch. 694, § 1; 2015, ch. 238, § 1.

Compiler's Notes
Acts 2015, ch. 238, § 3 provided that the act, which added (c)(2), shall apply to persons who are indicted for an applicable offense committed on or after July 1, 2015.

36-6-113. [Repealed.]

History.
Acts 2008, ch. 793, § 1; 2011, ch. 86, §§ 1, 2; repealed by Acts 2014, ch. 798, § 2, effective July 1, 2014.

Compiler's Notes.
Former section § 36-6-113 concerned temporary modification of decree for child custody or visitation for children of mobilized parent.

36-6-114. False allegations of sexual abuse in furtherance of litigation.

Whenever a trial court finds that any person knowingly made a false allegation of sexual abuse in furtherance of litigation, in addition to any other penalties provided for by law or rule, the court may hold the accuser in contempt of court and may order the accuser to pay all litigation expenses, including, but not limited to, reasonable attorney's fees, discretionary costs and

other costs incurred by the wrongly accused party in defending against the false allegation.

History.
Acts 2010, ch. 894, § 3.

Compiler's Notes.
Former § 36-6-102 (Acts 1983, ch. 297, § 1; T.C.A., § 36-828; Acts 1988, ch. 670, § 1; 1994, ch. 969, §§ 1, 2), concerning custody preference of child, was repealed by Acts 1995, ch. 428, § 1. For new law, see § 36-6-106.

36-6-115. Requirements to be met by parent for return of child removed from custody due to parent's drug abuse.

When, in a private custody case not involving the department of children's services or a child-placing agency, a court has removed a child from the custody of the child's parent due primarily or solely to drug abuse by the parent, the court shall not return the child to the parent's custody until the parent has demonstrated a sustained commitment to responsible parenting by:

(1) Not being the subject of criminal charges or a criminal investigation for at least ninety (90) days;

(2) Resolving any former and pending investigations by child protective services to the satisfaction of the court; and

(3) Passing two (2) consecutive monthly drug screens to be paid for by the parent.

History.
Acts 2015, ch. 236, § 1.

36-6-116. Temporary injunctions upon service of complaint other than complaint for divorce or legal separation.

(a) When a petition related to child custody is filed, other than a complaint for divorce or legal separation, and upon personal service of the complaint and summons on the respondent or upon waiver and acceptance of service by the respondent, the following temporary injunctions shall be in effect against both parties:

(1) An injunction restraining and enjoining both parties from voluntarily canceling, modifying, terminating, assigning, or allowing to lapse for nonpayment of premiums, any insurance policy, including, but not limited to, life and health, where such insurance policy provides coverage to a child who is the subject of the custody action, or that names either of the parties or the child as beneficiaries without the consent of the other party or an order of the court. For the purposes of this section, "modifying" includes any change in beneficiary status;

(2) An injunction restraining both parties from harassing, threatening, assaulting, or abusing the other and from making disparaging remarks about the other to or in the presence of any children of the parties or to either party's employer;

(3) An injunction restraining and enjoining both parties from hiding, destroying, or spoiling, in whole or in part, any evidence that may be relevant to the custody proceeding, whether electronically stored on computer hard drives or other memory storage devices; and

(4) An injunction restraining both parties from relocating any child of the parties outside this state, or more than fifty (50) miles from the other parent, without the permission of the other party or a court order pursuant to § 36-6-108, except in the case of a removal based upon a well-founded fear of physical abuse against either the fleeing parent or the child. In such case, upon request of the nonrelocating parent, the court shall conduct an expedited hearing, by telephone conference if appropriate, to determine the reasonableness of the relocation and to make such other orders as appropriate.

(b) To the extent that a current valid court order or parenting plan provides protections equal to or greater than those contained in the injunction, that order shall apply instead. The injunctions shall remain in effect until:

(1) A final order in the custody proceeding is entered;

(2) The petition is dismissed;

(3) An agreed order is entered; or

(4) The court modifies or dissolves the injunctions, written notice of which shall be served with the complaint.

(c) The injunctions shall be attached to the summons and the complaint and shall be served with the complaint. The injunctions shall become an order of the court upon being served; provided, however, that nothing in this section shall preclude either party from applying to the court for further temporary orders, an expanded temporary injunction, or modification or revocation of the temporary injunction.

(d) The temporary injunctions provided in this section shall only apply to the parties named in the petition and shall not apply to any third party; provided, however, that nothing in this subsection (d) shall preclude any party from applying to the court for an order of injunctive or extraordinary relief against any other party named in any petition as provided by law.

History.
Acts 2016, ch. 734, § 1.

PART 2

UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

36-6-201. Short title.

This part may be cited as the "Uniform Child Custody Jurisdiction and Enforcement Act."

History.
Acts 1999, ch. 389, § 2.

Compiler's Notes.
The comments appearing under the sections of this part were provided by the Tennessee code commission and were derived from the comments set forth under similar provisions of the Uniform Child Custody Jurisdiction and Enforcement Act (U.L.A.) § 101 et seq. References in the comments have been revised to correspond to §§ 36-6-201 — 36-6-243, which comprise this part.

Former part 2, §§ 36-6-201 — 36-6-225 (Acts 1979, ch. 383, §§ 1-25; 1981, ch. 483, § 1; T.C.A., §§ 36-1301 — 36-1325), the Uniform Child

Custody Jurisdiction Act, was repealed and replaced by the Uniform Child Custody Jurisdiction and Enforcement Act by Acts 1999, ch. 389, § 1, effective June 14, 1999. For current provisions, see this part.

36-6-202. Construction and purpose.

This part shall be liberally construed and applied to promote its underlying purposes and policies. This part should be construed according to its purposes, which are to:

(1) Avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;

(2) Promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child;

(3) Discourage the use of the interstate system for continuing controversies over child custody;

(4) Deter abductions of children;

(5) Avoid relitigation of custody decisions of other states in this state; and

(6) Facilitate the enforcement of custody decrees of other states.

History.
Acts 1999, ch. 389, § 3.

Compiler's Notes.
Former part 2, §§ 36-6-201 — 36-6-225 (Acts 1979, ch. 383, §§ 1-25; 1981, ch. 483, § 1; T.C.A., §§ 36-1301 — 36-1325), the Uniform Child Custody Jurisdiction Act, was repealed and replaced by the Uniform Child Custody Jurisdiction and Enforcement Act by Acts 1999, ch. 389, § 1, effective June 14, 1999. For current provisions, see this part.

36-6-203. Evidentiary use of official comments.

In any dispute as to the proper construction of one (1) or more sections of this part, the official comments pertaining to the corresponding sections of the Uniform Child Custody Jurisdiction and Enforcement Act, Official Text, as adopted by the National Conference of Commissioners on Uniform State Laws as in effect on June 14, 1999, shall constitute evidence of the purposes and policies underlying such sections, unless:

(1) The sections of this part that are applicable to the dispute differ materially from the sections of the Official Text that would be applicable thereto; or

(2) The Official Comments are inconsistent with the plain meaning of the applicable sections of this part.

History.
Acts 1999, ch. 389, § 4.

Compiler's Notes.
Former part 2, §§ 36-6-201 — 36-6-225 (Acts 1979, ch. 383, §§ 1-25; 1981, ch. 483, § 1; T.C.A., §§ 36-1301 — 36-1325), the Uniform Child Custody Jurisdiction Act, was repealed and replaced by the Uniform Child Custody Jurisdiction and Enforcement Act by Acts 1999, ch. 389, § 1, effective June 14, 1999. For current provisions, see this part.

36-6-204. Official comments to be included in this part.

The Tennessee code commission is hereby authorized and directed to include as Official Comments those comment provisions pertaining to the corresponding sections of the Uniform Child Custody Jurisdiction and Enforcement Act, which shall be transmitted to the commission with this act.

History.
Acts 1999, ch. 389, § 5.

Compiler's Notes.
Former part 2, §§ 36-6-201 — 36-6-225 (Acts 1979, ch. 383, §§ 1-25; 1981, ch. 483, § 1; T.C.A., §§ 36-1301 — 36-1325), the Uniform Child Custody Jurisdiction Act, was repealed and replaced by the Uniform Child Custody Jurisdiction and Enforcement Act by Acts 1999, ch. 389, § 1, effective June 14, 1999. For current provisions, see this part.

36-6-205. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Abandoned" means left without provision for reasonable and necessary care or supervision;

(2) "Child" means an individual who has not attained eighteen (18) years of age;

(3) "Child custody determination" means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. "Child custody determination" includes a permanent, temporary, initial, and modification order. "Child custody determination" does not include an order relating to child support or other monetary obligation of an individual;

(4) "Child custody proceeding" means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. "Child custody proceeding" includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. "Child custody proceeding" does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under part 3 of this chapter;

(5) "Commencement" means the filing of the first pleading in a proceeding;

(6) "Court" means an entity authorized under the law of a state to establish, enforce, or modify a child custody determination;

(7) "Home state" means the state in which a child lived with a parent or a person acting as a parent for at least six (6) consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six (6) months of age, "home state" means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period;

(8) "Initial determination" means the first child custody determination concerning a particular child;

(9) "Issuing court" means the court that makes a child custody determination for which enforcement is sought under this part;

(10) "Issuing state" means the state in which a child custody determination is made;

(11) "Modification" means a child custody determination that changes, replaces, supersedes, or is oth-

erwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination;

(12) "Person" means an individual, corporation, business, trust estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity;

(13) "Person acting as a parent" means a person, other than a parent, who:

(A) Has physical custody of the child or has had physical custody for a period of six (6) consecutive months, including any temporary absence, within one (1) year immediately before the commencement of a child custody proceeding; and

(B) Has been awarded legal custody by a court or claims a right to legal custody under the law of this state;

(14) "Petitioner" means a person who seeks enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination;

(15) "Physical custody" means the physical care and supervision of a child;

(16) "Respondent" means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination;

(17) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States;

(18) "Tribe" means an Indian tribe or band, or Alaskan native village, which is recognized by federal law or formally acknowledged by a state; and

(19) "Warrant" means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

History.
Acts 1999, ch. 389, § 6.

Compiler's Notes.
The Hague Convention on the Civil Aspects of Child Abduction (CTIA No. 8303.000), referred to in this section, was completed October 25, 1990, entered into force December 1, 1983, and was signed by the United States July 1, 1998.

Former part 2, §§ 36-6-201 — 36-6-225 (Acts 1979, ch. 383, §§ 1-25; 1981, ch. 483, § 1; T.C.A., §§ 36-1301 — 36-1325), the Uniform Child Custody Jurisdiction Act, was repealed and replaced by the Uniform Child Custody Jurisdiction and Enforcement Act by Acts 1999, ch. 389, § 1, effective June 14, 1999. For current provisions, see this part.

36-6-206. Applicability to adoption or emergency medical care proceedings.

This part does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

History.
Acts 1999, ch. 389, § 7.

Compiler's Notes.
Former part 2, §§ 36-6-201 — 36-6-225 (Acts 1979, ch. 383, §§ 1-25; 1981, ch. 483, § 1; T.C.A., §§ 36-1301 — 36-1325), the Uniform Child Custody Jurisdiction Act, was repealed and replaced by the Uniform Child Custody Jurisdiction and Enforcement Act by Acts 1999, ch. 389, § 1, effective June 14, 1999. For current provisions, see this part.

36-6-207. Native American children.

(a) A child-custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., is not subject to this part to the extent that it is governed by the Indian Child Welfare Act.

(b) A court of this state shall treat a tribe as if it were a state of the United States for the purpose of applying parts 1 and 2 of this chapter.

(c) A child-custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this part must be recognized and enforced under part 3 of this chapter.

History.
Acts 1999, ch. 389, § 8.

Compiler's Notes.
Former part 2, §§ 36-6-201 — 36-6-225 (Acts 1979, ch. 383, §§ 1-25; 1981, ch. 483, § 1; T.C.A., §§ 36-1301 — 36-1325), the Uniform Child Custody Jurisdiction Act, was repealed and replaced by the Uniform Child Custody Jurisdiction and Enforcement Act by Acts 1999, ch. 389, § 1, effective June 14, 1999. For current provisions, see this part.

36-6-208. Foreign countries — Human rights.

(a) A court of this state shall treat a foreign country as if it were a state of the United States for the purpose of applying this part.

(b) Except as otherwise provided in subsection (c), a child-custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this part must be recognized and enforced under this part.

(c) A court of this state need not apply this part if the child custody law of a foreign country violates fundamental principles of human rights.

History.
Acts 1999, ch. 389, § 9.

Compiler's Notes.
Former part 2, §§ 36-6-201 — 36-6-225 (Acts 1979, ch. 383, §§ 1-25; 1981, ch. 483, § 1; T.C.A., §§ 36-1301 — 36-1325), the Uniform Child Custody Jurisdiction Act, was repealed and replaced by the Uniform Child Custody Jurisdiction and Enforcement Act by Acts 1999, ch. 389, § 1, effective June 14, 1999. For current provisions, see this part.

36-6-209. Binding nature of state court decisions.

(a) A child-custody determination made by a court of this state that had jurisdiction under this part binds all persons who have been served in accordance with the laws of this state or notified in accordance with this part or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard.

(b) As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

History.
Acts 1999, ch. 389, § 10.

Compiler's Notes.
Former part 2, §§ 36-6-201 — 36-6-225 (Acts 1979, ch. 383, §§ 1-25; 1981, ch. 483, § 1; T.C.A., §§ 36-1301 — 36-1325), the Uniform Child Custody Jurisdiction Act, was repealed and replaced by the Uniform Child Custody Jurisdiction and Enforcement Act by Acts 1999, ch. 389, § 1, effective June 14, 1999. For current provisions, see this part.

36-6-210. Priority of jurisdictional question in proceedings.

If a question of existence or exercise of jurisdiction under this part is raised in a child-custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously.

History.
Acts 1999, ch. 389, § 11.

Compiler's Notes.
Former part 2, §§ 36-6-201 — 36-6-225 (Acts 1979, ch. 383, §§ 1-25; 1981, ch. 483, § 1; T.C.A., §§ 36-1301 — 36-1325), the Uniform Child Custody Jurisdiction Act, was repealed and replaced by the Uniform Child Custody Jurisdiction and Enforcement Act by Acts 1999, ch. 389, § 1, effective June 14, 1999. For current provisions, see this part.

36-6-211. Requirements for notice.

(a) Notice required for the exercise of jurisdiction when a person is outside this state may be given in a manner prescribed by the law of this state for service of process or by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice, but may be by publication if other means are not effective.

(b) Proof of service may be made in the manner prescribed by the law of this state or by the law of the state in which the service is made.

(c) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

History.
Acts 1999, ch. 389, § 12.

Compiler's Notes.
Former part 2, §§ 36-6-201 — 36-6-225 (Acts 1979, ch. 383, §§ 1-25; 1981, ch. 483, § 1; T.C.A., §§ 36-1301 — 36-1325), the Uniform Child Custody Jurisdiction Act, was repealed and replaced by the Uniform Child Custody Jurisdiction and Enforcement Act by Acts 1999, ch. 389, § 1, effective June 14, 1999. For current provisions, see this part.

36-6-212. Personal jurisdiction over a party — Immunity from jurisdiction for unrelated matters.

(a) A party to a child-custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child-custody determination, is not subject to personal jurisdiction in this state for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating, in the proceeding.

(b) A person who is subject to personal jurisdiction in this state on a basis other than physical presence is not immune from service of process in this state. A party present in this state who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.

(c) The immunity granted by subsection (a) does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this part committed by an individual while present in this state.

History.
Acts 1999, ch. 389, § 13.

Compiler's Notes.
Former part 2, §§ 36-6-201 — 36-6-225 (Acts 1979, ch. 383, §§ 1-25; 1981, ch. 483, § 1; T.C.A., §§ 36-1301 — 36-1325), the Uniform Child Custody Jurisdiction Act, was repealed and replaced by the Uniform Child Custody Jurisdiction and Enforcement Act by Acts 1999, ch. 389, § 1, effective June 14, 1999. For current provisions, see this part.

36-6-213. Communication among courts and parties — Records of communications.

(a) A court of this state may communicate with a court in another state concerning a proceeding arising under this part.

(b) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

(c) Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.

(d) Except as otherwise provided in subsection (c), a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

(e) For the purposes of this section, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

History.
Acts 1999, ch. 389, § 14.

Compiler's Notes.
Former part 2, §§ 36-6-201 — 36-6-225 (Acts 1979, ch. 383, §§ 1-25; 1981, ch. 483, § 1; T.C.A., §§ 36-1301 — 36-1325), the Uniform Child Custody Jurisdiction Act, was repealed and replaced by the Uniform Child Custody Jurisdiction and Enforcement Act by Acts 1999, ch. 389, § 1, effective June 14, 1999. For current provisions, see this part.

36-6-214. Testimony of witnesses residing out of state — Acceptance of electronically transmitted documents as evidence.

(a) In addition to other procedures available to a party, a party to a child custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this state for

testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

(b) A court of this state may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of this state shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

History.
Acts 1999, ch. 389, § 15.

Compiler's Notes.
Former part 2, §§ 36-6-201 — 36-6-225 (Acts 1979, ch. 383, §§ 1-25; 1981, ch. 483, § 1; T.C.A., §§ 36-1301 — 36-1325), the Uniform Child Custody Jurisdiction Act, was repealed and replaced by the Uniform Child Custody Jurisdiction and Enforcement Act by Acts 1999, ch. 389, § 1, effective June 14, 1999. For current provisions, see this part.

36-6-215. Request for hearing in, or evidence from another state — Holding hearings or obtaining evidence for other states — Expenses — Preservation of records.

(a) A court of this state may request the appropriate court of another state to:

(1) Hold an evidentiary hearing;

(2) Order a person to produce or give evidence pursuant to procedures of that state;

(3) Order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;

(4) Forward to the court of this state a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and

(5) Order a party to a child-custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

(b) Upon request of a court of another state, a court of this state may hold a hearing or enter an order described in subsection (a).

(c) Travel and other necessary and reasonable expenses incurred under subsections (a) and (b) may be assessed against the parties according to the law of this state.

(d) A court of this state shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child-custody proceeding until the child attains eighteen (18) years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records.

History.
Acts 1999, ch. 389, § 16.

Compiler's Notes.
Former part 2, §§ 36-6-201 — 36-6-225 (Acts 1979, ch. 383, §§ 1-25; 1981, ch. 483, § 1; T.C.A., §§ 36-1301 — 36-1325), the Uniform Child Custody Jurisdiction Act, was repealed and replaced by the Uniform Child Custody Jurisdiction and Enforcement Act by Acts 1999, ch. 389, § 1, effective June 14, 1999. For current provisions, see this part.

36-6-216. Jurisdiction to make custody determination.

(a) Except as otherwise provided in § 36-6-219, a court of this state has jurisdiction to make an initial child custody determination only if:

(1) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six (6) months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

(2) A court of another state does not have jurisdiction under subdivision (a)(1), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under §§ 36-6-221 or 36-6-222, and:

(A) The child and the child's parents, or the child and at least one (1) parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and

(B) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;

(3) All courts having jurisdiction under subdivision (a)(1) or (a)(2) have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under §§ 36-6-221 or 36-6-222; or

(4) No court of any other state would have jurisdiction under the criteria specified in subdivision (a)(1), (a)(2), or (a)(3).

(b) Subsection (a) is the exclusive jurisdictional basis for making a child-custody determination by a court of this state.

(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child-custody determination.

History.
Acts 1999, ch. 389, § 17.

Compiler's Notes.
Former part 2, §§ 36-6-201 — 36-6-225 (Acts 1979, ch. 383, §§ 1-25; 1981, ch. 483, § 1; T.C.A., §§ 36-1301 — 36-1325), the Uniform Child Custody Jurisdiction Act, was repealed and replaced by the Uniform Child Custody Jurisdiction and Enforcement Act by Acts 1999, ch. 389, § 1, effective June 14, 1999. For current provisions, see this part.

36-6-217. Continuing jurisdiction of state courts — Jurisdiction to modify own decrees.

(a) Except as otherwise provided in § 36-6-219, a court of this state which has made a child-custody determination consistent with this part has exclusive,

continuing jurisdiction over the determination until:

(1) A court of this state determines that neither the child, nor the child and one (1) parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships; or

(2) A court of this state or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this state.

(b) A court of this state which has made a child-custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under § 36-6-216.

History.
Acts 1999, ch. 389, § 18.

Compiler's Notes.
Former part 2, §§ 36-6-201 — 36-6-225 (Acts 1979, ch. 383, §§ 1-25; 1981, ch. 483, § 1; T.C.A., §§ 36-1301 — 36-1325), the Uniform Child Custody Jurisdiction Act, was repealed and replaced by the Uniform Child Custody Jurisdiction and Enforcement Act by Acts 1999, ch. 389, § 1, effective June 14, 1999. For current provisions, see this part.

36-6-218. Jurisdiction to modify foreign decrees.

Except as otherwise provided in § 36-6-219, a court of this state may not modify a child-custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under § 36-6-216(a)(1) or (2), and:

(1) The court of the other state determines it no longer has exclusive, continuing jurisdiction under § 36-6-217 or that a court of this state would be a more convenient forum under § 36-6-221; or

(2) A court of this state or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

History.
Acts 1999, ch. 389, § 19.

Compiler's Notes.
Former part 2, §§ 36-6-201 — 36-6-225 (Acts 1979, ch. 383, §§ 1-25; 1981, ch. 483, § 1; T.C.A., §§ 36-1301 — 36-1325), the Uniform Child Custody Jurisdiction Act, was repealed and replaced by the Uniform Child Custody Jurisdiction and Enforcement Act by Acts 1999, ch. 389, § 1, effective June 14, 1999. For current provisions, see this part.

36-6-219. Temporary emergency jurisdiction — Order enforcement — Communication with foreign courts.

(a) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

(b) If there is no previous child custody determination that is entitled to be enforced under this part and a child custody proceeding has not been commenced in a court of a state having jurisdiction under §§ 36-6-216 — 36-6-218, a child-custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under §§ 36-6-216 — 36-6-218. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under §§ 36-6-216 — 36-6-218, a child custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.

(c) If there is a previous child custody determination that is entitled to be enforced under this part, or a child-custody proceeding has been commenced in a court of a state having jurisdiction under §§ 36-6-216 — 36-6-218, any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under §§ 36-6-216 — 36-6-218. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

(d) A court of this state which has been asked to make a child-custody determination under this section, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of a state having jurisdiction under §§ 36-6-216 — 36-6-218, shall immediately communicate with the other court. A court of this state which is exercising jurisdiction pursuant to §§ 36-6-216 — 36-6-218, upon being informed that a child custody proceeding has been commenced in, or a child-custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

History.
Acts 1999, ch. 389, § 20.

Compiler's Notes.
Former part 2, §§ 36-6-201 — 36-6-225 (Acts 1979, ch. 383, §§ 1-25; 1981, ch. 483, § 1; T.C.A., §§ 36-1301 — 36-1325), the Uniform Child Custody Jurisdiction Act, was repealed and replaced by the Uniform Child Custody Jurisdiction and Enforcement Act by Acts 1999, ch. 389, § 1, effective June 14, 1999. For current provisions, see this part.

36-6-220. Notice and opportunity to be heard — Joinder and intervention.

(a) Before a child-custody determination is made under this part, notice and an opportunity to be heard in accordance with the standards of § 36-6-211 must be given to all persons entitled to notice under the law of this state as in child-custody proceedings between residents of this state, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

(b) This part does not govern the enforceability of a child-custody determination made without notice or an opportunity to be heard.

(c) The obligation to join a party and the right to intervene as a party in a child-custody proceeding under this part are governed by the law of this state as in child-custody proceedings between residents of this state.

History.
Acts 1999, ch. 389, § 21.

Compiler's Notes.
Former part 2, §§ 36-6-201 — 36-6-225 (Acts 1979, ch. 383, §§ 1-25; 1981, ch. 483, § 1; T.C.A., §§ 36-1301 — 36-1325), the Uniform Child Custody Jurisdiction Act, was repealed and replaced by the Uniform Child Custody Jurisdiction and Enforcement Act by Acts 1999, ch. 389, § 1, effective June 14, 1999. For current provisions, see this part.

36-6-221. Proceedings already commenced in another state.

(a) Except as otherwise provided in § 36-6-219, a court of this state may not exercise its jurisdiction under this part if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this part, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under § 36-6-222.

(b) Except as otherwise provided in § 36-6-219, a court of this state, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to § 36-6-224. If the court determines that a child custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this part, the court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this part does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the proceeding.

(c) In a proceeding to modify a child custody determination, a court of this state shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child custody determination has been commenced in another state, the court may:

(1) Stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement;

(2) Enjoin the parties from continuing with the proceeding for enforcement; or

(3) Proceed with the modification under conditions it considers appropriate.

History.
Acts 1999, ch. 389, § 22.

Compiler's Notes.
Former part 2, §§ 36-6-201 — 36-6-225 (Acts 1979, ch. 383, §§ 1-25; 1981, ch. 483, § 1; T.C.A., §§ 36-1301 — 36-1325), the Uniform Child Custody Jurisdiction Act, was repealed and replaced by the Uniform Child Custody Jurisdiction and Enforcement Act by Acts 1999, ch. 389, § 1, effective June 14, 1999. For current provisions, see this part.

36-6-222. Declining jurisdiction — Inconvenient forum.

(a) A court of this state which has jurisdiction under this part to make a child-custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court.

(b) Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

(1) The length of time the child has resided outside this state;

(2) The distance between the court in this state and the court in the state that would assume jurisdiction;

(3) The relative financial circumstances of the parties;

(4) Any agreement of the parties as to which state should assume jurisdiction;

(5) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

(6) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence;

(7) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child; and

(8) The familiarity of the court of each state with the facts and issues in the pending litigation.

(c) If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child-custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

(d) A court of this state may decline to exercise its jurisdiction under this part if a child-custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

History.
Acts 1999, ch. 389, § 23.

Compiler's Notes.
Former part 2, §§ 36-6-201 — 36-6-225 (Acts 1979, ch. 383, §§ 1-25; 1981, ch. 483, § 1; T.C.A., §§ 36-1301 — 36-1325), the Uniform Child Custody Jurisdiction Act, was repealed and replaced by the Uniform Child Custody Jurisdiction and Enforcement Act by Acts 1999, ch. 389, § 1, effective June 14, 1999. For current provisions, see this part.

36-6-223. Unjustifiable conduct of a party.

(a) Except as otherwise provided in § 36-6-219, or by other law of this state, if a court of this state has jurisdiction under this part because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

(1) The parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

(2) A court of the state otherwise having jurisdiction under §§ 36-6-216 — 36-6-218 determines that this state is a more appropriate forum under § 36-6-222; or

(3) No court of any other state would have jurisdiction under the criteria specified in §§ 36-6-216 — 36-6-218.

(b) If a court of this state declines to exercise its jurisdiction pursuant to subsection (a), it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction under §§ 36-6-216 — 36-6-218.

(c) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection (a), it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate.

History.
Acts 1999, ch. 389, § 24.

Compiler's Notes.
Former part 2, §§ 36-6-201 — 36-6-225 (Acts 1979, ch. 383, §§ 1-25; 1981, ch. 483, § 1; T.C.A., §§ 36-1301 — 36-1325), the Uniform Child Custody Jurisdiction Act, was repealed and replaced by the Uniform Child Custody Jurisdiction and Enforcement Act by Acts 1999, ch. 389, § 1, effective June 14, 1999. For current provisions, see this part.

36-6-224. Information in first pleading or affidavit — Stay — Continuing duty to inform court — Sealing records.

(a) Subject to § 36-4-106(b), in a child-custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath, as to the child's present address or whereabouts, the places where the child has lived during the last five (5) years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

(1) Has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number, and the date of the child-custody determination, if any;

(2) Knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding; and

(3) Knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

(b) If the information required by subdivisions (a)(1)-(3) is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

(c) If the declaration as to any of the items described in subdivisions (a)(1)-(3) is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

(d) Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

(e) If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice. Nothing in this subsection (e) shall be construed to require sealing of any information or records maintained by the state or a local government except identifying information in a custody or visitation action brought under this part.

History.
Acts 1999, ch. 389, § 25.

Compiler's Notes.
Former part 2, §§ 36-6-201 — 36-6-225 (Acts 1979, ch. 383, §§ 1-25; 1981, ch. 483, § 1; T.C.A., §§ 36-1301 — 36-1325), the Uniform Child Custody Jurisdiction Act, was repealed and replaced by the Uniform Child Custody Jurisdiction and Enforcement Act by Acts 1999, ch. 389, § 1, effective June 14, 1999. For current provisions, see this part.

36-6-225. Order to appear before court — Orders to ensure safety — Payment of expenses.

(a) In a child-custody proceeding in this state, the court may order a party to the proceeding who is in this state to appear before the court in person with or without the child. The court may order any person who is in this state and who has physical custody or control of the child to appear in person with the child.

(b) If a party to a child-custody proceeding whose presence is desired by the court is outside this state, the court may order that a notice given pursuant to § 36-6-220 include a statement directing the party to appear in person with or without the child and inform-

ing the party that failure to appear may result in a decision adverse to the party.

(c) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

(d) If a party to a child custody proceeding who is outside this state is directed to appear under subsection (b) or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

History.
Acts 1999, ch. 389, § 26.

Compiler's Notes.
Former part 2, §§ 36-6-201 — 36-6-225 (Acts 1979, ch. 383, §§ 1-25; 1981, ch. 483, § 1; T.C.A., §§ 36-1301 — 36-1325), the Uniform Child Custody Jurisdiction Act, was repealed and replaced by the Uniform Child Custody Jurisdiction and Enforcement Act by Acts 1999, ch. 389, § 1, effective June 14, 1999. For current provisions, see this part.

36-6-226. Enforcement of international orders under the Hague Convention.

A court of this state may enforce an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child-custody determination.

History.
Acts 1999, ch. 389, § 27.

Compiler's Notes.
The Hague Convention on the Civil Aspects of Child Abduction (CTIA No. 8303.000), referred to in this section, was completed October 25, 1990, entered into force December 1, 1983, and was signed by the United States July 1, 1998.

36-6-227. Recognition and enforcement of foreign decrees.

(a) A court of this state shall recognize and enforce a child-custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this part, or the determination was made under factual circumstances meeting the jurisdictional standards of this part and the determination has not been modified in accordance with this part.

(b) A court of this state may utilize any remedy available under other law of this state to enforce a child-custody determination made by a court of another state. The remedies provided in this part are cumulative and do not affect the availability of other remedies to enforce a child-custody determination.

History.
Acts 1999, ch. 389, § 28.

36-6-228. Temporary order of enforcement.

(a) A court of this state which does not have jurisdiction to modify a child-custody determination may issue a temporary order enforcing:

(1) A visitation schedule made by a court of another state; or

(2) The visitation provisions of a child-custody determination of another state that does not provide for a specific visitation schedule.

(b) If a court of this state makes an order under subdivision (a)(2), it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in this part. The order remains in effect until an order is obtained from the other court or the period expires.

History.
Acts 1999, ch. 389, § 29.

36-6-229. Registration of foreign decrees — Duties of registering court — Contesting validity of registered decree.

(a) A child-custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending to the appropriate court in this state:

(1) A letter or other document requesting registration;

(2) Two (2) copies, including one (1) certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and

(3) Except as otherwise provided in § 36-6-224, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child-custody determination sought to be registered.

(b) On receipt of the documents required by subsection (a), the registering court shall:

(1) Cause the determination to be filed as a foreign judgment, together with one (1) copy of any accompanying documents and information, regardless of their form; and

(2) Serve notice upon the persons named pursuant to subdivision (a)(3) and provide them with an opportunity to contest the registration in accordance with this section.

(c) The notice required by subdivision (b)(2) must state that:

(1) A registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state;

(2) A hearing to contest the validity of the registered determination must be requested within twenty (20) days after service of notice; and

(3) Failure to contest the registration will result in confirmation of the child-custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

(d) A person seeking to contest the validity of a registered order must request a hearing within twenty (20) days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

(1) The issuing court did not have jurisdiction under this part;

(2) The child-custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under this part; or

(3) The person contesting registration was entitled to notice, but notice was not given in accordance with the standards of § 36-6-211, in the proceedings before the court that issued the order for which registration is sought.

(e) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

(f) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

History.
Acts 1999, ch. 389, § 30.

36-6-230. Enforcement and modification of registered decrees.

(a) A court of this state may grant any relief normally available under the law of this state to enforce a registered child-custody determination made by a court of another state.

(b) A court of this state shall recognize and enforce, but may not modify, except in accordance with this part, a registered child-custody determination of a court of another state.

History.
Acts 1999, ch. 389, § 31.

36-6-231. Proceeding for enforcement of registered decree when modification procedures are pending in another state.

If a proceeding for enforcement under this part is commenced in a court of this state and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under this part, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

History.
Acts 1999, ch. 389, § 32.

36-6-232. Verification and contents of petition for enforcement — Order for respondent to appear.

(a) A petition under this part must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

(b) A petition for enforcement of a child-custody determination must state:

(1) Whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

(2) Whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must be enforced under this part and, if so, identify the court, the case number, and the nature of the proceeding;

(3) Whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding;

(4) The present physical address of the child and the respondent, if known;

(5) Whether relief in addition to the immediate physical custody of the child and attorney's fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought; and

(6) If the child custody determination has been registered and confirmed under § 36-6-229, the date and place of registration.

(c) Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the next judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

(d) An order issued under subsection (c) must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs, and expenses under § 36-6-236, and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

(1) The child-custody determination has not been registered and confirmed under § 36-6-229 and that:

(A) The issuing court did not have jurisdiction under this part;

(B) The child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court having jurisdiction to do so under this part;

(C) The respondent was entitled to notice, but notice was not given in accordance with the standards of § 36-6-211, in the proceedings before the court that issued the order for which enforcement is sought; or

(2) The child-custody determination for which enforcement is sought was registered and confirmed under § 36-6-229, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under this part.

History.
Acts 1999, ch. 389, § 33.

36-6-233. Service of petition and order.

Except as otherwise provided in § 36-6-235, the petition and order must be served, by any method authorized by the law of this state, upon the respondent and any person who has physical custody of the child.

History.
Acts 1999, ch. 389, § 34.

36-6-234. Order for immediate physical custody — Fees, costs and expenses — Party refusal to testify — Husband and wife communications as evidence.

(a) Unless the court issues a temporary emergency order pursuant to § 36-6-219, upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

(1) The child-custody determination has not been registered and confirmed under § 36-6-229 and that:

(A) The issuing court did not have jurisdiction under this part;

(B) The child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under this part; or

(C) The respondent was entitled to notice, but notice was not given in accordance with the standards of § 36-6-211, in the proceedings before the court that issued the order for which enforcement is sought; or

(2) The child-custody determination for which enforcement is sought was registered and confirmed under § 36-6-229 but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under this part.

(b) The court shall award the fees, costs, and expenses authorized under § 36-6-236 and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

(c) If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

(d) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under this part.

History.
Acts 1999, ch. 389, § 35.

36-6-235. Warrant for physical custody — Conditional placement.

(a) Upon the filing of a petition seeking enforcement of a child-custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is immediately likely to suffer serious physical harm or be removed from this state.

(b) If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from this state, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by § 36-6-232(b).

(c) A warrant to take physical custody of a child must:

(1) Recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;

(2) Direct law enforcement officers to take physical custody of the child immediately; and

(3) Provide for the placement of the child pending final relief.

(d) The respondent must be served with the petition, warrant, and order immediately after the child is taken into physical custody.

(e) A warrant to take physical custody of a child is enforceable throughout this state. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.

(f) The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

History.
Acts 1999, ch. 389, § 36.

36-6-236. Award of prevailing party fees, costs and expenses.

The court may award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings. The court may assess fees, costs, or expenses against a state pursuant to this part.

History.
Acts 1999, ch. 389, § 37.

36-6-237. Full faith and credit for foreign orders.

A court of this state shall accord full faith and credit to an order issued by another state and consistent with this part which enforces a child-custody determination by a court of another state unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under this part.

History.
Acts 1999, ch. 389, § 38.

36-6-238. Appeals.

An appeal may be taken from a final order in a proceeding under this part in accordance with the Tennessee Rules of Appellate Procedure and may be accelerated under Tennessee Rules of the Court of Appeals, Rule 13. Unless the court enters a temporary emergency order under § 36-6-219, the enforcing court may not stay an order enforcing a child-custody determination pending appeal.

History.
Acts 1999, ch. 389, § 39.

36-6-239. Powers of prosecutors or public officials.

(a) In a case arising under this part or involving the Hague Convention on the Civil Aspects of International Child Abduction, the prosecutor or other appropriate public official may take any lawful action, including resort to a proceeding under this part or any other available civil proceeding to locate a child, obtain the return of a child, or enforce a child-custody determination if there is:

(1) An existing child-custody determination;

(2) A request to do so from a court in a pending child-custody proceeding;

(3) A reasonable belief that a criminal statute has been violated; or

(4) A reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.

(b) A prosecutor or appropriate public official acting under this section acts on behalf of the court and may not represent any party.

History.
Acts 1999, ch. 389, § 40.

Compiler's Notes.
The Hague Convention on the Civil Aspects of Child Abduction (CTIA No. 8303.000), referred to in this section, was completed October 25, 1990, entered into force December 1, 1983, and was signed by the United States July 1, 1998.

36-6-240. Law enforcement officer powers.

At the request of a prosecutor or other appropriate public official acting under § 36-6-239, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist a prosecutor or appropriate public official with responsibilities under § 36-6-239.

History.
Acts 1999, ch. 389, § 41.

36-6-241. Respondent liability for costs and expenses incurred by prosecutors, public officials and law enforcement officers.

If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the prosecutor or other appropriate public official and law enforcement officers under §§ 36-6-239 or 36-6-240.

History.
Acts 1999, ch. 389, § 42.

36-6-242. Uniformity of construction among states.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History.
Acts 1999, ch. 389, § 43.

36-6-243. Actions commenced before June 14, 1999.

A motion or other request for relief made in a child-custody proceeding or to enforce a child-custody determination which was commenced before June 14, 1999, is governed by the law in effect at the time the motion or other request was made.

History.
Acts 1999, ch. 389, § 45.

PART 3

VISITATION

36-6-301. Visitation.

After making an award of custody, the court shall, upon request of the non-custodial parent, grant such rights of visitation as will enable the child and the non-custodial parent to maintain a parent-child relationship unless the court finds, after a hearing, that visitation is likely to endanger the child's physical or emotional health. In granting any such rights of visitation, the court shall designate in which parent's home each minor child shall reside on given days of the year, including provisions for holidays, birthdays of family members, vacations and other special occasions. If the court finds that the non-custodial parent has physically

or emotionally abused the child, the court may require that visitation be supervised or prohibited until such abuse has ceased or until there is no reasonable likelihood that such abuse will recur. The court may not order the department of children's services to provide supervision of visitation pursuant to this section except in cases where the department is the petitioner or intervening petitioner in a case in which the custody or guardianship of a child is at issue.

History.
Acts 1995, ch. 428, § 3; 1996, ch. 1079, § 71; 1998, ch. 1050, § 1.

Compiler's Notes.
Former § 36-6-301 was transferred to § 36-6-302 by Acts 1995, ch. 428, § 3.

36-6-302. Grandparents' visitation rights.

(a)(1)(A) If a child is removed from the custody of the child's parents, guardian or legal custodian; and

(B) If a child is placed in a licensed foster home, a facility operated by a licensed child care agency, or other home or facility designated or operated by the court, whether such placement is by court order, voluntary placement agreement, surrender of parental rights, or otherwise;

(2) Then, the grandparents of such child may be granted reasonable visitation rights to the child during such child's minority by the court of competent jurisdiction upon a finding that:

(A) Such visitation rights would be in the best interest of the minor child;

(B) The grandparents would adequately protect the child from further abuse or intimidation by the perpetrator or any other family member;

(C) The grandparents were not implicated in the commission of any alleged act against such child or of their own children that under the law in effect prior to November 1, 1989, would constitute 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) Assault with intent to commit rape or attempt to commit rape or sexual battery under § 39-2-608 [repealed];

(vi) Crimes against nature under § 39-2-612 [repealed];

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

(viii) Begetting child on wife's sister under § 39-4-307 [repealed];

(ix) Use of minor of obscene purposes under § 39-6-1137 [repealed]; or

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

(D) The grandparents are not implicated in the commission of any alleged act against such child or of their own children that under the law in effect on or after November 1, 1989, would constitute 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) Criminal attempt for any of the offenses in subdivisions (a)(2)(D)(i)-(a)(2)(D)(iv) as provided in § 39-12-101;

(vi) Incest under § 39-15-302;

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

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

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

(b) This section shall not apply in any case in which the child has been adopted by any person other than a stepparent or other relative of the child.

History.
Acts 1971, ch. 74, §§ 1, 2; 1975, ch. 330, § 1; T.C.A., §§ 36-1101, 36-1102; Acts 1985, ch. 341, § 1; 1985, ch. 478, § 22; 1995, ch. 428, § 3; T.C.A. § 36-6-301; Acts 1997, ch. 503, § 1; 2000, ch. 981, § 51.

Compiler's Notes.
Former § 36-6-302, concerning visitation rights of stepparents, was transferred to § 36-6-303 in 1995.

The sections of title 39, chs. 1-6, referred to in this section, were repealed by Acts 1989, ch. 591.

Acts 1997, ch. 503, § 4 provides that the 1997 amendment shall apply to any petition for visitation rights filed on or after June 1, 1997.

36-6-303. Visitation rights of stepparents.

(a) In a suit for annulment, divorce or separate maintenance where one (1) party is a stepparent to a minor child born to the other party, such stepparent may be granted reasonable visitation rights to such child during the child's minority by the court of competent jurisdiction upon a finding that such visitation rights would be in the best interests of the minor child and that such stepparent is actually providing or contributing towards the support of such child.

(b) Such decree shall remain within the control of the court and be subject to such changes or modification as the exigencies of the case require.

History.
Acts 1981, ch. 243, § 1; T.C.A., § 36-837; § 36-6-302; Acts 1995, ch. 428, § 3.

36-6-304. Exposure of child to nudist colony prohibited.

No person who has been granted visitation rights to a child shall, during the child's minority, expose the child to any facility organized or operated as a nudist colony without the consent of the custodial parent. Any court of competent jurisdiction shall have the ability to enforce these provisions and enjoin violations of this section through the full extent of the court's civil and criminal contempt powers.

History.
Acts 1996, ch. 900, § 1.

36-6-305. Mediation in cases involving domestic abuse.

In any proceeding concerning the visitation of a child, if an order of protection issued in or recognized by this state is in effect or if there is a court finding of domestic abuse or any criminal conviction involving domestic abuse within the marriage that is the subject of the proceeding for divorce or separate support and maintenance, the court may order mediation or refer either party to mediation only if:

(1) Mediation is agreed to by the victim of the alleged domestic or family violence;

(2) Mediation is provided by a certified mediator who is trained in domestic and family violence in a specialized manner that protects the safety of the victim; and

(3) The victim is permitted to have in attendance at mediation a supporting person of the victim's choice, including, but not limited to, an attorney or advocate. No victim may provide monetary compensation to a non-attorney advocate for attendance at mediation.

History.
Acts 1997, ch. 350, § 3.

36-6-306. Visitation rights of grandparents.

(a) Any of the following circumstances, when presented in a petition for grandparent visitation to the circuit, chancery, general sessions courts with domestic relations jurisdiction, or juvenile court in matters involving children born out of wedlock of the county in which the petitioned child currently resides, necessitates a hearing if such grandparent visitation is opposed by the custodial parent or parents or custodian or if the grandparent visitation has been severely reduced by the custodial parent or parents or custodian:

(1) The father or mother of an unmarried minor child is deceased;

(2) The child's father or mother are divorced, legally separated, or were never married to each other;

(3) The child's father or mother has been missing for not less than six (6) months;

(4) The court of another state has ordered grandparent visitation;

(5) The child resided in the home of the grandparent for a period of twelve (12) months or more and was subsequently removed from the home by the parent, parents, or custodian (this grandparent-grandchild relationship establishes a rebuttable presumption that denial of visitation may result in irreparable harm to the child); or

(6) The child and the grandparent maintained a significant existing relationship for a period of twelve (12) months or more immediately preceding severance or severe reduction of the relationship, this relationship was severed or severely reduced by the parent, parents, or custodian for reasons other than abuse or presence of a danger of substantial harm to the child, and severance or severe reduction of this relationship is likely to occasion substantial emotional harm to the child.

(b)(1) In considering a petition for grandparent visitation, the court shall first determine the presence of a danger of substantial harm to the child. Such finding of substantial harm may be based upon cessation or severe reduction of the relationship between an unmarried minor child and the child's grandparent if the court determines, upon proper proof, that:

(A) The child had such a significant existing relationship with the grandparent that loss or severe reduction of the relationship is likely to occasion severe emotional harm to the child;

(B) The grandparent functioned as a primary caregiver such that cessation or severe reduction of the relationship could interrupt provision of the daily needs of the child and thus occasion physical or emotional harm; or

(C) The child had a significant existing relationship with the grandparent and loss or severe reduction of the relationship presents the danger of other direct and substantial harm to the child.

(2) For purposes of this section, a grandparent shall be deemed to have a significant existing relationship with a grandchild if:

(A) The child resided with the grandparent for at least six (6) consecutive months;

(B) The grandparent was a full-time caretaker of the child for a period of not less than six (6) consecutive months; or

(C) The grandparent had frequent visitation with the child who is the subject of the suit for a period of not less than one (1) year.

(3) A grandparent is not required to present the testimony or affidavit of an expert witness in order to establish a significant existing relationship with a grandchild or that the loss or severe reduction of the relationship is likely to occasion severe emotional harm to the child. Instead, the court shall consider whether the facts of the particular case would lead a reasonable person to believe that there is a significant existing relationship between the grandparent and grandchild or that the loss or severe reduction of the relationship is likely to occasion severe emotional harm to the child.

(4) For the purposes of this section, if the child's parent is deceased and the grandparent seeking visitation is the parent of that deceased parent, there shall be a rebuttable presumption of substantial harm to the child based upon the cessation or severe reduction of the relationship between the child and grandparent.

(c) Upon an initial finding of danger of substantial harm to the child, the court shall then determine whether grandparent visitation would be in the best interests of the child based upon the factors in § 36-6-307. Upon such determination, reasonable visitation may be ordered.

(d)(1) Notwithstanding § 36-1-121, if a relative or stepparent adopts a child, this section applies.

(2) If a person other than a relative or a stepparent adopts a child, any visitation rights granted pursuant to this section before the adoption of the child shall automatically end upon such adoption.

(e) Notwithstanding any law to the contrary, as used in this part, with regard to the petitioned child, the word "grandparent" includes, but is not limited to:

(1) A biological grandparent;

(2) The spouse of a biological grandparent;

(3) A parent of an adoptive parent; or

(4) A biological or adoptive great-grandparent or the spouse thereof.

(f) For purposes of this section, "severe reduction" or "severely reduced" means reduction to no contact or token visitation as defined in § 36-1-102.

History.
Acts 1997, ch. 503, § 2; 2000, ch. 891, § 1; 2001, ch. 440, § 1; 2003, ch. 79, § 1; 2004, ch. 452, § 1; 2004, ch. 691, § 1; 2004, ch. 874, § 1; 2007, ch. 22, § 1; 2010, ch. 957, § 1; 2015, ch. 247, §§ 1, 2; 2016, ch. 1076, §§ 1-4.

Compiler's Notes.
Acts 1997, ch. 503, § 4 provides that this section shall apply to any petition for visitation rights filed on or after July 23, 1997.

36-6-307. Determination of best interests of child for grandparent visitations.

In determining the best interests of the child under § 36-6-306, the court shall consider all pertinent matters, including, but not necessarily limited to, the following:

(1) The length and quality of the prior relationship between the child and the grandparent and the role performed by the grandparent;

(2) The existing emotional ties of the child to the grandparent;

(3) The preference of the child if the child is determined to be of sufficient maturity to express a preference;

(4) The effect of hostility between the grandparent and the parent of the child manifested before the child, and the willingness of the grandparent, except in case of abuse, to encourage a close relationship between the child and the parent or parents, or guardian or guardians of the child;

(5) The good faith of the grandparent in filing the petition;

(6) If the parents are divorced or separated, the time-sharing arrangement that exists between the parents with respect to the child;

(7) If one (1) parent is deceased or missing, the fact that the grandparents requesting visitation are the parents of the deceased or missing person;

(8) Any unreasonable deprivation of the grandparent's opportunity to visit with the child by the child's parents or guardian, including denying visitation of the minor child to the grandparent for a period exceeding ninety (90) days;

(9) Whether the grandparent is seeking to maintain a significant existing relationship with the child;

(10) Whether awarding grandparent visitation would interfere with the parent-child relationship; and

(11) Any court finding that the child's parent or guardian is unfit.

History.
Acts 1997, ch. 503, § 2; 2000, ch. 891, § 2; 2011, ch. 500, § 1.

Compiler's Notes.
Acts 1997, ch. 503, § 4 provides that this section shall apply to any petition for visitation rights filed on or after July 23, 1997.

36-6-308. [Repealed.]

History.
Acts 2009, ch. 442, § 1; 2012, ch. 770, §§ 1, 2; repealed by Acts 2014, ch. 798, § 2, effective July 1, 2014.

Compiler's Notes.
Former section § 36-6-308 concerned permits.

PART 4

PARENTING PLANS

36-6-401. Findings.

(a) Parents have the responsibility to make decisions and perform other parental duties necessary for the care and growth of their minor children. In any proceeding between parents under this chapter, the best interests of the child shall be the standard by which the court determines and allocates the parties' parental responsibilities. The general assembly recognizes the detrimental effect of divorce on many children and that divorce, by its nature, means that neither parent will have the same access to the child as would have been possible had they been able to maintain an intact family. The general assembly finds the need for stability and consistency in children's lives. The general assembly also has an interest in educating parents concerning the impact of divorce on children. The general assembly recognizes the fundamental importance of the parent-child relationship to the welfare of the child, and the relationship between the child and each parent should be fostered unless inconsistent with the child's best interests. The best interests of the child are served by a parenting arrangement that best maintains a child's emotional growth, health and stability, and physical care.

(b) The general assembly finds that mothers and fathers in families are the backbone of this state and this nation. They teach children right from wrong, respect for others, and the value of working hard to make a good life for themselves and for their future families. Most children do best when they receive the emotional and financial support of both parents. The general assembly finds that a different approach to dispute resolution in child custody and visitation matters is useful.

History.
Acts 1997, ch. 557, § 1; 1998, ch. 1098, §§ 71, 74; 2000, ch. 889, § 1.

Compiler's Notes.
Acts 1997, ch. 557, § 3 further provided that this part shall apply to each action or petition for modification filed on or after July 1, 1997.

36-6-402. Part definitions.

As used in this part, unless the context requires otherwise:

(1) "Dispute resolution" means the mediation process or alternative dispute resolution process in accordance with Tennessee Supreme Court Rule 31 unless the parties agree otherwise. For the purposes of this part, such process may include: mediation, the neutral party to be chosen by the parties or the court; arbitration, the neutral party to be chosen by the parties or the court; or a mandatory settlement conference presided over by the court or a special master.

(2) "Parenting responsibilities" means those aspects of the parent-child relationship in which the parent makes decisions and performs duties necessary for the care and growth of the child. "Parenting responsibilities," the establishment of which is the objective of a permanent parenting plan, include:

(A) Providing for the child's emotional care and stability, including maintaining a loving, stable, consistent, and nurturing relationship with the child and supervising the child to encourage and protect emotional, intellectual, moral, and spiritual development;

(B) Providing for the child's physical care, including attending to the daily needs of the child, such as feeding, clothing, physical care, and grooming, supervision, health care, and day care, and engaging in other activities that are appropriate to the developmental level of the child and that are within the social and economic circumstances of the particular family;

(C) Providing encouragement and protection of the child's intellectual and moral development, including attending to adequate education for the child, including remedial or other education essential to the best interests of the child;

(D) Assisting the child in developing and maintaining appropriate interpersonal relationships;

(E) Exercising appropriate judgment regarding the child's welfare, consistent with the child's developmental level and the family's social and economic circumstances; and

(F) Providing any financial security and support of the child in addition to child support obligations;

(3) "Permanent parenting plan" means a written plan for the parenting and best interests of the child, including the allocation of parenting responsibilities and the establishment of a residential schedule, as well as an award of child support consistent with chapter 5 of this title;

(4) "Primary residential parent" means the parent with whom the child resides more than fifty percent (50%) of the time;

(5) "Residential schedule" is the schedule of when the child is in each parent's physical care, and it shall designate the primary residential parent; in addition, the residential schedule shall designate in which parent's home each minor child shall reside on given days of the year, including provisions for holidays, birthdays of family members, vacations, and other special occasions, consistent with the criteria of this part; provided, that nothing contained herein shall be construed to modify any provision of § 36-6-108; and

(6) "Temporary parenting plan" means a plan for the temporary parenting and the best interests of the child, including the establishment of a temporary residential schedule, and the establishment of temporary financial support designed to maintain the financial status quo to the extent possible, consistent with chapter 5 of this title, and the guidelines thereunder.

History.

Acts 1997, ch. 557, § 1; 2000, ch. 889, § 1.

36-6-403. Requirement of and procedure for determining temporary parenting plan.

Except as may be specifically provided otherwise herein, a temporary parenting plan shall be incorporated in any temporary order of the court in actions for absolute divorce, legal separation, annulment, or separate maintenance involving a minor child. A temporary parenting plan shall comply with those provisions for a permanent parenting plan under § 36-6-404(a) that are applicable for the time frame and shall include a residential schedule as described in § 36-6-404(b). The court shall approve a temporary parenting plan as follows:

(1) If the parties can agree to a temporary parenting plan, no written temporary parenting plan is required to be entered; or

(2) If the parties cannot agree to a temporary parenting plan, either or both parties may request the court to order dispute resolution. The court may immediately order the parties to participate in dispute resolution to establish a temporary parenting plan unless one (1) of the restrictions in § 36-6-406(a) exists. If dispute resolution is not available, either party may request and the court may order an expedited hearing to establish a temporary parenting plan. In either mediation or in a hearing before the court each party shall submit a proposed temporary parenting plan and a verified statement of income as defined by chapter 5 of this title, and a verified statement that the plan is proposed in good faith and is in the best interest of the child. If only one (1) party files a proposed temporary parenting plan in compliance with this section, that party may petition the court for an order adopting that party's plan by default, upon a finding by the court that the plan is in the child's best interest. In determining whether the proposed temporary parenting plan serves the best interests of the child, the court shall be governed by the allocation of residential time and support obligations contained in the child support guidelines and related provisions in chapter 5 of this title.

History.
Acts 1997, ch. 557, § 1; T.C.A., § 36-6-407; Acts 2000, ch. 889, § 1.

Compiler's Notes.
Acts 2000, ch. 889, § 1, effective January 1, 2001, renumbered former § 36-6-403 as present § 36-6-411 and former § 36-6-407 as this section.

36-6-404. Requirement of and procedure for determining permanent parenting plan.

(a) Any final decree or decree of modification in an action for absolute divorce, legal separation, annulment, or separate maintenance involving a minor child shall incorporate a permanent parenting plan; provided, however, that this part shall be inapplicable to parties who were divorced prior to July 1, 1997, and thereafter return to court to enter an agreed order modifying terms of the previous court order. A permanent parenting plan shall:

(1) Provide for the child's changing needs as the child grows and matures, in a way that minimizes the need for further modifications to the permanent parenting plan;

(2) Establish the authority and responsibilities of each parent with respect to the child, consistent with the criteria in this part;

(3) Minimize the child's exposure to harmful parental conflict;

(4) Provide for a process for dispute resolution, before court action, unless precluded or limited by § 36-6-406; provided, that state agency cases are excluded from the requirement of dispute resolution as to any child support issue involved. In the process for dispute resolution:

(A) Preference shall be given to carrying out the parenting plan;

(B) The parents shall use the designated process to resolve disputes relating to the implementation of the plan;

(C) A written record shall be prepared of any agreement reached in mediation, arbitration, or settlement conference and shall be provided to each party to be drafted into a consent order of modification;

(D) If the court finds that a parent willfully failed to appear at a scheduled dispute resolution process without good reason, the court may, upon motion, award attorney fees and financial sanctions to the prevailing parent;

(E) The provisions of this subsection (a) shall be set forth in the decree; and

(F) Nothing in this part shall preclude court action, if required to protect the welfare of the child or a party;

(5) Allocate decision-making authority to one (1) or both parties regarding the child's education, health care, extracurricular activities, and religious upbringing. The parties may incorporate an agreement related to the care and growth of the child in these specified areas, or in other areas, into their plan, consistent with the criteria in this part. Regardless of the allocation of decision making in the parenting plan, the parties may agree that either parent may make emergency decisions affecting the health or safety of the child;

(6) Provide that each parent may make the day-to-day decisions regarding the care of the child while the child is residing with that parent;

(7) Provide that when mutual decision making is designated but cannot be achieved, the parties shall make a good-faith effort to resolve the issue through the appropriate dispute resolution process, subject to the exception set forth in subdivision (a)(4)(F);

(8) Require the obligor to report annually on a date certain to the obligee, and the department of human services or its contractor in Title IV-D cases, on a form provided by the court, the obligor's income as defined by the child support guidelines and related provisions contained in chapter 5 of this title; and

(9) Specify that if the driver license of a parent is currently expired, canceled, suspended or revoked or if the parent does not possess a valid driver license for any other reason, the parent shall make acceptable transportation arrangements as may be necessary to protect and ensure the health, safety and welfare of the child when such child is in the custody of such parent.

(b) Any permanent parenting plan shall include a residential schedule as defined in § 36-6-402. The court shall make residential provisions for each child, consistent with the child's developmental level and the family's social and economic circumstances, which encourage each parent to maintain a loving, stable, and nurturing relationship with the child. The child's residential schedule shall be consistent with this part. If the limitations of § 36-6-406 are not dispositive of the child's residential schedule, the court shall consider the factors found in § 36-6-106(a)(1)–(15).

(c) The court shall approve a permanent parenting plan as follows:

(1) Upon agreement of the parties:

(A) With the entry of a final decree or judgment; or

(B) With a consent order to modify a final decree or judgment involving a minor child;

(2) If the parties cannot reach agreement on a permanent parenting plan, upon the motion of either party, or upon its own motion, the court may order appropriate dispute resolution proceedings pursuant to Tennessee Rules of the Supreme Court, Rule 31, to determine a permanent parenting plan; or

(3) If the parties have not reached agreement on a permanent parenting plan on or before forty-five (45) days before the date set for trial, each party shall file and serve a proposed permanent parenting plan, even though the parties may continue to mediate or negotiate. Failure to comply by a party may result in the court's adoption of the plan filed by the opposing party if the court finds such plan to be in the best interests of the child. In determining whether the proposed plan is in the best interests of the child, the court may consider the allocation of residential time and support obligations contained in the child support guidelines and related provisions contained in

chapter 5 of this title. Each parent submitting a proposed permanent parenting plan shall attach a verified statement of income pursuant to the child support guidelines and related provisions contained in chapter 5 of this title, and a verified statement that the plan is proposed in good faith and is in the best interest of the child.

(d) The administrative office of the courts shall develop a "parenting plan" form that shall be used consistently by each court within the state that approves parenting plans pursuant to § 36-6-403 or this section on and after July 1, 2005. The administrative office of the courts shall be responsible for distributing such form for the use of those courts no later than June 1, 2005. The administrative office of the courts shall be responsible for updating such form as it deems necessary, in consultation with the Tennessee family law commission, the domestic relations committee of the Tennessee judicial conference, and other knowledgeable persons.

History.

Acts 1997, ch. 557, § 1; T.C.A., § 36-6-410; Acts 2000, ch. 889, § 1; 2002, ch. 677, § 1; 2003, ch. 243, § 1; 2004, ch. 864, § 1; 2005, ch. 127, § 1; 2014, ch. 617, § 7.

Compiler's Notes.

Acts 2000, ch. 889, § 1, effective January 1, 2001, renumbered former § 36-6-404 as present § 36-6-412 and former § 36-6-410 as this section.

Acts 2004, ch. 864, § 2 provided for the repeal of former subsection (d) effective June 30, 2005.

Title IV-D of the Social Security Act, referred to in this section, is compiled in 42 U.S.C. § 651 et seq.

For the Preamble to the act concerning domestic relations, please refer to Acts 2014, ch. 617.

36-6-405. Modifying permanent parenting plans.

(a) In a proceeding for a modification of a permanent parenting plan, a proposed parenting plan shall be filed and served with the petition for modification and with the response to the petition for modification. Such plan is not required if the modification pertains only to child support. The obligor parent's proposed parenting plan shall be accompanied by a verified statement of that party's income pursuant to the child support guidelines and related provisions contained in chapter 5 of this title. The process established by § 36-6-404(b) shall be used to establish an amended permanent parenting plan or final decree or judgment.

(b) In a proceeding for a modification of a permanent parenting plan, the existing residential schedule shall not be modified prior to a final hearing unless the parents agree to the modification or the court finds that the child will be subject to a likelihood of substantial harm absent the temporary modification. If a temporary modification of the existing residential schedule is granted ex parte, the respondent shall be entitled to an expedited hearing within fifteen (15) days of the entry of the temporary modification order.

(c) Title IV-D child support cases involving the department of human services or any of its public or private contractors shall be bifurcated from the remaining parental responsibility issues. Separate orders shall be issued concerning Title IV-D issues, which shall not be contained in, or part of, temporary, permanent or modified parenting plans. The department and its public or private contractors shall not be required to participate in mediation or dispute resolution pursuant to this part.

History.

Acts 1997, ch. 557, § 1; T.C.A., § 36-6-409; Acts 2000, ch. 889, § 1; 2010, ch. 956, § 1.

Compiler's Notes.

Acts 2000, ch. 889, § 1, effective January 1, 2001, renumbered former § 36-6-405 as present § 36-6-408 and former § 36-6-409 as this section.

Title IV-D of the Social Security Act, referred to in this section, is compiled in 42 U.S.C. § 651 et seq.

36-6-406. Restrictions in temporary or permanent parenting plans.

(a) The permanent parenting plan and the mechanism for approval of the permanent parenting plan shall not utilize dispute resolution, and a parent's residential time as provided in the permanent parenting plan or temporary parenting plan shall be limited if it is determined by the court, based upon a prior order or other reliable evidence, that a parent has engaged in any of the following conduct:

(1) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting responsibilities; or

(2) Physical or sexual abuse or a pattern of emotional abuse of the parent, child or of another person living with that child as defined in § 36-3-601.

(b) The parent's residential time with the child shall be limited if it is determined by the court, based upon a prior order or other reliable evidence, that the parent resides with a person who has engaged in physical or sexual abuse or a pattern of emotional abuse of the parent, child or of another person living with that child as defined in § 36-3-601.

(c) If a parent has been convicted as an adult of a sexual offense under § 39-15-302, title 39, chapter 17, part 10, or §§ 39-13-501 — 39-13-511, or has been found to be a sexual offender under title 39, chapter 13, part 7, the court shall restrain the parent from contact with a child that would otherwise be allowed under this part. If a parent resides with an adult who has been convicted, or with a juvenile who has been adjudicated guilty of a sexual offense under § 39-15-302, title 39, chapter 17, part 10, or §§ 39-13-501 — 39-13-511, or who has been found to be a sexual offender under title 39, chapter 13, part 7, the court shall restrain that parent from contact with the child unless the contact occurs outside the adult's or juvenile's presence and sufficient provisions are established to protect the child.

(d) A parent's involvement or conduct may have an adverse effect on the child's best interest, and the court may preclude or limit any provisions of a parenting plan, if any of the following limiting factors are found to exist after a hearing:

(1) A parent's neglect or substantial nonperformance of parenting responsibilities;

(2) An emotional or physical impairment that interferes with the parent's performance of parenting responsibilities as defined in § 36-6-402;

(3) An impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting responsibilities;

(4) The absence or substantial impairment of emotional ties between the parent and the child;

(5) The abusive use of conflict by the parent that creates the danger of damage to the child's psychological development;

(6) A parent has withheld from the other parent access to the child for a protracted period without good cause;

(7) A parent's criminal convictions as they relate to such parent's ability to parent or to the welfare of the child; or

(8) Such other factors or conduct as the court expressly finds adverse to the best interests of the child.

(e) In entering a permanent parenting plan, the court shall not draw any presumptions from the provisions of the temporary parenting plan.

(f)(1) In all Title IV-D child or spousal support cases in which payment of support is to be made by income assignment, or otherwise, and in all cases where payments made by income assignment based upon support orders entered on or after January 1, 1994, that are not Title IV-D support cases but must be made to the central collection and disbursement unit as provided by § 36-5-116, and, except as may otherwise be allowed by § 36-5-501(a)(2)(B), the court shall only approve a temporary or permanent parenting plan involving the payment of support that complies with the requirements for central collection and disbursement as required by § 36-5-116. Prior to approval of a parenting plan in which payments are to be made directly to the spouse or the court clerk or to some other person or entity, there shall be filed with the plan presented to the court a written certification, under oath if filed by a party, or signed by the party's counsel, stating whether the case for which the plan is to be approved is a Title IV-D support case subject to enforcement by the department of human services or is otherwise subject to collection through the department's central collection and disbursement unit established by § 36-5-116.

(2) Any provision of any parenting plan, agreement or court order providing for any other payment procedure contrary to the requirements of § 36-5-116, except as may otherwise be allowed by § 36-5-501(a)(2)(B), whether or not approved by the court, shall be void and of no effect. No credit for support payments shall be given by the court, the court clerk or the department of human services for child or spousal support payments required by the support order that are made in contravention of such requirements; provided, however, the department may make any necessary adjustments to the balances owed to account for changes in the Title IV-D or central collection and disbursement status of the support case.

(g) Forms used by parties as parenting plans or adopted by the court for their use shall conform to all substantive language requirements established by the administrative office of the courts at such time as parenting plan forms are promulgated and approved by that office.

History.

Acts 1997, ch. 557, § 1; T.C.A., § 36-6-412; Acts 2000, ch. 889, § 1; 2001, ch. 447, § 18.

Compiler's Notes.

In the span of §§ 39-13-501 — 39-13-511, referred to in this section, § 39-13-507 is repealed, and § 39-13-510 has been removed from the Tennessee Code Annotated as unconstitutional.

Former § 36-6-406 (Acts 1997, ch. 557, § 1), concerning failure to comply with decree, temporary injunction, temporary or permanent parenting plan and obligation to make support or maintenance payments or permit contact with children not suspended, was repealed by Acts 2000, ch. 889, § 1.

Acts 2000, ch. 889, § 1, effective January 1, 2001, renumbered former § 36-6-412 as this section.

Title IV-D of the Social Security Act, referred to in this section, is compiled in 42 U.S.C. § 651 et seq.

36-6-407. Allocation of parenting responsibilities.

(a) The court shall approve agreements of the parties allocating parenting responsibilities, or specifying rules, if it finds that:

(1) The agreement is consistent with any limitations on a parent's decision-making authority mandated by § 36-6-406;

(2) The agreement is knowing and voluntary; and

(3) The agreement is in the best interest of the child.

(b) The court may consider a parent's refusal, without just cause, to attend a court-ordered parental educational seminar in making an award of sole decision-making authority to the other parent. The court shall order sole decision-making to one (1) parent when it finds that:

(1) A limitation on the other parent's decision-making authority is mandated by § 36-6-406;

(2) Both parents are opposed to mutual decision making; or

(3) One (1) parent is opposed to mutual decision making, and such opposition is reasonable in light of the parties' inability to satisfy the criteria for mutual decision-making authority.

(c) Except as provided in subsections (a) and (b), the court shall consider the following criteria in allocating decision-making authority:

(1) The existence of a limitation under § 36-6-406;

(2) The history of participation of each parent in decision making in each of the following areas: physical care, emotional stability, intellectual and moral development, health, education, extracurricular activities, and religion; and whether each parent attended a court ordered parent education seminar;

(3) Whether the parents have demonstrated the ability and desire to cooperate with one another in decision making regarding the child in each of the following areas: physical care, emotional stability, intellectual and moral development, health, educa-

tion, extracurricular activities, and religion; and

(4) The parents' geographic proximity to one another, to the extent that it affects their ability to make timely mutual decisions.

(d) When determining whether an agreement allocating parenting responsibilities is in the best interest of the child pursuant to subdivision (a)(3), the court may consider any evidence submitted by a guardian ad litem appointed for the child, if one has been appointed by the court, subject to the Tennessee Rules of the Supreme Court relative to guidelines for guardians ad litem appointed for minor children in divorce proceedings and the Tennessee Rules of Evidence.

History.

Acts 1997, ch. 557, § 1; 1998, ch. 1098, § 71; T.C.A., § 36-6-411; Acts 2000, ch. 889, § 1; 2009, ch. 563, §§ 1, 2.

Compiler's Notes.

Acts 2000, ch. 889, § 1, effective January 1, 2001, renumbered former § 36-6-407 as present § 36-6-403 and former § 36-6-411 as this section.

Acts 2009, ch. 563, § 3 provided that the act, which amended § 36-6-407(a)(3) and added § 36-6-407(d), shall apply to parenting plans approved by the court on or after July 1, 2009.

36-6-408. Parent educational seminar.

(a) In an action where a permanent parenting plan is or will be entered, each parent shall attend a parent educational seminar as soon as possible after the filing of the complaint. The seminar shall educate parents concerning how to protect and enhance the child's emotional development and informing the parents regarding the legal process. The seminar shall also include a discussion of alternative dispute resolution, marriage counseling, the judicial process, and common perpetrator attitudes and conduct involving domestic violence. The program may be divided into sessions, which in the aggregate shall not be less than four (4) hours in duration. The seminar shall be educational in nature and not designed for individual therapy. The minor children shall be excluded from attending these sessions. The requirement of attendance at such a seminar may be waived upon motion by either party and the agreement of the court upon the showing of good cause for such relief.

(b) The fees or costs of the educational sessions under this section, which shall be reasonable, shall be borne by the parties and may be assessed by the court as it deems equitable. Such fees may be waived for indigent persons.

(c) No court shall deny the granting of a divorce from the bonds of matrimony for failure of a party or both parties to attend the educational session.

History.

Acts 1997, ch. 557, § 1; T.C.A., § 36-6-405; Acts 2000, ch. 889, § 1.

Compiler's Notes.

Former § 36-6-408 (Acts 1997, ch. 557, § 1), concerning procedure for determining permanent parenting plan, was repealed by Acts 2000, ch. 889, § 1.

Acts 2000, ch. 889, § 1, effective January 1, 2001, renumbered former § 36-6-405 as this section.

36-6-409. Procedures and restrictions applicable to dispute resolution.

The following procedures and restrictions are applicable to the use of the dispute resolution process under this part:

(1) Each neutral party, the court, or the special master shall apply or, in the case of mediation, assist the parties to uphold as a standard for making decisions in mediation, the criteria in this part. Nothing in this part shall be construed to prevent a party from having the party's attorney present at a mediation or other dispute resolution procedure;

(2) The Tennessee rules of evidence do not apply in any mediation or alternative dispute resolution process; the neutral party may rely upon evidence submitted that reasonably prudent persons would rely upon in the conduct of their affairs;

(3) When dispute resolution is utilized in this chapter, it shall be preceded by a pretrial conference and the attendance by parents at the parent educational seminar set forth in § 36-6-408;

(4) The court shall not order a dispute resolution process, except court action, if the court:

(A) Finds that any limiting factor under § 36-6-406 applies;

(B) Finds that either parent is unable to afford the cost of the proposed dispute resolution process, unless such cost is waived or subsidized by the state;

(C) Enters a default judgment against the defendant; or

(D) Preempts such process upon motion of either party for just cause;

(5) If an order of protection issued in or recognized by this state is in effect or if there is a court finding of domestic abuse or criminal conviction involving domestic abuse within the marriage that is the subject of the proceeding for divorce or separate support and maintenance, the court may order mediation or refer the parties to mediation only if:

(A) Mediation is agreed to by the victim of the alleged domestic or family violence;

(B) Mediation is provided by a certified mediator who is trained in domestic and family violence in a specialized manner that protects the safety of the victim; and

(C) The victim is permitted to have in attendance at mediation a supporting person of the victim's choice, including, but not limited to, an attorney or advocate. No victim may provide monetary compensation to a non-attorney advocate for attendance at mediation. The other party may also have in attendance at mediation a supporting person of such party's choice, including, but not limited to, an attorney or advocate;

(6) If a dispute resolution process is not precluded or limited, then in designating such a process the court shall consider all relevant factors, including:

(A) Differences between the parents that would substantially inhibit their effective participation in any designated process;

(B) The parents' wishes or agreements and, if the parents have entered into agreements, whether the agreements were made knowingly and voluntarily; and

(C) The financial circumstances of the parties to pay for alternative dispute resolution processes where court sanctioned alternative dispute resolution programs are unavailable.

History.
Acts 2000, ch. 889, § 1; 2002, ch. 651, § 7.

Compiler's Notes.
Acts 2000, ch. 889, § 1, effective January 1, 2001, renumbered former § 36-6-409 as present § 36-6-405.

36-6-410. Designation of custody for the purpose of other state and federal statutes.

Solely for the purpose of all other state and federal statutes and any applicable policies of insurance that require a designation or determination of custody, a parenting plan shall designate the parent with whom the child is scheduled to reside a majority of the time as the custodian of the child; provided, that this designation shall not affect either parent's rights and responsibilities under the parenting plan. In the absence of such a designation, the parent with whom the child is scheduled to reside a majority of the time shall be deemed to be the custodian for the purposes of such federal and state statutes.

History.
Acts 1997, ch. 557, § 1; T.C.A., § 36-6-413; Acts 2000, ch. 889, § 1.

Compiler's Notes.
Acts 2000, ch. 889, § 1, effective January 1, 2001, renumbered former § 36-6-410 as present § 36-6-404 and former § 36-6-413 as this section.

36-6-411. Juvenile court jurisdiction.

(a) Nothing in this part shall be construed to alter, modify or restrict the exclusive jurisdiction of the juvenile court pursuant to § 37-1-103.

(b) The juvenile court may incorporate any part of the parenting plan process in any matter that the court deems appropriate.

(c) Nothing in this part shall require the department of children's services, acting in any capacity, to:

(1) Be bound in any manner by a permanent parenting plan;

(2) Participate in mediation or dispute resolution in relation to any permanent parenting plan; or

(3) Facilitate the development, modification, or presentation of any permanent or temporary parenting plan to a court.

History.
Acts 1997, ch. 557, § 1; T.C.A., § 36-6-403; Acts 2000, ch. 889, § 1; 2006, ch. 947, §§ 1, 4.

Compiler's Notes.
Acts 2000, ch. 889, § 1, effective January 1, 2001, renumbered former § 36-6-411 as present § 36-6-407 and former § 36-6-403 as this section.

36-6-412. Gender.

It is the legislative intent that the gender of the party seeking to be the primary residential parent shall not give rise to a presumption of parental fitness or cause a presumption in favor of or against such party.

History.
Acts 1997, ch. 557, § 1; T.C.A., § 36-6-404; Acts 2000, ch. 889, § 1.

Compiler's Notes.
Acts 2000, ch. 889, § 1, effective January 1, 2001, renumbered former § 36-6-412 as present § 36-6-406 and former § 36-6-404 as this section.

36-6-413. Funding.

(a) The costs of the mediation required by this part may be assessed as discretionary costs of the action.

(b)(1) The court may direct that all or part of the cost of court-ordered mediation, education and any related services to resolve family conflict in divorce and post-divorce matters shall be paid from all available federal, state, and local funds. Eligibility for receipt of such funds will be based on a sliding scale based on a person's ability to pay.

(2) There is hereby imposed an additional fee of sixty-two dollars and fifty cents ($62.50) on the issuance of a marriage license; provided, however, that, in any county having a municipality defined as a premier type tourist resort pursuant to § 67-6-103(a)(3)(B) when both applicants provide the county clerk with an affidavit or valid driver license establishing that they are not Tennessee residents, or when both applicants provide the county clerk with a valid and timely certificate of completion of a premarital preparation course as provided in subdivision (b)(3), the applicants shall be exempt from payment of sixty dollars ($60.00) of this fee. The county clerk shall pay the sixty dollar ($60.00) fee to the state treasurer, which fee shall be allocated as follows:

(A) Seven dollars ($7.00) to the administrative office of the courts for the specific purpose of funding the parenting plan requirements pursuant to this part, through the divorcing parent education and mediation fund, which funding includes the costs of court-ordered mediation, parenting education programs and any related services to resolve family conflict in divorce and post-divorce matters;

(B) Fifteen dollars ($15.00) to the department of children's services for child abuse prevention services;

(C) Seven dollars and fifty cents ($7.50) to the office of criminal justice programs for domestic violence services, which shall be in addition to the privilege tax on marriage licenses under § 67-4-505;

(D) Twenty dollars and fifty cents ($20.50) to the Tennessee Disability Coalition to build the capacity of the statewide disability community to offer services to families and children with disabilities;

(E) Three dollars ($3.00) to the Tennessee Court

Appointed Special Advocates Association (CASA);

(F) Four dollars ($4.00) to the department of education for the sole purpose of making grants to Tennessee Alliance of Boys and Girls Clubs in each grand division as selected by the commissioner of education for the purpose of defraying the expenses of such clubs implementing the "Project Learn" after-school program in the areas served by each club; and

(G) Three dollars ($3.00) to the Tennessee chapter of the National Association of Social Workers for education, information, publications and capacity building efforts focused on strengthening services and referral networks to families and children.

(3) Funds in the divorcing parent education and mediation fund shall be used to fund the parenting plan requirements of this part, including the creation of a grant process to serve local courts utilizing any part of the parenting plan process, costs of court-ordered mediation, parenting educational programs and any related services to resolve family conflict in divorce, post-divorce, and other child custody matters.

(4) The clerks of court with divorce jurisdiction, or two (2) or more clerks within a county or judicial district acting jointly, may apply to the administrative office of the courts for funding to serve such court or courts.

(5)(A) A man and a woman who, together or separately, complete a premarital preparation course in compliance with this section shall be exempt from the sixty dollar ($60.00) fee otherwise imposed by this section. Such course shall be not less than four (4) hours each, and shall be completed no more than one (1) year prior to the date of application for a marriage license. Each individual shall verify completion of the course by filing with the application a valid certificate of completion from the course provider, on a form developed by the administrative office of the courts, which certificate shall comply with the requirements of this subdivision (b)(5).

(B) The premarital preparation course may include instruction regarding:

(i) Conflict management;

(ii) Communication skills;

(iii) Financial responsibilities;

(iv) Children and parenting responsibilities; and

(v) Data compiled from available information relating to problems reported by married couples that seek marital or individual counseling.

(C) All individuals who participate in a premarital preparation course shall choose from the following list of qualified instructors:

(i) A psychologist as defined under § 63-11-203;

(ii) A clinical social worker as defined in title 63, chapter 23;

(iii) A licensed marital and family therapist as defined in § 63-22-115;

(iv) A clinical pastoral therapist as defined in title 63, chapter 22, part 2;

(v) A professional counselor as defined in § 63-22-104;

(vi) A psychological examiner as defined in § 63-11-202;

(vii) An official representative of a religious institution that is recognized under § 63-22-204; or

(viii) Any other instructor who meets the qualifying guidelines that may be established by the judicial district for the county in which the marriage license is issued.

(D) The administrative office of the courts shall develop a certificate of completion form to be completed by providers, which shall include:

(i) An attestation of the provider's compliance with the premarital preparation course requirements as set forth in this section;

(ii) The course instructor's name, address, qualifications, and license number, if any, or, if an official representative of a religious institution, a statement as to relevant training;

(iii) The name of the participant or participants; and

(iv) The hours completed and the date of completion.

(E) Each premarital preparation course provider shall furnish each participant who completes the course with a certificate of completion as required by this subdivision (b)(5).

(6) Any moneys collected under this section during the pilot program and not expended shall remain in the divorcing parent and mediation fund established by the state treasurer within the general fund for use by the administrative office of the courts, consistent with subdivision (b)(2)(A). No moneys collected under this section shall revert to the general fund of the state, but shall remain available exclusively as specified in this section.

(7) In addition to other fees authorized by this section, court clerks shall be entitled to normal copying fees, not to exceed fifty cents (50¢) per page, for providing copies of documents necessary for parenting plans.

History.

Acts 1997, ch. 557, § 1; T.C.A., § 36-6-414; Acts 2000, ch. 889, § 1; 2002, ch. 854, § 1; 2003, ch. 203, § 1; 2004, ch. 951, §§ 1-3; 2006, ch. 947, §§ 2, 3; 2008, ch. 924, § 16.

Compiler's Notes.

Acts 2000, ch. 889, § 1, effective January 1, 2001, renumbered former § 36-6-413 as present § 36-6-410 and former § 36-6-414 as this section.

Acts 2002, ch. 854, § 2 provided that the administrative office of the courts shall not be obligated to make grants to judicial districts except with funds specifically appropriated for such purpose.

Acts 2002, ch. 854, § 3 provided that the provisions of that act shall not be construed to be an appropriation of funds and no funds shall be obligated or expended pursuant to that act unless such funds are specifically appropriated by the general appropriations act.

36-6-414. Evaluation.

The parenting plan processes established by this part shall be evaluated by the administrative office of the

courts after the program has been in effect for three (3) years.

History.
Acts 2000, ch. 889, § 1.

Compiler's Notes.
Acts 2000, ch. 889, § 1 renumbered former § 36-6-414 as present § 36-6-413.

PART 5

PARENT VISITATION

36-6-501. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "License" means a license, certification, registration, permit, approval or other similar document issued to an individual evidencing admission to or granting authority to engage in a profession, trade, occupation, business, or industry, or to hunt or fish, but does not include a license to practice law unless the supreme court establishes guidelines pursuant to § 36-6-511 making this part applicable to such license; "license" does not include a license to operate any motor vehicle or other conveyance;

(2) "Licensee" means any individual holding a license, certification, registration, permit, approval, or other similar document evidencing admission to or granting authority to engage in a profession, trade, occupation, business, or industry, or to hunt or fish. "Licensee" does not include an attorney only with respect to the attorney's license to practice law unless the supreme court establishes guidelines pursuant to § 36-6-511 making this part applicable to such license;

(3) "Licensing authority" means the board, commission, or agency, excluding the department of safety, that has been established by statute or state regulation to oversee the issuance and regulation of any license. Excluded from this definition is the supreme court, unless the supreme court acts in accordance with § 36-6-511, and any licensing authority established solely by the action and authority of a county or municipal government;

(4) "Not in compliance with an order of visitation" means that one parent has intentionally interfered with implementation of a schedule of court-ordered visitation on two (2) or more occasions in any six-month period; and

(5) "Order of visitation" means any order granting a non-custodial parent the right to visit with such parent's child on days and times determined by the court.

History.
Acts 2000, ch. 971, § 2.

36-6-502. Compliance with visitation orders; enforcement.

(a) In all cases where visitation is ordered, both parents shall comply with such order of visitation by turning over custody of the child on the days and at the times so ordered by the court and by picking up the child and returning the child on the days and at the times so ordered by the court.

(b) An order of visitation may be enforced by using the license revocation, denial or suspension procedures provided in this part and any other sanctions deemed appropriate by the court.

(c) Notwithstanding any law to the contrary, if the driver license of a parent is currently canceled, suspended or revoked pursuant to title 55, chapter 10, part 4, or title 55, chapter 50, part 5, and, if such parent personally drives a motor vehicle to the location where the parent is scheduled to take custody of a child pursuant to a valid order of visitation or parenting plan, then the parent or other person having custody of the child may refuse to turn over custody of the child under the circumstances and such refusal shall not constitute a violation of subsection (a).

History.
Acts 2000, ch. 971, § 3; 2003, ch. 243, § 2.

36-6-503. Petition to court for intentional violation by parent — Serving notice.

(a) A parent, who has been victimized by the other parent's intentional violation of § 36-6-502(a) on two (2) or more occasions within any six-month period, may petition the court having jurisdiction over the order of visitation for a finding that the other parent is not in compliance with an order of visitation; provided, prior to the most recent violation, the victimized parent must have notified the other parent, by certified mail, return receipt requested, that subsequent violations of the court-ordered visitation shall be subject to sanctions authorized by this part and a copy of such notification must have been filed with the court. The petitioner shall include with the petition any information concerning a license held by the other parent and covered by § 36-6-511. A notice shall be served on the other parent together with the petition. Such notice shall state that:

(1) The parent may request a hearing to contest the issue of compliance;

(2) A request for a hearing must be made in writing and must be received by the court within twenty (20) days of service;

(3) If such parent requests a hearing within twenty (20) days of service, the court shall stay the proceedings to certify such parent to any appropriate licensing authority for noncompliance with an order of visitation pending a decision after the hearing;

(4) If the court finds that such parent is not in compliance with an order of visitation or such parent does not request a hearing within twenty (20) days of service, the court may certify such parent to any appropriate licensing authority for noncompliance with a court order of visitation; and

(5) If the court certifies such parent to a licensing authority for noncompliance with an order of visitation, the licensing authority, notwithstanding any law to the contrary, must deny a renewal request,

revoke such parent's license or refuse to issue or reinstate a license, as the case may be, until such parent provides the licensing authority with a release from the court pursuant to § 36-6-508 that states such parent is in compliance with the order of visitation.

(b) The notice sent pursuant to this section shall also include a statement informing such parent of the need to obtain a release from the court in order to allow such parent's license to be issued, renewed or reinstated. The notice shall be served by certified mail, return receipt requested, or by personal service with an affidavit of service completed by an authorized process server.

History.
Acts 2000, ch. 971, § 4.

36-6-504. Determination of contesting the court's intention.

(a) If a parent requests a hearing pursuant to this part to contest the court's intention to issue a finding of noncompliance to a licensing authority, the court shall conduct the hearing only to determine:

(1) Whether the licensee is a parent subject to an order of visitation;

(2) Whether the licensee is not in compliance with an order of visitation; and

(3) Whether good cause exists to impose the licensing sanctions provided for in this part.

(b) The parties may enter into a consent order wherein the parent in violation agrees to henceforth comply with the order of visitation. Upon entry of such an order the proceedings for licensing sanctions shall be further stayed unless there is noncompliance with the consent order. In the event of noncompliance with the consent order, the stay shall cease and the court shall certify to each affected licensing authority that such parent is not in compliance with an order of visitation. Entry of such consent order shall constitute a waiver of such parent's right to any hearing on the issue of noncompliance with an order of visitation based upon the notice of noncompliance for which the consent order has been entered.

(c) The cost of this action and reasonable attorney's fees shall be taxed to the parent who is not in compliance with an order of visitation. The cost of this action and reasonable attorney's fees shall be assessed against any parent who, in bad faith, petitions the court for imposition of sanctions pursuant to this part.

History.
Acts 2000, ch. 971, § 5.

36-6-505. Requesting hearing for noncompliance.

(a) If a parent timely requests a hearing to contest the issue of compliance, the court shall stay the action and may not certify the name of such parent to any licensing authority for noncompliance with an order of visitation until the court issues a written decision after a hearing that finds such parent is not in compliance with an order of visitation; provided, that after a decision by the court has been made in the form of a final order as provided in § 4-5-315, there will be no further stay unless a reviewing court issues a stay, which stay shall be automatic upon the filing of a notice of appeal.

(b) The court shall issue its decision after hearing without undue delay. The order must inform both parents that either party may file an appeal of the decision within thirty (30) days of the date of the decision. A certification concerning the status of a license shall be automatically stayed pending disposition of an appeal.

(c) Upon a finding of noncompliance, the court may also allocate additional time with the child to the nonoffending parent.

(d) Notwithstanding any law to the contrary, the court shall assess costs of an unsuccessful appeal of notice of noncompliance to the parent in non-compliance.

History.
Acts 2000, ch. 971, § 6.

36-6-506. Determining noncompliance of visitation.

The court may certify in writing or by electronic data exchange to each licensing authority that the offending parent is not in compliance with an order of visitation if:

(1) Such parent does not timely request a hearing upon service of notice issued under § 36-6-503;

(2) Such parent has not entered into a consent order as provided for in § 36-6-504, or having entered into such an order, has failed to comply with such an order;

(3) The court issues a decision after a hearing pursuant to this part that finds such parent is not in compliance with an order of visitation; or

(4) In any proceeding to enforce any provision of an order of visitation, the court finds a parent to be not in compliance with the order of visitation and the other parent specifically prayed for relief in the form of license revocation, denial or suspension.

History.
Acts 2000, ch. 971, § 7.

36-6-507. Denial, suspension or revocation of a license.

(a) Notwithstanding any other law, rule or regulation to the contrary, the certification from the court under § 36-6-506 shall be a basis for the denial, suspension or revocation of a license, or for refusal to issue, renew, or reinstate a license by a licensing authority.

(b) The licensing authority shall notify, without undue delay, by regular mail, a parent certified from the court under § 36-6-506, that the parent's application for the issuance, renewal or reinstatement of a license has been denied or that the parent's current license has been suspended or revoked because the parent's name has been certified by the court as a parent who is not in compliance with an order of visitation.

(c) A notice of suspension shall specify the reason and statutory grounds for the suspension and the effective date of the suspension and may include any other notices prescribed by the licensing authority. The notice shall also inform the individual that in order to apply for issuance, renewal or reinstatement of the license, the individual shall obtain a release from the court in accordance with § 36-6-508.

(d) If a licensing authority fails to deny, suspend or revoke a license when so ordered by a court pursuant to this part, the other parent may petition the court to compel the authority's compliance.

(e) A notice to the individual by the licensing authority to revoke, deny, suspend, or refuse to renew or reinstate a license after receipt of the court certification under this section shall not be appealable under title 4, chapter 5, part 3 of the Uniform Administrative Procedures Act.

History.
Acts 2000, ch. 971, § 8.

36-6-508. Compliance with order; release from the court.

(a) When a parent who is served notice under § 36-6-503, or whose license was otherwise revoked, denied or suspended by order of the court, complies with the order of visitation, the court shall provide the licensing authority with written or electronic data exchange confirmation that the parent is in compliance with the order and issue a release to the parent. For purposes of lifting the licensing sanctions pursuant to this section, a parent will be considered in compliance with an order of visitation upon fully complying with such order for the next four (4) consecutive scheduled visitation periods after the finding by the court of noncompliance.

(b)(1) Upon receipt of the release from the court, the licensing authority shall issue or extend the parent's license, or withdraw any denial, revocation or suspension of the parent's license; provided, that all other applicable licensing requirements are met by the parent. If all other applicable licensing requirements are met by the parent, the parent shall not, however, be required to be re-tested or re-certified for a license that was valid and that was held in good standing by the parent, or for which the parent had been determined otherwise eligible by the licensing authority to receive, prior to the revocation or suspension or denial of such license pursuant to this part, and which license was revoked, suspended or denied solely pursuant to this part.

(2) If, after the revocation, suspension or denial of the license, and before the date on which the next periodic licensing would be due, the license is restored or issued by the licensing authority due to a release, the parent shall not be required to pay a new periodic license fee for the period remaining before the next periodic licensing fee would be due; provided, the licensing authority may impose a reasonable reinstatement fee not to exceed five dollars ($5.00) for processing of the restoration or issuance of the license at any time.

History.
Acts 2000, ch. 971, § 9.

36-6-509. Authorities cooperating with the court.

The various licensing authorities shall cooperate with the court in any manner necessary to effectuate this part, and the court and the various licensing authorities shall enter into any necessary agreements to carry out the purposes of this part.

History.
Acts 2000, ch. 971, § 10.

36-6-510. Filing of motions.

Nothing in this part prohibits a custodial or noncustodial parent from filing a motion with the court to modify an order of visitation or a custody order.

History.
Acts 2000, ch. 971, § 11.

36-6-511. Qualifications for licensure or registration; eligibility.

(a) In addition to other qualifications for licensure or registration and conditions for continuing eligibility to hold a license as prescribed by law, rule or regulation issued under the provisions of titles 43, 44, 45, 56, 62, 63, 68, 70 or 71, for an individual to engage in a profession, trade, occupation, business, or industry, or to hunt or fish, applicants for licensure, certification or registration, and licensees renewing their licenses, and existing licensees, must not then be subject to a certification that the licensee is not in compliance with an order of visitation.

(b) The supreme court is encouraged to establish guidelines to suspend the license of an attorney who fails to comply with an order of visitation.

History.
Acts 2000, ch. 971, § 12.

PART 6

UNIFORM CHILD ABDUCTION PREVENTION ACT

36-6-601. Short title.

This part shall be known and may be cited as the "Uniform Child Abduction Prevention Act."

History.
Acts 2010, ch. 832, § 1.

36-6-602. Part definitions.

In this part:

(1) "Abduction" means the wrongful removal or wrongful retention of a child;

(2) "Child" means an unemancipated individual who is less than eighteen (18) years of age;

(3) "Child-custody determination" means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent,

temporary, initial, and modification order;

(4) "Child-custody proceeding" means a proceeding in which legal custody, physical custody, or visitation with respect to a child is at issue. "Child-custody proceeding" includes a proceeding for divorce, dissolution of marriage, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, or protection from domestic violence;

(5) "Court" means an entity authorized under the law of a state to establish, enforce, or modify a child-custody determination;

(6) "Petition" includes a motion or its equivalent;

(7) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(8) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. "State" includes a federally recognized Indian tribe or nation;

(9) "Travel document" means records relating to a travel itinerary, including travel tickets, passes, reservations for transportation, or accommodations. "Travel document" does not include a passport or visa;

(10) "Wrongful removal" means the taking of a child that breaches rights of custody or visitation given or recognized under the law of this state; and

(11) "Wrongful retention" means the keeping or concealing of a child that breaches rights of custody or visitation given or recognized under the law of this state.

History.
Acts 2010, ch. 832, § 1.

36-6-603. Cooperation and communication among courts.

Sections 36-6-210, 36-6-211 and 36-6-212 apply to cooperation and communications among courts in proceedings under this part.

History.
Acts 2010, ch. 832, § 1.

36-6-604. Actions for abduction prevention measures.

(a) A court on its own motion may order abduction prevention measures in a child-custody proceeding if the court finds that the evidence establishes a credible risk of abduction of the child.

(b) A party to a child-custody determination or another individual or entity having a right under the law of this state or any other state to seek a child-custody determination for the child may file a petition seeking abduction prevention measures to protect the child under this part.

(c) A prosecutor or public authority designated under § 36-6-239 may seek a warrant to take physical custody of a child under § 36-6-609 or other appropriate prevention measures.

History.
Acts 2010, ch. 832, § 1.

36-6-605. Jurisdiction.

(a) A petition under this part may be filed only in a court that has jurisdiction to make a child-custody determination with respect to the child at issue under part 2 of this chapter.

(b) A court of this state has temporary emergency jurisdiction under § 36-6-219 if the court finds a credible risk of abduction.

History.
Acts 2010, ch. 832, § 1.

36-6-606. Contents of petition.

(a) A petition under this part must be verified and include a copy of any existing child-custody determination, if available. The petition must specify the risk factors for abduction, including the relevant factors described in § 36-6-607.

(b) Subject to § 36-6-224(e), if reasonably ascertainable, the petition must contain:

(1) The name, date of birth, and gender of the child;

(2) The customary address and current physical location of the child;

(3) The identity, customary address, and current physical location of the respondent;

(4) A statement of whether a prior action to prevent abduction or domestic violence has been filed by a party or other individual or entity having custody of the child, and the date, location, and disposition of the action;

(5) A statement of whether a party to the proceeding has been arrested for a crime related to domestic violence, stalking, or child abuse or neglect, and the date, location, and disposition of the case; and

(6) Any other information required to be submitted to the court for a child-custody determination under § 36-6-224.

History.
Acts 2010, ch. 832, § 1.

36-6-607. Factors to determine risk of abduction.

(a) In determining whether there is a credible risk of abduction of a child, the court shall consider any evidence that the petitioner or respondent:

(1) Has previously abducted or attempted to abduct the child;

(2) Has threatened to abduct the child;

(3) Has recently engaged in activities that may indicate a planned abduction, including:

(A) Abandoning employment;

(B) Selling a primary residence;

(C) Terminating a lease;

(D) Closing bank or other financial management accounts, liquidating assets, hiding or destroying financial documents, or conducting any unusual

financial activities;

(E) Applying for a passport or visa or obtaining travel documents for the respondent, a family member, or the child; or

(F) Seeking to obtain the child's birth certificate or school or medical records;

(4) Has engaged in domestic violence, stalking, or child abuse or neglect;

(5) Has refused to follow a child-custody determination;

(6) Lacks strong familial, financial, emotional, or cultural ties to the state or the United States;

(7) Has strong familial, financial, emotional, or cultural ties to another state or country;

(8) Is likely to take the child to a country that:

(A) Is not a party to the Hague Convention on the Civil Aspects of International Child Abduction and does not provide for the extradition of an abducting parent or for the return of an abducted child;

(B) Is a party to the Hague Convention on the Civil Aspects of International Child Abduction but:

(i) The Hague Convention on the Civil Aspects of International Child Abduction is not in force between the United States and that country;

(ii) Is noncompliant according to the most recent compliance report issued by the United States department of state; or

(iii) Lacks legal mechanisms for immediately and effectively enforcing a return order under the Hague Convention on the Civil Aspects of International Child Abduction;

(C) Poses a risk that the child's physical or emotional health or safety would be endangered in the country because of specific circumstances relating to the child or because of human rights violations committed against children;

(D) Has laws or practices that would:

(i) Enable the respondent, without due cause, to prevent the petitioner from contacting the child;

(ii) Restrict the petitioner from freely traveling to or exiting from the country because of the petitioner's gender, nationality, marital status, or religion; or

(iii) Restrict the child's ability legally to leave the country after the child reaches the age of majority because of a child's gender, nationality, or religion;

(E) Is included by the United States department of state on a current list of state sponsors of terrorism;

(F) Does not have an official United States diplomatic presence in the country; or

(G) Is engaged in active military action or war, including a civil war, to which the child may be exposed;

(9) Is undergoing a change in immigration or citizenship status that would adversely affect the respondent's ability to remain in the United States legally;

(10) Has had an application for United States citizenship denied;

(11) Has forged or presented misleading or false evidence on government forms or supporting documents to obtain or attempt to obtain a passport, a visa, travel documents, a social security card, a driver's license, or other government-issued identification card or has made a misrepresentation to the United States government;

(12) Has used multiple names to attempt to mislead or defraud; or

(13) Has engaged in any other conduct the court considers relevant to the risk of abduction.

(b) In the hearing on a petition under this part, the court shall consider any evidence that the respondent believed in good faith that the respondent's conduct was necessary to avoid imminent harm to the child or respondent and any other evidence that may be relevant to whether the respondent may be permitted to remove or retain the child.

History.
Acts 2010, ch. 832, § 1.

36-6-608. Provisions and measures to prevent abduction.

(a) If a petition is filed under this part, the court may enter an order that must include:

(1) The basis for the court's exercise of jurisdiction;

(2) The manner in which notice and opportunity to be heard were given to the persons entitled to notice of the proceeding;

(3) A detailed description of each party's custody and visitation rights and residential arrangements for the child;

(4) A provision stating that a violation of the order may subject the party in violation to civil and criminal penalties; and

(5) Identification of the child's country of habitual residence at the time of the issuance of the order.

(b) If, at a hearing on a petition under this part or on the court's own motion, the court after reviewing the evidence finds a credible risk of abduction of the child, the court shall enter an abduction prevention order. The order must include the provisions required by subsection (a) and measures and conditions, including those in subsections (c), (d), and (e), that are reasonably calculated to prevent abduction of the child, giving due consideration to the custody and visitation rights of the parties. The court shall consider the age of the child, the potential harm to the child from an abduction, the legal and practical difficulties of returning the child to the jurisdiction if abducted, and the reasons for the potential abduction, including evidence of domestic violence, stalking, or child abuse or neglect.

(c) An abduction prevention order may include one (1) or more of the following:

(1) An imposition of travel restrictions that require that a party traveling with the child outside a designated geographical area provide the other party with the following:

(A) The travel itinerary of the child;

(B) A list of physical addresses and telephone numbers at which the child can be reached at specified times; and

(C) Copies of all travel documents;

(2) A prohibition of the respondent directly or indirectly:

(A) Removing the child from this state, the United States, or another geographic area without permission of the court or the petitioner's written consent;

(B) Removing or retaining the child in violation of a child-custody determination;

(C) Removing the child from school or a child-care or similar facility; or

(D) Approaching the child at any location other than a site designated for supervised visitation;

(3) A requirement that a party register the order in another state as a prerequisite to allowing the child to travel to that state;

(4) With regard to the child's passport:

(A) A direction that the petitioner place the child's name in the United States department of state's child passport issuance alert program;

(B) A requirement that the respondent surrender to the court or the petitioner's attorney any United States or foreign passport issued in the child's name, including a passport issued in the name of both the parent and the child; and

(C) A prohibition upon the respondent from applying on behalf of the child for a new or replacement passport or visa;

(5) As a prerequisite to exercising custody or visitation, a requirement that the respondent provide:

(A) To the United States department of state office of children's issues and the relevant foreign consulate or embassy, an authenticated copy of the order detailing passport and travel restrictions for the child;

(B) To the court:

(i) Proof that the respondent has provided the information in subdivision (c)(5)(A); and

(ii) An acknowledgment in a record from the relevant foreign consulate or embassy that no passport application has been made or passport issued on behalf of the child;

(C) To the petitioner, proof of registration with the United States embassy or other United States diplomatic presence in the destination country and with the Central Authority for the Hague Convention on the Civil Aspects of International Child Abduction, if that Convention is in effect between the United States and the destination country, unless one of the parties objects; and

(D) A written waiver under the Privacy Act, 5 U.S.C. § 552a, with respect to any document, application, or other information pertaining to the child authorizing its disclosure to the court and the petitioner; and

(6) Upon the petitioner's request, a requirement that the respondent obtain an order from the relevant foreign country containing terms identical to the child-custody determination issued in the United States.

(d) In an abduction prevention order, the court may impose conditions on the exercise of custody or visitation that:

(1) Limit visitation or require that visitation with the child by the respondent be supervised until the court finds that supervision is no longer necessary and order the respondent to pay the costs of supervision;

(2) Require the respondent to post a bond or provide other security in an amount sufficient to serve as a financial deterrent to abduction, the proceeds of which may be used to pay for the reasonable expenses of recovery of the child, including reasonable attorney's fees and costs if there is an abduction; and

(3) Require the respondent to obtain education on the potentially harmful effects to the child from abduction.

(e) To prevent imminent abduction of a child, a court may:

(1) Issue a warrant to take physical custody of the child under § 36-6-609 or the law of this state other than this part;

(2) Direct the use of law enforcement to take any action reasonably necessary to locate the child, obtain return of the child, or enforce a custody determination under this part or the law of this state other than this part; or

(3) Grant any other relief allowed under the law of this state other than this part.

(f) The remedies provided in this part are cumulative and do not affect the availability of other remedies to prevent abduction.

History.
Acts 2010, ch. 832, § 1.

36-6-609. Warrant to take physical custody of child.

(a) If a petition under this part contains allegations, and the court finds that there is a credible risk that the child is imminently likely to be wrongfully removed, the court may issue an ex parte warrant to take physical custody of the child.

(b) The respondent on a petition under subsection (a) must be afforded an opportunity to be heard at the earliest possible time after the ex parte warrant is executed, but not later than the next judicial day unless a hearing on that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible.

(c) An ex parte warrant under subsection (a) to take physical custody of a child must:

(1) Recite the facts upon which a determination of a credible risk of imminent wrongful removal of the child is based;

(2) Direct law enforcement officers to take physical custody of the child immediately;

(3) State the date and time for the hearing on the petition; and

(4) Provide for the safe interim placement of the child pending further order of the court.

(d) If feasible, before issuing a warrant and before determining the placement of the child after the war-

rant is executed, the court may order a search of the relevant databases of the national crime information center system and similar state databases to determine if either the petitioner or respondent has a history of domestic violence, stalking, or child abuse or neglect.

(e) The petition and warrant must be served on the respondent when or immediately after the child is taken into physical custody.

(f) A warrant to take physical custody of a child, issued by this state or another state, is enforceable throughout this state. If the court finds that a less intrusive remedy will not be effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances, the court may authorize law enforcement officers to make a forcible entry at any hour.

(g) If the court finds after a hearing that a petitioner sought an ex parte warrant under subsection (a) for the purpose of harassment or in bad faith, the court may award the respondent reasonable attorney's fees, costs, and expenses.

(h) This part does not affect the availability of relief allowed under the law of this state other than this part.

History.
Acts 2010, ch. 832, § 1.

36-6-610. Duration of abduction prevention order.

An abduction prevention order remains in effect until the earliest of:

(1) The time stated in the order;

(2) The emancipation of the child;

(3) The child's attaining eighteen (18) years of age; or

(4) The time the order is modified, revoked, vacated, or superseded by a court with jurisdiction under §§ 36-6-216 — 36-6-218 and other applicable law of this state.

History.
Acts 2010, ch. 832, § 1.

36-6-611. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History.
Acts 2010, ch. 832, § 1.

36-6-612. Relation to Electronic Signatures in Global and National Commerce Act.

This part modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, compiled in 15 U.S.C. § 7001 et seq., but does not modify, limit, or supersede § 101(c) of the act, codified in 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in § 103(b) of that act, codified in 15 U.S.C. § 7003(b).

History.
Acts 2010, ch. 832, § 1.

CHAPTER 7

UNIFORM DEPLOYED PARENTS CUSTODY AND VISITATION ACT

Part 1. General Provisions

SECTION.
36-7-101. Short title.
36-7-102. Chapter definitions.
36-7-103. Remedies for noncompliance.
36-7-104. Jurisdiction.
36-7-105. Notification of pending deployment — Proposed plan for custodial responsibility during deployment.
36-7-106. Duty to notify of change of address.
36-7-107. Effect of past or future deployment on best interest considerations.

Part 2. Temporary custody agreements

36-7-201. Form of temporary agreement during deployment.
36-7-202. Nature of authority created by agreement.
36-7-203. Modification of agreement.
36-7-204. Grant and revocation of power of attorney.
36-7-205. Filing of agreement or power of attorney with court.

Part 3. Court proceedings to obtain temporary custody order

36-7-301. "Close and substantial relationship" defined.
36-7-302. Proceeding for temporary custody order.
36-7-303. Expedited hearing.
36-7-304. Testimony by electronic means.
36-7-305. Effect of prior judicial order or agreement.
36-7-306. Grant of caretaking or decision-making authority to nonparent.
36-7-307. Nature of authority created by temporary custody order.
36-7-308. Content of temporary custody order.
36-7-309. Order for child support.
36-7-310. Modifying or terminating grant of custodial responsibility to nonparent.

Part 4. Termination of order

36-7-401. Termination of temporary order providing for modification of child custody decree.

Part 5. Applicability and construction

36-7-501. Application and construction of uniform law.
36-7-502. Relation to Electronic Signatures in Global and National Commerce Act.
36-7-503. Applicability of chapter.

PART 1

GENERAL PROVISIONS

36-7-101. Short title.

This chapter shall be known and may be cited as the Uniform Deployed Parents Custody and Visitation Act.

History.
Acts 2014, ch. 798, § 1.

36-7-102. Chapter definitions.

In this chapter:

(1) "Adult" means an individual who has attained eighteen (18) years of age or is an emancipated minor;

(2) "Caretaking authority" means the right to live with and care for a child on a day-to-day basis. "Caretaking authority" includes physical custody,

parenting time, right to access, and visitation;

(3) "Child" means:

(A) An unemancipated individual who has not attained eighteen (18) years of age; or

(B) An adult son or daughter by birth or adoption, or under law of this state other than this chapter, who is the subject of a court order concerning custodial responsibility;

(4) "Court" means a tribunal, including an administrative agency, authorized under law of this state other than this chapter to make, enforce, or modify a decision regarding custodial responsibility;

(5) "Custodial responsibility" includes all powers and duties relating to caretaking authority and decision-making authority for a child. "Custodial responsibility" includes physical custody, legal custody, parenting time, right to access, visitation, and authority to grant limited contact with a child;

(6)(A) "Decision-making authority" means the power to make important decisions regarding a child, including decisions regarding the child's education, religious training, health care, extracurricular activities, and travel;

(B) "Decision-making authority" does not include the power to make decisions that necessarily accompany a grant of caretaking authority;

(7) "Deploying parent" means a service member who is deployed or has been notified of impending deployment and is:

(A) A parent of a child under law of this state other than this chapter; or

(B) An individual who has custodial responsibility for a child under law of this state other than this chapter;

(8) "Deployment" means the movement or mobilization of a service member for more than thirty (30) days pursuant to uniformed service orders that:

(A) Are designated as unaccompanied;

(B) Do not authorize dependent travel; or

(C) Otherwise do not permit the movement of family members to the location to which the service member is deployed;

(9) "Family member" means a sibling, aunt, uncle, cousin, stepparent, or grandparent of a child or an individual recognized to be in a familial relationship with a child under law of this state other than this chapter;

(10) "Limited contact" means the authority of a nonparent to visit a child for a limited time. "Limited contact" includes authority to take the child to a place other than the residence of the child;

(11) "Nonparent" means an individual other than a deploying parent or other parent;

(12) "Other parent" means an individual who, in common with a deploying parent, is:

(A) A parent of a child under law of this state other than this chapter; or

(B) An individual who has custodial responsibility for a child under law of this state other than this chapter;

(13) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(14) "Return from deployment" means the conclusion of a service member's deployment as specified in uniformed service orders;

(15) "Service member" means a member of a uniformed service;

(16) "Sign" means with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic symbol, sound, or process;

(17) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States; and

(18) "Uniformed service" means:

(A) Active and reserve components of the army, navy, air force, marine corps, or coast guard of the United States;

(B) The United States merchant marine;

(C) The commissioned corps of the United States public health service;

(D) The commissioned corps of the national oceanic and atmospheric administration of the United States; or

(E) The national guard of a state.

History.
Acts 2014, ch. 798, § 1.

36-7-103. Remedies for noncompliance.

In addition to other remedies under law of this state other than this chapter, if a court finds that a party to a proceeding under this chapter has acted in bad faith or intentionally failed to comply with this chapter or a court order issued under this chapter, the court may assess reasonable attorney's fees and costs against the party and order other appropriate relief.

History.
Acts 2014, ch. 798, § 1.

36-7-104. Jurisdiction.

(a) A court may issue an order regarding custodial responsibility under this chapter only if the court has jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act, compiled in chapter 6, part 2 of this title.

(b) If a court has issued a temporary order regarding custodial responsibility pursuant to part 3 of this chapter, the residence of the deploying parent is not changed by reason of the deployment for the purposes of the Uniform Child Custody Jurisdiction and Enforcement Act during the deployment.

(c) If a court has issued a permanent order regarding custodial responsibility before notice of deployment and the parents have requested to modify that order temporarily by agreement pursuant to part 2 of this chapter, the residence of the deploying parent is not changed by reason of the deployment for the purposes of the Uniform Child Custody Jurisdiction and Enforcement Act.

(d) If a court in another state has issued a temporary order regarding custodial responsibility as a result of impending or current deployment, the residence of the deploying parent is not changed by reason of the deployment for the purposes of the Uniform Child Custody Jurisdiction and Enforcement Act.

(e) This section does not prevent a court from exercising temporary emergency jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act.

History.
Acts 2014, ch. 798, § 1.

36-7-105. Notification of pending deployment — Proposed plan for custodial responsibility during deployment.

(a) Except as otherwise provided in subsection (d) and subject to subsection (c), a deploying parent shall notify in a record the other parent of a pending deployment not later than seven (7) days after receiving notice of deployment unless reasonably prevented from doing so by the circumstances of service. If the circumstances of service prevent giving notification within the seven (7) days, the deploying parent shall give the notification as soon as reasonably possible.

(b) Except as otherwise provided in subsection (d) and subject to subsection (c), each parent shall provide in a record the other parent with a proposed plan for fulfilling that parent's share of custodial responsibility during deployment. Each parent shall provide the plan as soon as reasonably possible after notification of deployment is given under subsection (a).

(c) If a court order currently in effect prohibits disclosure of the address or contact information of the other parent, notification of deployment under subsection (a), or notification of a plan for custodial responsibility during deployment under subsection (b), may be made only to the issuing court. If the address of the other parent is available to the issuing court, the court shall forward the notification to the other parent. The court shall keep confidential the address or contact information of the other parent.

(d) Notification in a record under subsection (a) or (b) is not required if the parents are living in the same residence and both parents have actual notice of the deployment or plan.

(e) In a proceeding regarding custodial responsibility, a court may consider the reasonableness of a parent's efforts to comply with this section.

History.
Acts 2014, ch. 798, § 1.

36-7-106. Duty to notify of change of address.

(a) Except as otherwise provided in subsection (b), an individual to whom custodial responsibility has been granted during deployment pursuant to part 2 or 3 of this chapter shall notify the deploying parent and any other person with custodial responsibility of a child of any change of the individual's mailing address or residence until the grant is terminated. The individual shall provide the notice to any court that has issued a custody or child support order concerning the child which is in effect.

(b) If a court order currently in effect prohibits disclosure of the address or contact information of an individual to whom custodial responsibility has been granted, a notification under subsection (a) may be made only to the court that issued the order. The court shall keep confidential the mailing address or residence of the individual to whom custodial responsibility has been granted.

History.
Acts 2014, ch. 798, § 1.

36-7-107. Effect of past or future deployment on best interest considerations.

In a proceeding for custodial responsibility of a child of a service member, a court may not consider a parent's past deployment or possible future deployment in itself in determining the best interest of the child but may consider any significant impact on the best interest of the child of the parent's past or possible future deployment.

History.
Acts 2014, ch. 798, § 1.

PART 2

TEMPORARY CUSTODY AGREEMENTS

36-7-201. Form of temporary agreement during deployment.

(a) The parents of a child may enter into a temporary agreement under this part granting custodial responsibility during deployment.

(b) An agreement under subsection (a) must be:

(1) In writing; and

(2) Signed by both parents and any nonparent to whom custodial responsibility is granted.

(c) Subject to subsection (d), an agreement under subsection (a), if feasible, must:

(1) Identify the destination, duration, and conditions of the deployment that is the basis for the agreement;

(2) Specify the allocation of caretaking authority among the deploying parent, the other parent, and any nonparent;

(3) Specify any decision-making authority that accompanies a grant of caretaking authority;

(4) Specify any grant of limited contact to a nonparent;

(5) If under the agreement custodial responsibility is shared by the other parent and a nonparent, or by other nonparents, provide a process to resolve any dispute that may arise;

(6) Specify the frequency, duration, and means, including electronic means, by which the deploying parent will have contact with the child, any role to be played by the other parent in facilitating the contact, and the allocation of any costs of contact;

(7) Specify the contact between the deploying parent and child during the time the deploying parent is on leave or is otherwise available;

(8) Acknowledge that any party's child-support obligation cannot be modified by the agreement, and that changing the terms of the obligation during deployment requires modification in the appropriate court;

(9) Provide that the agreement will terminate according to the procedures under part 4 of this chapter after the deploying parent returns from deployment; and

(10) Specify which parent is required to file the agreement with a court of competent jurisdiction pursuant to § 36-7-205.

(d) The omission of any of the items specified in subsection (c) does not invalidate an agreement under this section.

History.
Acts 2014, ch. 798, § 1.

36-7-202. Nature of authority created by agreement.

(a) An agreement under this part is temporary and terminates pursuant to part 4 of this chapter after the deploying parent returns from deployment, unless the agreement has been terminated before that time by court order or modification under § 36-7-203. The agreement does not create an independent, continuing right to caretaking authority, decision-making authority, or limited contact in an individual to whom custodial responsibility is given.

(b) A nonparent who has caretaking authority, decision-making authority, or limited contact by an agreement under this part has standing to enforce the agreement until it has been terminated by court order, by modification under § 36-7-203, or under part 4 of this chapter.

History.
Acts 2014, ch. 798, § 1.

36-7-203. Modification of agreement.

(a) By mutual consent, the parents of a child may modify an agreement regarding custodial responsibility made pursuant to this part.

(b) If an agreement is modified under subsection (a) before deployment of a deploying parent, the modification must be in writing and signed by both parents and any nonparent who will exercise custodial responsibility under the modified agreement approved by the court.

(c) If an agreement is modified under subsection (a) during deployment of a deploying parent, the modification must be agreed to in a record by both parents and any nonparent who will exercise custodial responsibility under the modified agreement approved by the court.

History.
Acts 2014, ch. 798, § 1.

36-7-204. Grant and revocation of power of attorney.

A deploying parent, by power of attorney, may delegate all or part of custodial responsibility to an adult nonparent for the period of deployment if no other parent possesses custodial responsibility under law of this state other than this part, or if a court order currently in effect prohibits contact between the child and the other parent. The deploying parent may revoke the power of attorney by signing a revocation of the power.

History.
Acts 2014, ch. 798, § 1.

36-7-205. Filing of agreement or power of attorney with court.

An agreement or power of attorney under this part must be filed within a reasonable time with any court that has entered an order on custodial responsibility or child support that is in effect concerning the child who is the subject of the agreement or power of attorney and shall be binding upon the parties upon approval by the court. The case number and heading of the pending case concerning custodial responsibility or child support must be provided to the court with the agreement or power of attorney.

History.
Acts 2014, ch. 798, § 1.

PART 3

COURT PROCEEDINGS TO OBTAIN TEMPORARY CUSTODY ORDER

36-7-301. "Close and substantial relationship" defined.

In this part, "close and substantial relationship" means a relationship in which a significant bond exists between a child and a nonparent.

History.
Acts 2014, ch. 798, § 1.

36-7-302. Proceeding for temporary custody order.

(a) After a deploying parent receives notice of deployment and until the deployment terminates, a court may issue a temporary order granting custodial responsibility unless prohibited by the Service Members Civil Relief Act, 50 U.S.C. Appendix Sections 521 and 522, and may not issue a permanent order granting custodial responsibility without the consent of the deploying parent.

(b) At any time after a deploying parent receives notice of deployment, either parent may file an action

regarding custodial responsibility of a child during deployment. A motion must be filed in a pending proceeding for custodial responsibility in a court with jurisdiction under § 36-7-104 or, if there is no pending proceeding in a court with jurisdiction under § 36-7-104, in a new complaint for granting custodial responsibility during deployment.

History.
Acts 2014, ch. 798, § 1.

36-7-303. Expedited hearing.

If an action to grant custodial responsibility is filed under § 36-7-302(b) before a deploying parent deploys, the court shall conduct an expedited hearing.

History.
Acts 2014, ch. 798, § 1.

36-7-304. Testimony by electronic means.

In a proceeding under this part, a party or witness who is not reasonably available to appear personally may appear, provide testimony, and present evidence by electronic means unless the court finds good cause to require a personal appearance.

History.
Acts 2014, ch. 798, § 1.

36-7-305. Effect of prior judicial order or agreement.

In a proceeding for a grant of custodial responsibility pursuant to this part, the following rules apply:

(1) A prior judicial order designating custodial responsibility in the event of deployment is binding on the court unless the circumstances meet the requirements of law of this state other than this chapter for modifying a judicial order regarding custodial responsibility; and

(2) The court shall enforce a prior written agreement between the parents for designating custodial responsibility in the event of deployment, including an agreement or modification executed under part 2 of this chapter, unless the court finds that the agreement is contrary to the best interest of the child.

History.
Acts 2014, ch. 798, § 1.

36-7-306. Grant of caretaking or decision-making authority to nonparent.

(a) On motion of a deploying parent and in accordance with law of this state other than this chapter, if it is in the best interest of the child, a court may grant caretaking authority to a nonparent who is an adult family member of the child.

(b) Unless a grant of caretaking authority to a nonparent under subsection (a) is agreed to by the other parent, the grant is limited to an amount of time not greater than:

(1) The amount of time granted to the deploying parent under a permanent custody order, but the court may add unusual travel time necessary to transport the child; or

(2) In the absence of a permanent custody order that is currently in effect, the amount of time that the deploying parent habitually cared for the child before being notified of deployment, but the court may add unusual travel time necessary to transport the child.

(c) A court may grant part of a deploying parent's decision-making authority, if the deploying parent and the other parent are both unable to exercise that authority, to a nonparent who is an adult family member of the child or an adult with whom the child has a close and substantial relationship. If a court grants the authority to a nonparent, the court shall specify the decision-making powers granted, including decisions regarding the child's education, religious training, health care, extracurricular activities, and travel.

History.
Acts 2014, ch. 798, § 1.

36-7-307. Nature of authority created by temporary custody order.

(a) A grant of authority under this part is temporary and terminates under part 4 of this chapter after the return from deployment of the deploying parent, unless the grant has been terminated before that time by court order. The grant does not create an independent, continuing right to caretaking authority, decision-making authority, or limited contact in an individual to whom it is granted.

(b) A nonparent granted caretaking authority, decision-making authority, or limited contact under this part has standing to enforce the grant until it is terminated by court order or under part 4 of this chapter.

History.
Acts 2014, ch. 798, § 1.

36-7-308. Content of temporary custody order.

(a) An order granting custodial responsibility under this part must:

(1) Designate the order as temporary; and

(2) Identify to the extent feasible the destination, duration, and conditions of the deployment.

(b) If applicable, an order for custodial responsibility under this part must:

(1) Specify the allocation of caretaking authority, decision-making authority, or limited contact among the deploying parent, the other parent, and any nonparent;

(2) If the order divides caretaking or decision-making authority between individuals, or grants caretaking authority to one individual and limited contact to another, provide a process to resolve any dispute that may arise;

(3) Provide for liberal communication between the deploying parent and the child during deployment, including through electronic means, unless contrary to the best interest of the child, and allocate any costs of communications;

(4) Provide for liberal contact between the deploying parent and the child during the time the deploying parent is on leave or otherwise available, unless

contrary to the best interest of the child; and

(5) Provide that the order will terminate pursuant to part 4 of this chapter after the deploying parent returns from deployment.

History.
Acts 2014, ch. 798, § 1.

36-7-309. Order for child support.

If a court has issued an order granting caretaking authority under this part, or an agreement granting caretaking authority has been executed under part 2 of this chapter, the court may enter a temporary order for child support consistent with law of this state other than this chapter if the court has jurisdiction under the Uniform Interstate Family Support Act, compiled in chapter 5, parts 21-29 of this title.

History.
Acts 2014, ch. 798, § 1.

36-7-310. Modifying or terminating grant of custodial responsibility to nonparent.

(a) Except for an order under § 36-7-305, except as otherwise provided in subsection (b), and consistent with the Service Members Civil Relief Act, 50 U.S.C. Appendix Sections 521 and 522, on motion of a deploying or other parent or any nonparent to whom caretaking authority, decision-making authority, or limited contact has been granted, the court may modify or terminate the grant if the modification or termination is consistent with this part and it is in the best interest of the child. A modification is temporary and terminates pursuant to part 4 of this chapter after the deploying parent returns from deployment, unless the grant has been terminated before that time by court order.

(b) On motion of a deploying parent, the court shall terminate a grant of limited contact.

History.
Acts 2014, ch. 798, § 1.

PART 4

TERMINATION OF ORDER

36-7-401. Termination of temporary order providing for modification of child custody decree.

A temporary order entered under this chapter providing for a modification of a child custody decree shall terminate at the end of the deployment and shall revert back to the previous custody order.

History.
Acts 2014, ch. 798, § 1.

PART 5

APPLICABILITY AND CONSTRUCTION

36-7-501. Application and construction of uniform law.

In applying and construing this uniform law, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History.
Acts 2014, ch. 798, § 1.

36-7-502. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

History.
Acts 2014, ch. 798, § 1.

36-7-503. Applicability of chapter.

This chapter does not affect the validity of a temporary court order concerning custodial responsibility during deployment which was entered before July 1, 2014.

History.
Acts 2014, ch. 798, § 1.

TITLE 37

JUVENILES

CHAPTER.

1. Juvenile Courts and Proceedings.
Part 1. General Provisions
Part 2. Juvenile Court Restructure Act of 1982
Part 3. Juvenile Post-Commitment Procedures Act
Part 4. Mandatory Child Abuse Reports
Part 5. Council of Juvenile and Family Court Judges
Part 6. Child Sexual Abuse
Part 7. Tennessee Teen Court Program of 2000
Part 8. Permanent Guardianship
2. Placement of Juveniles.
Part 1. Tennessee Preparatory School [Repealed]
Part 2. County Department of Children's Services Act of 1979
Part 3. Subsidized Receiving Homes

CHAPTER.
Part 4. Foster Care
Part 5. Tennessee Runaway Act
Part 6. Extension of Foster Care
3. Administration of Children and Youth Services.
Part 1. Tennessee Commission on Children and Youth Act of 1988
Part 2. Division of Juvenile Probation [Repealed]
Part 3. Commissioner of Youth Development [Repealed]
Part 4. Youth Investment Act of 1970
Part 5. Teenage Pregnancy
Part 6. Safe Families and Family Preservation Act
Part 7. Early Childhood Development Act of 1994
Part 8. Tennessee Second Look Commission
4. Interstate Compacts.
Part 1. Interstate Compact for Juveniles
Part 2. Interstate Compact on the Placement of Children
5. Department of Children's Services.
Part 1. General Provisions
Part 2. Youth Development Centers
Part 3. Community Services Agency Act of 1996
Part 4. Trafficking in Children
Part 5. Child Care Agencies
Part 6. Multi-level Response System for Children and Families
6 — 9. [Reserved].
10. Miscellaneous Provisions.
Part 1. Liability of Parent or Guardian for Acts of Juveniles
Part 2. Tennessee Missing Children Recovery Act
Part 3. Parental Consent for Abortions by Minors
Part 4. Childhood Immunizations
Part 5. Information on Child Abuse Prevention
11. Juvenile Offender Surcharges.

CHAPTER 1

JUVENILE COURTS AND PROCEEDINGS

Part 1. General Provisions

SECTION.
37-1-101. Purpose — Jurisdiction — Ensuring compliance with the Indian Child Welfare Act.
37-1-102. Chapter and part definitions.
37-1-103. Exclusive original jurisdiction.
37-1-104. Concurrent jurisdiction.
37-1-105. Probation officers.
37-1-106. Youth services officer.
37-1-107. Magistrates.
37-1-108. Commencement of proceedings.
37-1-109. Transfer of criminal cases from other courts.
37-1-110. Informal adjustment without adjudication — Pretrial diversion.
37-1-111. Venue.
37-1-112. Transfer to another court within state — Appeals.
37-1-113. Taking into custody — Grounds.
37-1-114. Detention or shelter care of child prior to hearing on petition.
37-1-115. Custody — Release to proper party — Warrant for custody.
37-1-116. Place of detention — Escape or attempted escape — Shelter care.
37-1-117. Investigation and release or detention — Petition — Hearings.
37-1-118. Subpoenas.
37-1-119. Petition — Who may make.
37-1-120. Contents of petition.
37-1-121. [Repealed]
37-1-122. Summons — Attachment where summons ineffectual.
37-1-123. [Repealed]
37-1-124. Conduct of hearing.
37-1-125. Party served by publication — Provisional hearing — Interlocutory order.
37-1-126. Right to counsel or guardian ad litem — Administrative fee.
37-1-127. Basic rights at hearing.
37-1-128. Investigations — Custody of child — Evaluation and commitment for mental illness or developmental disability.
37-1-129. Hearings — Judicial Diversion — Findings — Disposition of child.
SECTION.
37-1-130. Dependent or neglected child — Disposition.
37-1-131. Delinquent child — Disposition — Restitution.
37-1-132. Unruly child — Disposition.
37-1-133. Order of adjudication — Noncriminal.
37-1-134. Transfer from juvenile court.
37-1-135. Mentally ill or developmentally disabled child — Disposition.
37-1-136. Assessment reports in certain counties — Confidentiality — Limited access — Destruction.
37-1-137. Commitment of delinquent children to the department of children's services.
37-1-138. Liability for expenses of returning juvenile to custody of department of children's services.
37-1-139. Modification of orders.
37-1-140. Legal custodian — Duties.
37-1-141. Residence change — Transfer of jurisdiction to another state.
37-1-142. Nonresident child — Transfer from another state.
37-1-143. Out-of-state custody and supervision.
37-1-144. Supervision under out-of-state order.
37-1-145. Out-of-state probation officers — Powers.
37-1-146. Juvenile traffic offenders.
37-1-147. Termination of parental rights.
37-1-148. [Repealed.]
37-1-149. Guardian ad litem — Special advocate — Appointment.
37-1-150. Cost and expense for care of child.
37-1-151. Parents' liability for support.
37-1-152. Injunctive relief.
37-1-153. Court files and records — Inspection limited — Exceptions for certain violent offenders — Confidentiality — Expunction.
37-1-154. Law enforcement records — Inspection limited — Exceptions for certain violent offenders.
37-1-155. Fingerprints and photographs — Use — When destroyed — Video and audio recordings.
37-1-156. Contributing to delinquency — Penalty — Jurisdiction of court.
37-1-157. Contributing to dependency — Penalties — Jurisdiction of court.
37-1-158. Contempt of court.
37-1-159. Appeals.
37-1-160. Interstate flight by juvenile felon — Applicability of part.
37-1-161. Reimbursement account.
37-1-162. Supplement and account for juvenile court services improvement.
37-1-163, 37-1-164. [Repealed.]
37-1-165. Contracts among counties to pool juvenile justice supplements.
37-1-166. Orders committing or retaining a child within the custody of the department of children's services — Required determinations.
37-1-167. Removal from abusive parent or other party.
37-1-168. Juvenile-family crisis intervention programs — General provisions.
37-1-169. Referrals by juvenile court to crisis intervention program.
37-1-170. Joinder of parents or guardians in juvenile court actions.
37-1-171. Written orders — Presumptions — Forms.
37-1-172. Use and disposition of federal funds.
37-1-173. [Repealed.]
37-1-174. Order affecting delinquent juvenile's parent or guardian.
37-1-175. Temporary legal custody for children with mental illnesses.
37-1-176. Providing care, training or treatment in least drastic alternative way.
37-1-177. Person filing for commitment.
37-1-178. Discharge.
37-1-179. Reporting status of child who no longer meets commitment standards — Retention of custody.
37-1-180. Rights of child in hearing to review custody.
37-1-181. Judges to conduct proceedings.
37-1-182. Juvenile records task force.
37-1-183. Dependent and neglected child to remain in related caregiver's custody if in best interest of child.

Part 2. Juvenile Court Restructure Act of 1982

37-1-201. Short title — Legislative intent.
37-1-202. Part definitions.

SECTION.
37-1-203. Jurisdiction of general sessions court.
37-1-204. Procedure in general sessions court.
37-1-205. Special district juvenile courts.
37-1-206. Magistrates — Court personnel — Signs.
37-1-207. Special juvenile courts — Judges.
37-1-208. Contracts between counties.
37-1-209. Disbursements of moneys.
37-1-210. Clerks of general sessions courts.
37-1-211. Clerks of special juvenile courts.
37-1-212. Rules and regulations.
37-1-213. Deputies.
37-1-214. Compensation of judges pro tempore.

Part 3. Juvenile Post-Commitment Procedures Act

37-1-301. Short title.
37-1-302. Petition for post-commitment relief.
37-1-303. Filing of petition — Designation of judge to hear and determine petition.
37-1-304. Contents of petition.
37-1-305. Grounds for relief.
37-1-306. Court action upon receipt of petition.
37-1-307. Petition not to be dismissed for failure to follow form — Amended petition.
37-1-308. Application for habeas corpus — When allowed.
37-1-309. Grounds for dismissal of petition — Hearing on petition — Issuance of orders or stays.
37-1-310. Appearance of petitioner at hearing — Transportation of petitioner.
37-1-311. Scope of hearing.
37-1-312. Grounds for relief "previously determined" or "waived" defined.
37-1-313. Documents and records furnished to indigent petitioner.
37-1-314. District attorney general to represent state — Attorney general and reporter to represent state on appeal.
37-1-315. Withdrawal or amendment of petition — Technical defects not grounds for dismissal without opportunity to amend.
37-1-316. Evidence — Oral testimony, depositions, affidavits.
37-1-317. Relief granted — Costs — Final order — Record of counsel's consultations with petitioner.
37-1-318. Copies of final judgment.
37-1-319. Delayed appeal — Grounds for granting — Finality of order.
37-1-320. Indigency.
37-1-321. Finality of order — Appeal.
37-1-322. Promulgation of rules by supreme court — Release of petitioner on bail or temporary custody.

Part 4. Mandatory Child Abuse Reports

37-1-401. Part definitions.
37-1-402. Purpose and construction of part.
37-1-403. Reporting of brutality, abuse, neglect or child sexual abuse — Notification to parents of abuse on school grounds or under school supervision — Confidentiality of records.
37-1-404. Retention of custody of child by hospital or physician — Protective custody.
37-1-405. Reference of reported cases to local director — Notice to judge.
37-1-406. Availability for receiving reports — Commencement of investigations — Examination and observation of child — Reports — Services provided — Investigators — Interpreter for hearing-impaired child.
37-1-407. [Repealed.]
37-1-408. [Repealed.]
37-1-409. Reports confidential — Authorized access to information — Penalty for violation.
37-1-410. Immunity from civil or criminal liability for reporting abuse — Damages for employment change because of making report.
37-1-411. Evidentiary privileges not applicable to child abuse cases.
37-1-412. Violation of duty to report — Power of juvenile court — Penalty.
37-1-413. False reporting of child sexual abuse or false accusation that a child has sustained any wound, injury, disability or physical or mental condition caused by brutality, abuse or neglect — Penalty.

SECTION.
37-1-414. Persons working with children — Fingerprinting — Release of investigative and criminal records.

Part 5. Council of Juvenile and Family Court Judges

37-1-501. Creation and membership of council.
37-1-502. Rules, regulations and by-laws — Officers — Recommending rules to supreme court — Development of plan to establish demonstration sites.
37-1-503. Executive secretary of council.
37-1-504. Annual meeting — Subject matter.
37-1-505. Annual meeting — Expenses.
37-1-506. Report and publishing of juvenile court information, including cases, informal adjustments, pretrial diversions and identifying information — Expungement of child's information upon order of expunction of charge that had resulted in probation or prevention services.
37-1-507. Program to reimburse counties for costs of inpatient mental health evaluations, examinations and detention of juveniles charged as adults — Rules and regulations.

Part 6. Child Sexual Abuse

37-1-601. Prevention of child sexual abuse deemed priority of state — Comprehensive approach — Purpose and construction of part.
37-1-602. Part definitions — Harm to child's health or welfare.
37-1-603. Comprehensive state plan.
37-1-604. Legislative intent relating to investigations, protective services and reports.
37-1-605. Reports of known or suspected child sexual abuse — Investigations — Notification to parents of abuse on school grounds or while under school supervision — Confidentiality of records.
37-1-606. Departmental availability for receiving reports — Commencement of investigations — Institutional abuse.
37-1-607. Child protective teams — Investigations — Services.
37-1-608. Protective custody of children.
37-1-609. Photographs and examinations of suspected abuse — Video recordings.
37-1-610. Guardian ad litem — Parental reimbursement of costs and expenses.
37-1-611. Duties of department of children's services — Cooperation with department — Publicity and education program.
37-1-612. Confidentiality of records and reports — Violations — Access to records — Confirmation of investigation — Anonymity of abuse reporters.
37-1-613. Immunity from civil or criminal liability.
37-1-614. Evidentiary privileges inapplicable in child sexual abuse cases.
37-1-615. Violations — Penalties.
37-1-616. Rules and regulations.

Part 7. Tennessee Teen Court Program of 2000

37-1-701. Short title.
37-1-702. Authority to establish teen court — Procedure for participation — Determining factors for participation — Authority of teen court.
37-1-703. Authority of teen court.
37-1-704. Empaneling teen court members.
37-1-705. Legislative intent — Location of teen court proceedings — Immunity of participants — Confidentiality.
37-1-706. Construction of part.

Part 8. Permanent Guardianship

37-1-801. Power of the juvenile courts to appoint a permanent guardian.
37-1-802. Who may be appointed permanent guardian — Criteria for children and permanent guardian — Best interests determination.
37-1-803. Permanent guardianship not a termination of parent child relationship — Visitation, contact and sharing of information.
37-1-804. Custody — Rights and responsibilities of permanent guardian — Liability.
37-1-805. Jurisdiction of court.
37-1-806. Modification or termination.

SECTION.
37-1-807. Monetary support of the child — How child claimed for tax purposes.

PART 1

GENERAL PROVISIONS

37-1-101. Purpose — Jurisdiction — Ensuring compliance with the Indian Child Welfare Act.

(a) This part shall be construed to effectuate the following public purposes:

(1) Provide for the care, protection, and wholesome moral, mental and physical development of children coming within its provisions;

(2) Consistent with the protection of the public interest, remove from children committing delinquent acts the taint of criminality and the consequences of criminal behavior and substitute therefor a program of treatment, training and rehabilitation;

(3) Achieve the foregoing purposes in a family environment whenever possible, separating the child from such child's parents only when necessary for such child's welfare or in the interest of public safety;

(4) Provide a simple judicial procedure through which this part is executed and enforced and in which the parties are assured a fair hearing and their constitutional and other legal rights recognized and enforced;

(5) Provide simple interstate procedures that permit resort to cooperative measures among the juvenile courts of the several states when required to effectuate the purposes of this part; and

(6) Generally deinstitutionalize children who have not been found to be delinquent.

(b) It is the intention of the general assembly in the passage of this part to promulgate laws relative to children that are to be uniform in application throughout the state.

(c) Each of the juvenile courts in all the counties and municipalities of the state as described in § 37-1-102 have all of the jurisdiction, authority, rights, powers and duties prescribed by this part, and any additional jurisdiction, authority, rights, powers or duties conferred by special or private act upon any of the juvenile courts in the state are not intended to be invalidated or repealed by this part, except where inconsistent or in conflict with any provisions of this part.

(d) Whenever a juvenile court conducts a child custody proceeding, as defined in § 36-6-205, the court shall ensure compliance with the Indian Child Welfare Act, compiled in 25 U.S.C. § 1901 et seq.

History.
Acts 1970, ch. 600, §§ 1, 59; 1979, ch. 289, § 1; T.C.A., §§ 37-201, 37-259; Acts 2009, ch. 317, § 1.

Compiler's Notes.
Rules of Juvenile Procedure were adopted by the Supreme Court on February 1, 1983, effective July 1, 1984. See Tennessee Court Rules Annotated.

37-1-102. Chapter and part definitions.

(a) As used in this chapter, any reference to the department of correction is construed to mean the department of children's services, unless the reference is clearly intended to designate the department of correction.

(b) As used in this part, unless the context otherwise requires:

(1) "Abuse" exists when a person under the age of eighteen (18) is suffering from, has sustained, or may be in immediate danger of suffering from or sustaining a wound, injury, disability or physical or mental condition caused by brutality, neglect or other actions or inactions of a parent, relative, guardian or caretaker;

(2) "Administrative hearing" is an action by the judge or magistrate of the juvenile court in conformity with legislative intent in terminating the home placement of a juvenile;

(3) "Adult" means any person eighteen (18) years of age or older;

(4) "Caregiver" means any relative or other person living, visiting, or working in the child's home who supervises or otherwise provides care or assistance for the child, such as a babysitter, or who is an employee or volunteer with the responsibility for any child at an educational, recreational, medical, religious, therapeutic, or other setting where children are present. "Caregiver" may also include a person who has allegedly used the child for the purpose of commercial sexual exploitation of a minor, including as a trafficker. For purposes of this chapter, "caregiver" and "caretaker" shall have the same meaning;

(5) "Child" means:

(A) A person under eighteen (18) years of age; or

(B) A person under nineteen (19) years of age for the limited purpose of:

(i) Remaining under the continuing jurisdiction of the juvenile court to enforce a non-custodial order of disposition entered prior to the person's eighteenth birthday;

(ii) Remaining under the jurisdiction of the juvenile court for the purpose of being committed, or completing commitment including completion of home placement supervision, to the department of children's services with such commitment based on an adjudication of delinquency for an offense that occurred prior to the person's eighteenth birthday; or

(iii) Remaining under the jurisdiction of the juvenile court for resolution of a delinquent offense or offenses committed prior to a person's eighteenth birthday but considered by the juvenile court after a person's eighteenth birthday with the court having the option of retaining jurisdiction for adjudication and disposition or transferring the person to criminal court under § 37-1-134;

(C) In no event shall a person eighteen (18) years of age or older be committed to or remain in the custody of the department of children's services

by virtue of being adjudicated dependent and neglected, unruly or in need of services pursuant to § 37-1-175, except as provided in 37-5-106(a)(20);

(D) This subdivision (b)(5) shall in no way be construed as limiting the court's jurisdiction to transfer a person to criminal court under § 37-1-134;

(E) A person eighteen (18) years of age is legally an adult for all other purposes including, but not limited to, enforcement of the court's orders under this subsection (b) through its contempt power under § 37-1-158;

(F) No exception shall be made for a child who may be emancipated by marriage or otherwise; and

(G) A person over the age of eighteen (18) shall be allowed to remain under the continuing jurisdiction of the juvenile court for purposes of the voluntary extension of services pursuant to § 37-2-417;

(6) "Commissioner" means commissioner of children's services;

(7) "Court order" means any order or decree of a judge, magistrate or court of competent jurisdiction. A "valid court order" is one that is authorized by law, and any order entered in the minutes of a court of record is presumed to be valid;

(8) "Custodian" means a person, other than a parent or legal guardian, who stands in loco parentis to the child or a person to whom temporary legal custody of the child has been given by order of a court;

(9) "Custody" means the control of actual physical care of the child and includes the right and responsibility to provide for the physical, mental, moral and emotional well-being of the child. "Custody," as herein defined, relates to those rights and responsibilities as exercised either by the parents or by a person or organization granted custody by a court of competent jurisdiction. "Custody" shall not be construed as the termination of parental rights set forth in § 37-1-147. "Custody" does not exist by virtue of mere physical possession of the child;

(10) "Delinquent act" means an act designated a crime under the law, including local ordinances of this state, or of another state if the act occurred in that state, or under federal law, and the crime is not a status offense under subdivision (b)(24)(C) and the crime is not a traffic offense as defined in the traffic code of the state other than failing to stop when involved in an accident pursuant to § 55-10-101, driving while under the influence of an intoxicant or drug, vehicular homicide or any other traffic offense classified as a felony;

(11) "Delinquent child" means a child who has committed a delinquent act and is in need of treatment or rehabilitation;

(12) "Department" means the department of children's services;

(13) "Dependent and neglected child" means a child:

(A) Who is without a parent, guardian or legal custodian;

(B) Whose parent, guardian or person with whom the child lives, by reason of cruelty, mental incapacity, immorality or depravity is unfit to properly care for such child;

(C) Who is under unlawful or improper care, supervision, custody or restraint by any person, corporation, agency, association, institution, society or other organization or who is unlawfully kept out of school;

(D) Whose parent, guardian or custodian neglects or refuses to provide necessary medical, surgical, institutional or hospital care for such child;

(E) Who, because of lack of proper supervision, is found in any place the existence of which is in violation of law;

(F) Who is in such condition of want or suffering or is under such improper guardianship or control as to injure or endanger the morals or health of such child or others;

(G) Who is suffering from abuse or neglect;

(H) Who has been in the care and control of one (1) or more agency or person not related to such child by blood or marriage for a continuous period of six (6) months or longer in the absence of a power of attorney or court order, and such person or agency has not initiated judicial proceedings seeking either legal custody or adoption of the child;

(I) Who is or has been allowed, encouraged or permitted to engage in prostitution or obscene or pornographic photographing, filming, posing, or similar activity and whose parent, guardian or other custodian neglects or refuses to protect such child from further such activity; or

(J)(i) Who has willfully been left in the sole financial care and sole physical care of a related caregiver for not less than eighteen (18) consecutive months by the child's parent, parents or legal custodian to the related caregiver, and the child will suffer substantial harm if removed from the continuous care of such relative;

(ii) For the purposes of this subdivision (b)(13)(J):

(a) A related caregiver shall include the child's biological, step or legal grandparent, great grandparent, sibling, aunt, uncle or any other person who is legally or biologically related to the child; and

(b) A child willfully left with a related caregiver as defined in subdivision (b)(13)(J)(ii)(*a*) because of the parent's military service shall not be subject to action pursuant to § 37-1-183;

(14) "Detention" means confinement in a secure or closed type of facility that is under the direction or supervision of the court or a facility that is designated by the court or other authority as a place of confinement for juveniles;

(15) "Foster care" means the temporary placement of a child in the custody of the department of children's services or any agency or institution, whether public or private, for care outside the home of a

parent or relative, by blood or marriage, of the child, whether the placement is by court order, voluntary placement agreement, surrender of parental rights or otherwise;

(16) "Foster parent" means, for purposes other than § 37-2-414, a person who has been trained and approved by the department or licensed child-placing agency to provide full-time temporary out-of-home care at a private residence for a child or children who have been placed in foster care, or in the case of a child or children placed for adoption, a person who has provided care for the child or children for a period of six (6) months or longer in the absence of a power of attorney or court order;

(17) "Juvenile court" means the general sessions court in all counties of this state, except in those counties and municipalities in which special juvenile courts are provided by law, and "judge" means judge of the juvenile court;

(18) "Nonjudicial days" means Saturdays, Sundays and legal holidays. Nonjudicial days begin at four thirty p.m. (4:30 p.m.) on the day preceding a weekend or holiday, and end at eight o'clock a.m. (8:00 a.m.) on the day after a weekend or holiday;

(19) "Probation" means casework service as directed by the court, as a measure for the protection, guidance and well-being of the child and such child's family. Probation methods shall be directed to the discovery and correction of the basic causes of maladjustment;

(20) "Protective supervision" means supervision ordered by the court of children found to be dependent or neglected or unruly;

(21) "Restitution" means compensation that is accomplished through actual monetary payment to the victim of the offense by the child who committed the offense, or symbolically, through unpaid community service work by the child, for property damage or loss incurred as a result of the delinquent offense;

(22) "Severe child abuse" means:

(A)(i) The knowing exposure of a child to or the knowing failure to protect a child from abuse or neglect that is likely to cause serious bodily injury or death and the knowing use of force on a child that is likely to cause serious bodily injury or death;

(ii) "Serious bodily injury" shall have the same meaning given in § 39-15-402(d).

(B) Specific brutality, abuse or neglect towards a child that in the opinion of qualified experts has caused or will reasonably be expected to produce severe psychosis, severe neurotic disorder, severe depression, severe developmental delay or intellectual disability, or severe impairment of the child's ability to function adequately in the child's environment, and the knowing failure to protect a child from such conduct;

(C) The commission of any act towards the child prohibited by §§ 39-13-502 — 39-13-504, 39-13-515, 39-13-522, 39-15-302, 39-15-402, and 39-17-1005 or the knowing failure to protect the child from the commission of any such act towards the child; or

(D) Knowingly allowing a child to be present within a structure where the act of creating methamphetamine, as that substance is identified in § 39-17-408(d)(2), is occurring;

(23) "Shelter care" means temporary care of a child in physically unrestricted facilities; and

(24) "Unruly child" means a child in need of treatment and rehabilitation who:

(A) Habitually and without justification is truant from school while subject to compulsory school attendance under § 49-6-3007;

(B) Habitually is disobedient of the reasonable and lawful commands of the child's parent(s), guardian or other legal custodian to the degree that such child's health and safety are endangered;

(C) Commits an offense that is applicable only to a child; or

(D) Is away from the home, residence or any other residential placement of the child's parent(s), guardian or other legal custodian without their consent. Such child shall be known and defined as a "runaway".

History.

Acts 1970, ch. 600, § 2; 1973, ch. 81, § 3; 1975, ch. 326, § 1; 1976, ch. 425, § 1; 1977, ch. 87, § 1; 1977, ch. 482, § 1; 1978, ch. 543, § 1; 1978, ch. 704, § 3; 1979, ch. 271, § 1; 1979, ch. 289, § 2; 1980, ch. 796, § 1; 1980, ch. 838, § 3; 1981, ch. 120, § 1; 1981, ch. 316, §§ 1, 3; 1982, ch. 882, § 4; 1982, ch. 934, § 16; 1983, ch. 9, § 1; 1983, ch. 254, § 1; 1983, ch. 435, § 2; T.C.A., § 37-202; Acts 1984, ch. 789, § 5; 1985, ch. 441, § 1; 1985, ch. 478, § 30; 1989, ch. 278, §§ 29, 77; 1990, ch. 988, § 2; 1993, ch. 276, § 1; 1995, ch. 532, §§ 4-6; 1996, ch. 1079, §§ 73, 77-84, 183; 2000, ch. 947, § 8G; 2002, ch. 868, § 1; 2009, ch. 235, § 1; 2009, ch. 411, §§ 5-8, 10; 2010, ch. 1065, § 4; 2011, ch. 158, § 19; 2011, ch. 314, §§ 3, 4; 2011, ch. 486, § 1; 2012, ch. 653, § 1; 2014, ch. 711, § 1; 2016, ch. 979, § 4.

Compiler's Notes.

Acts 1993, ch. 276, § 4 provided that the amendment by that act shall not affect or apply to any juvenile committed to the department of youth development on or before July 1, 1993, or to the subsequent de novo appeal of such case.

The definition in subdivision (b)(23) (now subdivision (b)(24)) shall be effective July 1, 1996, before which date the definition of "unruly" shall be the definition found in former § 37-1-102(b)(21), which read: " 'Unruly child' means a child who: (A) While subject to compulsory school attendance is habitually and without justification truant from school; (B) Is habitually disobedient of the reasonable and lawful commands of the child's parent, guardian or other custodian, and is ungovernable; (C) Has committed an offense applicable only to a child; or (D) Is away from the home or residence of his parents or guardians without their consent. Such child shall be known and defined as a 'runaway'; if any of the foregoing is in need of treatment or rehabilitation."

Acts 2009, ch. 235, § 1 directed the code commission to revise appropriate references from "child support referees" and "juvenile referees" to "child support magistrates" and "juvenile magistrates" in the code as supplements are published and volumes are replaced.

Acts 2009, ch. 411, § 12 provided that the act, which amended §§ 36-1-102, 36-1-108, 37-1-102, 37-2-402 and added new § 37-1-183, shall apply to conduct covered by the provisions of the act that occurs on or after July 1, 2009. The eighteen (18) month time period set out in § 37-1-102(b)(12)(J) shall not commence until July 1, 2009.

Acts 2010, ch. 1065, § 5 provided that the act, which added subdivision (b)(4)(G), shall be repealed June 30, 2012. Acts 2012, ch. 653, § 1 repealed Acts 2010, ch. 1065, § 5, effective April 4, 2012.

37-1-103. Exclusive original jurisdiction.

(a) The juvenile court has exclusive original jurisdiction of the following proceedings, which are governed

by this part:

(1) Proceedings in which a child is alleged to be delinquent, unruly or dependent and neglected, or to have committed a juvenile traffic offense as defined in § 37-1-146;

(2) Proceedings arising under §§ 37-1-141 — 37-1-144;

(3) Proceedings arising under § 37-1-137 for the purposes of termination of a home placement;

(4) Prosecutions under § 37-1-412, unless the case is bound over to the grand jury by the juvenile court or the defendant is originally charged with a greater offense of which violation of § 37-1-412 is a lesser included offense;

(5) Proceedings arising under § 49-5-5209(e) [repealed]; and

(6) Proceedings in which a parent or legal guardian is alleged to have violated parental responsibilities pursuant to § 37-1-174.

(b) The juvenile court also has exclusive original jurisdiction of the following proceedings, which are governed by the laws relating thereto without regard to the other provisions of this part:

(1) Proceedings to obtain judicial consent to employment, or enlistment in the armed services of a child, if consent is required by law;

(2) Proceedings under the Interstate Compact for Juveniles, compiled as chapter 4, part 1 of this title; and

(3) Proceedings under the Interstate Compact on the Placement of Children, compiled as chapter 4, part 2 of this title.

(c) Except as provided in subsection (d), when jurisdiction has been acquired under this part, such jurisdiction shall continue until the case has been dismissed, or until the custody determination is transferred to another juvenile, circuit, chancery or general sessions court exercising domestic relations jurisdiction, or until a petition for adoption is filed regarding the child in question as set out in § 36-1-116(f). A juvenile court shall retain jurisdiction to the extent needed to complete any reviews or permanency hearings for children in foster care as may be mandated by federal or state law. This subsection (c) does not establish concurrent jurisdiction for any other court to hear juvenile cases, but permits courts exercising domestic relations jurisdiction to make custody determinations in accordance with this part.

(d)(1) A juvenile court in any county of this state shall have temporary jurisdiction to issue temporary orders pursuant to this section upon a petition on behalf of a child present or residing in that county. Upon being informed that a proceeding pertaining to the same child has been commenced in or a determination pertaining to the same child has been made by a court of a county having prior jurisdiction under this part; provided, that the court having temporary jurisdiction shall immediately notify and attempt to communicate with the court having original jurisdiction regarding the status of the child before issuing any temporary order hereunder, the courts shall coordinate with one another to resolve any jurisdictional issues, protect the best interests of the child, and determine the duration of any order entered by a court pursuant to this section.

(2) A court shall have temporary jurisdiction pursuant to this subsection (d) only in a neglect, dependency or abuse proceeding, a termination of parental rights proceeding or an order of protection pursuant to title 36, pertaining to the child whose matter is before the court when the court determines it is necessary to protect the best interests of that child by action of that court.

(3) Upon notice that a proceeding pertaining to the child has been commenced in a court in a county having prior jurisdiction under this part or upon notice that there is a previous determination pertaining to the child that is entitled to be enforced under this part:

(A) The court exercising temporary jurisdiction shall attempt to communicate with the prior court having jurisdiction and resolve jurisdictional issues and determine whether jurisdiction should transfer to the court exercising temporary jurisdiction;

(B) If jurisdiction is not transferred to the court exercising temporary jurisdiction, the orders of the court exercising temporary jurisdiction shall remain in force and effect until an order is obtained from the court having prior jurisdiction regarding the child;

(C) If jurisdiction is not transferred to the court exercising temporary jurisdiction, the court exercising temporary jurisdiction under this part, either upon motion by a party or on its own, shall enter an order specifying the period of time that the court considers adequate to allow the parties to resume the proceeding in the court having prior jurisdiction under this part; and

(D) If jurisdiction is transferred to the court exercising temporary jurisdiction, all matters thereafter pertaining to the child shall be within the jurisdiction of that court.

(e) Notwithstanding any other law to the contrary, transfers under this section shall be at the sole discretion of the juvenile court. In all other cases, jurisdiction shall continue until a person is no longer a child as defined in § 37-1-102.

(f) The court is authorized to require any parent or legal guardian of a child within the jurisdiction of the court to participate in any counseling or treatment program the court may deem appropriate and in the best interest of the child.

History.

Acts 1970, ch. 600, § 3; 1971, ch. 189, §§ 1, 2; 1975, ch. 326, § 2; 1977, ch. 482, § 2; 1979, ch. 96, § 1; 1981, ch. 120, § 2; 1981, ch. 316, § 2; 1981, ch. 348, § 1; 1981, ch. 488, § 11; T.C.A., § 37-203; Acts 1989, ch. 278, § 44; 1994, ch. 811, § 1; 1994, ch. 929, § 3; 1995, ch. 532, § 7; 1996, ch. 675, § 16; 1996, ch. 1079, § 85; 1997, ch. 465, § 1; 2001, ch. 297, § 1; 2003, ch. 333, § 1; 2009, ch. 335, § 1; 2011, ch. 485, §§ 1, 2.

Compiler's Notes.

Section 49-5-5209, referred to in subdivision (a)(5), was repealed by Acts 2013, ch. 214, § 1, effective April 23, 2013.

Acts 2001, ch. 297, § 5 provided that the act shall apply to any case pending or filed on or after July 1, 2001. Any custody order that has

been entered by a court exercising domestic relations jurisdiction and that is not the subject of or eligible for appeal on July 1, 2001, shall be valid and is hereby declared to be in full compliance with the laws of this state.

37-1-104. Concurrent jurisdiction.

(a) The juvenile court has concurrent jurisdiction with the probate court of proceedings to:

(1) Treat or commit a developmentally disabled or mentally ill child;

(2) Determine the custody or appoint a guardian of the person of a child; and

(3) Give judicial consent to the marriage of a child if consent is required by law.

(b) The juvenile court has concurrent jurisdiction with the general sessions court for the offenses of contributing to the delinquency or unruly conduct of a minor as defined in § 37-1-156 and contributing to the dependency of a minor as defined in § 37-1-157.

(c) The juvenile, circuit and chancery courts have concurrent jurisdiction to terminate parental or guardian rights pursuant to the provisions of title 36, chapter 1, part 1.

(d)(1)(A) The juvenile court has concurrent jurisdiction and statewide jurisdiction with other courts having the jurisdiction to order support for minor children and shall have statewide jurisdiction over the parties involved in the case.

(B) In intrastate cases, jurisdiction to modify, alter or enforce orders or decrees for the support of children shall be determined in accordance with the provisions of title 36, chapter 5, parts 30 and 31.

(C) In any political subdivision or judicial district of the state in which a court by contract is the agency designated to provide child support enforcement pursuant to Title IV-D of the Social Security Act, compiled in 42 U.S.C. §§ 651 et seq., and if a judge with child support jurisdiction in that political subdivision or judicial district agrees, the contracting court shall have jurisdiction in any case in such judge's court in which an application is made for assistance in obtaining support under this part. Upon application being made for child support enforcement assistance as provided by law, the contracting court shall assume jurisdiction and it is the duty of the court clerk to so notify the clerk of any court having prior jurisdiction. The contracting court shall then proceed to make and enforce such orders of support as it deems proper within its jurisdiction pursuant to the agreement. The contracting court shall not have jurisdiction in any case in which an absent parent is in full compliance with a support order of another court.

(2) In any case in which the court has exclusive or concurrent jurisdiction to order the payment of child support, the court may issue a child support order when requested by a party. All provisions of title 36, chapter 5 that relate to child support or child support orders that include an order of spousal support and § 50-2-105 apply to support orders issued in these proceedings.

(e) The juvenile court has concurrent jurisdiction with the circuit and chancery court of proceedings arising from the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

(f) Notwithstanding any law to the contrary, the juvenile court has concurrent jurisdiction with the circuit and chancery court of proceedings to establish the paternity of children born out of lawful wedlock and to determine any custody, visitation, support, education or other issues regarding the care and control of children born out of wedlock. The court further has the power to enforce its orders. Nothing in this subsection (f) shall be construed as vesting the circuit and chancery court with jurisdiction over matters that are in the exclusive jurisdiction of the juvenile court under § 37-1-103.

History.

Acts 1970, ch. 600, § 4; 1971, ch. 189, § 3; 1975, ch. 248, § 34; 1980, ch. 838, § 4; 1981, ch. 348, § 2; 1983, ch. 453, §§ 1, 2; T.C.A., § 37-204; Acts 1985, ch. 477, § 16; 1989, ch. 206, § 2; 1995, ch. 416, § 1; 1995, ch. 532, § 8; 1997, ch. 551, § 9; imp. am. Acts 2000, ch. 947, § 6; 2003, ch. 333, § 2; 2016, ch. 600, § 1.

Compiler's Notes.

Acts 1985, ch. 477, § 1 provided that Acts 1985, ch. 477 may be cited as the "Child Support Enforcement Act of 1985."

37-1-105. Probation officers.

(a) The judge has authority to appoint one (1) or more probation officers who shall receive such salary as shall be fixed by the county legislative body or as otherwise provided by law.

(b) For the purpose of carrying out the objectives and purposes of this part and subject to the limitations of this part or imposed by the court, a probation officer, or other designated officers of the court, shall:

(1) Make investigations, reports and recommendations to the juvenile court;

(2) Receive and examine complaints and charges of delinquency, unruly conduct or dependency and neglect of a child for the purpose of considering the commencement of proceedings under this part;

(3) Supervise and assist a child placed on probation or in such probation officer's protective supervision or care by order of the court or other authority of law;

(4) Make appropriate referrals to other public or private agencies of the community if their assistance appears to be needed or desirable;

(5) Take into custody and detain a child who is under such probation officer's supervision or care as a delinquent, unruly or dependent and neglected child if the probation officer, or other designated officers of the court, have reasonable cause to believe that the child's health or safety is in imminent danger, or that such child may abscond or be removed from the jurisdiction of the court, or when ordered by the court pursuant to this part. Except as provided by this part, a probation officer, or other designated officer of the court, does not have the powers of a law enforcement officer. Such probation officer, or other designated officer of the court, may not conduct

accusatory proceedings under this part against a child who is or may be under such officer's care or supervision; and

(6) Perform all other functions designated by this part or by order of the court pursuant thereto.

(c) Any of the functions in subsection (b) may be performed in another state if authorized by the court of this state and permitted by the laws of the other state.

History.
Acts 1970, ch. 600, §§ 5, 6; 1983, ch. 165, § 1; T.C.A., §§ 37-205, 37-206.

37-1-106. Youth services officer.

(a) Each county with a population of more than twenty thousand (20,000), according to the 1980 federal census or any subsequent federal census, may establish a full-time youth services officer to assist the court sitting as a juvenile court in relation to cases coming before the court. Counties with a population of twenty thousand (20,000) or less, according to the 1980 federal census or any subsequent federal census, may establish a part-time youth services officer.

(b) The youth services officer shall be paid by the county in which the officer serves and the officer's duties include, but are not limited to, the following:

(1) Intake duties including receiving and examining complaints and allegations of delinquency and unruly behavior for the purpose of considering the commencement of proceedings;

(2) Counseling;

(3) Record keeping and transmitting information as required by this part or by law to the commission on children and youth or the office of the executive secretary of the Tennessee council of juvenile and family court judges;

(4) Make investigations, reports and recommendations to the judge having juvenile jurisdiction;

(5) Make appropriate referrals to other public or private agencies;

(6) Make predisposition studies and submit reports and recommendations to the court as required; and

(7) Perform other functions as directed by the court or by law including, but not limited to, those set out in § 37-1-105.

History.
Acts 1982, ch. 934, § 19; 1983, ch. 161, § 1; T.C.A., § 37-287.

Compiler's Notes.
For tables of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

37-1-107. Magistrates.

(a)(1) The judge of the juvenile court may appoint one (1) or more suitable persons to act as magistrates at the pleasure of the judge. A magistrate shall be a member of the bar and may qualify and shall hold office at the pleasure of the judge. The compensation of a magistrate shall be fixed by the judge with the approval of the county legislative body or the pertinent governing body, and paid from public funds.

(2) In any county with a population of not less than seventy-one thousand three hundred (71,300) nor more than seventy-one thousand four hundred (71,400), according to the 2000 federal census or any subsequent federal census, the child support magistrate appointed to serve the chancery court shall also serve the juvenile court.

(b) The judge may direct that any case or class of cases over which the juvenile court has jurisdiction shall be heard in the first instance by the magistrate. These cases shall be conducted in the same manner as cases heard by the judge. In the conduct of the proceedings, the magistrate shall have the powers of a judge and shall have the same authority as the judge to issue any and all process.

(c) Upon the conclusion of the hearing, the magistrate shall file an order. The magistrate shall also inform each party of the right to a hearing before the juvenile court judge, of the time limits within which a request for a hearing must be perfected, and of the manner in which to perfect the request.

(d) Any party may, within ten (10) days after entry of the magistrate's order, file a request with the court for a de novo hearing by the judge of the juvenile court. The judge shall allow a hearing if a request for hearing is filed. No later than ten (10) days after the entry of the magistrate's order, the judge may, on the judge's own initiative, order a hearing of any matter heard before a magistrate. There shall be no hearing in any delinquent or unruly case in which the petition is dismissed by the magistrate after a hearing on the merits. Unless the judge orders otherwise, the order of the magistrate shall be the order of the court pending the hearing.

(e) If no hearing before the judge is requested, or if the right to the hearing is expressly waived by all parties within the specified time period, the magistrate's order becomes the order of the court. A party may appeal the order pursuant to § 37-1-159.

(f) Any hearing by a magistrate on any preliminary matter shall be final and not reviewable by the judge of the juvenile court, except on the court's own initiative. The setting of bond in detention hearings and any matter that is a final adjudication of a child shall not be construed to be preliminary matters under this section and are reviewable by the judge of the juvenile court upon request or upon the court's own initiative, except as provided in this section.

(g) All parties to the hearing before the magistrate shall be parties to a de novo hearing before the judge.

History.
Acts 1975, ch. 256, §§ 2-5; 1981, ch. 458, § 1; 1983, ch. 88, § 1; 1983, ch. 254, § 2; T.C.A., § 37-207; Acts 1999, ch. 393, §§ 1, 2; 2008, ch. 646, § 1; 2009, ch. 235, § 1; 2016, ch. 716, § 1.

Compiler's Notes.
Acts 1983, ch. 254, § 5 provided that the amendment by that act shall not be construed as altering or decreasing the maximum period of eighty-four hours that a juvenile may be detained without a hearing.

For tables of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

Acts 2009, ch. 235, § 1 directed the code commission to revise appropriate references from "child support referees" and "juvenile referees" to "child support magistrates" and "juvenile magistrates" in the code as supplements are published and volumes are replaced.

37-1-108. Commencement of proceedings.

A proceeding under this part may be commenced:

(1) By transfer of a case from another court as provided in § 37-1-109;

(2) As provided in § 37-1-146 in a proceeding charging the violation of a traffic offense;

(3) By the court accepting jurisdiction as provided in § 37-1-142 or accepting supervision of a child as provided in § 37-1-144; or

(4) In other cases by the filing of a petition as provided in this part or by issuing a citation as authorized by law. The petition and all other documents in the proceeding, other than a citation, shall be entitled "In the matter of _____, a child under eighteen (18) years of age."

History.
Acts 1970, ch. 600, § 8; T.C.A., § 37-208; 2016, ch. 598, § 1.

37-1-109. Transfer of criminal cases from other courts.

(a) If it appears to the court in a criminal proceeding that the defendant is a child, the court shall forthwith transfer the case to the juvenile court, together with a copy of the accusatory pleading and other papers, documents and transcripts of testimony relating to the case.

(b) It shall order that the defendant be taken forthwith to the juvenile court or to a place of detention designated by the juvenile court, or release the defendant to the custody of the defendant's parent, guardian, custodian or other person legally responsible for the defendant, to be brought before the juvenile court at a time designated by that court.

(c) The accusatory pleading may serve in lieu of a petition in the juvenile court unless that court directs the filing of a petition.

History.
Acts 1970, ch. 600, § 9; T.C.A., § 37-209.

37-1-110. Informal adjustment without adjudication — Pretrial diversion.

(a) Before or after a petition is filed, a designated court officer may informally resolve a complaint containing delinquent or unruly allegations without adjudication by giving counsel and advice to the child if such informal resolution would be in the best interest of the public and the child, and the child and the child's parents, guardian, or other custodian consent to the informal adjustment with knowledge that consent is not obligatory. The informal adjustment shall not extend beyond three (3) months from the day commenced unless extended by the court and does not authorize the detention of the child if not otherwise permitted by this part.

(b)(1) After a petition has been filed and a designated court officer determines that an unruly or delinquent case is an appropriate case for diversion from adjudication, the parties may agree to pretrial diversion that suspends the proceedings and places the child under supervision on terms and conditions agreeable to the designated court officer and approved by the court. A child may not be placed on pretrial diversion if the delinquent act alleged is an offense described in § 37-1-153(b).

(2) A pretrial diversion agreement shall remain in force for a maximum of six (6) months unless the child is discharged sooner by the court. Upon application of any party to the proceedings, made before expiration of the six-month period and after notice and a hearing, pretrial diversion may be extended by the court for an additional six (6) months.

(3) If, prior to discharge by the court or expiration of the pretrial diversion period, the child fails to fulfill the terms and conditions of the pretrial diversion agreement, the original petition may be reinstated and the case may proceed to adjudication just as if the agreement had never been entered.

(c) The petition shall be dismissed with prejudice once a child completes an informal adjustment pursuant to subsection (a) or pretrial diversion pursuant to subsection (b) without reinstatement of the original delinquent or unruly petition.

History.
Acts 1970, ch. 600, § 10; 1981, ch. 113, § 1; T.C.A., § 37-210; Acts 2016, ch. 600, § 2.

37-1-111. Venue.

(a) A proceeding under this part may be commenced in the county in which the child resides.

(b) If delinquent or unruly conduct is alleged, the proceeding may be commenced in the county in which the acts constituting the alleged delinquent or unruly conduct occurred.

(c) If dependency or neglect is alleged, the proceeding may be brought in the county in which the child is present when it is commenced.

(d) Proceedings to terminate parental rights shall be brought pursuant to § 36-1-113.

(e) If unruly conduct is alleged against a child in the custody of the department of children's services, the proceeding may be brought in the juvenile court exercising continuing jurisdiction under § 37-1-103 or it may be brought in the juvenile court that issued the order granting custody to the department.

History.
Acts 1970, ch. 600, § 11; 1971, ch. 189, § 4; 1983, ch. 435, § 3; T.C.A., § 37-211; Acts 1995, ch. 532, §§ 9, 10; 2011, ch. 275, § 1.

37-1-112. Transfer to another court within state — Appeals.

(a) If the child resides in a county of this state and the proceeding is commenced in a court of another county, the court, on motion of a party or on its own motion after a finding of fact, may transfer the proceeding to the county of the child's residence for further action. Like transfer may be made if the residence of the child changes pending the proceeding. The proceeding may be transferred if the child has been adjudicated delinquent or unruly, or neglected or abandoned and other proceedings involving the child are pending in the juvenile court of the county of the child's residence.

(b) If a juvenile court proceeding is commenced under this part and a proceeding involving the child's custody is also commenced or pending in the circuit, chancery or general sessions court exercising domestic relations jurisdiction, the juvenile court, on motion of a party or on its own motion after an adjudication making specific findings of fact pursuant to § 37-1-129(a)(2) and after ordering any essential services for the child and family, may transfer the custody proceeding to the court where the pending matter has been commenced. Like transfer may be made if the residence of the child changes during the pendency of the juvenile court proceedings. The transfer shall only occur upon a finding of fact by the transferring court that the transfer will be in the best interest of the child, will promote judicial economy, will provide a more reasonable or convenient forum, or for other good cause. The transferring court may communicate with the receiving court concerning the transfer of the case. The transfer of the custody proceeding to another court exercising domestic relations jurisdiction, except to another juvenile court, shall not occur if the case involves allegations of dependency, neglect or abuse and the child is in the custody of the department of children's services.

(c) Certified copies of all legal and social documents and records pertaining to the case on file with the clerk of the court shall accompany the transfer.

(d) An appeal of a transfer decision under this part shall be to the court of appeals in accordance with the Tennessee Rules of Appellate Procedure.

History.

Acts 1970, ch. 600, § 12; 1972, ch. 592, § 1; T.C.A., § 37-212; Acts 2001, ch. 297, §§ 2-4.

Compiler's Notes.

Acts 2001, ch. 297, § 5 provided that the act shall apply to any case pending or filed on or after July 1, 2001. Any custody order that has been entered by a court exercising domestic relations jurisdiction and that is not the subject of or eligible for appeal on July 1, 2001, shall be valid and is hereby declared to be in full compliance with the laws of this state.

37-1-113. Taking into custody — Grounds.

(a) A child may be taken into custody:

(1) Pursuant to an order of the court under this part;

(2) Pursuant to the laws of arrest;

(3) By a law enforcement officer, social worker of the department of human services, or duly authorized officer of the court, if there are reasonable grounds to believe that the conditions specified in § 37-1-114(a)(2) exist; or

(4) By a law enforcement officer or duly authorized officer of the court if there are reasonable grounds to believe that the child has run away from the child's parents, guardian or other custodian.

(b) The taking of a child into custody is not an arrest, except for the purpose of determining its validity under the Constitution of Tennessee or the Constitution of the United States.

History.

Acts 1970, ch. 600, § 13; 1977, ch. 482, § 14; 1981, ch. 247, § 2; T.C.A., § 37-213.

37-1-114. Detention or shelter care of child prior to hearing on petition.

(a) A child taken into custody shall not be detained or placed in shelter care prior to the hearing on the petition unless there is probable cause to believe that the child:

(1) Has committed the delinquent or unruly act with which the child is charged; or

(2) Is a neglected, dependent or abused child, and in either case the child's detention or shelter care is required because the child is subject to an immediate threat to the child's health or safety to the extent that delay for a hearing would be likely to result in severe or irreparable harm, or the child may abscond or be removed from the jurisdiction of the court, and in either case, there is no less drastic alternative to removal of the child from the custody of the child's parent, guardian, legal custodian or the person who physically possesses or controls the child available that would reasonably and adequately protect the child's health or safety or prevent the child's removal from the jurisdiction of the court pending a hearing.

(b) Children alleged to be unruly shall not be detained for more than twenty-four (24) hours, excluding nonjudicial days unless there has been a detention hearing and a judicial determination that there is probable cause to believe the child has violated a valid court order, and in no event shall such a child be detained for more than seventy-two (72) hours exclusive of nonjudicial days prior to an adjudicatory hearing. Nothing herein prohibits the court from ordering the placement of children in shelter care where appropriate, and such placement shall not be considered detention within the meaning of this section.

(c) A child shall not be detained in any secure facility or secure portion of any facility unless:

(1) There is probable cause to believe the child has committed a delinquent offense constituting:

(A) A crime against a person resulting in the serious injury or death of the victim or involving the likelihood of serious injury or death to such victim; or

(B) The unlawful possession of a handgun or carrying of a weapon, as prohibited by title 39, chapter 17, part 13;

(2) There is probable cause to believe the child has committed any other delinquent offense involving the likelihood of serious physical injury or death, or an offense constituting a felony, violation of probation or violation of aftercare, and the child:

(A) Is currently on probation;

(B) Is currently awaiting court action on a previous alleged delinquent offense;

(C) Is alleged to be an escapee or absconder from a juvenile facility, institution or other court-ordered placement; or

(D) Has, within the previous twelve (12) months, willfully failed to appear at any juvenile court hearing, engaged in violent conduct resulting in serious injury to another person or involving the likelihood of serious injury or death, or been adjudicated delinquent by virtue of an offense constituting a felony if committed by an adult;

(3) There is probable cause to believe the child has committed a delinquent offense, and special circumstances in accordance with the provisions of subsection (a) indicate the child should be detained; however, in any such case, the judge shall, within twenty-four (24) hours of the actual detention, excluding nonjudicial days, issue a written order on a form prescribed by the Tennessee council of juvenile and family court judges setting forth the specific reasons necessitating such detention. Nothing in this subdivision (c)(3) shall be construed as requiring a hearing or formal finding of fact, except as otherwise required by § 37-1-117;

(4) The child is alleged to be an escapee from a secure juvenile facility or institution;

(5) The child is wanted in another jurisdiction for an offense that, if committed by an adult, would be a felony in that jurisdiction;

(6) There is probable cause to believe the child is an unruly child who has violated a valid court order or who is a runaway from another jurisdiction. Any detention of such a child shall be in compliance with subsection (b);

(7) In addition to any of the conditions listed in subdivisions (c)(1)-(6), there is no less restrictive alternative that will reduce the risk of flight or of serious physical harm to the child or to others, including placement of the child with a parent, guardian, legal custodian or relative; use of any of the alternatives listed in § 37-1-116(g); or the setting of bail; and

(8) For the purposes of this subsection (c), "serious physical injury" includes conduct that would constitute the offenses of aggravated rape, rape and aggravated sexual battery.

History.

Acts 1970, ch. 600, § 14; 1979, ch. 289, § 3; 1980, ch. 595, § 1; 1981, ch. 247, § 3; 1982, ch. 882, § 1; 1983, ch. 137, § 1; 1983, ch. 408, § 3; T.C.A., § 37-214; Acts 1994, ch. 998, § 2; 1995, ch. 85, § 1; 1999, ch. 524, § 1; 2013, ch. 255, § 1.

37-1-115. Custody — Release to proper party — Warrant for custody.

(a) A person taking a child into custody shall within a reasonable time:

(1) Release the child to such child's parents, guardian or other custodian upon a promise by such person or persons to bring the child before the court when requested by the court unless such child's detention or shelter care is warranted or required under § 37-1-114; or

(2) Bring the child before the court or deliver such child to a detention or shelter care facility designated by the court or to a medical facility if the child is believed to suffer from a serious physical condition or illness that requires prompt treatment. A person taking a child into custody shall give notice thereof, together with a reason for taking the child into custody, to a parent, guardian or other custodian and to the court. If the child is taken into custody pursuant to the provisions of § 37-1-113(a)(3) prior to the filing of a petition, a petition under § 37-1-120 shall be filed as soon as possible but in no event later than two (2) days after the child is taken into custody excluding Saturdays, Sundays and legal holidays.

(b) If a parent, guardian or other custodian, when requested, fails to bring the child before the court as provided in subsection (a), the court may issue its warrant directing that the child be taken into custody and brought before the court.

History.

Acts 1970, ch. 600, § 15; 1976, ch. 745, § 1; 1981, ch. 247, § 4; T.C.A., § 37-215.

37-1-116. Place of detention — Escape or attempted escape — Shelter care.

(a) A child alleged to be delinquent or unruly may be detained only in:

(1) A licensed foster home or a home approved by the court;

(2) A facility operated by a licensed child care agency;

(3) A detention home or center for delinquent children that is under the direction or supervision of the court or other public authority or of a private agency approved by the court; or

(4) Subject to subsection (e), any other suitable place or facility designated or operated by the court. The child may be detained in a jail or other facility for the detention of adults only if:

(A) Other facilities in subdivision (a)(3) are not available;

(B) The detention is in a room separate and removed from those for adults; and

(C) It appears to the satisfaction of the court that public safety and protection reasonably require detention, and it so orders.

(b) The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the court immediately if a person who is or appears to be under eighteen (18) years of age is received at the facility, and shall bring such person before the court upon request or deliver such person to a detention or shelter care facility designated by the court.

(c) If a case is transferred to another court for criminal prosecution, the child may be transferred to the appropriate officer or detention facility in accordance with the law governing the detention of persons charged with crime.

(d) A child alleged to be dependent or neglected may be detained or placed in shelter care only in the facilities stated in subdivisions (a)(1), (2) and (4), and shall not be detained in a jail or other facility intended or used for the detention of adults charged with criminal offenses or of children alleged to be delinquent.

(e) No child may be detained or otherwise placed in any jail or other facility for the detention of adults, except as provided in subsections (c) and (h).

(f) A county may contract with juvenile courts in other counties, other public authorities, or private agencies to place children in any of the facilities listed in subdivisions (a)(1)-(3) and in the first sentence of subdivision (a)(4). The payment for such placements shall be according to per diem allowances established jointly by the department of children's services and the comptroller of the treasury, or as agreed upon between the county and the juvenile court or other authority or agency operating the facility. The cost allowances established jointly by the department and the comptroller of the treasury shall take into account the actual operating costs of the facility, the costs of any special programs offered by the facility, and the cost of any transportation provided by the facility. Any and all such costs of placement and transportation may be assessed against the parents or other persons legally obligated to care for and support the child as provided in § 37-1-150(d).

(g) To the extent necessary to comply with subsection (e), counties may expend funds received from the state for the purpose of improving juvenile court services or providing community alternatives to detention to pay for the alternative placement and transportation services described in subsection (f), and to develop other alternatives to jail for children, including emergency foster homes, runaway/emergency shelters, juvenile summons, crisis intervention, home detention, attendant care and other programs.

(h) A juvenile may be temporarily detained for as short a time as feasible, not to exceed forty-eight (48) hours, in an adult jail or lockup, if:

(1) The juvenile is accused of a serious crime against persons, including criminal homicide, forcible rape, mayhem, kidnapping, aggravated assault, robbery and extortion accompanied by threats of violence;

(2) The county has a low population density not to exceed thirty-five (35) persons per square mile;

(3) The facility and program have received prior certification by the Tennessee corrections institute as providing detention and treatment with total sight and sound separation from adult detainees and prisoners, including no access by trustees;

(4) There is no juvenile court or other public authority, or private agency as provided in subsection (f), able and willing to contract for the placement of the juvenile; and

(5) A determination is made that there is no existing acceptable alternative placement available for the juvenile.

(i)(1) Notwithstanding the provisions of this section to the contrary, in any facility that meets the following requisites of separateness, juveniles who meet the detention criteria of § 37-1-114(c) may be held in a juvenile detention facility that is in the same building or on the same grounds as an adult jail or lockup; provided, that no juvenile facility constructed or developed after January 1, 1995, may be located in the same building or directly connected to any adult jail or lockup facility complex:

(A) Total separation between juvenile and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities;

(B) Total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping and general living activities;

(C) Separate juvenile and adult staff, including management, security staff and direct care staff, such as recreational, educational and counseling. Specialized services staff, such as cooks, bookkeepers and medical professionals who are not normally in contact with detainees or whose infrequent contacts occur under conditions of separation of juveniles and adults, can serve both; and

(D) In the event that state standards or licensing requirements for secure juvenile detention facilities are established, the juvenile facility must meet the standards and be licensed or approved as appropriate.

(2) In determining whether the criteria set out in this subsection (i) are met, the following factors will serve to enhance the separateness of juvenile and adult facilities:

(A) Juvenile staff are employees of or volunteers for a juvenile service agency or the juvenile court with responsibility only for the conduct of the youth serving operations. Juvenile staff are specially trained in the handling of juveniles and the special problems associated with this group;

(B) A separate juvenile operations manual, with written procedures for staff and agency reference, specifies the function and operation of the juvenile program;

(C) There is minimal sharing between the facilities of public lobbies or office/support space for staff;

(D) Juveniles do not share direct service or access space with adult offenders within the facilities, including entrance to and exits from the facilities. All juvenile facility intake, booking and admission processes take place in a separate area and are under the direction of juvenile facility staff. Secure juvenile entrances (sally ports, waiting areas) are independently controlled by juvenile staff and separated from adult entrances. Public entrances, lobbies and waiting areas for the juvenile detention program are also controlled by juvenile staff and separated from similar adult areas. Adult and juvenile residents do not make use of common passageways between intake areas, residential spaces and program/service spaces;

(E) The space available for juvenile living, sleeping and the conduct of juvenile programs conforms to the requirements for secure juvenile detention specified by prevailing case law, prevailing professional standards of care, and by state code; and

(F) The facility is formally recognized as a juvenile detention center by the state agency respon-

sible for monitoring, review or certification of juvenile detention facilities.

(j)(1) Any juvenile who:

(A) Is alleged or adjudicated to be delinquent;

(B) Is confined to a secure detention or correctional facility designated, operated or approved by the court; and

(C) Absconds or attempts to abscond from such facility;

may be charged with the offense of escape or attempted escape and a petition alleging such offense may be filed with the juvenile court of the county in which the alleged offense occurred. If the allegations of the petition are sustained, then the court may make any order of disposition authorized by § 37-1-131.

(2) Any juvenile who:

(A) Is alleged or adjudicated to be delinquent;

(B) Has been placed by the court in a secure detention or correctional facility designated, operated or approved by the court;

(C) Is being transported to or from such facility; and

(D) Absconds or attempts to abscond from the custody of the person responsible for such transportation;

may be charged with the offense of escape or attempted escape and a petition alleging such offense may be filed with the juvenile court of the county in which the alleged offense occurred. If the allegations of the petition are sustained, then the court may make any order of disposition authorized by § 37-1-131.

(3)(A) Any juvenile may be charged with the offense of escape or attempted escape and a petition alleging the offense may be filed with the juvenile court of the county in which the alleged offense occurred who:

(i) Is adjudicated to be delinquent;

(ii) Is placed in a place of detention other than a secure detention facility, as specified in subsection (a); and

(iii) Absconds or attempts to abscond from such facility.

(B) Escape or attempted escape from a facility listed in subdivisions (a)(1)-(3) constitutes an offense that, if committed by an adult, would be a misdemeanor. If the allegations of the petition are sustained, then the court may make any order of disposition authorized by § 37-1-131.

(4) Upon an escape by a juvenile who is alleged or adjudicated to be delinquent by virtue of an act which would be a felony if committed by an adult and who is confined to a secure detention or correctional facility designated, operated or approved by the court, the appropriate facility or departmental official shall immediately report the escape to the chief law enforcement officer of the county in which the facility is located. The report shall include the facts of the escape, the time when it occurred and the circumstances under which it occurred, together with the particular description of the escapee, the escapee's age, size, complexion, race, color of hair and eyes, and from what county committed, for what offense, and when.

(k)(1) Notwithstanding any law to the contrary, no child alleged to be delinquent and meeting any of the criteria under this subsection (k) nor any child committed to the department of children's services as a delinquent child and meeting any of the criteria under this subsection (k) shall be held in shelter care authorized by this section with a child alleged to be dependent or neglected unless the following are satisfied:

(A) There is total separation between facility spatial areas such that there could be no haphazard or accidental contact between a child alleged to be delinquent, or committed as delinquent, who meets the criteria of this subsection (k) and a child alleged to be dependent or neglected; and

(B) There is total separation in all program activities between children alleged to be delinquent, or committed as delinquent, who meet the criteria of this subsection (k) and children alleged to be dependent or neglected, including all program activities listed in subdivision (i)(1)(B) and total separation of any staff for such children as listed in subdivision (i)(1)(C).

(2) The criteria to be used under this subsection (k), together with an allegation of delinquency or commitment to the department as delinquent, are:

(A) The child has been found to be delinquent or is alleged to be delinquent based upon a felony offense constituting a crime against a person or persons;

(B) The child has prior commitments to the department as a result of having committed a felony offense or offenses that constitute a crime against a person or persons;

(C) The child has been found to be delinquent or is alleged to be delinquent based upon a felony drug offense;

(D) The child has prior commitments to the department as a result of having committed a felony drug offense; or

(E) The child has a history of prior convictions for felony offenses that constitute crimes against persons or felony drug offenses, even though the child has never been committed to the department.

History.

Acts 1970, ch. 600, § 16; 1983, ch. 408, §§ 1, 2; T.C.A., § 37-216; Acts 1984, ch. 995, § 1; 1989, ch. 278, § 38; 1989, ch. 329, § 1; 1994, ch. 817, § 1; 1996, ch. 1079, § 73; 1999, ch. 508, § 6; 2000, ch. 981, § 51; 2008, ch. 1083, § 1; 2010, ch. 803, § 1.

Compiler's Notes.

For tables of U. S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

37-1-117. Investigation and release or detention — Petition — Hearings.

(a)(1) If a child alleged to have committed a delinquent or unruly act is brought before the court or delivered to a detention facility designated by the court, the intake or other authorized officer of the court shall immediately make an investigation and release the child unless it appears that such child's

detention is warranted or required under § 37-1-114.

(2) If such child is not so released, the court shall issue an order authorizing the detention of the child and a petition under § 37-1-120 shall be promptly filed with the court. In the case of a child alleged to be delinquent, a detention hearing shall be held no later than seventy-two (72) hours after the child is placed in detention to determine whether such child's detention is required under § 37-1-114. In computing the time limitation for purposes of such detention hearing, nonjudicial days are excluded, but in no event shall the hearing be held later than eighty-four (84) hours after the child is placed in detention. The court, in its discretion, may release the child on an appearance bond.

(b)(1) When the court finds, based upon a sworn petition or sworn testimony containing specific factual allegations, that there is probable cause to believe that the conditions specified in § 37-1-114(a)(2) exist and a child is in need of the immediate protection of the court, the court may order that the child be removed from the custody of the child's parent, guardian, legal custodian, or the person who physically possesses or controls the child and be placed in the custody of a suitable person, persons, or agency, as specified in § 37-1-116(d), pending further investigation and hearing. When a child alleged to be dependent and neglected is removed from the custody of such child's parent, guardian, legal custodian, or the person who physically possesses or controls the child prior to a hearing on a petition, a preliminary hearing shall be held no later than seventy-two (72) hours after the child's removal to determine whether such child's continued removal is required under § 37-1-114. In computing the time limitation for purposes of such preliminary hearing, nonjudicial days are excluded, but in no event shall the hearing be held later than eighty-four (84) hours after the child is removed from the home.

(2) If a child is removed from the home prior to the filing of a petition, a petition shall be filed within forty-eight (48) hours of the removal, excluding nonjudicial days, unless the child is returned to the home within the forty-eight hour time period. In no event shall a petition be filed later than the preliminary hearing.

(3) This subsection (b) may be waived by express and knowing waiver, by the parties to an action including the parents, guardian, or legal custodian and the child or guardian ad litem for the child. Any such waiver may be revoked at any time, at which time this section shall apply. The court shall make every effort to advise the parent, guardian, or legal custodian, and the child individually, if fourteen (14) years of age or older, of the time, date, and place of the hearing and the factual circumstances necessitating the removal.

(c) If the child is not so released, and a parent, guardian, or legal custodian has not been notified of the hearing, did not appear or waived appearance at this hearing, and files an affidavit showing these facts, the court shall rehear the matter without unnecessary delay and order such child's release unless it appears from the hearing that the child's detention or shelter care is required under § 37-1-114.

History.

Acts 1970, ch. 600, § 17; 1973, ch. 269, § 3; 1979, ch. 289, § 4; 1980, ch. 595, § 2; 1981, ch. 247, §§ 5, 6; 1981, ch. 458, § 2; 1982, ch. 882, § 3; 1983, ch. 254, § 3; T.C.A., § 37-217; Acts 2009, ch. 235, § 1; 2016, ch. 598, § 2.

Compiler's Notes.

Acts 2009, ch. 235, § 1 directed the code commission to change all references from "child support referee" and "juvenile referee" to "child support magistrate" and "juvenile magistrate" and to include all such changes in supplements and replacement volumes for the Tennessee Code Annotated.

Acts 1983, ch. 254, § 5 provided that the amendment by that act shall not be construed as altering or decreasing the maximum period of eighty-four hours that a juvenile may be detained without a hearing.

37-1-118. Subpoenas.

Upon application of a party, the court or the clerk of the court shall issue, or the court on its own motion may issue, subpoenas requiring attendance and testimony of witnesses and production of papers at any hearing under this part.

History.

Acts 1970, ch. 600, § 18; T.C.A., § 37-218.

37-1-119. Petition — Who may make.

The petition may be made by any person, including a law enforcement officer, who has knowledge of the facts alleged or is informed and believes that they are true.

History.

Acts 1970, ch. 600, § 19; T.C.A., § 37-219.

37-1-120. Contents of petition.

The petition shall be verified and may be on information and belief. It shall set forth plainly and to the extent reasonably ascertainable:

(1) The facts that bring the child within the jurisdiction of the court, including the approximate date, manner, and place of the acts alleged, with a statement that it is in the best interest of the child and the public that the proceeding be brought and, if delinquency or unruly conduct is alleged, that the child is in need of treatment or rehabilitation;

(2) The name, age, and residence address, if any, of the child on whose behalf the petition is brought and the places where the child has lived for the last five (5) years, and the names and present addresses of the persons with whom the child has lived during that period;

(3) The names and residence addresses, if known to petitioner, of the legal parents, guardian, or custodian of the child and of the child's spouse, or of any person who has physical custody of the child or claims rights of legal or physical custody of, or visitation with the child;

(4) The names, and residence addresses, if known to the petitioner, of any persons, other than the legal father, alleged to be the biological father of the child whose parental rights have not been terminated;

(5) The court, case number, and nature of any proceeding, if known to the petitioner, that could affect the current proceeding including proceedings for custody, visitation, enforcement, domestic violence, protective orders, termination of parental rights, or adoption;

(6) A statement whether the petitioner has participated as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, a statement that identifies the court, the case number, and the date of the child custody determination, if any;

(7) A statement whether or not the parents are currently serving in the armed forces;

(8) If the child is in detention, the place of detention, and the time the child was taken into custody; and

(9) A statement whether the child or child's parent is a member or eligible for membership in any recognized Indian tribe under the federal Indian Child Welfare Act (25 U.S.C. § 1901).

History.
Acts 1970, ch. 600, § 20; T.C.A., § 37-220; Acts 2012, ch. 1017, §§ 1, 2; 2016, ch. 598, § 4.

Compiler's Notes.
Acts 2012, ch. 1017, § 4 provided that the act, which amended subdivision (3) and added present subdivision (4), shall apply to any proceeding commenced on or after July 1, 2012.

37-1-121. [Repealed]

History.
Acts 1970, ch. 600, § 21; T.C.A., § 37-221; Acts 2012, ch. 1017, § 3; repealed by Acts 2016, ch. 717, § 1, effective July 1, 2016.

Compiler's Notes.
Former § 37-1-121 concerned summons.

37-1-122. Summons — Attachment where summons ineffectual.

After the petition has been filed, the clerk shall schedule a time for a hearing and issue summons to the parties. In case the summons cannot be served or the party served fails to obey the same, and in any case where it is made to appear to the court that such summons will be ineffectual, an attachment may issue, on the order of the court, against the:

(1) Parent or guardian;

(2) Person having custody of the child;

(3) Person with whom the child may be; or

(4) Child.

History.
Acts 1970, ch. 600, § 22; T.C.A., § 37-222; 2016, ch. 717, § 2.

37-1-123. [Repealed]

History.
Acts 1970, ch. 600, § 23; 1983, ch. 137, § 2; T.C.A., § 37-223; repealed by Acts 2016, ch. 717 § 3, effective July 1, 2016.

Compiler's Notes.
Former § 37-1-123 concerned service of summons.

37-1-124. Conduct of hearing.

(a) Hearings pursuant to this part shall be conducted by the court without a jury, in an informal but orderly manner, separate from other proceedings not included in § 37-1-103.

(b) The district attorney general or city or county attorney, or any attorney, upon request of the court, shall present the evidence in support of the petition and otherwise conduct the proceedings on behalf of the state.

(c) Minutes of all proceedings shall be kept by the court.

History.
Acts 1970, ch. 600, § 24; T.C.A., § 37-224; Acts 2007, ch. 199, §§ 3, 4; 2016, ch. 600, § 3.

37-1-125. Party served by publication — Provisional hearing — Interlocutory order.

(a) If, after reasonable effort, a party cannot be found, or the party's postal address cannot be ascertained, regardless of whether the party is within this state, the court may order service of the summons upon the party by publication in accordance with §§ 21-1-203 and 21-1-204. The published summons shall indicate the general nature of the allegations and where a copy of the petition may be obtained. The hearing shall not be earlier than five (5) days after the date of the last publication.

(b) If service of summons upon a party is made by publication, the court may conduct a provisional hearing upon the allegations of the petition and enter an interlocutory order of disposition if the:

(1) Petition alleges delinquency, unruly conduct, or dependency or neglect of the child;

(2) Summons served upon any party:

(A) States that prior to the final hearing on the petition designated in the summons a provisional hearing thereon will be held at a specified time and place;

(B) Requires the party who is served other than by publication to appear and answer the allegations of the petition at the provisional hearing;

(C) States further that findings of fact and orders of disposition made pursuant to the provisional hearing will become final at the final hearing unless the party served by publication appears at the final hearing; and

(D) [Deleted by 2016 amendment.]

(3) Child is personally before the court at the provisional hearing.

(c) All provisions of this part applicable to a hearing on a petition, orders of disposition, and other proceedings dependent thereon, apply under this section, but findings of fact and orders of disposition have only interlocutory effect pending the final hearing on the petition. The rights and duties of the party served by publication are not affected, except as provided in subsection (c).

(d) If the party served by publication fails to appear at the final hearing on the petition, the findings of fact

and interlocutory orders made become final without further evidence and are governed by this part as if made at the final hearing. If the party appears at the final hearing, the findings and orders shall be vacated and disregarded and the hearing shall proceed upon the allegations of the petition without regard to this section.

History.
Acts 1970, ch. 600, § 25; T.C.A., § 37-225; 2016, ch. 717, §§ 4, 5.

37-1-126. Right to counsel or guardian ad litem — Administrative fee.

(a)(1) A child is entitled to representation by legal counsel at all stages of any delinquency proceedings or proceedings alleging unruly conduct that place the child in jeopardy of being removed from the home pursuant to § 37-1-132(b) and is entitled to a guardian ad litem for proceedings alleging a child to be dependent and neglected or abused.

(2)(A) An adult is entitled to representation by legal counsel at all stages of any proceeding under this part in proceedings involving:

(i) Child abuse prosecutions pursuant to §§ 37-1-412 and 39-15-401;

(ii) Contributing to the delinquency or unruly behavior of a child pursuant to § 37-1-156 or contributing to the dependency and neglect of a child pursuant to § 37-1-157;

(iii) Violation of compulsory school attendance pursuant to §§ 49-6-3007 and 49-6-3009; or

(iv) Criminal contempt.

(B) A parent is entitled to representation by legal counsel at all stages of any proceeding under this part in proceedings involving:

(i) Abuse, dependency or neglect pursuant to § 37-1-102; or

(ii) Termination of parental rights pursuant to § 36-1-113.

(3) If the person is indigent, the court shall provide counsel for the indigent person. If a person appears without counsel, the court shall ascertain whether the person knows of the right to counsel and of the right to be provided with counsel by the court if the person is indigent. The court may continue the proceeding to enable a person to obtain counsel and shall provide counsel for an unrepresented indigent person upon request.

(4) In all delinquency hearings or in unruly hearings in which the child may be in jeopardy of being removed from the home as specified in § 37-1-132(b), counsel must be provided for a child not represented by the child's parent, guardian, guardian ad litem or custodian or where the child's interests conflict with the parent, guardian, custodian or guardian ad litem. If the interest of two (2) or more persons conflict, separate counsel may be provided for each of them.

(b) A person is indigent if:

(1) That person does not possess sufficient means to pay reasonable compensation for the services of a competent attorney or guardian ad litem. In determining indigency, the court shall consider the financial resources of the child and the child's parents, legal custodians or guardians; or

(2) In the case of a child, if the child, the child's parents, legal custodians or guardians are financially able to defray a portion or all of the cost of the child's representation but refuse to do so timely, the court may make written findings determining this as indigency; provided, the court shall assess the administrative fee and costs pursuant to § 37-1-150(g).

(c)(1) A child who is provided with court-appointed counsel pursuant to this section, the child's parents, legal custodians or guardians, or any adult defendant or respondent who is provided with court-appointed counsel pursuant to this section shall be assessed by the court at the time of appointment a nonrefundable administrative fee in the amount of fifty dollars ($50.00). The parents, legal custodians or guardians of a child who is appointed a guardian ad litem shall be assessed by the court an administrative fee as provided in this subdivision (c)(1).

(2) The administrative fee shall be assessed only one (1) time per case and shall be waived or reduced by the court upon a finding that the child and the child's parents, legal custodians or guardians lack financial resources sufficient to pay the fee in such amount. In cases where a guardian ad litem is appointed, the financial resources of the child shall not be considered. The fee may be increased by the court to an amount not in excess of two hundred dollars ($200) upon a finding that the child, the child's parents, legal custodians or guardians, or an adult defendant or respondent possess sufficient financial resources to pay the fee in such increased amount. The administrative fee shall be payable, at the court's discretion, in a lump sum or in installments; provided, that the fee shall be paid prior to disposition of the case or within two (2) weeks of appointment of counsel, whichever first occurs. Prior to disposition of the case, the clerk of the court shall inform the judge whether the administrative fee has been collected. Failure to pay the administrative fee assessed by the court shall not reduce or in any way affect the rendering of services by court-appointed counsel; provided, that willful failure to pay such fee may be weighed by the court when determining appropriate disposition of the case.

(3) The administrative fee shall be separate from and in addition to any other contribution or recoupment assessed pursuant to law for defrayal of costs associated with the provision of court-appointed counsel. The clerk of the court shall retain a commission of five percent (5%) of each dollar of administrative fees collected and shall transmit the remaining ninety-five percent (95%) of each such dollar to the state treasurer for deposit in the state's general fund.

(4) If the administrative fee is not paid prior to disposition of the case, then the fee shall be collected in the same manner as costs are collected; provided, that upon disposition of the case, moneys paid to the clerk, including any cash bond posted by or on behalf of the child or adult, shall be allocated to taxes, costs and fines and then to the administrative fee and any recoupment ordered. The administrative fee and any

recoupment or contribution ordered for the services of court-appointed counsel shall apply and shall be collected even if the charges against the party are dismissed. In cases where a guardian ad litem is appointed, the court shall have discretion to waive the administrative fee if the case is dismissed.

(5) As part of the clerk's regular monthly report, each clerk of court, who is responsible for collecting administrative fees pursuant to this section, shall file a report with the court and with the Tennessee administrative director of the courts. The report shall indicate the following:

(A) Number of children and adults for whom the court appointed counsel pursuant to this section;

(B) Number of children for whom the court appointed a guardian ad litem pursuant to § 37-1-149;

(C) Number of children and adults for whom the court appointed counsel and waived the administrative fee;

(D) Number of children for whom the court appointed a guardian ad litem and waived the administrative fee;

(E) Number of children and adults from, or on behalf of, whom the clerk collected administrative fees;

(F) Total amount of commissions retained by the clerk from such administrative fees; and

(G) Total amount of administrative fees forwarded by the clerk to the state treasurer.

History.
Acts 1970, ch. 600, § 26; 1980, ch. 796, § 2; T.C.A., § 37-226; Acts 1997, ch. 547, § 2; 2008, ch. 1084, §§ 1-4; 2009, ch. 417, § 1; 2012, ch. 857, §§ 1-5.

37-1-127. Basic rights at hearing.

(a) A party is entitled to the opportunity to introduce evidence and otherwise be heard in the party's own behalf and to cross-examine adverse witnesses.

(b) A child charged with a delinquent act need not be a witness against self-interest or otherwise engage in self-incrimination.

(c) An extra-judicial statement, if obtained in the course of violation of this part or that would be constitutionally inadmissible in a criminal proceeding, shall not be used against the child.

(d) Evidence illegally seized or obtained shall not be received over objection to establish the allegations made against the child.

(e) A confession validly made by a child out of court is insufficient to support an adjudication of delinquency unless it is corroborated in whole or in part by other evidence.

(f) If a child is charged with a delinquent act that could qualify such child as a violent juvenile sexual offender, as defined by § 40-39-202, such child shall be given verbal and written notice of the violent juvenile sexual offender registration requirements prior to a hearing on whether the child committed such act.

History.
Acts 1970, ch. 600, § 27; T.C.A., § 37-227; Acts 2011, ch. 483, § 1.

37-1-128. Investigations — Custody of child — Evaluation and commitment for mental illness or developmental disability.

(a)(1) When a child alleged to be delinquent or unruly is brought before the court, the court may notify a probation officer attached to the court or any such person, persons or agencies available to the court, or to the department of children's services, and it shall be their duty to:

(A) Make an investigation of the case;

(B) Be present in court to report when the case is heard;

(C) Furnish such information and assistance as the court may require; and

(D) Take charge of any child before or after the hearing as may be directed by the court.

(2) A probation officer shall have, as to any child committed to such officer's care, the powers of a law enforcement officer. At any time, the probation officer may bring such child before the court committing the child to the officer's care for further action as the court may deem fit and proper.

(b) [Deleted by 2016 amendment.]

(c)(1) At any time prior to a child being adjudicated unruly or dependent and neglected, or before the disposition of a child who has been adjudicated delinquent, unruly or dependent and neglected, the court may order that the department make an assessment of the child and report the findings and recommendations to the court. Such order of referral shall confer authority to the department or its designees to transport the child and to obtain any necessary evaluations of the child without further consent of the parent(s), legal custodian or guardian.

(2) If, during the evaluation or assessment, the department determines that there is a need for treatment for either the mental or physical well being of the child, consent of the parent(s), guardian or current legal custodian shall be obtained. If such consent cannot be obtained, the department may apply to the court for authorization to provide consent on behalf of the child. If a child is suspected of being in need of or is eligible for special education services, then state and federal laws governing evaluation and placement must be followed.

(3) A report to the court of the department's recommendations shall be made within fifteen (15) days, which may be extended up to thirty (30) days for good cause following the court's order of referral. The department shall include in the report a review of the child's previous records including, but not limited to, health and education records, a review of the child's family history and current family status, and a written recommendation concerning the child's status.

(4) Any order of the court that places custody of a child with the department shall empower the depart-

ment to select any specific residential or treatment placements or programs for the child according to the determination made by the department, its employees, agents or contractors.

(d) During the pendency of any proceeding, the court may order the child examined at a suitable place by a physician regarding the child's medical condition, and may order medical or surgical treatment of a child who is suffering from a serious physical condition or illness that requires prompt treatment, even if the parent, guardian or other custodian has not been given notice of a hearing, is not available, or without good cause informs the court of such person's refusal to consent to treatment.

(e)(1)(A) If, during the pendency of any proceeding under this chapter, there is reason to believe that the child may be suffering from mental illness, the court may order the child to be evaluated on an outpatient basis by a mental health agency or a licensed private practitioner designated by the commissioner of mental health and substance abuse services to serve the court. If, during the pendency of any proceeding under this chapter, there is reason to believe that the child may be suffering from a developmental disability, the court may order the child to be evaluated on an outpatient basis by a mental health agency, developmental center or a licensed private practitioner designated by the commissioner of mental health and substance abuse services to serve the court. The outpatient evaluation shall be completed no more than thirty (30) days after receipt of the order by the examining professional.

(B) If, and only if, in either of the circumstances described in subdivision (e)(1)(A) the outpatient evaluator concludes that further evaluation and treatment are needed, the court may order the child hospitalized. If the court orders the child to be hospitalized in a department of mental health and substance abuse services facility, hospital or treatment resource, the child shall be placed into the custody of the commissioner of mental health and substance abuse services at the expense of the county for not more than thirty (30) days at a facility, hospital or treatment resource with available, suitable accommodations. Prior to transporting a defendant for such evaluation and treatment in a department facility, the sheriff or other transportation agent shall determine that the receiving department facility has available, suitable accommodations.

(2) If an evaluation is ordered under this subsection (e), the evaluator shall file a complete report with the court, which shall include:

(A) Whether the child is mentally ill or developmentally disabled;

(B) Identification of the care, training or treatment required to address conditions of mental illness or developmental disability that are found, and recommendations as to resources that may be able to provide such services;

(C) Whether the child is subject to voluntary or involuntary admission or commitment for inpatient or residential services or for commitment to the custody of the department of mental health and substance abuse services for such conditions under title 33; and

(D) Any other information requested by the court that is within the competence of the evaluator.

(3) If it appears from the evaluation report and other information before the court that the child is in need of care, training or treatment for mental illness or developmental disability, the court may proceed in accordance with other provisions of this chapter or may order that proceedings be initiated before the court under § 37-1-175, § 33-5-402 or title 33, chapter 6, part 5.

(4) When transportation of the child is necessary to obtain evaluations under this subsection (e), the court may order the child transported with the cost of the transportation borne by the county from which the child is sent.

(5) If a community mental health center receives grants or contracts from the department of mental health and substance abuse services for services for mental illness or developmental disability and the commissioner has not designated another provider of outpatient evaluation for the court, the department shall contract with the center for evaluation services under this subsection (e), and the center shall provide such services ordered under this subsection (e) by courts in the center's catchment area.

(6) If a child who is alleged to be delinquent or unruly is brought before the court, and if the court determines that there is reason to believe that the child is experiencing a behavioral health emergency, then the court may request the services of a crisis response provider designated by the commissioner of mental health and substance abuse services to perform such services under title 33. For purposes of this subdivision (e)(6), "behavioral health emergency" means an acute onset of a behavioral health condition that manifests itself by an immediate substantial likelihood of serious harm as defined in § 33-6-501. If the crisis provider is unable to respond within two (2) hours of contact by the court, the crisis provider shall immediately notify the court and provide instructions for examination of the child under title 33, chapter 6, part 1.

(f) After adjudication, but prior to the disposition of a child found to be dependent and neglected, delinquent, unruly or in need of services under § 37-1-175, the court may place the child in custody of the department of children's services for the purpose of evaluation and assessment if the department has a suitable placement available for such purpose. If the department determines that there is no suitable placement available, the court shall not order the department to take custody of the child for the purpose of evaluation and assessment. Such pre-disposition custody shall last for a maximum of thirty (30) days and the court shall have a hearing to determine the appropriate disposition before the expiration of the thirty (30) days.

History.

Acts 1970, ch. 600, § 28; 1972, ch. 487, § 1; impl. am. 1975, ch. 219, § 1; 1975, ch. 248, § 35; 1980, ch. 639, § 1; 1981, ch. 224, § 29; 1981, ch. 247, § 1; T.C.A., § 37-228; Acts 1986, ch. 836, § 1; 1986, ch. 837, § 1; 1987, ch. 240, § 1; 1989, ch. 277, § 1; 1989, ch. 278, § 35; 1996, ch. 1079, §§ 73, 74, 86-88, 183; 2000, ch. 947, §§ 6, 8C, 8G, 8H; 2009, ch. 549, §§ 1, 2; 2010, ch. 1100, §§ 47–51; 2012, ch. 575, §§ 1, 2; 2013, ch. 255, § 2; 2016, ch. 598, § 3.

Compiler's Notes.

For the establishment of the Tennessee Children's Plan, see Executive Order No. 58 (June 29, 1994).

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

37-1-129. Hearings — Judicial Diversion — Findings — Disposition of child.

(a)(1) If a child alleged to be delinquent or unruly enters a plea of guilty or no contest, the court may defer further proceedings and place the child on probation upon such reasonable conditions as it may require without entering a judgment of guilty and with the consent of the child. Probation conditions shall not include a period of detention or placing the child in custody of the department. A child shall not be placed on judicial diversion if the delinquent act alleged is an offense described in § 37-1-153(b) or if the child has previously been adjudicated delinquent for such an offense.

(2) A judicial diversion agreement shall remain in force for a maximum of six (6) months unless the child is discharged sooner by the court. Upon application of any party to the proceedings, made before expiration of the six-month period and after notice and a hearing, judicial diversion may be extended by the court for an additional six (6) months.

(3) If a violation of any of the terms of judicial diversion probation is alleged, the child shall be given notice of the violation and an opportunity to be heard concerning the alleged violation. If, after a hearing, the court determines that a violation has occurred, the court may enter an adjudication of guilty and proceed to a dispositional hearing. If no violation is found, the court may continue the period of probation or may dismiss the petition.

(4) If, during the period of probation, the child does not violate any of the conditions of the probation, then upon expiration of the period, the court shall discharge the child and dismiss the proceedings against the child.

(b)(1) If an adjudicatory hearing is held, the court shall make and file its findings as to whether the child is a dependent and neglected child, or, if the petition alleges that the child is delinquent or unruly, whether the acts ascribed to the child were committed by that child. If the court finds that the child is not a dependent or neglected child or that the allegations of delinquency or unruly conduct have not been established, it shall dismiss the petition and order the child discharged from any detention or other restriction theretofore ordered in the proceeding.

(2) If the petition alleged the child was dependent and neglected as defined in § 37-1-102(b)(12)(G), or if the court so finds regardless of the grounds alleged in the petition, the court shall determine whether the parents or either of them or another person who had custody of the child committed severe child abuse. The court shall file written findings of fact that are the basis of its conclusions on that issue within thirty (30) days of the close of the hearing or, if an appeal or a petition for certiorari is filed, within five (5) days thereafter, excluding nonjudicial days. If the court finds the child is dependent and neglected, a dispositional hearing shall be held. In scheduling the hearing, the court shall give priority to proceedings in which a child has been removed from the child's home before an order of disposition has been made.

(3) If the petition alleged the child was delinquent or unruly and the court finds that the child committed the alleged delinquent or unruly acts, the court shall further determine whether the child is in need of treatment or rehabilitation and make and file its findings thereon. In the absence of evidence to the contrary, evidence of the commission of acts that constitute a felony or that reflect recidivistic delinquency is sufficient to sustain a finding that the child is in need of treatment or rehabilitation. If the court finds the child is in need of treatment and rehabilitation, a dispositional hearing shall be held. If the court finds the child is not in need of treatment or rehabilitation, it shall dismiss the petition and discharge the child from any detention or other restriction. If the court continues its determination of whether the child is in need of treatment and rehabilitation or the dispositional hearing, it shall make an appropriate order for detention of the child or the child's release from detention, subject to supervision of the court during the period of the continuance. In scheduling the hearings, the court shall give priority to proceedings in which a child is in detention or has otherwise been removed from the child's home before an order of disposition has been made.

(c)(1) Any order of the court that places custody of a child with the department shall empower the department to select any specific residential or treatment placements or programs for the child according to the determination made by the department, its employees, agents or contractors.

(2) The court may review the residential or treatment placement of a child placed in the department's custody, and within ninety (90) days of the placement, the court may, on its own motion, order a hearing to receive evidence and testimony with regard to the appropriateness of the child's residential or treatment placement. The court shall provide notice of the hearing to the department, to the child's biological parent or parents, and any other person who has been primarily responsible for the care of the child during the twelve (12) months prior to the child's placement in the department's custody. The court shall allow thirty (30) days from the time such notices are sent before the hearing date is set. The

court shall issue a placement recommendation based on a preponderance of the evidence to the department within ten (10) days after the conclusion of the hearing. Upon receiving the court's recommendation, the department shall issue a determination as to the child's placement within fifteen (15) days. The department shall notify the court, the child's biological parent or parents, and any other person who has been primarily responsible for the care of the child during the twelve (12) months prior to the child's placement.

History.

Acts 1970, ch. 600, § 29; 1977, ch. 482, § 3; T.C.A., § 37-229; Acts 1986, ch. 837, § 2; 1987, ch. 240, § 1; 1989, ch. 277, § 1; 1989, ch. 278, § 42; 1996, ch. 1079, §§ 73, 89; 1997, ch. 479, § 1; 2004, ch. 859, § 1; 2010, ch. 820, § 1; 2012, ch. 1016, § 1; 2016, ch. 600, § 4.

37-1-130. Dependent or neglected child — Disposition.

(a) If the child is found to be dependent or neglected, the court may make any of the following orders of disposition best suited to the protection and physical, mental and moral welfare of the child:

(1) Subject to the restrictions of § 37-1-129(c), permit the child to remain with the child's parents, guardian or other custodian, subject to conditions and limitations as the court prescribes, including supervision as directed by the court for the protection of the child;

(2) Subject to the restrictions of § 37-1-129(c), and subject to conditions and limitations as the court prescribes, transfer temporary legal custody to or grant permanent guardianship in accordance with part 8 of this chapter to any of the following:

(A) Any individual who, after study by the probation officer or other person or agency designated by the court, is found by the court to be qualified to receive and care for the child;

(B) The department of children's services:

(i) Any child placed in the custody of the department of children's services shall become a resident of the county in which such child is placed by the department. The board of education of each local school system shall assign the student to a public school pursuant to § 49-6-3102;

(ii) In order to assure appropriate placement for students with disabilities, the procedures required by the state board of education must be followed;

(iii) If a student is determined to be a child with disabilities as defined by state and federal laws and regulations and, therefore, entitled to special education and related services, a multidisciplinary team of the receiving school system must be convened prior to the placement of the child in the school system for the purpose of developing an appropriate educational program. The department shall notify the receiving school system as far in advance of the intended placement as possible. A representative from the department must be present at the multi-disciplinary team meeting;

(iv) Placements in educational programs not following the requirements set forth in this section shall be the financial responsibility of the department of education;

(v) Any financial responsibility required under the provisions of this section for the education of children with disabilities whose parents are not residents of the county in which the children are placed shall be borne by the department of education and not by any local government. This provision shall not act to reduce federal funds for children with disabilities or special education going to any local education agency;

(C) An agency or other private organization licensed or otherwise authorized by law to receive and provide care for the child; or

(D) An individual in another state with or without supervision by an appropriate officer under § 37-1-142;

(3) In those counties having a county department of children's services, commit the child to the custody of such county department; or

(4) Without making any of the foregoing orders, transfer custody of the child to the juvenile court of another state if authorized by and in accordance with § 37-1-141 if the child is or is about to become a resident of that state.

(b) Unless a child found to be dependent or neglected is found also to be delinquent, the child shall not be committed to or confined in an institution or other facility designed or operated for the benefit of delinquent children. Any disposition under this section shall be implemented as soon as possible after entry of the court's order. A disposition under subdivision (a)(2) or (3) shall, in no event, result in the child's detention in shelter care, as defined in § 37-1-116, or other temporary placement, without provision of necessary services consistent with the child's assessments or evaluations, in excess of thirty (30) days after entry of the court's order.

(c) No child who has been found to be a victim of severe child abuse shall be returned to the custody or residence of any person who engaged in or knowingly failed to protect the child from the brutality or abuse unless the court finds on the basis of clear and convincing evidence that the child will be provided a safe home free from further such brutality and abuse. The court shall file written findings of fact that are the basis of its conclusions on that issue within thirty (30) days of the close of the hearing or, if an appeal or petition for certiorari is filed, within five (5) days thereafter, excluding Sundays. No such child shall be returned to such custody on the basis of the court's order until five (5) days after entry of the order without the consent of the department and the petitioner.

(d)(1) When the department determines that a child who has been committed to the department under this section is ready to return home, the department shall notify the court in writing of its intention to place the child at home on a trial home visit. If the

court objects to the trial home visit, it must notify the department of its objection in writing or set a hearing within fifteen (15) days of the date of the notice, with such hearing to be held at the earliest possible date. If the hearing is not set nor a written objection received within fifteen (15) days of the date of the notice, the department may place the child on a trial home visit. The notice shall include the provision that the department's legal custody of the child shall terminate in ninety (90) days.

(2) If during the ninety-day period the department determines that the trial home visit is not in the child's best interest and removes the child on an emergency basis or seeks to remove the child on a non-emergency basis, the department shall file a motion for review by the court of the trial home visit and shall provide notice to the parent or parents, guardian or other custodian. The court shall hold a hearing on such motion within three (3) days of an emergency removal and shall set a hearing within fifteen (15) days to be held at the earliest possible date if the motion seeks the court's permission to make a non-emergency removal.

(3) During the ninety-day trial home visit, the court may periodically review the child's status and may make any orders that the best interest of the child may require.

History.

Acts 1970, ch. 600, § 30; impl. am. Acts 1975, ch. 219, § 1; 1977, ch. 482, § 4; Acts 1978, ch. 886, § 1; 1979, ch. 143, § 9; T.C.A., § 37-230; Acts 1985 (1st Ex. Sess.), ch. 6, § 2; 1996, ch. 1079, §§ 73, 90, 91; 1999, ch. 508, § 7; 2007, ch. 372, § 3; 2011, ch. 314, §§ 1, 2; 2013, ch. 397, § 1.

Compiler's Notes.

For the establishment of the Tennessee Children's Plan, see Executive Order No. 58 (June 29, 1994).

37-1-131. Delinquent child — Disposition — Restitution.

(a) If the child is found to be a delinquent child, the court may make any of the following orders of disposition best suited to the child's treatment, rehabilitation and welfare:

(1) Any order authorized by § 37-1-130 for the disposition of a dependent or neglected child;

(2)(A) Placing the child on probation under the supervision of the probation officer of the court or the department of children's services, any person, or persons or agencies designated by the court, or the court of another state as provided in § 37-1-143, under conditions and limitations the court prescribes. If in a subsequent proceeding, the court finds the child has violated any of the conditions or limitations of probation, the court may make any disposition which would have been permissible in the original proceeding;

(B) The court shall make a finding that the child's school shall be notified, if:

(i) The adjudication of delinquency was for an offense involving:

(a) First degree murder;

(b) Second degree murder;

(c) Rape;

(d) Aggravated rape;

(e) Rape of a child;

(f) Aggravated rape of a child;

(g) Aggravated robbery;

(h) Especially aggravated robbery;

(i) Kidnapping;

(j) Aggravated kidnapping;

(k) Especially aggravated kidnapping;

(l) Aggravated assault;

(m) Felony reckless endangerment; or

(n) Aggravated sexual battery; or

(ii) The adjudication of delinquency was for a violation of:

(a) Voluntary manslaughter, as defined in § 39-13-211;

(b) Criminally negligent homicide, as defined in § 39-13-212;

(c) Sexual battery by an authority figure, as defined in § 39-13-527;

(d) Statutory rape by an authority figure, as defined in § 39-13-532;

(e) Prohibited weapon, as defined in § 39-17-1302;

(f) Unlawful carrying or possession of a firearm, as defined in § 39-17-1307;

(g) Carrying weapons on school property, as defined in § 39-17-1309;

(h) Carrying weapons on public parks, playgrounds, civic centers, and other public recreational buildings and grounds, as defined in § 39-17-1311;

(i) Handgun possession, as defined in § 39-17-1319;

(j) Providing handguns to juveniles, as defined in § 39-17-1320; or

(k) Any violation of § 39-17-417 that constitutes a Class A or Class B felony; and

(iii) School attendance is a condition of probation, or if the child is to be placed in the custody of a state agency and is to be placed in school by a state agency or by a contractor of the state agency;

(C) The court may make a finding that the child's school shall be notified based on the circumstances surrounding the offense if the adjudication of delinquency is for an offense not listed in this subsection (a);

(D) The court shall then enter an order directing the youth service officer, probation officer, or the state agency, if the child has been committed to the custody of the state agency, to notify the school principal in writing of the nature of the offense and probation requirements, if any, related to school attendance, within five (5) days of the order or before the child resumes or begins school attendance, whichever occurs first. In individual cases when the court deems it appropriate, the court may also include in the order a requirement to notify county and municipal law enforcement agencies having jurisdiction over the school in which the child will be enrolled;

(E) When the principal of a school is notified, the principal of the child's school, or the principal's designee, shall convene a meeting to develop a plan within five (5) days of the notification. Reasonable notice shall be given of the date and time of the meeting. The child, the department of children's services if the child is in state custody, the child's parent/guardian/legal caretaker if not in state custody, and other appropriate parties identified by the child, the department of children's services or parent/guardian/legal caretaker shall be invited to the meeting. The plan shall set out a list of goals to provide the child an opportunity to succeed in school and provide for school safety, a schedule for completion of the goals and the personnel who will be responsible for working with the child to complete the goals;

(F) The information shall be shared only with the employees of the school having responsibility for classroom instruction of the child and the school counselor, social worker or psychologist who is involved in developing a plan for the child while in the school, and with the school resource officer, and any other person notified pursuant to this section. The information is otherwise confidential and shall not be shared by school personnel with any other person or agency, except as may otherwise be required by law. Notification in writing of the nature of the offense committed by the child and any probation requirements and the plan shall not become a part of the child's student record;

(G) In no event shall a child be delayed from attending school for more than five (5) school days from the date of notice;

(H) Notwithstanding any other state law to the contrary, the department of children's services shall develop a written policy consistent with federal law detailing the information to be shared by the department with the school for children in its legal custody when notification is required;

(I) Upon the subsequent enrollment of any such student in any other LEA, the parents or custodians of the student, and the administrator of any school having previously received the same or similar notice pursuant to this section, shall notify the school in the manner specified in § 49-6-3051;

(J) A violation of the confidentiality provisions of subdivision (a)(2)(F) is a Class C misdemeanor;

(K)(i) If the court does not place the child in state custody, but orders the child to complete an inpatient mental health treatment program at a hospital or treatment resource as defined in § 33-1-101, upon leaving that hospital or treatment resource, the principal of the child's school shall be notified and the principal of the child's school or the principal's designee shall convene a meeting to develop a transition plan within five (5) days of the notification. Reasonable notice shall be given of the date and time of the meeting. The child, child's parent/guardian/legal caretaker, other relevant service providers, and other appropriate parties identified by the child and parent/guardian/legal caretaker shall be invited to the meeting;

(ii) If an information release is executed in compliance with § 33-3-109 that provides the principal or other designated school personnel access to certain information concerning the child, the principal or other designated school personnel may work with the child's mental health provider to develop this plan. The transition plan shall set out a list of goals to provide the child an opportunity to succeed in school and provide for school safety, a schedule for completion of the goals and the personnel who will be responsible for working with the child to complete the goals. The information shall be shared only with employees of the school having responsibility for classroom instruction of the child, but the information is otherwise confidential and shall not be shared by school personnel with any other person or agency, except as may be otherwise required by law. The notification in writing of the nature of the offense committed by the child, any probation requirements, and the transition plan developed pursuant to this subdivision (a)(2)(K)(ii) shall not become a part of the child's student record;

(iii) In no event shall a child be delayed from attending school for more than five (5) school days;

(iv) A violation of the confidentiality provisions of subdivision (a)(2)(K)(ii) is a Class C misdemeanor;

(3) Placing the child in an institution, camp or other facility for delinquent children operated under the direction of the court or other local public authority;

(4) Subject to the restrictions of § 37-1-129(c), commit the child to the department of children's services, which commitment shall not extend past the child's nineteenth birthday;

(5) Assessing a fine not to exceed fifty dollars ($50.00) for each offense that constitutes a violation of a state law or municipal ordinance;

(6) Committing the child to the custody of the county department of children's services in those counties having such a department;

(7)(A) Ordering the child to perform community service work with such work being in compliance with federal and state child labor laws. For first-time delinquent acts involving alcohol or beer, in its order for community service work, the court may require the juvenile to spend a portion of such time in the emergency room of a hospital, only if, and to the extent, the hospital agrees with such action;

(B) No charitable organization, municipality, county or political subdivision thereof utilizing juveniles performing community service work pursuant to this chapter shall be liable for any injury sustained by the juvenile or other person, proximately caused by the juvenile, while the juvenile is performing a work project for such organization or governmental entity, if the organization or governmental entity exercised due care in the supervision

of the juvenile;

(C) No charitable organization, municipality, county or political subdivision thereof, nor any employee or officer thereof, shall be liable to any person for any act of a juvenile while the juvenile is on a community work project for such organization or governmental entity, if the organization or governmental entity exercised due care in the supervision of the juvenile;

(D) No charitable organization, municipality, county or political subdivision thereof, nor any employee or officer thereof, shall be liable to any juvenile or the juvenile's family for death or injuries received, proximately caused by the juvenile, while the juvenile is on a community work project for such organization or governmental entity, if the organization or governmental entity exercised due care in the supervision of the juvenile;

(E) The authority and protection from liability provided by this section is supplemental and in addition to any other authority and protection provided by law; and

(8)(A) In lieu of committing a child to the custody of the department of children's services and subject to the requirements of subdivision (a)(8)(B), the court may order any of the following if the child is found to be a delinquent child:

(i) Assign a long-term mentor to such child; or

(ii) Require that the delinquent child or any of the child's family members receive counseling services from any counseling service provided through or approved by the juvenile court;

(B) An order may be issued under subdivision (a)(8)(A) only if the funding necessary to implement such order is appropriated by the legislative body of the county in which the court is located or is provided by grants from public or private sources.

(b)(1) If the child is found to be delinquent, the court shall determine if any monetary damages actually resulted from the child's delinquent conduct. Upon a determination that monetary damages resulted from such conduct, the court shall order the child to make restitution for such damages unless the court further determines that the specific circumstances of the individual case render such restitution, or a specified portion thereof, inappropriate.

(2)(A) IF restitution is ordered pursuant to this subsection (b) in those cases where the court has made a finding that:

(i) A specified amount is owed;

(ii) Such amount is ordered to be paid pursuant to a specific payment schedule; and

(iii) The total amount of such ordered restitution is not paid by the time the juvenile court no longer has jurisdiction over the child;

THEN, notwithstanding § 37-1-133(b) or any other law to the contrary, the recipient of such restitution may convert the unpaid balance of the restitution ordered by the court into a civil judgment in accordance with the procedure set out in this subsection (b). The payment of such civil judgment shall be at the same payment schedule as that as when the offender was a juvenile.

(B) Under such judgment, payments shall be continued to be made under the specific payment schedule ordered by the juvenile court until the judgment has been satisfied.

(3) The restitution recipient shall file a certified copy of the juvenile court's restitution order with any court having jurisdiction over the total amount of restitution ordered.

(4) Upon receipt of such a restitution order, the court shall take proof as to the amount of ordered restitution actually paid. If the court finds that the amount of restitution actually paid is less than the total amount of restitution ordered by the juvenile court, it shall enter a judgment in favor of the restitution recipient and against the offender for the amount of the unpaid balance of such restitution.

(5) A judgment entered pursuant to this subsection (b) shall remain in effect for a period of ten (10) years from the date of entry and shall be enforceable by the restitution recipient in the same manner and to the same extent as other civil judgments.

(c)(1) This subsection (c) shall apply to a juvenile who is adjudicated delinquent, but not committed to the custody of the department of children's services, for an act that if committed by an adult would be one (1) or more of the following offenses:

(A) First degree murder, as prohibited by § 39-13-202;

(B) Second degree murder, as prohibited by § 39-13-210;

(C) Voluntary manslaughter, as prohibited by § 39-13-211;

(D) Criminally negligent homicide, as prohibited by § 39-13-212;

(E) Rape, as prohibited by § 39-13-503;

(F) Aggravated rape, as prohibited by § 39-13-502;

(G) Rape of a child, as prohibited by § 39-13-522;

(H) Aggravated rape of a child, as prohibited by § 39-13-531;

(I) Aggravated robbery, as prohibited by § 39-13-402;

(J) Especially aggravated robbery, as prohibited by § 39-13-403;

(K) Kidnapping, as prohibited by § 39-13-303;

(L) Aggravated kidnapping, as prohibited by § 39-13-304;

(M) Especially aggravated kidnapping, as prohibited by § 39-13-305;

(N) Aggravated assault, as prohibited by § 39-13-102;

(O) Felony reckless endangerment, as prohibited by § 39-13-103;

(P) Sexual battery, as prohibited by § 39-13-505;

(Q) Aggravated sexual battery, as prohibited by § 39-13-504; or

(R) Any other Class A or Class B felony.

(2) If a court finds a juvenile to be delinquent as a result of an act listed in subdivision (c)(1), the court

shall have broad discretion to issue orders and, in conjunction with representatives from the LEA, to change the educational assignment of the juvenile. The court shall involve representatives of the LEA, as necessary, to ascertain a proper educational assignment and the availability of secure educational facilities for the juvenile who, through actions of the court, is facing personal restrictions or being released with compulsory attendance in school as a condition of personal restriction or release. There shall be a presumption in favor of issuing a court order prohibiting the juvenile from attending the same educational placement as the victim.

(3) The court shall have discretion to determine how best to restrict future contact of the defendant with the victim while the victim is at school or in other public settings.

(4) When consulted by the court, the representatives of the LEA shall provide a list of alternatives to attendance at the school which is attended by the victim. This information shall include the availability of programs including another school assignment within the district, alternative school, virtual education, homebound instruction, adult education programs, and high school equivalency testing eligibility.

(5) The school resource officer shall be authorized to assist school officials in the enforcement of orders issued by the court and shall be made fully aware of the confidential nature of any order and the student's educational assignment.

(6) For a delinquent act that would be any offense not specifically enumerated in subdivision (c)(1), the court shall have the discretionary authority to enter orders that provide sanctions for the offense and, in consultation with school officials, limitations or conditions on attendance at school.

History.

Acts 1970, ch. 600, § 31; 1979, ch. 143, § 10; 1983, ch. 9, § 2; T.C.A., § 37-231; Acts 1985, ch. 374, §§ 1-3; 1985, ch. 441, § 2; 1989, ch. 278, § 38; 1993, ch. 276, § 2; 1995, ch. 380, § 1; 1996, ch. 815, § 1; 1996, ch. 982, § 1; 1996, ch. 1079, §§ 73, 74, 92, 93; 1997, ch. 500, § 1; 1997, ch. 525, § 1; 2003, ch. 238, § 5; 2005, ch. 57, § 1; 2005, ch. 265, § 1; 2007, ch. 200, § 1; 2007, ch. 314, § 1; 2008, ch. 1052, §§ 1-3; 2009, ch. 160, § 1; 2013, ch. 343, § 1; 2014, ch. 757, § 1; 2016, ch. 600, § 7.

Compiler's Notes.

Acts 1993, ch. 276, § 4 provided that the amendment by that act shall not affect or apply to any juvenile committed to the department of youth development (now department of children's services) on or before July 1, 1993, or to the subsequent de novo appeal of such case.

For the establishment of the Tennessee Children's Plan, see Executive Order No. 58 (June 29, 1994).

37-1-132. Unruly child — Disposition.

(a) If the child is found to be an unruly child, the court may make such disposition as authorized by § 37-1-131(a)(1), (2), (5), or (7) that is best suited to such child's treatment. However, no child found to be an unruly child may be placed on probation under the supervision of the department, unless such child is found to also be a delinquent child or is found to have committed a violation of a valid court order as provided for in the Appendix to the Tennessee Rules of Juvenile Procedure. No county government may be required to increase local funding to implement this provision. The court has the additional dispositional alternative of ordering the department to provide non-custodial services to a child found to be unruly.

(b)(1) If the court finds that it is in the best interest of the child and the public that any unruly child be removed from the home of a parent, guardian or other legal custodian, the placement of the child shall be with the person, agency or facility that presents the least drastic or restrictive alternative.

(2) If the court desires to commit an unruly child to the custody of the department of children's services, it shall, prior to ordering commitment, refer such child to the department's juvenile-family crisis intervention program under § 37-1-168. The court may commit the child to the department after such juvenile-family crisis intervention program certifies to the court that there is no other less drastic measure than court intervention. Nothing in this subdivision (b)(2) shall preclude placing a child in protective service custody.

(3) A disposition under this section shall, in no event, result in the child's detention in shelter care, as defined in § 37-1-116, or other temporary placement, without provision of necessary services consistent with the child's assessments or evaluations, in excess of thirty (30) days after entry of the court's order.

(c)(1) When the department determines that a child who has been committed to the department under this section is ready to return home, the department shall notify the court in writing of its intention to place the child at home on a trial home visit. If the court objects to the trial home visit, it must notify the department of its objection in writing or set a hearing within fifteen (15) days of the date of the notice with such hearing being held at the earliest possible date. If a hearing is not set nor a written objection received within fifteen (15) days of the date of the notice, the department may place the child on a trial home visit. The notice shall include the provision that the department's legal custody of the child shall terminate in thirty (30) days.

(2) If during the thirty-day period the department determines that the trial home visit is not in the child's best interest and removes the child on an emergency basis or seeks to remove the child on a non-emergency basis, the department shall file a motion for review by the court of the trial home visit and shall provide notice to the parent(s), guardian or other custodian. The court shall hold a hearing on such motion within three (3) days of an emergency removal and shall set a hearing within fifteen (15) days to be held at the earliest possible date if the motion seeks the court's permission to make a non-emergency removal.

(3) During the thirty-day trial home visit, the court may periodically review the child's status and may make any orders that the best interest of the child may require.

History.
Acts 1970, ch. 600, § 32; 1979, ch. 289, § 5; 1982, ch. 882, § 2; T.C.A., § 37-232; Acts 1985 (1st Ex. Sess.), ch. 6, § 1; 1996, ch. 1079, § 94; 1999, ch. 508, § 8; 2007, ch. 372, § 4.

Compiler's Notes.
Acts 1985 (1st Ex. Sess.), ch. 6, § 6 provided that any child found to be unruly and placed on probation under the supervision of the division of juvenile probation (now department of children's services) prior to April 1, 1986, and remaining on such probation on that date, was deemed to be on probation under the supervision of the probation officer of the court.

37-1-133. Order of adjudication — Noncriminal.

(a) An order of disposition or other adjudication in a proceeding under this part is not a conviction of crime and does not impose any civil disability ordinarily resulting from a conviction or operate to disqualify the child in any state service or civil service application or appointment. A child shall not be committed or transferred to a penal institution or other facility used primarily for the execution of sentences of persons convicted of a crime, except as provided in § 37-1-134.

(b) The disposition of a child and evidence adduced in a hearing in juvenile court may not be used against such child in any proceeding in any court other than a juvenile court, whether before or after reaching majority, except in dispositional proceedings after conviction of a felony for the purposes of a pre-sentence investigation and report.

(c) A child found to be delinquent shall be exempt from the operation of laws applicable to infamous crimes, and such child shall not be rendered infamous by the judgment of the juvenile court in which such child is tried.

History.
Acts 1970, ch. 600, § 33; T.C.A., § 37-233; Acts 2012, ch. 800, § 49.

Compiler's Notes.
Acts 2012, ch. 800, § 1 provided that the act, which amended subsection (a), shall be known and cited as the "Tennessee Excellence, Accountability, and Management (T.E.A.M.) Act of 2012."

37-1-134. Transfer from juvenile court.

(a) After a petition has been filed alleging delinquency based on conduct that is designated a crime or public offense under the laws, including local ordinances, of this state, the court, before hearing the petition on the merits, may transfer the child to the sheriff of the county to be held according to law and to be dealt with as an adult in the criminal court of competent jurisdiction. The disposition of the child shall be as if the child were an adult if:

(1) The child was sixteen (16) years or more of age at the time of the alleged conduct, or the child was less than sixteen (16) years of age if such child was charged with the offense of first degree murder, second degree murder, rape, aggravated rape, rape of a child, aggravated rape of a child, aggravated robbery, especially aggravated robbery, kidnapping, aggravated kidnapping or especially aggravated kidnapping or an attempt to commit any such offenses. The district attorney general may not seek, nor may any child transferred under this section receive, a sentence of death for the offense for which the child was transferred;

(2) A hearing on whether the transfer should be made is held in conformity with §§ 37-1-124, 37-1-126 and 37-1-127;

(3) Reasonable notice in writing of the time, place and purpose of the hearing is given to the child and the child's parents, guardian or other custodian at least fourteen (14) days prior to the hearing; and

(4) The court finds that there is probable cause to believe that:

(A) The child committed the delinquent act as alleged;

(B) The child is not committable to an institution for the developmentally disabled or mentally ill; and

(C) The interests of the community require that the child be put under legal restraint or discipline.

(b) In making the determination required by subsection (a), the court shall consider, among other matters:

(1) The extent and nature of the child's prior delinquency records;

(2) The nature of past treatment efforts and the nature of the child's response thereto;

(3) Whether the offense was against person or property, with greater weight in favor of transfer given to offenses against the person;

(4) Whether the offense was committed in an aggressive and premeditated manner;

(5) The possible rehabilitation of the child by use of procedures, services and facilities currently available to the court in this state; and

(6) Whether the child's conduct would be a criminal gang offense, as defined in § 40-35-121, if committed by an adult.

(c) The transfer pursuant to subsection (a) terminates jurisdiction of the juvenile court with respect to any and all delinquent acts with which the child may then or thereafter be charged, and the child shall thereafter be dealt with as an adult as to all pending and subsequent criminal charges; provided, that if a child transferred pursuant to this section is acquitted in criminal court on the charge or charges resulting in such transfer, or if such charge or charges are dismissed in such court, this subsection (c) shall not apply and the juvenile court shall retain jurisdiction over such child. If a child is in the legal custody of the department at the time of transfer, such custody shall terminate at the transfer hearing, except that if a child is already committed to the department, the court may determine if it is in the best interest of the child to remain in the legal custody of the department until conviction occurs. In any case, legal custody by the department shall terminate upon any conviction in adult criminal court. If there is no conviction and charges so transferred are dismissed or acquittal occurs, the presiding trial judge shall notify the transferring juvenile court judge of such dismissal or acquittal so that the juvenile court may at its discretion set a hearing to ascertain status of the child as to the department's custody.

(d) If a person eighteen (18) years of age or older is to be charged with an offense that was alleged to have been committed prior to such person's eighteenth birthday, the petition shall be brought in the juvenile court that would have had jurisdiction at the time of the offense. The juvenile court shall either adjudicate the case under its continuing jurisdiction authority under § 37-1-102(b)(4)(B) and (C) or undertake transfer proceedings consistent with this section.

(e) No child, either before or after reaching eighteen (18) years of age, shall be prosecuted for an offense previously committed unless the case has been transferred as provided in subsection (a).

(f)(1) Statements made by the child at the juvenile court hearing under this section are not admissible against the child, over objection, in the criminal proceedings following the transfer.

(2) In any county in which, on July 1, 1996, the general sessions court or juvenile court makes audio recordings, the court shall make or cause to be made an audio recording of each transfer hearing conducted pursuant to this section. Such recording shall include all proceedings in open court and such other proceedings as the judge may direct and shall be preserved as a part of the record of the hearing. The juvenile who is the subject of the hearing may, at the juvenile's own expense, transcribe the recording of the hearing and a transcript so prepared may be used for the purpose of an appeal as provided by law. In all other counties, transfer hearings shall be recorded using the procedure provided in title 40, chapter 14, part 3.

(g) If the case is not transferred, the judge who conducted the hearing shall not over objection of an interested party preside at the hearing on the petition. If the case is transferred to a court of which the judge who conducted the hearing is also the judge, the judge likewise is disqualified from presiding in the prosecution.

(h) After a child has been sentenced to an adult institution, the department of correction may file a petition requesting the committing court to allow the department to transfer the defendant to an institution for juvenile delinquents administered by the department of children's services. Upon the approval by such court, the defendant may be transferred by the department of correction to a child-caring institution to be held until the defendant's eighteenth birthday. At the defendant's eighteenth birthday, the defendant may be transferred to an adult institution if there is time remaining on the defendant's term. If the term expires prior to the eighteenth birthday, the defendant shall be released. Any child sentenced by a committing court pursuant to this section shall, for the purpose of parole, be treated as if such child were an adult. The provisions of this section relative to housing of juveniles who have obtained the age of eighteen (18) shall not be affected by subsections (i), (j) and (k).

(i) When a child transferred under this section is detained, the juvenile court may, in its discretion, order confinement in a local juvenile detention facility, or a juvenile detention facility with which it contracts or an adult detention facility separate and removed from adult detainees. The court having adult criminal jurisdiction may thereafter order detention in an adult detention facility separate and removed from adult detainees; provided, however, that during the period while such child is detained separately from adult detainees, such child shall otherwise abide by the same regulations and policies governing conditions of imprisonment that apply to adult detainees who are charged with similar offenses. Similar regulations and policies governing educational opportunities for adults shall be implemented for a child so detained, but such regulations and policies shall in no way affect or alter the manner in which a local education agency is required to provide educational services to a child under the federal Individuals with Disabilities Education Act, compiled in 20 U.S.C. § 1471 et seq.

(j) Any person, who was transferred under this section and who was less than sixteen (16) years of age at the time of the offense and who is subsequently convicted and committed, shall be housed in a juvenile correctional facility until such person reaches sixteen (16) years of age, at which time such person may be transferred upon the order of the committing court to an adult facility. Any person committed to an adult facility under this section shall be housed separate and removed from adult inmates. In exercising the commissioner's discretion under § 41-1-403 to determine the institutional location of any such person, the commissioner of correction shall take into consideration the proximity of the institution to the person's home. However, during any period while such person is confined separately from adult inmates within such regional facility, such person shall otherwise abide by the same regulations and policies governing conditions of imprisonment that apply to adult inmates who are confined for similar offenses. Similar regulations and policies governing educational opportunities for adults shall be implemented for a child so detained, but such regulations and policies shall in no way affect or alter the manner in which a local education agency is required to provide educational services to a child under the federal Individuals with Disabilities Education Act, compiled in 20 U.S.C. § 1471 et seq.

(k) Any person who is transferred under this section and who was sixteen (16) years of age or older at the time of the offense and is subsequently convicted and committed shall be housed in a juvenile correctional facility unless the committing court orders commitment to an adult facility. Any person committed to an adult facility under this section shall be housed, separate and removed from adult inmates. In exercising the commissioner's discretion under § 41-1-403 to determine the institutional location of any such person, the commissioner of correction shall take into consideration the proximity of the institution to the person's home. However, during any period while such person is confined separately from adult inmates within such regional facility, such person shall otherwise abide by the same regulations and policies governing conditions of imprisonment that apply to adult inmates who are confined for similar offenses. Similar regulations and

policies governing educational opportunities for adults shall be implemented for a child so detained, but such regulations and policies shall in no way affect or alter the manner in which a local education agency is required to provide educational services to a child under the federal Individuals with Disabilities Education Act, compiled in 20 U.S.C. § 1471 et seq.

History.
Acts 1970, ch. 600, § 34; 1975, ch. 296, § 1; 1976, ch. 745, § 2; 1980, ch. 838, §§ 1, 2; Acts 1982, ch. 637, §§ 1-4; T.C.A., § 37-234; Acts 1989, ch. 278, § 39; 1990, ch. 958, § 1; 1990, ch. 982, § 2; 1994, ch. 823, §§ 1, 2; 1994, ch. 895, §§ 1, 2; 1995, ch. 267, § 1; 1995, ch. 354, §§ 1-3; 1995, ch. 379, § 1; 1996, ch. 767, § 1; 1996, ch. 1079, §§ 73, 95; 1998, ch. 782, § 1; imp. am. Acts 2000, ch. 947, § 6; 2005, ch. 265, § 2; 2010, ch. 860, § 1; 2011, ch. 486, §§ 2, 3; 2016, ch. 600, §§ 5, 6.

Compiler's Notes.
Acts 1994, ch. 823, § 3 provided that this section applies only to offenses committed on or after July 1, 1994.

37-1-135. Mentally ill or developmentally disabled child — Disposition.

If, at a dispositional hearing or at a hearing to transfer a child under § 37-1-134, there is reason to believe the child may be suffering from mental illness or is developmentally disabled, the court may proceed under § 37-1-128(d).

History.
Acts 1970, ch. 600, § 35; 1973, ch. 127, § 17; 1980, ch. 639, § 2; T.C.A., § 37-235; Acts 1985, ch. 437, § 32; 1986, ch. 836, § 2; imp. am. Acts 2000, ch. 947, § 6.

37-1-136. Assessment reports in certain counties — Confidentiality — Limited access — Destruction.

(a) All reports and materials compiled by the juvenile court in connection with an assessment report shall be confidential, shall not be public record, and shall not be disclosed, except as specifically authorized by this section. Except for purposes directly connected with this section, a person shall not disclose, receive, make use of, authorize, or knowingly permit the use of assessment reports and related materials. Assessment reports and related materials shall not be subject to any court subpoena.

(b) Access to assessment reports and materials shall be granted to the following people, officials, or agencies only for the following limited purposes:

(1) A court official or employee for the purpose of compiling information, administering assessment tools, preparing reports, and assisting children and families with accessing identified services and programs. The court official or employee may disclose relevant information, but not the actual assessment reports or materials, to professionals or other agency providers as needed to assist the child and family in accessing services and programs;

(2) An attorney for the child to use in representing the child or a guardian ad litem for the child for use in representing the child's best interests; or

(3) The child who is the subject of the assessment report and the child's parent or legal guardian.

(c) A juvenile court judge, magistrate, or district attorney general may be provided with a limited report concerning a child adjudicated delinquent. The limited report may contain service recommendations developed from the assessment report for the purpose of reviewing the appropriateness of the recommendations.

(d) A juvenile court judge or magistrate may hear testimony regarding the contents of an assessment report in a delinquency case for a child adjudicated delinquent for the limited purpose of determining appropriate services and programs for the child who is the subject of the assessment report. If such testimony is introduced, the actual assessment report and materials shall not be submitted to the court and shall not become part of the court record.

(e) The materials, records, and assessment reports compiled by the juvenile court for use as discussed in this section are to be maintained separately from public court records. When a child who is the subject of such an assessment report reaches an age when they are no longer under the jurisdiction of the juvenile court, the assessment report and all materials used to compile the information in the assessment report in possession of the juvenile court shall be destroyed.

(f) A violation of this section is a Class B misdemeanor.

(g) As used in this section, "assessment report" means a report compiled by the juvenile court assessment team.

(h) This section shall be limited in application to any assessment report or materials used in the creation of an assessment report in juvenile courts located in any county having a metropolitan form of government with a population of more than five hundred thousand (500,000), according to the 2010 federal census or any subsequent federal census.

History.
Acts 2016, ch. 833, § 1.

Compiler's Notes.
Former § 37-1-136 (Acts 1970, ch. 600, § 36; impl. am. Acts 1975, ch. 219, § 1; 1977, ch. 482, § 5; T.C.A., § 37-236), concerning disposition of abandoned children, was repealed by Acts 1995, ch. 532, § 11, effective January 1, 1996. For present related provisions, see § 36-1-113.

For tables of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

37-1-137. Commitment of delinquent children to the department of children's services.

(a)(1)(A) An order of the juvenile court committing a delinquent child to the custody of the department of children's services shall be for an indefinite time.

(B) If a juvenile offender is tried and adjudicated delinquent in juvenile court for the offense of first degree murder, second degree murder, aggravated rape, rape of a child, aggravated sexual battery, especially aggravated kidnapping, aggravated robbery, especially aggravated robbery, aggravated arson, attempt to commit first degree

murder, or violations of § 39-17-417(b), (i) or (j), or has been previously adjudicated delinquent in three (3) felony offenses arising out of separate criminal episodes at least one (1) of which has resulted in institutional commitment to the department of children's services, or is within six (6) months of the child's eighteenth birthday at the time of the adjudication of the child's delinquency, the commitment may be for a determinate period of time but in no event shall the length of the commitment be greater than the sentence for the adult convicted of the same crime, nor shall such commitment extend past the offender's nineteenth birthday. Commitment under this section shall not exceed the sentences provided for by the Tennessee Criminal Sentencing Reform Act of 1989, compiled in title 40, chapter 35, and in no event shall a juvenile offender be sentenced to Range II or Range III.

(2) However, no child shall be committed to such department when the court deems it in the best interest of the child without a pre-commitment report including, but not limited to:

(A) Educational status;

(B) Family background information;

(C) Employment background;

(D) Physical examination and report; and

(E) Psychological report (if possible).

(3) Such report shall be prepared by the probation officer assigned to the juvenile to be committed.

(4) Notwithstanding subdivisions (a)(2) and (3), the information in a pre-commitment report shall be provided only when presently available and shall not be provided at an additional cost to the department.

(5) The department may place the child in a suitable state institution, foster home or group home, or the department may purchase services from any agency, public or private, that is authorized by law to receive or provide care or services for children.

(6) The commissioner, in consultation with the executive committee of the Tennessee council of juvenile and family court judges, shall promulgate rules and regulations relative to commitment criteria for the incarceration of juvenile offenders in facilities operated or managed by the department. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) The commissioner shall prescribe procedures whereby the child's treatment, rehabilitation and progress shall be reviewed quarterly and a recommendation for or against home placement or discharge shall be made to the commissioner or the commissioner's designee at least semiannually.

(c)(1)(A) The commissioner or the commissioner's designee, with the assent of the committing court, may make a home placement of a child under the continuing supervision of the department.

(B) Notification of a home placement of a child shall be made in writing to the committing court at least fifteen (15) days prior to the proposed date of such placement. Unless the committing court makes an objection in writing to the commissioner or the commissioner's designee or sets a hearing within the fifteen-day period with such hearing to be held at the earliest possible date, the court shall be considered to have assented to the home placement and the child shall immediately be released to home placement supervision.

(C) The first thirty (30) days after the child's return to home placement supervision shall be a trial home pass with the department retaining legal custody of the child. If the child successfully completes the trial home pass, at the end of the thirty-day trial home pass the child shall automatically continue on home placement supervision status, unless the court has ordered that supervision status is not necessary, and the department's legal custody of the child shall terminate. Such home placement supervision by the department shall continue until the court orders a discharge of such supervision under subdivision (g)(1).

(D) If the committing court objects to the home placement supervision, such objections shall be made in writing to the commissioner or the commissioner's designee setting forth the reasons for such objections. A valid ground for such objection shall include, but not be limited to, consideration of the nature of the offense committed by the juvenile. No juvenile shall be released on home placement supervision if the committing court objects in the prescribed written manner. Upon receiving the objection from the committing court, the commissioner or the commissioner's designee shall review the child's file and consult with the committing judge regarding such denial in the form of a hearing set by either the court or by motion of the department or any attorney for the child.

(E) If no agreement is reached between the department and the committing judge, then the commissioner or the commissioner's designee shall request a hearing on the proposed placement by a three- judge panel to be appointed by the executive committee of the Tennessee council of juvenile and family court judges. Such three-judge panel shall not include the committing judge. The panel will hear and resolve the controversy within thirty (30) days of receipt of the commissioner's or the commissioner's designee's request for a hearing by the executive secretary of the council and the decision of the panel shall be final.

(2) In the event the juvenile offender is a person described in subdivision (a)(1)(B) and is given a determinate commitment, and the commissioner or the commissioner's designee is of the opinion that the juvenile offender is a fit subject to return to home placement prior to the achievement of committal reduction credits as set out in subsection (h), the commissioner or the commissioner's designee shall request a hearing before the judge of the juvenile court in which the original commitment occurred. The request shall state the reasons for recommending the early release placement and shall make specific recommendations as to where the child will

be placed. A copy of the request for a hearing shall be supplied to the district attorney general. If, on review of the record, the court is of the opinion that the request is well taken and the district attorney general has no objection, the judge may order the early release placement without a hearing. Otherwise, the court shall schedule a hearing within fifteen (15) days of the receipt of the request for hearing. At the hearing, the department, the juvenile offender, and the state shall be given an opportunity to be heard in support of or in opposition to the proposed early release placement and all of the parties may subpoena witnesses to testify on any issue raised by the proposed placement. The court may make such orders pertaining to such placement as the court determines are justified under the proof produced at the hearing for such early release placement. The court's decision may be appealed under § 37-1-302.

(d)(1) If the designee of the department supervising a delinquent child on home placement supervision has reasonable cause to believe that such child has violated the conditions of home placement supervision in an important respect after the trial home pass has ended, the designee may file a petition alleging a violation of home placement supervision. Notwithstanding any other law to the contrary, the court may require that the child be placed in detention pending adjudication of the petition. The department is prohibited from taking the child into custody until the court finds that the child has violated conditions of the home placement supervision and the court terminates the home placement supervision. Nothing in this subdivision (d)(1) shall prevent the transfer of a juvenile under § 37-1-134.

(2) No such court permission is required during the trial home pass and the department is authorized to remove the child from the home at its discretion, except that a notice of such removal and disruption of the trial home pass shall be filed with the court within ten (10) days as a violation allegation or other appropriate petition or motion and the legal custody of the department is not terminated. A review hearing on such action shall be held within thirty (30) days of such filing. Nothing in this subdivision (d)(2) shall prevent the transfer of a juvenile under § 37-1-134.

(e) The juvenile court that committed the delinquent child to the department retains jurisdiction to determine allegations of violation of home placement. Such court shall schedule a hearing within seven (7) days of the time the child is placed in detention and cause written notice to be served on the child, the child's parent(s), guardian or other custodian, and the department's designee a reasonable time before the hearing. The written notice shall contain a copy of the petition and any other written report or statement detailing the violation or violations as well as the time, place and purpose of the hearing. At the hearing, the court shall allow the child to be heard in person and to present witnesses or documentary evidence. The child shall also have the right to confront and cross-examine witnesses.

(f) If the court finds that no violation has occurred, the child shall be allowed to resume the former conditions of home placement. If the court finds that:

(1) A violation occurred; and

(2) The violation was serious enough to justify termination, it shall order that the child be recommitted to the department. Such order shall contain the reasons relied on for terminating the home placement. Upon such termination, the child may be placed as the commissioner or the commissioner's designee may direct. The child may appeal the disposition of the court as provided in § 37-1-159.

(g)(1) The commissioner or the commissioner's designee may discharge a child placed on state probation pursuant to § 37-1-131(a)(2)(A) or under home placement supervision status by the department after legal custody ends pursuant to subdivision (c)(1)(C) and thereby terminate supervision of the child by the department. Notification of discharge of a child shall be made in writing to the committing court at least fifteen (15) days prior to the proposed discharge. Unless the committing court makes an objection in writing to the commissioner or the commissioner's designee or sets a hearing within the fifteen-day period with such hearing to be held at the earliest possible date, the court shall be considered to have assented to the discharge from home placement supervision status of the department or from state probation, and such supervision by the department shall terminate.

(2) Upon receiving the written objection from the committing court, the commissioner or the commissioner's designee shall review the child's file and within fifteen (15) days of receipt of such objection may file a motion for a hearing. The court shall hold such hearing within thirty (30) days of the motion filing. A written decision will be rendered within ten (10) days of that hearing. If the department does not concur with the hearing decision, it shall notify the executive committee of the Tennessee council of juvenile and family court judges which shall appoint a panel of three (3) juvenile or family court judges to review the commissioner's final decision. Such three-judge panel will hear and resolve, by a majority vote, the controversy within thirty (30) days of the filing of the commissioner's request. The committing judge shall not be a member of the three-judge panel. The determination of the three-judge panel shall be final.

(3) In the event the juvenile offender is a person described in subdivision (a)(1)(B) and is given a determinate commitment, and the commissioner or the commissioner's designee is of the opinion that the juvenile offender is a fit subject for discharge, the commissioner or the commissioner's designee shall request a hearing before the judge of the juvenile court in which the original commitment occurred. The request shall state the reasons for recommending the discharge and shall make specific recommendations as to where the child will be placed. A copy of the request for a hearing shall be supplied to the district attorney general. If, on review of the record, the court is of the opinion that the request is well

taken and the district attorney general has no objection, the judge may order the placement without a hearing. Otherwise, the court shall schedule a hearing within fifteen (15) days of the receipt of the request for hearing. At the hearing, the department, the juvenile offender and the state shall be given an opportunity to be heard in support of or in opposition to the proposed discharge and all of the parties may subpoena witnesses to testify on any issue raised by the proposed discharge. The court may make such orders pertaining to the continued commitment or discharge as the court determines are justified under the proof produced at the hearing. The court's decision shall be appealable under the provisions of § 37-1-302.

(h)(1) Any juvenile offender who is given a determinate commitment shall be eligible to receive time credits toward the determinate sentence imposed. Such time credits shall be awarded for good institutional behavior or satisfactory performance, or both, within institutional programs. Notwithstanding any other law to the contrary, awarded time credits shall operate to reduce the time a juvenile offender must serve in the department on the determinate sentence.

(2) Each juvenile offender who exhibits good institutional behavior or exhibits satisfactory performance, or both, within a program may be awarded time credits toward the sentence imposed, varying between one (1) day and sixteen (16) days for each month served, with not more than eight (8) days for each month served for good institutional behavior and not more than eight (8) days for each month served for satisfactory program performance in accordance with criteria established by the department. No juvenile offender shall have the right to any such time credits nor shall any juvenile offender have the right to participate in any particular program and may be transferred from one (1) program to another without cause.

(3) Such sentence credits shall not be earned or credited automatically, but rather shall be awarded on a monthly basis to a juvenile offender at the discretion of the responsible superintendent in accordance with the criteria established by the department, and only after receipt by the superintendent of written documentation evidencing the juvenile offender's good institutional behavior or satisfactory program performance, or both.

(4) Such sentence credits may not be awarded for a period of less than one (1) calendar month or for any month in which a juvenile offender commits a major violation of which such juvenile offender is found guilty. No sentence credits for good institutional behavior may be awarded for any month in which a juvenile offender commits any disciplinary violation of which such juvenile offender is found guilty.

(5) A juvenile offender may be deprived of those sentence credits previously awarded pursuant to this subsection (h) only for the commission of any major infraction designated by the department as a major violation, or refusal to participate in a program.

(6) All determinately sentenced juvenile offenders, including those juveniles who are currently serving their sentences, are eligible for the sentence reduction credits authorized by this subsection (h). However, sentence reduction credits authorized by this subsection (h) may be awarded only for conduct or performance, or both, from and after July 1, 1987.

History.

Acts 1970, ch. 600, § 37; impl. am. Acts 1971, ch. 76, § 1; 1972, ch. 786, §§ 1, 2; 1975, ch. 326, § 3; 1976, ch. 745, §§ 3, 4, 5; 1977, ch. 171, §§ 1, 2; 1979, ch. 297, § 1; 1980, ch. 907, § 1; T.C.A., § 37-237; Acts 1985, ch. 441, §§ 3-5; 1987, ch. 56, § 1; 1988, ch. 979, §§ 6, 7; 1989, ch. 278, § 44; 1990, ch. 958, §§ 2-4; 1990, ch. 982, § 3; 1993, ch. 276, § 3; 1996, ch. 1079, §§ 73, 96-98, 100-102; 2005, ch. 265, § 3; 2011, ch. 486, §§ 4-7.

Compiler's Notes.

Acts 1993, ch. 276, § 4 provided that the amendment by that act shall not affect or apply to any juvenile committed to the department of youth development on or before July 1, 1993, or to the subsequent de novo appeal of such case.

37-1-138. Liability for expenses of returning juvenile to custody of department of children's services.

(a) The parent or other person who is the physical custodian of a juvenile shall reimburse the state for any expenses incurred by the state in returning such juvenile to the department if:

(1) The juvenile is in the legal custody of the department of children's services;

(2) The juvenile has been temporarily released for a definite period of time to the physical custody of such parent or custodian; and

(3) The juvenile has not returned to the physical custody of the department at the time designated for such return in the temporary release.

(b) The department shall notify the parent or other custodian of this liability prior to release of such juvenile.

(c) The department has the authority to initiate an appropriate civil action in order to collect any proceeds to which it is entitled under the provisions of subsection (a). For any judgment rendered in the state's favor, execution shall issue as provided by law.

History.

Acts 1982, ch. 569, § 1; T.C.A., § 37-284; Acts 1989, ch. 278, § 38; 1996, ch. 1079, § 73.

37-1-139. Modification of orders.

(a) Except as provided in § 36-1-113(q), an order of the court shall be set aside if it appears that:

(1) It was obtained by fraud or mistake sufficient to satisfy the legal requirements in any other civil action;

(2) The court lacked jurisdiction over a necessary party or of the subject matter; or

(3) Newly discovered evidence so requires.

(b) Except for an order terminating parental rights or an order of dismissal, an order of the court may be changed or modified:

(1) Upon a finding of changed circumstances and that the change or modification is in the best interest of the child;

(2) If the order contains clerical mistakes; or

(3) If newly discovered evidence so requires.

(c) In no event shall modification of an agreed order result in a child being placed into the custody of the department of children's services without the appropriate petition having been filed with the clerk of the court alleging the child to be dependent, neglected, abused, unruly, or delinquent. This subsection (c) shall not be construed as eliminating the judicial findings required for children in state custody by §§ 37-1-166 and 37-2-409 or as otherwise required by case law and federal regulations.

(d) [Deleted by 2016 amendment.]

(e) [Deleted by 2016 amendment.]

History.

Acts 1970, ch. 600, § 38; T.C.A., § 37-238; Acts 1989, ch. 278, § 40; 1995, ch. 532, § 12; 1996, ch. 1079, § 73; 2007, ch. 199, §§ 5-8; 2016, ch. 600, §§ 8-10; 2016, ch. 717, § 6.

37-1-140. Legal custodian — Duties.

(a) A custodian to whom legal custody has been given by the court under this part has the right to the physical custody of the child, the right to determine the nature of the care and treatment of the child, including ordinary medical care and the right and duty to provide for the care, protection, training and education, and the physical, mental and moral welfare of the child, subject to the conditions and limitations of the order and to the remaining rights and duties of the child's parents or guardian. A custodian is also responsible for providing notices as required in § 49-6-3051, to the principal of the school in which the child is enrolled.

(b) As an alternative to a parent or guardian transferring legal custody pursuant to this section or as otherwise provided by law, a parent or guardian may temporarily provide for the care of a child by executing a power of attorney for care of a minor child, pursuant to the Power of Attorney for Care of a Minor Child Act, compiled in title 34, chapter 6, part 3.

History.

Acts 1970, ch. 600, § 39; T.C.A., § 37-239; Acts 2003, ch. 71, § 2; 2003, ch. 238, § 1.

37-1-141. Residence change — Transfer of jurisdiction to another state.

(a) If the court finds that a child who has been adjudged to have committed a delinquent act or to be unruly or dependent or neglected is or is about to become a resident of another state, the court may defer a hearing on need for the treatment or rehabilitation and disposition and request, by any appropriate means, the juvenile court of the county of the child's residence or prospective residence to accept jurisdiction of the child.

(b) If the child becomes a resident of another state while on probation or under protective supervision under order of a juvenile court of this state, the court may request the juvenile court of the county of the state in which the child has become a resident to accept jurisdiction of the child and to continue the child's probation or protective supervision.

(c) Upon receipt and filing of an acceptance, the court of this state shall transfer custody of the child to the accepting court and cause the child to be delivered to the person designated by that court to receive the child's custody. It also shall provide that court with certified copies of the order adjudging the child to be a delinquent, unruly or dependent or neglected child, of the order of transfer, and, if the child is on probation or under protective supervision under order of the court, of the order of disposition. It also shall provide that court with a statement of the facts found by the court of this state and any recommendations and other information it considers of assistance to the accepting court in making a disposition of the case or in supervising the child on probation or otherwise.

(d) Upon compliance with subsection (c), the jurisdiction of the court of this state over the child is terminated.

History.

Acts 1970, ch. 600, § 40; T.C.A., § 37-240.

37-1-142. Nonresident child — Transfer from another state.

(a) If a juvenile court of another state requests a juvenile court of this state to accept jurisdiction of a child found by the requesting court to have committed a delinquent act or to be an unruly or dependent or neglected child, and the court of this state finds, after investigation that the child is, or is about to become, a resident of the county in which the court presides, it shall promptly and not later than fourteen (14) days after receiving the request issue its acceptance in writing to the requesting court and direct its probation officer or other person designated by it to take physical custody of the child from the requesting court, and bring the child before the court of this state or make other appropriate provisions for the child's appearance before the court.

(b) Upon the filing of certified copies of the orders of the requesting court:

(1) Determining that the child committed a delinquent act or is an unruly or dependent or neglected child; and

(2) Committing the child to the jurisdiction of the juvenile court of this state, the court of this state shall immediately fix a time for a hearing on the need for treatment or rehabilitation and disposition of the child or on the continuance of any probation or protective supervision.

(c) The hearing and notice thereof and all subsequent proceedings are governed by this part. The court may make any order of disposition permitted by the facts and this part. The orders of the requesting court are conclusive that the child committed the delinquent act or is an unruly or dependent or neglected child and of the facts found by the court in making the orders, subject only to § 37-1-139. If the requesting court has made an order placing the child on probation or under

protective supervision, a like order shall be entered by the court of this state. The court may modify or vacate the order in accordance with § 37-1-139.

History.
Acts 1970, ch. 600, § 41; T.C.A., § 37-241.

37-1-143. Out-of-state custody and supervision.

Subject to the provisions of this part governing dispositions and to the extent that funds of the county are available, the court may place a child in the custody of a suitable person in another state. On obtaining the written consent of a juvenile court of another state, the court of this state may order that the child be placed under the supervision of a probation officer or other appropriate person designated by the accepting court. One (1) certified copy of the order shall be sent to the accepting court and another filed with the clerk of the county of the requesting court of this state.

History.
Acts 1970, ch. 600, § 42; T.C.A., § 37-242.

37-1-144. Supervision under out-of-state order.

(a) Upon receiving a request of a juvenile court of another state to provide supervision of a child under the jurisdiction of that court, a court of this state may issue its written acceptance to the requesting court and designate its probation or other appropriate officer who is to provide supervision, stating the probable cost per day therefor.

(b) Upon the receipt and filing of a certified copy of the order of the requesting court placing the child under the supervision of the officer so designated, the officer shall arrange for the reception of the child from the requesting court, provide supervision pursuant to the order and to this part, and report thereon from time to time together with any recommendations the officer may have to the requesting court.

(c) The court of this state may terminate supervision at any time by notifying the requesting court. In that case, or if the supervision is terminated by the requesting court, the probation officer supervising the child shall return the child to a representative of the requesting court authorized to receive the child.

History.
Acts 1970, ch. 600, § 43; T.C.A., § 37-243.

37-1-145. Out-of-state probation officers — Powers.

If a child has been placed on probation or protective supervision by a juvenile court of another state and the child is in this state with or without the permission of that court, the probation officer of that court or other person designated by that court to supervise or take custody of the child has all the powers and privileges in this state with respect to the child as given by this part to like officers or persons of this state, including the right of visitation, counseling, control and direction, taking into custody and returning to that state.

History.
Acts 1970, ch. 600, § 44; T.C.A., § 37-244.

37-1-146. Juvenile traffic offenders.

(a) All cases of alleged traffic violations by children coming within this part shall be heard and disposed of upon a traffic ticket or citation signed by a law enforcement officer that describes in general terms the nature of the violation. Such cases may be disposed of nonjudicially under the supervision of the judge; in any case, however, the child or the child's parents may request and shall be granted a hearing before the judge.

(b) If the court finds that the child violated a traffic law or ordinance, the court may decree the child to be a traffic violator, and, in addition to any disposition provided for in this part for the disposition of a delinquent or unruly child, the judge may make one (1) or any combination of the following decisions:

(1) Suspend and hold the child's driver license for a specified or indefinite time;

(2) Limit the child's driving privileges as an order of the court;

(3) Order the child to attend traffic school, if available, or to receive driving instructions;

(4) Impose a fine of not more than fifty dollars ($50.00); or

(5) Perform community service work in lieu of a fine.

(c) In any case or class of cases the judge of any juvenile court may waive jurisdiction of traffic violators who are sixteen (16) years of age or older, and such cases shall be heard by the court or courts having jurisdiction of adult traffic violations, or the child may pay the stipulated fine to a traffic bureau.

History.
Acts 1970, ch. 600, § 45; T.C.A., § 37-245; Acts 2016, ch. 600, § 11.

37-1-147. Termination of parental rights.

(a) The juvenile court shall be authorized to terminate the rights of a parent or guardian to a child upon the grounds and pursuant to the procedures set forth in title 36, chapter 1, part 1.

(b) Upon entering an order to terminate parental or guardian rights to a child, the court shall award guardianship or partial guardianship of the child as provided in the relevant provisions of title 36, chapter 1, part 1.

(c) The effect of the court's order terminating parental or guardian rights shall be as provided in § 36-1-113.

History.
Acts 1970, ch. 600, § 46; 1977, ch. 482, § 6; 1981, ch. 316, § 4; 1981, ch. 348, §§ 3, 4; 1983, ch. 435, §§ 4, 5; T.C.A., § 37-246; Acts 1985, ch. 478, § 31; 1991, ch. 126, § 1; 1995, ch. 532, § 13.

37-1-148. [Repealed.]

Compiler's Notes.
Former § 37-1-148 (Acts 1970, ch. 600, § 47; T.C.A., § 37-247), concerning the effect of orders terminating parental rights, was repealed by Acts 1995, ch. 532, § 14, effective January 1, 1996.

37-1-149. Guardian ad litem — Special advocate — Appointment.

(a)(1) The court at any stage of a proceeding under this part, on application of a party or on its own motion, shall appoint a guardian ad litem for a child who is a party to the proceeding if such child has no parent, guardian or custodian appearing on such child's behalf or such parent's, guardian's or custodian's interests conflict with the child's or in any other case in which the interests of the child require a guardian. The court, in any proceeding under this part resulting from a report of harm or an investigation report under §§ 37-1-401 — 37-1-411, shall appoint a guardian ad litem for the child who was the subject of the report. A party to the proceeding or the party's employee or representative shall not be appointed.

(2) Any guardian ad litem appointed by the court shall receive training appropriate to that role prior to such appointment. Such training shall include, but is not limited to, training in early childhood, child and adolescent development provided by a qualified professional.

(b)(1) The court may also appoint a nonlawyer special advocate trained in accordance with that role and in accordance with the standards of the Tennessee Court Appointed Special Advocates Association (CASA) to act in the best interest of a child before, during and after court proceedings.

(2) The court-appointed special advocate shall conduct such investigation and make such reports and recommendations pertaining to the welfare of a child as the court may order or direct.

(3) Any guardian ad litem or special advocate so appointed by the court shall be presumed to be acting in good faith and in so doing shall be immune from any liability that might otherwise be incurred while acting within the scope of such appointment.

History.
Acts 1970, ch. 600, § 48; 1973, ch. 81, § 4; T.CA., § 37-248; Acts 1990, ch. 929, § 1; 2004, ch. 584, §§ 1, 2; 2012, ch. 1016, § 2.

37-1-150. Cost and expense for care of child.

(a) The following expenses may be a charge upon the funds of the county upon certification thereof by the court:

(1) The cost of medical and other examinations and treatment of a child that is ordered by the court. The cost of outpatient mental health evaluations under § 37-1-128(e)(1) shall be the responsibility of the state;

(2) Reasonable compensation for services and related expenses of counsel appointed by the court for a party; provided, however, that in the case of indigent persons appointed counsel pursuant to § 37-1-126, the state, through the administrative office of the courts, shall pay such compensation. The supreme court shall prescribe by rule the nature of the expense for which compensation may be allowed hereunder, and such limitations and conditions for such compensation as it deems appropriate, subject to this subdivision (a)(2). Such rules shall specify the form and content of applications for compensation under this subdivision (a)(2). The court may adopt such other rules related to this subdivision (a)(2) as it deems appropriate in the public interest;

(3) Reasonable compensation for a guardian ad litem, except that in the case of indigent persons, the state, through the administrative office of the courts, shall pay for the guardian ad litem required by § 37-1-149 for proceedings alleging a child to be dependent and neglected or abused. The supreme court shall prescribe by rule the nature of the expense for which compensation may be allowed hereunder, and such limitations and conditions for such compensation as it deems appropriate, subject to the provisions of this subdivision (a)(3). Such rules shall specify the form and content of applications for compensation under this subdivision (a)(3). The court may adopt such other rules related to this subdivision (a)(3) as it deems appropriate in the public interest;

(4) The cost of any preadjudicatory placement of a child pursuant to §§ 37-1-114 and 37-1-116, including necessary transportation of the child to such placement. A child alleged to be in violation of the conditions of home placement or charged with the commission of an offense that would be a felony if committed by an adult and eligible for secure detention as provided by § 37-1-114(c) who is taken into custody in a county that does not operate a secure juvenile detention facility may, with the approval of the court having jurisdiction in the matter, be transported to and from the nearest such facility in this state; the cost of such transportation and placement shall be paid by the state subject to appropriations to the commission on children and youth for juvenile court services. Payment may also be made from available federal funding;

(5) The expense of service of summons, notices, subpoenas, travel expense of witnesses, except as provided in subsection (b), transportation of the child, and other like expenses incurred in the proceedings under this part; and

(6) The reasonable cost of secretarial services for the court in performing its duties as a juvenile court.

(b)(1) The cost of transporting a child who has been committed to a state correctional institution on an offense that would be a felony if committed by an adult shall be paid by the state. The cost of transportation of a child for mental health examination or evaluation when the examination or evaluation has been ordered by the juvenile court judge for a child charged with commission of an offense that would be a felony if committed by an adult shall be paid by the county.

(2) The cost of an inpatient mental health examination or evaluation ordered by the juvenile court judge for a child charged with commission of an offense that would be a felony if committed by an adult, and the cost incidental to the examination or evaluation, shall be paid by the city or county.

(c) The cost of transporting a child from another state for an offense that would be a felony if the child

were an adult shall be paid by the state; otherwise, the city or county will bear the cost.

(d)(1) If, after due notice to the parents, legal custodians or guardians, and after affording them an opportunity to be heard, the court finds that they are financially able to pay all or part of the costs and expenses stated in subdivisions (a)(1)-(5), the court may order them to pay the same and prescribe the manner of payment. Unless otherwise ordered, payment shall be made to the clerk of the juvenile court for remittance to the person to whom compensation is due or, if the costs and expenses have been paid by the county, to the appropriate officer of the county.

(2) If, after due notice to the parents, legal custodians or guardians, and after affording them an opportunity to be heard, the court finds that they are financially able to pay all or part of the costs and expenses of the mental evaluation or examination of the child, which have been paid by the city or county pursuant to subsection (b), the court may order them to pay the costs and prescribe the manner of payment. Unless otherwise ordered, payment shall be made to the clerk of the juvenile court for remittance to the person to whom compensation is due; or if the costs and expenses have been paid by the state, to the appropriate officer of the state.

(e)(1) Attorneys appointed hereunder, other than public defenders, are entitled to reasonable compensation for their services, both prior to and at the hearing of the cause, and are entitled to reimbursement for their reasonable and necessary expenses in accordance with the rules of the supreme court.

(2) Each attorney seeking reimbursement or compensation hereunder shall file an application with the juvenile court, stating in detail the nature and amount of the expenses claimed, supporting such claim with receipts showing payment thereof and stating the nature and extent of the attorney's services, including those in connection with any preliminary hearing.

(f) Costs for proceedings under this title or the costs of the care or treatment of any child that is ordered by the court shall be paid by the state only when specifically authorized by this title or other provisions of law.

(g)(1) In proceedings where the child is determined to be indigent pursuant to § 37-1-126 and the court appoints counsel or a guardian ad litem to represent the child, but finds the child, the child's parents, legal custodians or guardians are financially able to defray a portion or all of the cost of the child's representation the court shall enter an order directing the child, child's parents or legal custodians or guardians to pay into the registry of the clerk of the court any sum that the court determines the child, child's parents or legal custodians or guardians is able to pay.

(2) In proceedings where an adult is determined to be indigent pursuant to § 37-1-126 and the court appoints counsel to represent the adult and finds the adult financially able to defray a portion or all of the cost of the adult's representation, the court shall enter an order directing the adult to pay into the registry of the clerk of the court any sum that the court determines the adult is able to pay.

(3) The sum to defray a portion or all of the costs shall be subject to execution as any other judgment. The court may provide for payments to be made at intervals, which the court shall establish, and upon terms and conditions as are fair and just. The court may also modify its order when there has been a change in circumstances.

(4) The clerk of the court shall collect all moneys paid pursuant to this subsection (g). The clerk shall notify the court of any failure to comply with the court's order. At the conclusion of the proceedings, the court shall order the clerk to pay to the administrative office of the courts any funds that the clerk collected. The clerk of the court shall receive a commission of five percent (5%) of the moneys collected for the clerk's services in collecting, handling and making payment pursuant to the order of the court.

(5) If the administrative office of the courts receives funds greater than the total amount which appointed counsel or the guardian ad litem has claimed and has been reimbursed pursuant to Tennessee Supreme Court Rule 13, then any such excess funds shall be paid to the appointed attorney.

History.

Acts 1970, ch. 600, § 49; 1971, ch. 107, § 1; 1972, ch. 755, § 1; 1973, ch. 258, § 1; 1974, ch. 483, § 1; 1977, ch. 482, §§ 7, 8; 1980, ch. 796, § 3; 1981, ch. 316, § 5; 1983, ch. 408, §§ 4, 5; T.C.A., § 37-249; Acts 1984, ch. 977, § 1; 1985, ch. 59, § 1; 1986, ch. 878, § 5; 1991, ch. 491, §§ 1, 2; 1993, ch. 66, §§ 49, 50; 1996, ch. 1079, §§ 73, 103; 1999, ch. 508, § 9; 2001, ch. 368, §§ 1, 2; 2009, ch. 549, §§ 3-5; 2012, ch. 857, §§ 6–10.

Compiler's Notes.

This section may be affected by § 9-1-116, concerning entitlement to funds, absent appropriation.

37-1-151. Parents' liability for support.

(a) In any case in which the court shall find a child dependent and neglected, unruly or delinquent, it may in the same or subsequent proceeding, upon the parents of such child or either of them being duly summoned or voluntarily appearing, proceed to inquire into the ability of such parent to support the child or contribute to such child's support, and if the court shall find such parent or parents able to support the child or contribute thereto, the court may enter such order or decree as shall be according to equity in the premises, and may enforce the same by executing or in any way in which a court of equity may enforce its orders and decrees, including by imprisonment and fine for contempt. No property of such parents, except the homestead of either of them, shall be exempt from levy and sale under such execution or other process issued from the court.

(b)(1) Notwithstanding subsection (a), placement of a child in the custody of an agency of the state shall make the parents of that child liable for support from the effective date of the court's order. The court's placement of the child's custody with the state shall be deemed as an automatic application by the state,

as custodian of the child, for child support services from the department of human services Title IV-D child support program.

(2) In all cases in which the court places physical custody of any child with an agency of the state, and if no prior orders for the support of the child by each parent exist, the court shall immediately order child support or shall set a hearing, which hearing shall be held within forty-five (45) days of the date the child's custody is placed with the state, for the purpose of establishing child support and the provision of medical care, to be paid by each parent to the state for the child placed in the state's custody by the court. Such hearing may be set on the court's next regular child support docket within the forty-five-day period in accordance with the provisions of subdivision (b)(3).

(3)(A) The parents and the Title IV-D office that is enforcing child support under Title IV-D of the Social Security Act, compiled in 42 U.S.C. §§ 651 et seq., for the county from which the child is placed shall receive at least ten (10) calendar days' notice of the child support hearing date unless child support was ordered at the custody hearing.

(B) The notice to the parents shall be in writing and may be given at the time of the hearing at which the child is placed in the custody of the state, and shall include a subpoena to each parent to bring to court any documents showing evidence of income, including, but not limited to, pay stubs, W-2 forms, or income tax returns. If not given to the parents at the hearing at which custody is placed with the state, the notice and subpoena shall be sent by mail to the parents or served upon them personally within five (5) working days of the date of the custody hearing, unless child support is ordered at the custody hearing.

(C) Unless child support is ordered at the custody hearing, within five (5) working days of the date of the custody hearing at which the child is placed in the custody of the state, the clerk shall by mail, personal delivery, or by electronic means if the clerk participates in the statewide child support enforcement computer system pursuant to title 36, notify the office that is enforcing child support under Title IV-D of the Social Security Act for the county from which the child is placed of the date of the child support hearing, the names, addresses, and social security numbers of the parents and child. If support was ordered at the time of the custody hearing, the clerk shall notify the Title IV-D office of the amount of support that was ordered.

(4)(A) At any hearing at which support is ordered, the court shall set child support as the evidence demonstrates is appropriate and in accordance with the child support guidelines established pursuant to § 36-5-101(e), and the court shall order the parents to pay the premium for health insurance for the child if the insurance is available at a reasonable cost, or the court shall order the parents to pay a reasonable portion of the child's medical costs. The order for support and for medical care shall be retroactive to the date that custody of the child was placed with the state by any order of the court.

(B) The court shall order the child support payments and any payments that are ordered by the court to be made by the parents to the state to offset the child's medical costs to be paid by the parents to the clerk, or to the department if the clerk is not participating in the statewide child support enforcement computer system pursuant to title 36. The court shall order the health insurance premiums ordered to be paid by the parents to be directed by them to the health insurance provider for the child or to be deducted from the parent's income as provided in § 36-5-501(a)(3).

(C) When the court enters an order in which the paternity of a child is determined or support is ordered, enforced or modified for a child, each individual who is a party to any action pursuant to this part shall immediately file with the court and, if the case is a Title IV-D child support case, shall immediately file with the local Title IV-D child support office, for entry into the state registry of support cases, and shall update, as appropriate, the parties' and, for subdivisions (b)(4)(A)-(C), the child's or children's:

(i) Full name and any change in name;

(ii) Social security number and date and place of birth;

(iii) Residential and mailing addresses;

(iv) Home telephone numbers;

(v) Driver license number;

(vi) The name, address, and telephone number of the person's employer;

(vii) The availability and cost of health insurance for the child; and

(viii) Gross annual income.

The requirements of this subdivision (b)(4)(C) may be included in the court's order.

(D) Each individual who is a party must update changes in circumstances of the individual for the information required by subdivision (b)(4)(C) within ten (10) days of the date of such change. At the time of the entry of the first order pertaining to child support after July 1, 1997, clear written notice shall be given to each party of the requirements of this subsection (b), procedures for complying with the subsection and a description of the effect or failure to comply. Such requirement may be noted in the order of the court.

(E) In any subsequent child support enforcement action, the delivery of written notice as required by Rule 5 of the Tennessee Rules of Civil Procedure to the most recent residential or employer address shown in the court's records or the Title IV-D agency's records as required in subdivision (b)(4)(C) shall be deemed to satisfy due process requirements for notice and service of process with respect to that party if there is a sufficient showing and the court is satisfied that a diligent effort has been made to ascertain the location and whereabouts of the party.

(F) Upon motion of either party, upon a showing of domestic violence or the threat of such violence, the court may enter an order to withhold from public access the address, telephone number, and location of the alleged victims(s) or threatened victims of such circumstances. The clerk of the court shall withhold such information based upon the court's specific order but may not be held liable for release of such information.

(G) The provisions of § 36-5-501(a)(3) shall apply with respect to enrollment of a child in the noncustodial parent's employer-based health care plan.

(5) The court shall order support paid by income assignment and by all other means provided for the support of children as may be necessary as provided in title 36, chapter 5, and the court may enforce its orders as provided in such chapter.

(6)(A) If any prior order for support exists for a child who is placed in the custody of the state in which the obligor was ordered to pay child support to the office of the clerk, the office that enforces child support pursuant to Title IV-D of the Social Security Act may certify to the clerk of that court in which the current order of support exists that the child for whom the support was ordered is in the custody of the state, and the clerk shall immediately, without further order of any court, forward all payments by the obligor to the department for distribution.

(B) If the obligor is currently paying child support directly to the obligee under a support order that exists at the time the child is placed in the custody of the state, the court shall order the obligor to begin directing payments of support directly to the clerk of the juvenile court, or if the clerk is not participating in the statewide child support enforcement computer system pursuant to title 36, to the department.

(C) When the child is no longer in the physical custody of the state, the Title IV-D office shall notify the clerk of the court to which it had sent the certification, or the department if the clerk is not participating in the statewide child support enforcement computer system, and shall notify the obligor. Until otherwise ordered by the court that had originally set the support or that currently has jurisdiction to set support, the child support shall thereafter be paid by the obligor to the person to whom the child support obligation was paid prior to the child's placement in the custody of the state.

(D) Any child support funds remaining with the state after the child is returned to the physical custody of either parent or other custodian by court order shall be returned to the custodial parent or other custodian named in the order for use in the care of the child after reimbursement to the state of such costs incurred for the child's care by the state that are not otherwise prohibited by state or federal law or regulation.

(c) In establishing or enforcing any provision of child support, if the party seeking to establish or to enforce an order of support specifically prays for revocation of a license, or if the court determines on its own motion or on motion of the party seeking to establish or seeking to enforce an order of support that an individual party has failed to comply with a subpoena or a warrant in connection with the establishment or enforcement of an order of support, the court may invoke the provisions of § 36-5-101(f)(5).

(d) Judgments for child support payments for each child subject to the order for child support pursuant to this part shall be enforceable without limitation as to time.

(e) In any case in which a child is receiving assistance under a state program funded under Title IV-A of the Social Security Act, compiled in 42 U.S.C. § 601 et seq., including, but not limited to, temporary assistance as provided under title 71, and the payment of support for such child is overdue, then, the department of human services may issue an administrative order to direct an individual who owes overdue support to such a child to pay the overdue support in accordance with a plan for payment of all overdue support or engage in work activities, as otherwise required and defined by the provisions of § 36-5-113.

History.

Acts 1970, ch. 600, § 56; T.C.A., § 37-256; Acts 1995, ch. 504, § 8; 1996, ch. 1079, § 73; 1997, ch. 551, §§ 20, 24, 27, 47, 50, 67; 1998, ch. 1098, §§ 58, 59; 2001, ch. 447, §§ 11, 19.

37-1-152. Injunctive relief.

At the commencement or during the pendency of any matter, or as part of its dispositional order, the court may, on application of a party or on its own motion, grant injunctive relief upon such terms as the court may deem proper.

History.

Acts 1970, ch. 600, § 50; 1983, ch. 196, §§ 1, 2; T.C.A., § 37-250; Acts 1985, ch. 478, § 39; 2016, ch. 600, § 12.

37-1-153. Court files and records — Inspection limited — Exceptions for certain violent offenders — Confidentiality — Expunction.

(a) Except in cases arising under § 37-1-146, all files and records of the court in a proceeding under this part are open to inspection only by:

(1) The judge, officers and professional staff of the court;

(2) The parties to the proceeding and their counsel and representatives;

(3) A public or private agency or institution providing supervision or having custody of the child under order of the court;

(4) A court and its probation and other officials or professional staff and the attorney for the defendant for use in preparing a presentence report in a criminal case in which the defendant is convicted and who prior thereto had been a party to the proceeding in juvenile court; and

(5) With permission of the court, any other person or agency or institution having a legitimate interest in the proceeding or in the work of the court.

(b) Notwithstanding subsection (a), petitions and orders of the court in a delinquency proceeding under this part shall be opened to public inspection and their content subject to disclosure to the public if:

(1) The juvenile is fourteen (14) or more years of age at the time of the alleged act; and

(2) The conduct constituting the delinquent act, if committed by an adult, would constitute first degree murder, second degree murder, rape, aggravated rape, rape of a child, aggravated rape of a child, aggravated robbery, especially aggravated robbery, kidnapping, aggravated kidnapping or especially aggravated kidnapping.

(c) Notwithstanding the provisions of this section, if a court file or record contains any documents other than petitions and orders, including, but not limited to, a medical report, psychological evaluation or any other document, such document or record shall remain confidential.

(d)(1) Except as otherwise permitted in this section, it is an offense for a person to intentionally disclose or disseminate to the public the files and records of the juvenile court, including the child's name and address.

(2) A violation of this subsection (d) shall be punished as criminal contempt of court as otherwise authorized by law.

(e) Notwithstanding other provisions of this section, where notice is required under § 49-6-3051, an abstract of the appropriate adjudication contained in the court file or record shall be made and provided to the parent, guardian, or other custodian of the juvenile, including the department, and this abstract shall be presented to the school in which the juvenile is, or may be, enrolled, in compliance with § 49-6-3051.

(f)(1) Notwithstanding any law to the contrary, any person who is tried and adjudicated delinquent or unruly by a juvenile court may subsequently petition the juvenile court for expunction of all court files and records. The court may order all or any portion of the requested expunction if, by clear and convincing evidence, the court finds that the petitioner:

(A)(i) Is currently eighteen (18) years of age or older;

(ii) Is at least one (1) year removed from the person's most recent delinquency or unruly adjudication; and

(iii) Has never been convicted of a criminal offense as an adult, has never been convicted of a criminal offense following transfer from juvenile court pursuant to § 37-1-134, and has never been convicted of a sexual offense as defined in § 40-39-202, whether in juvenile court, following transfer from juvenile court pursuant to § 37-1-134, or as an adult;

(iv) Does not have an adjudication of delinquency for a violent juvenile sexual offense as defined in § 40-39-202;

(B) Has maintained a consistent and exemplary pattern of responsible, productive and civic-minded conduct for one (1) or more years immediately preceding the filing of the expunction petition; or

(C) The juvenile has made such an adjustment of circumstances that the court, in its discretion, believes that expunction serves the best interest of the child and the community.

(2) Nothing in this subsection (f) shall be construed to apply to any law enforcement records, files, fingerprints or photographs pertaining to any delinquency or unruly adjudication.

(3)(A) In any case in which there is successful completion of an informal adjustment without adjudication under § 37-1-110, all court files and records shall be expunged by the juvenile court after one (1) year, upon a petition by the child pursuant to § 40-32-101(a), and without cost to the child. The court shall inform the child, at the time of the informal adjustment, of the need to petition for expunction after a year of successful completion of an informal adjustment and provide the child with a model expunction petition prepared by the administrative office of the courts. The administrative office of the courts shall create a petition that can be completed by a child and shall be circulated to all juvenile court clerks. All juvenile court clerks shall make this model expunction petition accessible to all petitioners.

(B) In any case that is dismissed, excluding a case dismissed after successful completion of an informal adjustment, all court files and records shall be expunged by the juvenile court as a part of the court's order of dismissal, without the filing of a petition for expunction, and at no cost to the child.

(4) Any person whose records are expunged under subdivisions (f)(1)-(3) shall be restored to the status that the person occupied before arrest, citation, the filing of a juvenile petition, or referral.

History.

Acts 1970, ch. 600, § 51; T.C.A., § 37-251; Acts 1994, ch. 998, § 1; 1999, ch. 366, § 1; 2003, ch. 238, § 2; 2005, ch. 265, § 4; 2005, ch. 412, § 1; 2007, ch. 552, § 1; 2011, ch. 483, § 2; 2016, ch. 1017, §§ 1-4.

37-1-154. Law enforcement records — Inspection limited — Exceptions for certain violent offenders.

(a) Unless a charge of delinquency is transferred for criminal prosecution under § 37-1-134, the interest of national security requires or the court otherwise orders in the interest of the child, the law enforcement records and files shall not be open to public inspection or their contents disclosed to the public; but inspection of the records and files is permitted by:

(1) A juvenile court having the child before it in any proceeding;

(2) Counsel for a party to the proceeding;

(3) The officers of public institutions or agencies to whom the child is committed;

(4) Law enforcement officers of other jurisdictions when necessary for the discharge of their official duties; and

(5) A court in which such child is convicted of a criminal offense for the purpose of a presentence

report or other dispositional proceeding, or by officials of penal institutions and other penal facilities to which such child is committed, or by a parole board in considering such child's parole or discharge or in exercising supervision over such child.

(b) Notwithstanding subsection (a), petitions and orders of the court in a delinquency proceeding under this part shall be opened to public inspection and their content subject to disclosure to the public if:

(1) The juvenile is fourteen (14) years of age or older at the time of the alleged act; and

(2) The conduct constituting the delinquent act, if committed by an adult, would constitute first degree murder, second degree murder, rape, aggravated rape, rape of a child, aggravated robbery, especially aggravated robbery, kidnapping, aggravated kidnapping or especially aggravated kidnapping.

(c) Notwithstanding the provisions of this section, if a court file or record contains any documents other than petitions and orders, including, but not limited to, a medical report, psychological evaluation or any other document, such document or record shall remain confidential.

(d)(1) Except as otherwise permitted in this section, it is an offense for a person to intentionally disclose or disseminate to the public the law enforcement records concerning a charge of delinquency, including the child's name and address.

(2) A violation of this subsection (d) shall be punished as criminal contempt of court as otherwise authorized by law.

(e) Notwithstanding other provisions of this section, where notice is required under § 49-6-3051, an abstract of the appropriate adjudication contained in the court file or record shall be made and provided to the parent, guardian, or other custodian of the juvenile, including the department, and this abstract shall be presented to the school in which the juvenile is, or may be, enrolled, in compliance with § 49-6-3051.

History.

Acts 1970, ch. 600, § 52; T.C.A., § 37-252; Acts 1994, ch. 998, § 1; 1999, ch. 366, § 2; 2003, ch. 238, § 3; 2005, ch. 265, § 5.

37-1-155. Fingerprints and photographs — Use — When destroyed — Video and audio recordings.

(a)(1) No child shall be fingerprinted or photographed in the investigation of delinquent acts without the permission of the court, unless the child is charged with a delinquent act that, if committed by an adult, would constitute a felony, in which case the child shall be fingerprinted and photographed at the time the child is taken into custody and such fingerprint file may be maintained in an automated fingerprint identification system. Such fingerprint file and photograph shall only be accessible to law enforcement officers, except as provided in § 37-1-154, and shall be maintained separate and apart from adult fingerprint files. The custody and maintenance of those fingerprints and photographs shall be the responsibility of the agency taking the child into custody.

(2) Law enforcement agencies shall not disclose such fingerprint or photograph files, except as permitted under § 37-1-154.

(b)(1) Fingerprint and photograph records shall be destroyed:

(A) If the child is charged with a misdemeanor offense and is not adjudicated a delinquent child; or

(B) If a petition alleging delinquency is not filed or the case is transferred to the juvenile court as provided in § 37-1-109.

(2) If the child is charged with a felony and is not adjudicated a delinquent child, the fingerprint and photograph records shall be maintained until the subject reaches eighteen (18) years of age. The record is then subject to expunction at the direction of the court.

(3) If the child is adjudicated a delinquent child on a felony offense, the fingerprint and photograph records shall be maintained permanently.

(4) If the child is adjudicated a delinquent child on a misdemeanor offense, the fingerprint and photograph records shall be maintained until the child reaches eighteen (18) years of age, or permanently if the child was fourteen (14) years of age or older when the offense was committed.

(5) All fingerprint and photograph records maintained pursuant to the authority of this section shall be confidential and used for law enforcement purposes only, or as otherwise permitted by law.

(c) If latent fingerprints are found during the investigation of an offense and a law enforcement officer has probable cause to believe that they are those of a particular child, such officer may fingerprint the child regardless of age or offense for purposes of immediate comparison with the latent fingerprints. If the comparison is negative, the fingerprint card and other copies of the fingerprints taken shall be immediately destroyed. If the child is not referred to the court or the case is dismissed, the fingerprints shall be immediately destroyed.

(d) If during the investigation of an offense, a law enforcement officer receives a description of the offender and such law enforcement officer has reasonable suspicion to believe that the description is that of a particular child, such officer may photograph the child regardless of age or offense for purposes of identification. However, nothing in this subsection (d) shall be deemed as authorizing an unconstitutional seizure of a child for purposes of obtaining a photograph.

(e)(1) Notwithstanding any other law to the contrary, a law enforcement officer, while acting in the course of official duties, may photograph, make a video recording or make an audio recording of a juvenile in the following circumstances:

(A) The juvenile is in the process of committing an offense;

(B) The law enforcement officer is conducting field sobriety tests based upon suspicion that the juvenile is driving under the influence of an intoxicant; or

(C) The juvenile is the victim of an offense and consents to photographing or recording. However,

any photograph or recording of the victim taken pursuant to this subdivision (e)(1)(C) shall be taken solely for use as evidence in the case being investigated and not for any other purpose except as is already provided in this section.

(2) The photograph or recording shall be made solely for use as evidence, and if no charges are brought against the juvenile within the applicable statute of limitations for the offense under investigation, the photograph or recording shall be destroyed unless a court of competent jurisdiction orders otherwise.

(3) Notwithstanding any other law to the contrary, the photograph or recording shall not be considered a public record and shall not be released to the public except by order of the court having jurisdiction over the charges brought against the juvenile.

History.

Acts 1970, ch. 600, § 53; impl. am. Acts 1971, ch. 162, § 3; T.C.A., § 37-253; Acts 1993, ch. 363, § 1; 1994, ch. 748, § 1; 2007, ch. 134, § 1.

37-1-156. Contributing to delinquency — Penalty — Jurisdiction of court.

(a)(1) Any adult who contributes to or encourages the delinquency or unruly behavior of a child, whether by aiding or abetting or encouraging the child in the commission of an act of delinquency or unruly conduct or by participating as a principal with the child in an act of delinquency, unruly conduct or by aiding the child in concealing an act of delinquency or unruly conduct following its commission, commits a Class A misdemeanor, triable in the circuit or criminal court.

(2) An adult convicted of a violation of this section shall be sentenced to the county jail or workhouse to serve one hundred percent (100%) of the maximum authorized sentence for a Class A misdemeanor if:

(A) The adult's conduct constituting a violation of this section involves supplying, giving, furnishing, selling, or permitting a child to buy or obtain, a product or substance that is unlawful for the child to possess; and

(B) As a proximate result of the product or substance, the child engages in conduct that causes the death of another.

(b) When any juvenile judge shall have reasonable ground to believe that any person is guilty of having contributed to the delinquency or unruly conduct of a child, such judge shall cause the person to be arrested and brought before such judge. In such case, when the defendant pleads not guilty, the juvenile court judge has the power to bind the defendant over to the grand jury or to proceed to hear the case on its merits without the intervention of a jury if the defendant requests the hearing in juvenile court and expressly waives in writing an indictment, presentment, grand jury investigation and jury trial. In the event the defendant enters a plea of guilty, the juvenile court judge has the same power as the circuit or criminal court in making final disposition of the case.

(c)(1) If a child is found delinquent a second or subsequent time for conduct that constitutes the offense of vandalism under § 39-14-408, and the property vandalized is owned, operated, maintained or used by a governmental or other public entity, the parent or legal guardian of that child is in violation of this section.

(2) It is a defense to a violation of this subsection (c) if the parent or guardian demonstrates to the court that all reasonable means available were taken to prevent the child from engaging in the prohibited conduct.

(3) In lieu of the punishment prescribed in subsection (a), if the court finds that the parent or guardian of the delinquent child is in violation of this subsection (c), it may order the parent or guardian to repair, repaint, clean, refurbish or replace the property damaged as a result of the vandalism. If the damage does not lend itself to repair or cleaning, or if there is a legitimate reason why the parent or guardian is unable to do so, the court, in its discretion, may allow the parent or guardian to pay to have the damage repaired or replaced. If the parent or guardian is indigent and cannot afford to replace the damaged property, the court shall order the indigent parent or guardian to perform other community service work for which the parent or guardian is better suited.

(4) A violation of this subsection (c) may be heard and determined by the juvenile court.

(5) As a dispositional option for the delinquent act of vandalism, the court may also require the child responsible for the vandalism to assist in the repair or cleaning of the damage along with the child's parent or guardian.

History.

Acts 1970, ch. 600, § 54; T.C.A., § 37-254; Acts 1989, ch. 591, § 111; 2007, ch. 353, § 1; 2010, ch. 1116, § 2.

Compiler's Notes.

Acts 2010, ch. 1116, § 1 provided that the act, which added subdivision (a)(2), shall be known and may be cited as the "Markie Voyles Act."

37-1-157. Contributing to dependency — Penalties — Jurisdiction of court.

(a) When any child is alleged to be a dependent and neglected child, the parent, guardian or other person who by any willful act causes, contributes to or encourages such dependency and neglect commits a Class A misdemeanor, triable in the circuit or criminal court.

(b) In such a case when the defendant pleads not guilty, the juvenile court judge has the power to bind the defendant over to the grand jury as in cases of misdemeanors under the criminal laws of this state. In such case, when the defendant pleads not guilty, the juvenile court judge has the power to bind the defendant over to the grand jury or to proceed to hear the case on its merits without the intervention of a jury if the defendant requests the hearing in juvenile court and expressly waives in writing an indictment, presentment, grand jury investigation and jury trial. In the event the defendant enters a plea of guilty, the juvenile court judge has the same power as the circuit or criminal court in making final disposition of the case.

(c) Reliance by a parent, guardian or custodian upon remedial treatment, other than medical or surgical treatment for a child, when such treatment is legally recognized or legally permitted under the laws of this state, shall not subject such parent, guardian or custodian to any of the penalties hereunder.

(d) Subsection (a) shall not be construed to impose criminal liability upon a mother based solely upon her act of voluntarily delivering a newborn infant to a facility pursuant to § 68-11-255.

History.
Acts 1970, ch. 600, § 55; 1971, ch. 189, § 6; 1980, ch. 796, § 4; T.C.A., § 37-255; Acts 1989, ch. 591, § 111; 2001, ch. 388, § 3.

37-1-158. Contempt of court.

The court may punish a person for contempt of court for disobeying an order of the court or for obstructing or interfering with the proceedings of the court or the enforcement of its orders by imposing a fine or imprisonment as prescribed for circuit, chancery or appellate courts pursuant to title 29, chapter 9.

History.
Acts 1970, ch. 600, § 57; 1971, ch. 189, § 5; T.C.A., § 37-257.

37-1-159. Appeals.

(a) The juvenile court shall be a court of record; and any appeal from any final order or judgment in a delinquency proceeding, filed under this chapter, except a proceeding pursuant to § 37-1-134, may be made to the criminal court or court having criminal jurisdiction that shall hear the testimony of witnesses and try the case de novo. Any appeal from any final order or judgment in an unruly child proceeding or dependent and neglect proceeding, filed under this chapter, may be made to the circuit court that shall hear the testimony of witnesses and try the case de novo. The appeal shall be perfected within ten (10) days, excluding nonjudicial days, following the entry of the juvenile court's order. If a hearing before a judge of a matter heard by a magistrate is not requested or provided pursuant to § 37-1-107, the date of the expiration of the time within which to request the hearing shall be the date of disposition for appeal purposes, and the parties and their attorneys shall be so notified by the magistrate. If there is a rehearing by the judge, the appeal period shall commence the day after the order of disposition is entered. All parties to the juvenile court proceeding shall be parties to the de novo appeal.

(b) An appeal does not suspend the order of the juvenile court, nor does it release the child from the custody of that court or of that person, institution or agency to whose care the child has been committed. Pending the hearing, the criminal court or circuit court may make the same temporary disposition of the child as is vested in juvenile courts; provided, that until the criminal court or circuit court has entered an order for temporary disposition, the order of the juvenile court shall remain in effect. A juvenile court shall retain jurisdiction to the extent needed to complete any reviews or permanency hearings for children in foster care as may be mandated by federal or state law.

(c) When an appeal has been perfected, the juvenile court shall cause the entire record in the case, including the juvenile court's findings and written reports from probation officers, professional court employees or professional consultants, to be taken forthwith to the criminal court or circuit court whose duty it is, either in term or in vacation, to set the case for an early hearing. When an appeal is taken from a juvenile court's decision that involves the removal of a child or children from the custody of their natural or legal parents or guardian or from the department of children's services, or when the decision appealed involves the deprivation of a child's liberty as the result of a finding that such child engaged in criminal activity, such hearing shall be held within forty-five (45) days of receipt of the findings and reports. In its order, the criminal court or circuit court shall remand the case to the juvenile court for enforcement of the judgment rendered by the criminal court or circuit court. Appeals from an order of the criminal court or circuit court pursuant to this subsection (c) may be carried to the court of appeals as provided by law.

(d) There is no civil or interlocutory appeal from a juvenile court's disposition pursuant to § 37-1-134. If and only if a nonlawyer judge presides at the transfer hearing in juvenile court, then the criminal court, upon motion of the child filed within ten (10) days of the juvenile court order, excluding nonjudicial days, shall hold a hearing as expeditiously as possible to determine whether it will accept jurisdiction over the child; provided, that if no such motion is filed with the criminal court within the ten-day period, excluding nonjudicial days, such child shall be subject to indictment, presentment or information for the offense charged and thus subject to trial as an adult. At this hearing, which is de novo, the criminal court shall consider:

(1) Any written reports from professional court employees, professional consultants as well as the testimony of any witnesses; and

(2) Those issues considered by the juvenile court pursuant to § 37-1-134(a) and (b).

(e) Following a hearing held pursuant to subsection (d), the criminal court may:

(1) Remand the child to the jurisdiction of the juvenile court for further proceedings and disposition pursuant to § 37-1-131, such remand order reciting in detail the court's findings of fact and conclusions of law; or

(2) Enter an order certifying that it has taken jurisdiction over the child. This order shall recite, in detail, the court's finding of fact and conclusions of law. Following the order, the child shall be subject to indictment, presentment or information for the offenses charged. The criminal court judge who conducted the hearing to accept jurisdiction shall not thereby be rendered disqualified to preside at the criminal trial on the merits.

(f) Appeals from an order of the criminal court pursuant to subsection (e) may be carried to the court of criminal appeals in the manner provided by the Tennessee Rules of Appellate Procedure only following a

conviction on the merits of the charge. This is the exclusive method of appeal from a finding that the criminal court accepts jurisdiction. The state may appeal to the court of criminal appeals a finding that the child be remanded to the juvenile court upon the ground of abuse of discretion. Pending the appeal by the state, the criminal court shall make a determination of whether or not the child shall be released on the child's own recognizance, or on bond, or held in the custodial care of the sheriff of the county.

(g) Appeals in all other civil matters heard by the juvenile court shall be governed by the Tennessee Rules of Appellate Procedure.

History.

Acts 1970, ch. 600, § 58; 1976, ch. 745, § 6; 1980, ch. 558, § 1; 1981, ch. 370, § 1; 1981, ch. 449, § 2(24); 1983, ch. 254, § 4; T.C.A., § 37-258; Acts 1985, ch. 328, § 1; 1986, ch. 612, §§ 2, 3; 1992, ch. 704, § 1; 1993, ch. 386, § 1; 1994, ch. 810, §§ 1, 2; 1996, ch. 1079, §§ 73, 104; 1997, ch. 516, § 1; 2009, ch. 235, § 1; 2016, ch. 637, §§ 1, 2.

Compiler's Notes.

Acts 2009, ch. 235, § 1 directed the code commission to change all references Acts 2009, ch. 235, § 1 directed the code commission to change all references from "child support referee" and "juvenile referee" to "child support magistrate" and "juvenile magistrate" and to include all such changes in supplements and replacement volumes for the Tennessee Code Annotated.

Subsection (b) may be affected by T.R.A.P. 3(d).

37-1-160. Interstate flight by juvenile felon — Applicability of part.

(a) This part shall not apply to any person who violates:

(1) Any law of this state defining a felony, and is at the time of such violation less than eighteen (18) years of age, if such person thereafter flees from this state. Any such person may be proceeded against in the manner otherwise provided by law for proceeding against persons accused of a felony. Upon the return of such person to this state by extradition or otherwise, proceedings shall be commenced in the manner provided for in this part;

(2) Any law of another state defining a felony, and is at the time of such violation less than eighteen (18) years of age, if such person thereafter flees from that state into this state. Any such person may be proceeded against as an adult in the manner provided in the Uniform Criminal Extradition Act, compiled in title 40, chapter 9. Pending rendition to the demanding state, the juvenile shall be detained as provided in § 37-1-116; provided, that nothing in this subdivision (a)(2) shall prevent a juvenile from being released pursuant to § 40-9-106.

(b) This section does not apply in any case where proceedings under the Interstate Compact for Juveniles, compiled in chapter 4, part 1 of this title, are applicable.

History.

Acts 1977, ch. 219, § 1; T.C.A., §§ 37-282, 37-286.

37-1-161. Reimbursement account.

(a) There is hereby established a reimbursement account, which shall be comprised of such amount of federal funds as are set aside by the commission on children and youth from the state's allocation under the Juvenile Justice and Delinquency Prevention Act formula grant funds and of state funds, if funds for such purpose are appropriated in the general appropriations act. The reimbursement account shall be used to provide financial assistance to counties for removing children from adult jails.

(b)(1) A child who meets the criteria of § 37-1-114(c) for placement in a secure facility and who is taken into custody in a county that does not operate a secure juvenile detention facility may, with the approval of the juvenile court having jurisdiction in the matter, receive alternative services provided through the reimbursement account.

(2) A child who meets the criteria of § 37-1-114(c) for placement in a secure facility and who is taken into custody in a county that has established a secure juvenile detention facility since the passage of legislation effective May 26, 1983, that prohibits the placement of children in adult jails may, with the approval of the juvenile court having jurisdiction in the matter, receive nonsecure alternative services provided through the reimbursement account.

(c) The commission on children and youth shall promulgate regulations in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, for the administration of the reimbursement account. The regulations shall include, but not be limited to, the following factors:

(1) Reporting requirements;

(2) A maximum amount of payment per day;

(3) Maximum length of stay;

(4) Qualifications of service providers; and

(5) Allowable services, which shall include, but not be limited to, the following items:

(A) Transportation;

(B) Secure detention;

(C) Emergency shelter care;

(D) Emergency foster care; and

(E) Attendant care.

(d) The juvenile court having jurisdiction in the matter shall make a determination concerning the ability of a child's parent or guardian to pay for all or part of the services eligible for reimbursement account payment. If the parent or guardian is able to pay for all or part of such services, the court shall require such payment from the parent or guardian.

History.

Acts 1984, ch. 856, § 1; 1986, ch. 837, §§ 3, 4; 1988, ch. 979, § 5; 2012, ch. 1026, § 1.

Compiler's Notes.

The Juvenile Justice and Delinquency Prevention Act, referred to in this section, is compiled primarily in U.S.C. titles 18 and 42. The provisions pertaining to federal assistance for state plans under the act are codified in 42 USCS § 5633.

37-1-162. Supplement and account for juvenile court services improvement.

(a) A supplement shall be provided by the state each year to counties for the improvement of juvenile court

services. Such supplements shall be administered by the department of children's services and distributed by the department to participating counties. Where more than one (1) court exercises juvenile court jurisdiction within a single county, each court shall receive an equitable share of the county's allocation, as determined by percentage of juvenile court intakes or some other appropriate measure. Each court accepting such funds shall employ a youth services officer to be appointed and supervised by the court.

(b) The department shall establish policies regarding application and reporting procedures, adequate minimum educational requirements for youth services officers, and permissible uses of funds received under this section, including, but not limited to, requirements that such funds shall not be used to supplant funds formerly used by counties for juvenile court services, to pay salaries or personal expenses of juvenile court judges, or to construct or remodel jails or other facilities used for the detention or housing of adults alleged to have committed or been convicted of criminal offenses.

History.
Acts 1984, ch. 856, §§ 2, 3; 2012, ch. 1026, § 2.

37-1-163, 37-1-164. [Repealed.]

Compiler's Notes.
Former §§ 37-1-163 and 37-1-164 (Acts 1985 (1st Ex. Sess.), ch. 6, §§ 3, 4; 1989, ch. 278, § 41), concerning placement in accredited facilities and a plan for a central intake system, were repealed by Acts 1996, ch. 1079, §§ 105 and 183.

37-1-165. Contracts among counties to pool juvenile justice supplements.

Any two (2) or more contiguous counties may contract to pool the state juvenile justice supplements received by such counties through the commission on children and youth in order to provide more effective and efficient provision of services, including the employment of one (1) or more persons to provide full-time assistance throughout the contracting counties. Any combination of counties may so contract, but where feasible, counties desiring to pool their supplements should attempt to act within the judicial district of which they constitute a part.

History.
Acts 1985 (1st Ex. Sess.), ch. 6, § 5.

37-1-166. Orders committing or retaining a child within the custody of the department of children's services — Required determinations.

(a) At any proceeding of a juvenile court, prior to ordering a child committed to or retained within the custody of the department of children's services, the court shall first determine whether reasonable efforts have been made to:

(1) Prevent the need for removal of the child from such child's family; or

(2) Make it possible for the child to return home.

(b) Whenever a juvenile court is making the determination required by subsection (a), the department has the burden of demonstrating that reasonable efforts have been made to prevent the need for removal of the child or to make it possible for the child to return home.

(c) To enable the court to determine whether such reasonable efforts have been made, the department, in a written affidavit to the court in each proceeding where the child's placement is at issue, shall answer each of the following questions:

(1) Is removal of the child from such child's family necessary in order to protect the child, and, if so, then what is the specific risk or risks to the child or family that necessitates removal of the child?;

(2) What specific services are necessary to allow the child to remain in the home or to be returned to the home?;

(3) What services have been provided to assist the family and the child so as to prevent removal or to reunify the family?; and

(4) Has the department had the opportunity to provide services to the family and the child, and, if not, then what are the specific reasons why services could not have been provided?

(d) Whenever a juvenile court is making a determination required by subsection (a), based on all the facts and circumstances presented, the court must find whether:

(1) There is no less drastic alternative to removal;

(2) Reasonable efforts have been made to prevent the need for removal of the child from such child's family or to make it possible for the child to return home; and

(3) Continuation of the child's custody with the parent or legal guardian is contrary to the best interests of the child.

(e) All parties involved in each proceeding shall receive a copy of the department's affidavit and shall have an opportunity to respond as allowed by law.

(f) Unless emergency removal is necessary, the department shall be provided no more than thirty (30) days to investigate or offer services to the family and child in cases where the petition is not filed by the department.

(g)(1) As used in this section, "reasonable efforts" means the exercise of reasonable care and diligence by the department to provide services related to meeting the needs of the child and the family. In determining reasonable efforts to be made with respect to a child, as described in this subdivision (g)(1), and in making such reasonable efforts, the child's health and safety shall be the paramount concern.

(2) Except as provided in subdivision (g)(4), reasonable efforts shall be made to preserve and reunify families:

(A) Prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and

(B) To make it possible for a child to safely return to the child's home.

(3) If continuation of reasonable efforts of the type described in subdivision (g)(2) is determined to be

inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child.

(4) Reasonable efforts of the type described in subdivision (g)(2) shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction has determined that:

(A) The parent has subjected the child that is the subject of the petition or any sibling or half-sibling of the child who is the subject of the petition or any other child residing temporarily or permanently in the home to aggravated circumstances as defined in § 36-1-102;

(B) As set out in § 36-1-113, the parent has:

(i) Committed murder of any sibling or half-sibling of the child who is the subject of the petition or any other child residing temporarily or permanently in the home;

(ii) Committed voluntary manslaughter of any sibling or half-sibling of the child who is the subject of the petition or any other child residing temporarily or permanently in the home;

(iii) Aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter of the child or any sibling or half-sibling of the child who is the subject of the petition or any other child residing temporarily or permanently in the home; or

(iv) Committed a felony assault that results in serious bodily injury to the child or any sibling or half-sibling of the child who is the subject of the petition or any other child residing temporarily or permanently in the home; or

(C) The parental rights of the parent to a sibling or half-sibling have been terminated involuntarily.

(5) If reasonable efforts of the type described in subdivision (g)(2) are not made with respect to a child as a result of a determination made by a court of competent jurisdiction in accordance with subdivision (g)(4):

(A) A permanency hearing shall be held for the child within thirty (30) days after the determination; and

(B) Reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child.

(6) Reasonable efforts to place a child for adoption or with a legal guardian may be made concurrently with reasonable efforts of the type described in subdivision (g)(2).

(h) In determining whether to continue or restore custody to a parent is in the best interest of a child, the department shall not require a parent to:

(1) Obtain employment if such parent has sufficient resources from other means to care for the child; or

(2) Provide the child with the child's own bedroom, unless there are specific safety or medical reasons that would make placement of the child with another child unsafe.

History.
Acts 1992, ch. 587, § 1; 1996, ch. 1079, § 73; 1998, ch. 1097, § 12; 2013, ch. 354, § 1.

37-1-167. Removal from abusive parent or other party.

If a child has suffered either sexual abuse or aggravated child abuse at the hands of a parent, legal guardian or caregiver, that child shall not be placed back in the care of the abusive party unless the judge finds by clear and convincing evidence that a threat to the child's safety no longer exists.

History.
Acts 1994, ch. 978, § 6.

37-1-168. Juvenile-family crisis intervention programs — General provisions.

(a) The department of children's services shall establish juvenile-family crisis intervention programs to provide continuous twenty-four (24) hour on-call service designed to attend and stabilize juvenile-family crises. The crisis intervention program may, in appropriate cases, work with the family on a short-term basis. The juvenile-family crisis intervention program may make referrals for appropriate services needed to continue resolution of the crisis.

(b) The juvenile-family crisis intervention programs may serve as an alternative to juvenile court in situations where a juvenile-family crisis exists and there has been either:

(1) A request by a parent or juvenile for intervention; or

(2) A referral by a public or private agency, educational institution or any other organization serving children, that has contact with the juvenile or family, and has reason to believe that a family crisis exists.

(c) If there has already been court intervention through the filing of a petition or otherwise, the court may refer appropriate cases to the juvenile-family crisis intervention program. If the department is providing non-custodial services to a child or family, or both, it may provide services through its juvenile-family crisis intervention program if appropriate.

(d) If, in the judgment of the juvenile-family crisis intervention program, a juvenile-family crisis continues to exist despite the provision of crisis intervention services and the exhaustion of appropriate community services, then the juvenile-family crisis intervention program shall, in writing or through sworn testimony, certify to the juvenile court that there is no other less drastic measure than court intervention. The court may then proceed by accepting a petition or acting on a pending petition and hold a hearing to determine what is in the best interest of the child consistent with

§ 37-1-132 and any other applicable laws under this part.

History.
Acts 1994, ch. 1000, §§ 2, 4; 1996, ch. 1079, § 106; 2008, ch. 906, § 1.

Compiler's Notes.
Acts 1994, ch. 1000, § 1 provided that the intent of the general assembly in enacting this section is to implement services to reduce the number of unruly children, as defined in T.C.A. § 37-1-102, who are referred to juvenile court and to reduce the number of unruly children who are placed in state custody.

The office of children's services administration in the department of finance and administration is responsible for implementing the provisions of Acts 1994, ch. 1000. See Executive Order No. 58 (June 29, 1994).

37-1-169. Referrals by juvenile court to crisis intervention program.

(a) By promulgation of local rules of the juvenile court, a referral may be made to the department of children's services juvenile-family crisis intervention program in the following instances:

(1) Where there is an allegation that a child is unruly; or

(2) Where there is an allegation that a juvenile-family crisis exists.

(b) Nothing in this section shall preclude the court or the department from taking any necessary action that shall be required to provide to a child any protective services, including, but not limited to, emergency protective custody.

History.
Acts 1994, ch. 1000, § 3; 1996, ch. 1079, § 107.

Compiler's Notes.
Acts 1994, ch. 1000, § 1 provided that the intent of the general assembly in enacting this section is to implement services to reduce the number of unruly children, as defined in T.C.A. § 37-1-102, who are referred to juvenile court and to reduce the number of unruly children who are placed in state custody.

The office of children's services administration in the department of finance and administration is responsible for implementing the provisions of Acts 1994, ch. 1000. See Executive Order No. 58 (June 29, 1994).

37-1-170. Joinder of parents or guardians in juvenile court actions.

(a) A juvenile court may, when the court determines that it is in the best interests of the child, join the child's parent or guardian and the person with whom the child resides, if other than the child's parent or guardian, as a respondent to a juvenile court action and may issue a summons requiring the parent or guardian and the person with whom the child resides, if other than the child's parent or guardian, to appear with the child at all proceedings under this chapter involving the child. If the parent or guardian of any child cannot be found, the court, in its discretion, may proceed with the case without the presence of such parent or guardian.

(b)(1) For the purposes of this section, "parent" includes a natural parent who has sole or joint custody, regardless of whether the parent is designated as the primary residential custodian, or an adoptive parent. This subsection (b) does not apply to any person whose parental rights have been terminated pursuant to this title or the parent of an emancipated minor.

(2) For the purposes of this section, "emancipated minor" has the same meaning as set forth in § 39-11-106.

(c) The summons shall require the person or persons having the physical custody of the juvenile, if other than a parent or guardian, to appear and to bring the juvenile before the court at a time and place stated.

(d) Whenever a parent or guardian or person with whom the juvenile resides, if other than the parent or guardian, who has received a summons to appear fails, without good cause, to appear on any date set by the court, a bench warrant shall be issued for the parent, guardian or person with whom the juvenile resides and the parent, guardian or person with whom the juvenile resides shall be subject to contempt.

(e) For purposes of subsection (d), good cause for failing to appear includes, but is not limited to, a situation where a parent or guardian:

(1) Does not have physical custody of the child and resides outside Tennessee;

(2) Has physical custody of the child, but resides outside of Tennessee and appearing in court will result in undue hardship to such parent or guardian; or

(3) Resides in Tennessee, but is outside of the state at the time of the juvenile proceeding for reasons other than avoiding appearance before the court and appearing in court will result in undue hardship to such parent or guardian.

(f) This section shall not be applicable to any proceeding in a case that has been transferred to the criminal court pursuant to the provisions of § 37-1-134.

(g) The general assembly hereby declares that every parent or guardian whose child is the subject of a juvenile proceeding under this title should attend any such proceeding as often as is practicable.

(h) Nothing in this section shall be construed to create a right for any juvenile to have a parent or guardian present at any proceeding at which such juvenile is present.

History.
Acts 1995, ch. 191, § 1.

37-1-171. Written orders — Presumptions — Forms.

(a) When a court desires to commit a child to the department of children's services under this part, it shall do so by written order that finds that the child has been adjudicated dependent and neglected, unruly, delinquent or meets the criteria in § 37-1-175. If the written order fails to make a specific adjudication of the child, it shall be presumed that the court has found the child dependent and neglected. Commitments to the department shall be consistent with all other laws regarding adjudication and commitment to the department. Nothing in this part shall be interpreted as

prohibiting taking children into emergency protective services custody without a prior adjudication.

(b) When a court commits a child to the department, the court shall address the issue of child support under § 37-1-151(b).

(c) The department shall prepare a form for the court to use when committing a child to custody. Such form shall be completed and transmitted along with the court's commitment order to the department at the time of the child's commitment.

History.
Acts 1996, ch. 1079, § 72; 2000, ch. 947, § 8G.

37-1-172. Use and disposition of federal funds.

(a) The court shall not direct the department of children's services' or its contractors' or agents' use or disposition of any federal funds for which any child or person in the care of the department is eligible or may receive and for which the department may be payee on behalf of such child or person including, but not limited to, Social Security survivors benefits under Title II of the federal Social Security Act, compiled in 42 U.S.C. § 401 et seq., and supplemental security income benefits under Title XVI of the federal Social Security Act, compiled in 42 U.S.C. § 1381 et seq., foster care or adoption assistance benefits received pursuant to Title IV-E of the Adoption Assistance Act of 1980 of the federal Social Security Act, compiled in 42 U.S.C. § 670 et seq., or veteran's benefits, railroad retirement benefits or black lung benefits or any successor entitlements that are provided by federal law.

(b) Funds received under any federal benefits programs shall be processed, utilized and accounted for by the department pursuant only to federal regulations or federal court orders governing those programs.

History.
Acts 1996, ch. 1079, § 75.

Compiler's Notes.
Acts 1996, ch. 1079, § 184 provided: "Any provision of this act, or the application thereof, which is inconsistent with federal law, rule or regulation shall be deemed to be construed as being consistent with federal law, rule or regulation."

37-1-173. [Repealed.]

Compiler's Notes.
Former § 37-1-173 (Acts 1996, ch. 1079, § 76; 2000, ch. 947, § 8G), concerning status review for persons eighteen years of age or older, was repealed by Acts 2008, ch. 906, § 2, effective July 1, 2008.

37-1-174. Order affecting delinquent juvenile's parent or guardian.

(a) If an unemancipated child commits a delinquent or unruly act that brings the child within the jurisdiction of the juvenile court and if the child's parent or legal guardian, who is not the victim of the act that brings the child within the jurisdiction of the juvenile court, did not take reasonable steps to control such delinquent or unruly conduct, then the court may order the parent or legal guardian to do one (1) or more of the following:

(1) Participate in the child's program of treatment and rehabilitation;

(2) Seek assistance from school officials, social service officials or other appropriate public or private resources and authorities to provide treatment and rehabilitation for the child;

(3) Complete community service work individually or jointly with the child; or

(4) Provide supervision to ensure that the child complies with any and all conditions and requirements that the court has ordered the child to follow.

(b) If the parent or legal guardian violates or refuses to comply with the order of the juvenile court, then the parent or legal guardian may be held in contempt pursuant to § 37-1-158; and the juvenile court may fine the parent or legal guardian up to fifty dollars ($50.00), may incarcerate the parent or legal guardian in the county jail for up to ten (10) days or may impose both fine and incarceration. However, prior to holding any such parent or guardian in contempt, the parent or legal guardian shall be served with notice and shall be given a reasonable opportunity to be heard by the court.

(c) This section shall not apply to the department of children's services acting in its capacity as custodian or guardian of any child.

History.
Acts 1997, ch. 465, § 2; 2000, ch. 834, §§ 1, 2.

37-1-175. Temporary legal custody for children with mental illnesses.

IF AND ONLY IF

(1) a child is the subject of a proceeding under this chapter, AND

(2) the child is mentally ill, AND

(3) the child needs care, training, or treatment because of the mental illness, AND

(4) all available less drastic alternatives to committing the child to the temporary legal custody of the department are unsuitable to meet the child's needs for care, training, or treatment for the mental illness,

THEN

(5) a juvenile court may commit the child to the temporary legal custody of the department in proceedings conducted in conformity with §§ 33-3-602 — 33-3-608, 33-3-610 — 33-3-620, and 33-6-505 — 33-6-508, to meet the child's needs for care, training, or treatment for the mental illness.

History.
Acts 1986, ch. 836, § 3; 1996, ch. 1079, §§ 37-39; T.C.A., § 33-3-203; Acts 2000, ch. 947, § 7.

Compiler's Notes.
Acts 1986, ch. 836, § 8, provided that the implementation of the provisions of this section as enacted by that act and the expenditure of any funds to implement such provisions shall be subject to the approval of the commissioner of finance and administration.

For the establishment of the Tennessee Children's Plan, see Executive Order No. 58 (June 29, 1994).

For transfer of certain case management functions from the department of mental health and mental retardation [department of mental

health and developmental disabilities] to the department of health, see Executive Order No. 5 (November 9, 1995).

37-1-176. Providing care, training or treatment in least drastic alternative way.

IF

(1) a juvenile court commits a child to the temporary legal custody of the department under § 37-1-175,

THEN

(2) the department shall provide the necessary care, training, or treatment for the child in the least drastic alternative way that is available and suitable to meet the child's needs, AND

(3) community mental health centers and community programs that receive grants or contracts from the department to provide such services to children shall, at the direction of the department, provide the community-based services necessary to meet the child's needs for treatment in the least drastic alternative to hospitalization, AND

IF AND ONLY IF

(4)(A) placing the child in inpatient care in a hospital or treatment resource is the least drastic alternative way that is available to the department and is suitable to meet the child's needs,

THEN

(B) the department shall apply for the child's admission to a hospital or treatment resource under title 33, chapter 6, part 2 or 4 or shall initiate proceedings under title 33, chapter 6, part 5.

History.
Acts 2000, ch. 947, § 7.

37-1-177. Person filing for commitment.

If an evaluation under § 37-1-128(d) shows that a child may be subject to commitment to the temporary legal custody of the department, the juvenile court may direct any person it determines to be suitable for the purpose to file a complaint under § 37-1-175.

History.
Acts 2000, ch. 947, § 7.

37-1-178. Discharge.

If a child no longer meets the standards under which the child was hospitalized or admitted to a treatment resource under § 37-1-176(4), the child shall be discharged under title 33, chapter 6, part 7, and the child shall remain in the custody of the department until the department's custody is terminated under §§ 37-1-179 and 37-1-180.

History.
Acts 2000, ch. 947, § 7.

37-1-179. Reporting status of child who no longer meets commitment standards — Retention of custody.

If a child no longer meets the standards under which the child was committed to the custody of the department under § 37-1-175, the department shall make a full report of the status of the child to the committing court. If the committing court objects to the termination of the department's custody, the court shall set a hearing on the matter within fifteen (15) days of the date of the report, with such hearing to be held at the earliest possible date. The department shall retain custody pending the outcome of the hearing. If the court does not set a hearing, the department's custody terminates at the end of the fifteenth day after the date of the report unless the court has approved an earlier termination.

History.
Acts 2000, ch. 947, § 7.

37-1-180. Rights of child in hearing to review custody.

If the court sets a hearing to review the status of the child under § 37-1-179, the child shall have the same rights as in the original commitment proceeding under §§ 33-3-605, 33-3-608, 33-3-610 — 33-3-616, and 33-3-620. If and only if the court finds on the basis of clear, unequivocal, and convincing evidence that the child is subject to commitment to the custody of the department under § 37-1-175, the court may order that the child remain in the temporary legal custody of the department. If the court does not so find, the department's custody terminates at the end of the hearing.

History.
Acts 2000, ch. 947, § 7.

37-1-181. Judges to conduct proceedings.

Proceedings under §§ 37-1-175 — 37-1-181 may be held only by judges who are lawyers or by magistrates.

History.
Acts 2000, ch. 947, § 7; 2009, ch. 235, § 1.

Compiler's Notes.
Acts 2009, ch. 235, § 1 directed the code commission to revise appropriate references from "child support referees" and "juvenile referees" to "child support magistrates" and "juvenile magistrates" in the code as supplements are published and volumes are replaced.

37-1-182. Juvenile records task force.

(a)(1) There is established a task force on the submission of juvenile fingerprints and reporting of juvenile court dispositions, which shall be named the juvenile records task force.

(2) The task force shall have the following members:

(A) The director of the Tennessee bureau of investigation (TBI) or the director's designee, who shall be a member of the director's staff;

(B) A juvenile court judge or magistrate from each grand division of the state, who shall be appointed by the director of the administrative office of the courts;

(C) A clerk or deputy clerk whose primary duties include the maintenance of juvenile court records, to be appointed by the president of the state court

clerks' conference;

(D) The commissioner of children's services or the commissioner's designee;

(E) The attorney general and reporter or attorney general and reporter's designee, who shall be an ex officio member of the task force;

(F) The chair of the judiciary committee of the senate and the chair of the civil justice committee of the house of representatives or their designees, who shall be members of the task force;

(G) The executive director of the Tennessee commission on children and youth or the executive director's designee.

(3) Appointments shall be made within sixty (60) days after July 1, 2007. The governor shall designate the chair of the task force, who shall set the date of the first meeting. At the organizational meeting, a secretary shall be elected from the task force's membership.

(b)(1) The task force is authorized to request and receive assistance from any department, agency or entity of state government, upon request from the chair.

(2) Members of the task force are volunteers and shall serve without pay, except that nonlegislative members may be reimbursed for travel expenses in accordance with travel regulations promulgated by the commissioner of finance and administration and approved by the attorney general and reporter. Members of the general assembly shall be compensated in accordance with the provisions of § 3-1-106.

(c) The task force is directed to assess and examine:

(1) The process of the submission of juvenile fingerprints to the TBI and to the federal bureau of investigation;

(2) The maintenance of juvenile fingerprint cards;

(3) The reporting of dispositions of juvenile offenses;

(4) The disclosure or nondisclosure of juvenile offenses for employment or volunteer purposes;

(5) Whether a juvenile offender repository is needed;

(6) Whether any of the statutes referring to juvenile records and/or juvenile fingerprints are in direct conflict with other statutes and, if so, to determine how to correct any ambiguities; and

(7) Any other relevant issues that concern juvenile fingerprint submissions, dispositions, and disclosures of juvenile records.

(d) The task force is directed to submit a report of its findings and recommendations, including any suggested legislation, to the general assembly and the governor no later than February 15, 2008.

History.
Acts 2007, ch. 552, §§ 2-5; 2009, ch. 235, § 1; 2011, ch. 410, § 3(d); 2013, ch. 236, § 21.

Compiler's Notes.
Acts 2009, ch. 235, § 1 directed the code commission to revise appropriate references from "child support referees" and "juvenile referees" to "child support magistrates" and "juvenile magistrates" in the code as supplements are published and volumes are replaced.

For the Preamble to the act concerning the prohibition against establishment of a special committee if there is a standing committee on the same subject, please refer to Acts 2011, ch. 410.

37-1-183. Dependent and neglected child to remain in related caregiver's custody if in best interest of child.

If the court finds that a child is dependent and neglected as defined in § 37-1-102(b)(12)(J), the court shall order the child to remain in the related caregiver's custody if such an arrangement is in the best interest of the child. Any future order for modification or termination of the related caregiver's custody brought by the child's parent shall be based on a finding, by a preponderance of the evidence, that there has been a material change in circumstances. When making such a determination, the court may consider whether the child's parent is currently able and willing to care for the child or that the related caregiver is unable to continue to care for the child.

History.
Acts 2009, ch. 411, § 11.

Compiler's Notes.
Acts 2009, ch. 411, § 12 provided that the act, which amended §§ 36-1-102, 36-1-108, 37-1-102, 37-2-402 and added new § 37-1-183, shall apply to conduct covered by the provisions of the act that occurs on or after July 1, 2009. The eighteen (18) month time period set out in § 37-1-102(b)(12)(J) shall not commence until July 1, 2009.

PART 2

JUVENILE COURT RESTRUCTURE ACT OF 1982

37-1-201. Short title — Legislative intent.

(a) This part shall be known and may be cited as the "Juvenile Court Restructure Act of 1982."

(b) It is the purpose of this part to provide in every county of this state adequate juvenile court services as contemplated in the laws of Tennessee, as stated in this title and other general laws of the state of Tennessee now in force and effect, or hereafter to become of force and effect.

History.
Acts 1982, ch. 934, § 1; T.C.A., § 37-261.

37-1-202. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "District juvenile court" means a special juvenile court with jurisdiction in more than one (1) county; and

(2) "Special juvenile court" means a court created by law with jurisdiction limited to those matters contemplated in this title and other general laws of this state.

History.
Acts 1982, ch. 934, § 2; T.C.A., § 37-262.

37-1-203. Jurisdiction of general sessions court.

The general sessions courts shall exercise juvenile court jurisdiction in all of the counties of this state, except in the counties or municipalities in which juve-

nile courts are, or may hereafter be, specially provided by law; provided, that only general sessions court judges who are attorneys may order commitment of a delinquent child to the department of children's services.

History.
Acts 1982, ch. 934, § 3; T.C.A., § 37-263; Acts 1989, ch. 278, § 37; 1996, ch. 1079, §§ 73, 108.

37-1-204. Procedure in general sessions court.

Any general sessions court exercising juvenile court jurisdiction shall, when exercising such jurisdiction, have the title and style of juvenile court of _____ county, and shall maintain a separate juvenile court docket and minutes, and hearings pursuant to this title shall be separate from general sessions court proceedings.

History.
Acts 1982, ch. 934, § 4; T.C.A., § 37-264.

37-1-205. Special district juvenile courts.

Special juvenile courts may be created by law to exercise juvenile court jurisdiction in a county or in several contiguous counties. Funds for the operation of such special district juvenile courts shall be furnished by the counties within each special juvenile court district. Counties within the juvenile court district shall, by contract, enter into such agreements as they may deem necessary and desirable in order to provide for the conducting of business affairs and financing of the court as provided in § 5-1-114.

History.
Acts 1982, ch. 934, § 5; T.C.A., § 37-265.

37-1-206. Magistrates — Court personnel — Signs.

Judges of juvenile courts shall appoint magistrates where constitutionally required and such other court personnel as may be necessary to assure availability of juvenile court services in every county of this state. Every court having juvenile jurisdiction shall have a sign in a conspicuous place identifying it as the "Juvenile Court."

History.
Acts 1982, ch. 934, § 6; T.C.A., § 37-266; Acts 2009, ch. 235, § 1.

Compiler's Notes.
Acts 2009, ch. 235, § 1 directed the code commission to revise appropriate references from "child support referees" and "juvenile referees" to "child support magistrates" and "juvenile magistrates" in the code as supplements are published and volumes are replaced.

37-1-207. Special juvenile courts — Judges.

Any special juvenile court created by law shall have such title and style as the act creating such court may provide. Each juvenile court shall be a court of record, presided over by a judge who shall have such qualifications and salary as may be provided by law. Upon creation of a special juvenile court, a judge of the court shall be appointed as provided by law until the next general election and a person duly qualified is elected, and until a successor qualifies. The term of office shall be the same as other judges of the state. In the event the office of judge of the juvenile court becomes vacant by reason of death, resignation, retirement or other cause, before the expiration of the term of the judge, the vacancy shall be filled as provided by law.

History.
Acts 1982, ch. 934, § 7; T.C.A., § 37-267.

37-1-208. Contracts between counties.

Unless otherwise provided by law, the counties within a special juvenile court district may enter into contracts of agreement providing such terms and conditions therein as the parties deem best for the joint financial support, operation and maintenance of such special juvenile courts.

History.
Acts 1982, ch. 934, § 8; T.C.A., § 37-268.

37-1-209. Disbursements of moneys.

All moneys derived from fees, fines and costs assessed by the judge and collected by the clerk shall be paid to the county, or, in the case of a juvenile court serving more than one (1) county, revenue shall be disbursed in accordance with the contract between the various county governments.

History.
Acts 1982, ch. 934, § 9; T.C.A., § 37-269.

37-1-210. Clerks of general sessions courts.

(a) In those counties in which the general sessions court is also the juvenile court, the clerk of the court exercising juvenile jurisdiction in such counties prior to May 19, 1982, shall serve as clerk of the general sessions court when it is exercising juvenile jurisdiction after May 19, 1982, unless otherwise provided by law. No later than July 1, 2006, in those counties in which the general sessions court is also the juvenile court, the clerk of the court of general sessions or the clerk and master shall also serve as the juvenile court clerk, unless otherwise provided by law. Such clerks shall maintain separate minutes, dockets and records for all matters pertaining to juvenile court proceedings as required by law. County legislative bodies may, in their discretion, provide additional compensation to general sessions court judges in such counties.

(b) Notwithstanding subsection (a), the clerk who is serving as clerk of the court with juvenile jurisdiction in any county having a population of not less than forty-six thousand eight hundred (46,800) nor more than forty-six thousand nine hundred (46,900), according to the 2000 federal census of population or any subsequent federal census, on June 30, 2003, shall continue to serve as the clerk of the court with juvenile jurisdiction after July 1, 2003.

(c) The second sentence of subsection (a) and the provisions of subsection (b) shall not apply in counties having a population, according to the 2000 federal

census or any subsequent federal census, of:

not less than	nor more than
5,500	5,600
11,369	11,450
27,700	27,800
37,200	37,300

(d) Nothing in the second sentence of subsection (a) and the provisions of subsection (b) shall be construed as affecting special juvenile courts authorized by law or elected juvenile court clerks.

History.
Acts 1982, ch. 934, § 10; T.C.A., § 37-270; Acts 2003, ch. 226, §§ 1, 3-8; 2007, ch. 275, §§ 1, 2; 2008, ch. 1153, § 1.

Compiler's Notes.
For tables of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

37-1-211. Clerks of special juvenile courts.

(a) The appropriate legislative body of a county having a special juvenile court may, by resolution, designate the duly elected clerk of another court of that county to serve as clerk of the special juvenile court. In any county in which the legislative body does not designate a duly elected clerk of another court to serve as clerk of the special juvenile court, the judge of such special juvenile court shall appoint a clerk or an administrator of the court, except in counties where a duly elected clerk is otherwise provided by law. Clerks of such special juvenile courts shall, under the supervision of the judge, keep all records of the court, and shall have all the duties, authorities, and obligations provided by law for clerks of other courts of record of this state, and shall give an appropriate surety bond for the faithful performance of their duties.

(b) Subsection (a) shall only apply in counties having a population, according to the 2000 federal census or any subsequent federal census, of:

not less than	nor more than
5,500	5,600
11,369	11,450
14,300	14,400
17,800	17,875
27,700	27,800
37,200	37,300
62,300	62,400

(c) Nothing in this section shall be construed as affecting special juvenile courts authorized by law or elected juvenile court clerks.

History.
Acts 1982, ch. 934, § 11; T.C.A., § 37-271; Acts 1988, ch. 629, § 1; 2003, ch. 226, §§ 2-6, 8.

Compiler's Notes.
For tables of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

37-1-212. Rules and regulations.

The judge is authorized and empowered to make and promulgate rules and regulations for the administration of the court, to fix the times and places at which all persons in the jurisdiction of the court shall have their causes set for hearing.

History.
Acts 1982, ch. 934, § 12; T.C.A., § 37-272.

37-1-213. Deputies.

The sheriffs of the various counties shall furnish the necessary deputies and special deputies to attend and dispense with the business of such courts.

History.
Acts 1982, ch. 934, § 13; T.C.A., § 37-273.

37-1-214. Compensation of judges pro tempore.

Any judge pro tempore elected under this part shall be paid the usual and customary rate of compensation.

History.
Acts 1982, ch. 934, § 18; T.C.A., § 37-275.

PART 3

JUVENILE POST-COMMITMENT PROCEDURES ACT

37-1-301. Short title.

This part shall be known and may be cited as the "Juvenile Post-Commitment Procedures Act."

History.
Acts 1978, ch. 750, § 1; T.C.A., § 37-1701.

37-1-302. Petition for post-commitment relief.

A juvenile in the custody of the department of children's services pursuant to a commitment by a juvenile court of this state may petition for post-commitment relief under this part at any time after the juvenile has exhausted the juvenile's appellate remedies or time for an appeal to the circuit court pursuant to § 37-1-159, or the juvenile's appeal in the nature of a writ of error from the judgment of the circuit court has passed and before the juvenile has been discharged from the custody of the department.

History.
Acts 1978, ch. 750, § 2; T.C.A., § 37-1702; Acts 1989, ch. 278, § 34; 1996, ch. 1079, § 73.

37-1-303. Filing of petition — Designation of judge to hear and determine petition.

(a) To begin proceedings under this part, the petitioner shall file a written petition with the clerk of the chancery or circuit court in the county in which the commitment occurred, naming the state of Tennessee as the respondent. No filing fee shall be charged.

(b) The petition shall be heard by the judge of the chancery or circuit court in which the petition was filed.

If the petition is filed in the circuit court where a de novo hearing regarding the petitioner's juvenile court commitment was heard, the case shall be heard by the chancellor of the county or other trial judge by interchange as authorized by title 17, chapter 2. Where an issue is raised as to the effective assistance of counsel representing the petitioner at the de novo hearing in the circuit court, the circuit court judge who presided over that hearing, where available, shall hear and determine the petition.

History.
Acts 1978, ch. 750, § 3; 1980, ch. 752, § 1; T.C.A., § 37-1703.

37-1-304. Contents of petition.

(a) The petition shall briefly and clearly state:

(1) Petitioner's full name and address;

(2) The charge upon which petitioner's commitment is based;

(3) The name and location of the juvenile court that committed the petitioner;

(4) The date of commitment;

(5) What restraint of liberty is presently being imposed;

(6) Who is imposing the present restraint, and when it commenced;

(7) Any appeals and all other applications for relief previously filed, including the date decided, the court, the grounds asserted, and the results;

(8) The names of the attorneys who have represented petitioner and at what stage of the proceedings;

(9) Facts establishing the grounds upon which the claim for relief is based, whether they have been previously presented to any court and, if not, why not;

(10) Whether the petitioner has an attorney and, if not, whether the petitioner has funds to hire an attorney; and

(11) Any other information required by rule of the Tennessee supreme court.

(b) The petition shall have attached affidavits, records, or other evidence supporting its allegations, or shall state why they are not attached.

History.
Acts 1978, ch. 750, § 4; T.C.A., § 37-1704.

37-1-305. Grounds for relief.

Relief under this part shall be granted when petitioner's commitment is void or voidable because of the abridgement in any way of any right guaranteed by the laws or constitution of this state, or the Constitution of the United States, including a right that was not recognized as existing at the time of the trial if either constitution requires retrospective application of that right.

History.
Acts 1978, ch. 750, § 5; T.C.A., § 37-1705.

37-1-306. Court action upon receipt of petition.

When the chancery or circuit court receives any petition applying for relief under this part, it shall forthwith:

(1) Make three (3) copies of the petition;

(2) Docket and file the original petition and its attachments;

(3) Mail one (1) copy of the petition to the attorney general and reporter;

(4) Mail or forward one (1) copy of the petition to the district attorney general of the district in which the petition was filed;

(5) Mail or forward one (1) copy of the petition to petitioner's attorney; and

(6) Notify the juvenile court judge responsible for committing the petitioner.

History.
Acts 1978, ch. 750, § 6; T.C.A., § 37-1706.

37-1-307. Petition not to be dismissed for failure to follow form — Amended petition.

(a) No petition for relief shall be dismissed for failure to follow the prescribed form or procedure until the court has given the petitioner reasonable opportunity, with the aid of counsel, to file an amended petition.

(b) Nothing in this section shall be construed to prohibit the court from dismissing a petition under this part when it does not state a proper claim for relief.

History.
Acts 1978, ch. 750, § 7; T.C.A., § 37-1707.

37-1-308. Application for habeas corpus — When allowed.

An application for a writ of habeas corpus on behalf of a petitioner entitled to apply pursuant to this part shall not be entertained if it appears that the applicant has failed to apply for relief pursuant to this part with the chancery or circuit court in the county of commitment, unless the petitioner establishes that an application under this part would be inadequate or ineffective.

History.
Acts 1978, ch. 750, § 8; 1980, ch. 752, § 2; T.C.A., § 37-1708.

37-1-309. Grounds for dismissal of petition — Hearing on petition — Issuance of orders or stays.

(a) When the petition has been competently drafted, and all pleadings, files and records of the case that are before the court conclusively show that the petitioner is entitled to no relief, the court may order the petition dismissed.

(b) In all other cases, the court shall grant a hearing as soon as practicable.

(c) The court shall issue such interlocutory order, including a stay of execution, as may be required.

History.
Acts 1978, ch. 750, § 9; T.C.A., § 37-1709.

37-1-310. Appearance of petitioner at hearing — Transportation of petitioner.

(a) If the petitioner has had no prior evidentiary hearing under this part and in other cases where the

petitioner's petition raises substantial questions of facts as to events in which the petitioner participated, the petitioner shall appear and testify.

(b)(1) The superintendent of the institution that has custody of the petitioner shall arrange for transportation of the petitioner to and from the court upon proper orders issued by the judge. The sheriff of the county where the proceedings are pending shall have the authority to receive and transport the petitioner to and from the institution and the court, if the court so orders, or if for any reason the superintendent is unable to transport the petitioner.

(2) The sheriff shall be entitled to the same costs allowed for the transportation of prisoners as provided in criminal cases upon the presentation of the account certified by the judge and district attorney general.

History.
Acts 1978, ch. 750, § 10; T.C.A., § 37-1710.

37-1-311. Scope of hearing.

The scope of the hearing shall extend to all grounds the petitioner has stated in the petitioner's petition, except those grounds that the court finds should be excluded because they have been waived or previously determined, as defined in § 37-1-312.

History.
Acts 1978, ch. 750, § 11; T.C.A., § 37-1711.

37-1-312. Grounds for relief "previously determined" or "waived" defined.

(a) A ground for relief is "previously determined" if a court of competent jurisdiction has ruled on the merits after a full hearing.

(b) A ground for relief is "waived" if the petitioner knowingly and understandingly fails to present it for determination in any proceeding before a court of competent jurisdiction in which the ground could have been presented. There is a rebuttable presumption that a ground for relief not raised in any such proceeding that was held was waived.

History.
Acts 1978, ch. 750, § 12; T.C.A., § 37-1712.

37-1-313. Documents and records furnished to indigent petitioner.

After a petition has been filed, if the judge finds that the petitioner is indigent as defined in § 40-14-201, the judge is empowered to issue an order directed to the clerk of any court in Tennessee to furnish to the petitioner or to petitioner's counsel, without cost to the petitioner, certified copies of such documents or parts of the record on file in the clerk's office as may be required.

History.
Acts 1978, ch. 750, § 13; T.C.A., § 37-1713.

37-1-314. District attorney general to represent state — Attorney general and reporter to represent state on appeal.

(a)(1) The district attorney general of the district in which the petition was filed shall represent the state and respond by proper pleading on behalf of the state within thirty (30) days after receiving notice of the docketing or within such time as the court orders.

(2) If the petition does not include the records or transcripts, or parts of records or transcripts that are material to the questions raised therein, the district attorney general is empowered to obtain them at the expense of the state and shall file them with the responsive pleading or within a reasonable time thereafter.

(3) The district attorney general shall be reimbursed for any expenses, including travel incurred in connection with the preparation and trial of any proceeding under this part. These expenses shall be paid by the state of Tennessee, and shall not be included in the expense allowance now received by the various district attorneys general.

(b) It is the duty and function of the attorney general and reporter and the attorney general and reporter's staff to lend whatever assistance may be necessary to the district attorney general in the trial and disposition of such cases.

(c) In the event an appeal to the court of appeals is taken from the judgment of the trial court hearing a petition pursuant to this part, or in the event a delayed appeal in the nature of a writ of error is granted from the judgment of the circuit court pursuant to § 37-1-319, the attorney general and reporter and the attorney general and reporter's staff shall represent the state and prepare and file all necessary briefs in the same manner as now performed in connection with criminal appeals.

History.
Acts 1978, ch. 750, § 14; T.C.A., § 37-1714.

37-1-315. Withdrawal or amendment of petition — Technical defects not grounds for dismissal without opportunity to amend.

(a) The court may grant leave to withdraw the petition at any time prior to the entry of the judgment, may freely allow amendments, and shall require amendments needed to achieve substantial justice and a full and fair hearing of all available grounds for relief. The district attorney general shall be allowed a reasonable time to respond to any amendments.

(b) The court shall look to the substance rather than the form of the petition, and no petition shall be

dismissed for technical defects, incompleteness or lack of clarity until after the petitioner has had reasonable opportunity, with aid of counsel, to file amendments.

History.
Acts 1978, ch. 750, § 15; T.C.A., § 37-1715.

37-1-316. Evidence — Oral testimony, depositions, affidavits.

Evidence may be taken orally or by deposition or, in the discretion of the court, by affidavit. If affidavits are admitted, any party shall have the right to propound written interrogatories to the affiants or to file answering affidavits.

History.
Acts 1978, ch. 750, § 16; T.C.A., § 37-1716.

37-1-317. Relief granted — Costs — Final order — Record of counsel's consultations with petitioner.

(a) If the court finds that there was such a denial or infringement of the constitutional or statutory rights of the juvenile so as to render the commitment void or voidable, the court shall vacate and set aside the judgment or order a delayed appeal as hereinafter provided, and shall enter an appropriate order and any supplementary orders that may be necessary and proper.

(b) Costs shall be taxed as in criminal cases.

(c) Upon the final disposition of every petition, the court shall enter a final order, and, except where the proceedings for delayed appeal are allowed, shall set forth in the order or a written memorandum of the case all of the grounds presented and shall state the findings of fact and conclusions of law with regard to each ground.

(d) Where the petitioner has court-appointed counsel, the court may require petitioner's counsel to file a verified statement of dates and times counsel has consulted with petitioner, and this statement shall become part of the record.

History.
Acts 1978, ch. 750, § 17; T.C.A., § 37-1717.

37-1-318. Copies of final judgment.

The clerk of the court shall send a copy of the final judgment to the petitioner, the petitioner's counsel of record, any authority imposing restraint on the petitioner, the district attorney general, and the attorney general and reporter.

History.
Acts 1978, ch. 750, § 18; T.C.A., § 37-1718.

37-1-319. Delayed appeal — Grounds for granting — Finality of order.

(a) When the judge conducting a hearing pursuant to this part finds that the petitioner was denied the right to an appeal to the circuit court from the judgment of the juvenile court or to an appeal from the judgment of the circuit court in violation of the laws and Constitution of Tennessee or the Constitution of the United States, the judge can grant a delayed appeal to the circuit court or a delayed appeal in the nature of a writ of error from the judgment of the circuit court, whichever is appropriate.

(b) Any bill of exceptions filed pursuant to this section may be approved by any judge of the court wherein the petitioner's hearing occurred, irrespective of whether such judge presided over the case at the time of the original hearing.

(c) An order granting proceedings for a delayed appeal shall be deemed a final judgment for purposes of the review provided by § 37-1-321.

(d) The judge of the court that committed a juvenile who has sought and obtained relief from that commitment by any procedure in a federal court is likewise empowered to grant the relief provided in this section.

History.
Acts 1978, ch. 750, § 19; T.C.A., § 37-1719.

37-1-320. Indigency.

Indigency shall be determined, and counsel and court reporters appointed and reimbursed, as now provided for criminal and habeas corpus cases by title 40, chapter 14, parts 2 and 3.

History.
Acts 1978, ch. 750, § 20; T.C.A., § 37-1720.

37-1-321. Finality of order — Appeal.

The order granting or denying relief under the provisions of this part shall be deemed a final judgment, and an appeal may be taken to the court of appeals by simple appeal. A motion for a new trial shall not be required for such an appeal.

History.
Acts 1978, ch. 750, § 21; T.C.A., § 37-1721.

37-1-322. Promulgation of rules by supreme court — Release of petitioner on bail or temporary custody.

(a) The supreme court may promulgate rules of practice and procedure consistent with this part, including rules prescribing the form and contents of the petition, the preparation and filing of the record and assignments of error for simple appeal and for delayed appeal in the nature of a writ of error and may make petition forms available for use by petitioners.

(b) When an appeal to the circuit court or a delayed appeal in the nature of a writ of error from the judgment of such court is granted pursuant to § 37-1-319, release on bail or temporary custody placement within the jurisdiction shall be discretionary with the circuit court judge pending further proceedings. In all other cases, the petitioner shall not be entitled to bail.

History.
Acts 1978, ch. 750, § 22; T.C.A., § 37-1722.

PART 4

MANDATORY CHILD ABUSE REPORTS

37-1-401. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Child" means a person who is under eighteen (18) years of age or who is reasonably presumed to be under eighteen (18) years of age;

(2) "Department" means the department of children's services; and

(3) "Report of harm" means a report filed under § 37-1-403.

History.
Acts 1973, ch. 81, § 1; impl. am. Acts 1975, ch. 219, § 1; T.C.A., § 37-1201; Acts 1987, ch. 145, § 25; 1988, ch. 964, § 4; 1996, ch. 1079, § 73.

37-1-402. Purpose and construction of part.

(a) The purpose of this part is to protect children whose physical or mental health and welfare are adversely affected by brutality, abuse or neglect by requiring reporting of suspected cases by any person having cause to believe that such case exists. It is intended that, as a result of such reports, the protective services of the state shall be brought to bear on the situation to prevent further abuses, to safeguard and enhance the welfare of children, and to preserve family life. This part shall be administered and interpreted to provide the greatest possible protection as promptly as possible for children.

(b) Except as expressly herein provided, this part shall not be construed as repealing any provision of any other statute but shall be supplementary thereto and cumulative thereof.

History.
Acts 1973, ch. 81, § 1; 1974, ch. 538, § 2; 1977, ch. 343, § 4; T.C.A., §§ 37-1202, 37-1212, 37-1213.

37-1-403. Reporting of brutality, abuse, neglect or child sexual abuse — Notification to parents of abuse on school grounds or under school supervision — Confidentiality of records.

(a)(1) Any person who has knowledge of or is called upon to render aid to any child who is suffering from or has sustained any wound, injury, disability, or physical or mental condition shall report such harm immediately if the harm is of such a nature as to reasonably indicate that it has been caused by brutality, abuse or neglect or that, on the basis of available information, reasonably appears to have been caused by brutality, abuse or neglect.

(2) Any such person with knowledge of the type of harm described in this subsection (a) shall report it, by telephone or otherwise, to the:

(A) Judge having juvenile jurisdiction over the child;

(B) Department, in a manner specified by the department, either by contacting a local representative of the department or by utilizing the department's centralized intake procedure, where applicable;

(C) Sheriff of the county where the child resides; or

(D) Chief law enforcement official of the municipality where the child resides.

(3) If any such person knows or has reasonable cause to suspect that a child has been sexually abused, the person shall report such information in accordance with § 37-1-605, relative to the sexual abuse of children, regardless of whether such person knows or believes that the child has sustained any apparent injury as a result of such abuse.

(b) The report shall include, to the extent known by the reporter, the name, address, telephone number and age of the child, the name, address, and telephone number of the person responsible for the care of the child, and the facts requiring the report. The report may include any other pertinent information.

(c)(1) If a law enforcement official or judge becomes aware of known or suspected child abuse, through personal knowledge, receipt of a report, or otherwise, such information shall be reported to the department immediately upon the receipt of such information, and, where appropriate, the child protective team shall be notified to investigate the report for the protection of the child in accordance with this part. Further criminal investigation by such official shall be appropriately conducted in coordination with the team or department to the maximum extent possible.

(2) A law enforcement official or judge who knows or becomes aware of a person who is convicted of a violation of § 55-10-401 and sentenced under § 55-10-402(b), because such person was at the time of the offense accompanied by a child under eighteen (18) years of age, shall report such information, as provided in subdivision (c)(1), and the department shall consider such information to be appropriate for investigation in the same manner as other reports of suspected child abuse or neglect.

(3)(A) If the department receives information containing references to alleged human trafficking or child pornography which does or does not result in an investigation by the department, the department shall notify the appropriate law enforcement agency immediately upon receipt of such information.

(B) If the department initiates an investigation of severe child abuse, including, but not limited to, child sexual abuse, the department shall notify the appropriate local law enforcement agency immediately upon assignment of such case to a department child protective services worker.

(C) Both the department and law enforcement shall maintain a log of all such reports of such information received and confirmation that the information was sent to the appropriate party, pursuant to this subdivision (c)(3).

(d) Any person required to report or investigate cases of suspected child abuse who has reasonable cause to suspect that a child died as a result of child abuse shall report such suspicion to the appropriate medical examiner. The medical examiner shall accept the report for investigation and shall report the medical examiner's findings, in writing, to the local law enforcement agency, the appropriate district attorney general, and the department. Autopsy reports maintained by the medical examiner shall not be subject to the confidentiality requirements provided for in § 37-1-409.

(e) Reports involving known or suspected institutional child sexual abuse shall be made and received in the same manner as all other reports made pursuant to Acts 1985, ch. 478, relative to the sexual abuse of children. Investigations of institutional child sexual abuse shall be conducted in accordance with § 37-1-606.

(f) Every physician or other person who makes a diagnosis of, or treats, or prescribes for any sexually transmitted disease set out in § 68-10-112, or venereal herpes and chlamydia, in children thirteen (13) years of age or younger, and every superintendent or manager of a clinic, dispensary or charitable or penal institution, in which there is a case of any of the diseases, as set out in this subsection (f), in children thirteen (13) years of age or younger shall report the case immediately, in writing on a form supplied by the department of health to that department. If the reported cases are confirmed and if sexual abuse is suspected, the department of health will report the case to the department of children's services. The department of children's services will be responsible for any necessary follow-up.

(g) Every physician or other person who makes an initial diagnosis of pregnancy to an unemancipated minor, and every superintendent or manager of a clinic, dispensary or charitable or penal institution in which there is a case of an unemancipated minor who is determined to be pregnant, shall provide to the minor's parent, if the parent is present, and the minor consents, any readily available written information on how to report to the department of children's services an occurrence of sex abuse that may have resulted in the minor's pregnancy, unless disclosure to the parent would violate the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. § 1320d et seq., or the regulations promulgated pursuant to the act.

(1) Failure to provide the written information shall not subject a person to the penalty provided by § 37-1-412.

(2) The department of children's services shall provide to the department of health the relevant written information. The department of health shall distribute copies of the written information to all licensees of the appropriate health-related boards through the boards' routinely issued newsletters. At the time of initial licensure, these boards shall also provide new licensees a copy of the relevant written information for distribution pursuant to this subsection (g).

(h) Nothing in this section shall be construed to prohibit any hospital, clinic, school, or other organization responsible for the care of children, from developing a specific procedure for internally tracking, reporting, or otherwise monitoring a report made by a member of the organization's staff pursuant to this section, including requiring a member of the organization's staff who makes a report to provide a copy of or notice concerning the report to the organization, so long as the procedure does not inhibit, interfere with, or otherwise affect the duty of a person to make a report as required by subsection (a). Nothing in this section shall prevent staff of a hospital or clinic from gathering sufficient information, as determined by the hospital or clinic, in order to make an appropriate medical diagnosis or to provide and document care that is medically indicated, and is needed to determine whether to report an incident as defined in this part. Those activities shall not interfere with nor serve as a substitute for any investigation by law enforcement officials or the department; provided, that, if any hospital, clinic, school or other organization responsible for the care of children develops a procedure for internally tracking, reporting or otherwise monitoring a report pursuant to this section, the identity of the person who made a report of harm pursuant to this section or § 37-1-605 shall be kept confidential.

(i)(1) Any school official, personnel, employee or member of the board of education who is aware of a report or investigation of employee misconduct on the part of any employee of the school system that in any way involves known or alleged child abuse, including, but not limited to, child physical or sexual abuse or neglect, shall immediately upon knowledge of such information notify the department of children's services or anyone listed in subdivision (a)(2) of the abuse or alleged abuse.

(2) Notwithstanding § 37-5-107 or § 37-1-612 or any other law to the contrary, if a school teacher, school official or any other school personnel has knowledge or reasonable cause to suspect that a child who attends such school may be a victim of child abuse or child sexual abuse sufficient to require reporting pursuant to this section and that the abuse occurred on school grounds or while the child was under the supervision or care of the school, then the principal or other person designated by the school shall verbally notify the parent or legal guardian of the child that a report pursuant to this section has been made and shall provide other information relevant to the future wellbeing of the child while under the supervision or care of the school. The verbal notice shall be made in coordination with the department of children's services to the parent or legal guardian within twenty-four (24) hours from the time the school, school teacher, school official or other school personnel reports the abuse to the department of children's services, judge or law enforcement; provided, that in no event may the notice be later than twenty-four (24) hours from the time the report was made. The notice shall not be given to any parent or legal guardian if there is reasonable cause to

believe that the parent or legal guardian may be the perpetrator or in any way responsible for the child abuse or child sexual abuse.

(3) Once notice is given pursuant to subdivision (i)(2), the principal or other designated person shall provide to the parent or legal guardian all school information and records relevant to the alleged abuse or sexual abuse, if requested by the parent or legal guardian; provided, that the information is edited to protect the confidentiality of the identity of the person who made the report, any other person whose life or safety may be endangered by the disclosure and any information made confidential pursuant to federal law or § 10-7-504(a)(4). The information and records described in this subdivision (i)(3) shall not include records of other agencies or departments.

(4) For purposes of this subsection (i), "school" means any public or privately operated child care agency, as defined in § 71-3-501, preschool, nursery school, kindergarten, elementary school or secondary school.

History.

Acts 1973, ch. 81, § 1; 1977, ch. 343, § 1; 1978, ch. 886, § 2; T.C.A., § 37-1203; Acts 1985, ch. 478, §§ 26, 32, 40; 1987, ch. 145, § 10; 1994, ch. 901, § 2; 1996, ch. 1079, § 73; 2001, ch. 351, § 1; 2005, ch. 185, §§ 1, 2, 3; 2005, ch. 437, § 2; 2006, ch. 843, § 1; 2007, ch. 305, § 1; 2008, ch. 1011, § 1; 2009, ch. 283, §§ 2, 3; 2009, ch. 358, § 2; 2010, ch. 979, §§ 1-4; 2013, ch. 154, § 31.

Compiler's Notes.

For codification of Acts 1985, ch. 478, see Session Law Disposition Tables in Volume 13.

Acts 2008, ch. 1011, § 4 provided that the state board of education, acting in consultation with the department of children's services, is authorized to promulgate rules and regulations to effectuate the purposes of the act, which added subsection (i). The rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

37-1-404. Retention of custody of child by hospital or physician — Protective custody.

(a) Any person in charge of a hospital or similar institution or any physician treating a child may keep that child in custody until the next regular weekday session of the juvenile court without the consent of the parents, legal guardian or legal custodian, whether or not additional medical treatment is required, if the circumstances are such, or if the condition of the child is such, that continuing the child in the child's place of residence or in the care or custody of the parents, legal guardian, or legal custodian presents an imminent danger to the child's life or physical or mental health.

(b) Any person taking a child into protective custody shall immediately notify the department, whereupon the department shall immediately begin a child protective investigation in accordance with the provisions of § 37-1-606, and shall make every reasonable effort to immediately notify the parents, legal guardian or legal custodian that such child has been taken into protective custody.

(c) If the department determines, according to the criteria set forth in § 37-1-114, that the child should remain in protective custody longer than the next regular weekday session of the juvenile court, it shall petition the court for an order authorizing such custody in the same manner as if the child were placed in a shelter.

(d) The department shall attempt to avoid the placement of a child in an institution whenever possible.

History.

Acts 1973, ch. 81, § 1; 1975, ch. 3, § 1; T.C.A., § 37-1204; Acts 1987, ch. 145, § 8.

37-1-405. Reference of reported cases to local director — Notice to judge.

(a)(1) All cases reported to the juvenile court judge or to state or local law enforcement officers shall be referred immediately to the local director of the county office of the department for investigation.

(2) If the court or law enforcement officer finds that there are reasonable grounds to believe that the child is suffering from illness or injury or is in immediate danger from the child's surroundings and that the child's removal is necessary, appropriate protective action shall be taken under part 1 of this chapter.

(b)(1) The county office of the department or the office of the sheriff or the chief law enforcement official of the municipality where the child resides, upon receipt of a report of harm or sexual abuse, shall give notice of the report to the judge having juvenile jurisdiction where the child resides.

(2) If the case appears to involve severe child abuse as defined in § 37-1-102, including child sexual abuse, the county director of the department shall immediately notify and consult with the district attorney general where the harm occurred, and the district attorney general may take such action as the district attorney general deems appropriate, including petitioning the court for removal of the child or termination of parental rights in accordance with part 1 of this chapter. Whenever there are multiple investigations, the department, the district attorney general, law enforcement, and, where applicable, the child protection team, shall coordinate their investigations to the maximum extent possible so that interviews with the victimized child shall be kept to an absolute minimum. Reference to the audio or videotape or tapes made by the child protection team or department should be utilized whenever possible to avoid additional questioning of the child.

(3) If, before the investigation is complete, the county office of the department or the local district attorney general determines that immediate removal is necessary to protect the child or other children, or if the district attorney general determines that influence is being exerted on a child victim of sexual abuse to change the child victim's testimony, the depart-

ment or the district attorney general may proceed under part 1 of this chapter.

History.
Acts 1973, ch. 81, § 1; 1977, ch. 482, § 9; 1980, ch. 776, §§ 1, 2; T.C.A., § 37-1205; Acts 1985, ch. 478, §§ 33, 41.

37-1-406. Availability for receiving reports — Commencement of investigations — Examination and observation of child — Reports — Services provided — Investigators — Interpreter for hearing-impaired child.

(a) The department shall be capable of receiving and investigating reports of child abuse twenty-four (24) hours a day, seven (7) days a week. The county office shall make a thorough investigation promptly after receiving either an oral or written report of harm. All representatives of the child protective services agency shall, at the initial time of contact with the individual who is subject to a child abuse and neglect investigation, advise the individual of the complaints or allegations made against the individual consistent with laws protecting the rights of the informant. If it appears that the immediate safety or well being of a child is endangered, that the family may flee or the child will be unavailable, or that the facts otherwise warrant, the department shall commence an investigation immediately, regardless of the time of day or night. In the event the report involves child sexual abuse, the department shall follow the procedures outlined in subsection (b).

(b) In cases involving child sexual abuse, the investigation shall be conducted by a child protective investigation team as defined in § 37-1-602 relative to child sexual abuse pursuant to the provisions of § 37-1-606. In the event an immediate investigation has been initiated, the department shall notify the child protection team as soon as possible and the team shall proceed with the investigation in accordance with the provisions of Acts 1985, ch. 478. Other cases of child abuse may be investigated by the team in the discretion of each individual team.

(c) All private schools, as defined by § 49-6-3001, church-related schools, as defined by § 49-50-801, and state, county and local agencies shall give the team access to records in their custody pertaining to the child and shall otherwise cooperate fully with the investigation.

(d) The investigation shall include:

(1) The nature, extent and cause of the harm, including a determination of whether there exists a threat of harm, and the nature and extent of any present or prior injuries or abuse;

(2) The identity of the person responsible for it;

(3) The names and conditions of the other children in the home;

(4) An evaluation of the parents or persons responsible for the care of the child, the home environment, and the relationship of each child to the parents or persons responsible for such child's care;

(5) The identity of any other persons in the same household;

(6) The identity of any other children in the care of any adult residing in the household; and

(7) All other pertinent data.

(e) The investigation shall include a visit to the child's home, an interview with and physical observation of the child, and an interview with the parent or parents or other custodian of the child and any other persons in the child's home. If the investigator deems it necessary, the investigation shall also include medical, psychological or psychiatric examinations of the child and any other children in the child's home or under the care of any person alleged to have permitted or caused abuse, neglect or sexual abuse to the child. If the investigator determines, based on a visit to the child's home, observation of and interview with the subject child, and interview with other persons in the child's home, that the report of harm was wholly without substance, the investigator may determine that physical and psychological examinations of the subject child are unnecessary, in which case they will not be required. If admission to the home, school, or any place where the child may be, or permission of the parents or persons responsible for the child's care for the physical and psychological or psychiatric examinations cannot be obtained, the juvenile court, upon cause shown, shall order the parents or person responsible for the care of the child or the person in charge of any place where the child may be, to allow entrance for the interview, examination, and investigation. If the report of harm indicates that the abuse, neglect or sexual abuse occurred in a place other than the child's home, then, in the discretion of the investigator, the investigation may include a visit to the location where the incident occurred or a personal interview with the child and the parents or other custodians in another location instead of a visit to the child's home.

(f) Any person required to investigate cases of child abuse may take or cause to be taken photographs of the areas of trauma visible on a child who is the subject of a report and of any objects or conditions in the child's home or surroundings that could have caused or contributed to the harm to the child. If the nature of the child's injuries indicate a need for immediate medical examination or treatment, the investigator may take or cause the child to be taken for diagnosis to a licensed physician or an emergency department in a hospital without the consent of the child's parents, legal guardian or legal custodian. Any licensed physician who, based on information furnished by the investigator, the parents or other persons having knowledge of the situation, or the child, or on personal observation of the child, suspects that an injury was the result of child abuse, may authorize appropriate examinations to be performed on the child without the consent of the child's parent, legal guardian or legal custodian.

(g) At the initial investigation of child abuse and at any subsequent investigation as deemed appropriate by the investigator, audio or videotape recording may be taken of the traumatized victim. Such tape shall be admissible as evidence in cases of child sexual abuse if it meets the standards established in title 24 for the use of recorded statements. Regardless of whether such recording is used in evidence, it shall be made available for use as provided in § 37-1-405(b)(2).

(h) The investigator shall interview the child outside the presence of the parent(s) or other persons allegedly responsible for the harm and, wherever possible, shall interview the child in a neutral setting other than the location where the alleged abuse occurred.

(i) No later than sixty (60) days after receiving the initial report, the department or team in cases of child sexual abuse or the department in all other cases shall determine whether the reported abuse was indicated or unfounded and report its findings to the department's abuse registry. Each member of the team shall be provided with a copy of the report in any case investigated by the team. In any case investigated solely by the department, the department shall make a complete written investigation report, including its recommendation, to the juvenile court. The district attorney general shall also be provided a copy of any report in all cases where the investigation determines that the report was indicated. Further proceedings shall be conducted pursuant to part 1 of this chapter, as appropriate.

(j) If the department or team in cases of child sexual abuse or the department in all other cases determines that the protection of the child so requires, the department shall provide or arrange for services necessary to prevent further abuse, to safeguard and enhance the welfare of children, and to preserve family life. Such services may include provision for protective shelter, to include room and board; medical and remedial care; day care; homemaker; caretaker; transportation; counseling and therapy; training courses for the parents or legal guardian; and arranging for the provision of other appropriate services. All such services shall be provided when appropriate within the limits of available resources. These services shall first be offered for the voluntary acceptance by the parent or other person responsible for the care of the child, unless immediate removal is needed to protect the child. At any point if the department or team in cases of child sexual abuse or the department in all other cases deems that the child's need for protection so requires, it may proceed with appropriate action under part 1 of this chapter.

(k) If the investigator, as a result of the investigation, determines that there is cause to classify the report of severe abuse as indicated rather than unfounded, the team in cases of child sexual abuse or the department in all other cases may recommend that criminal charges be filed against the alleged offender. Any interested person who has information regarding the offenses may forward a statement to the district attorney general as to whether such person believes prosecution is justified and appropriate. Within fifteen (15) days of the completion of the district attorney general's investigation of a report of severe abuse, the district attorney general shall advise the department or team whether or not prosecution is justified and appropriate, in the district attorney general's opinion, in view of the circumstances of the specific case.

(*l*) The legislative intent of this section is to protect the legal rights of the family in an investigation and to ensure that no activity occurs that compromises the department's child abuse investigation or any ongoing concurrent criminal investigation conducted by law enforcement.

(m)(1) In jurisdictions that have implemented the multi-level response system, in addition to other investigative procedures under this section, local law enforcement officers and district attorneys general having jurisdiction shall assist the department, on request in writing, if the department determines that it is likely that the case may result in criminal prosecution or that a child protective services worker may be at risk of harm while investigating the following reports of harm:

(A) Any report of harm alleging facts that, if proved, would constitute severe child abuse as defined in § 37-1-102;

(B) Any report of harm alleging facts that, if proved, would constitute child sexual abuse as defined in § 37-1-602;

(C) Any report of harm alleging facts that, if proved, would constitute the following physical injuries to a child:

(i) Head trauma;

(ii) Broken bones;

(iii) Inflicted burns;

(iv) Organic functional impairment, as defined by the department;

(v) Broken skin;

(vi) Shaken baby syndrome;

(vii) Defensive injuries;

(viii) Injuries related to physical confinement; or

(ix) Infants exposed to illegal narcotics, including methamphetamine;

(D) Any report of harm alleging facts that, if proved, would constitute the following types of neglect:

(i) A child left without supervision in a dangerous environment;

(ii) Lack of food or nurturance resulting in a failure to thrive;

(iii) Abandonment of a child under the age of eight (8);

(iv) Lack of care that results in a life-threatening condition or hospitalization; or

(v) Inaction of the parent resulting in serious physical injury;

(E) Any report of harm alleging facts that would result in the removal of a child from the home pursuant to department policy or rule;

(F) Any report of harm alleging facts that involve a caretaker at any institution, including, but not limited to, any licensed day care center, public or private school, or hospital; or

(G) Any report of harm alleging facts that, if proved, would constitute any other class of injury identified by the department through policy or rule as necessitating investigation.

(2) If a local law enforcement agency or district attorney general assisting the department under this subsection (m) decides not to proceed with prosecution or terminates prosecution after undertaking it, the agency or district attorney general shall make a

written report on a standardized check-off form developed by the department and the Tennessee district attorneys general conference to the department and the juvenile court on the basis for its decision. The department shall compile such reports and present them to the judiciary committee of the senate and the civil justice committee of the house of representatives as part of its report pursuant to the multilevel response system for children and families, compiled in chapter 5, part 6 of this title. The department shall make quarterly reports to local law enforcement agencies and district attorneys general as to the number and types of cases the department is handling in their jurisdictions on the basis of reports of harm or sexual abuse or of children at risk of being so harmed or sexually abused.

(n) If the report of child abuse alleges physical abuse, it shall be in the best interest of the child that the child be referred to a child advocacy center or that the investigation be conducted by a child protective services investigator who is adequately trained in investigating physical abuse reports. Under no circumstances shall the investigation be performed by a probation officer previously assigned to the child.

(o)(1) Any investigator or law enforcement officer who is investigating a possible domestic abuse or child abuse incident that may have involved or occurred in the presence of a hearing-impaired child shall not use the child's parent or family member as an interpreter. The investigator or officer shall instead communicate with the hearing-impaired child using an interpreter trained as a sign language interpreter.

(2) The interpreter may interpret from a remote location by communicating with the child using video remote interpreting. If the child is unable to understand, then a live, qualified interpreter from the list identified in subdivision (o)(3) shall be used. The communication shall occur outside the presence of the child's parent, other family members, or potential abusers.

(3) Law enforcement agencies shall maintain a list of interpreters developed from a list provided by the Tennessee council for the deaf, deaf-blind, and hard of hearing.

History.

Acts 1985, ch. 478, § 41; 1987, ch. 145, §§ 6, 7, 18, 19, 21, 31; 1988, ch. 964, § 2; 2004, ch. 740, §§ 2, 3; 2005, ch. 391, § 10; 2009, ch. 336, § 1; 2011, ch. 410, § 3(e); 2012, ch. 888, § 1; 2013, ch. 236, § 21; 2015, ch. 231, § 1.

Compiler's Notes.

For codification of Acts 1985, ch. 478, see Session Law Disposition Tables in Volume 13.

For the Preamble to the act concerning the prohibition against establishment of a special committee if there is a standing committee on the same subject, please refer to Acts 2011, ch. 410.

37-1-407. [Repealed.]

Compiler's Notes.

Former § 37-1-407 (Acts 1977, ch. 343, § 4; 1978, ch. 886, § 3; T.C.A., § 37-1207; Acts 1996, ch. 1079, § 73), concerning child abuse review teams, was repealed by Acts 2009, ch. 238, § 1, effective May 20, 2009.

37-1-408. [Repealed.]

Compiler's Notes.

Former § 37-1-408 (Acts 1973, ch. 81, § 1; 1977, ch. 343, § 4; T.C.A., §§ 37-1207, 37-1208; Acts 1985, ch. 478, § 40; 1987, ch. 145, §§ 22, 28-30, 32; 1988, ch. 964, § 1; 1992, ch. 833, § 1; 1996, ch. 1079, § 73), concerning the screening of child care providers by the state registry, was repealed by Acts 2000, ch. 981, § 17, effective July 1, 2000.

37-1-409. Reports confidential — Authorized access to information — Penalty for violation.

(a)(1) Except as otherwise provided by this section and §§ 37-1-612 and 37-5-107, reports of harm made under this part and the identity of the reporter are confidential, except when the juvenile court in which the investigation report is filed, in its discretion, determines the testimony of the person reporting to be material to an indictment or conviction.

(2) Except as may be ordered by the juvenile court as herein provided, the name of any person reporting child abuse shall not be released to any person, other than employees of the department or other child protection team members responsible for child protective services, the abuse registry, or the appropriate district attorney general upon subpoena of the Tennessee bureau of investigation, without the written consent of the person reporting. Such person's identity shall be irrelevant to any civil proceeding and shall, therefore, not be subject to disclosure by order of any court. This shall not prohibit the subpoenaing of a person reporting child abuse when deemed necessary by the district attorney general or the department to protect a child who is the subject of a report; provided, that the fact that such person made the report is not disclosed.

(b) Except as otherwise provided in this part, it is unlawful for any person, except for purposes directly connected with the administration of this part, to disclose, receive, make use of, authorize or knowingly permit, participate in, or acquiesce in the use of any list or the name of, or any information concerning, persons receiving services pursuant to this part, or any information concerning a report or investigation of a report of harm under this part, directly or indirectly derived from the records, papers, files or communications of the department or divisions thereof acquired in the course of the performance of official duties.

(c) In addition to such other purposes as may be directly connected with the administration of this part, the department shall also grant access to information to those persons specified in § 37-1-612.

(d) The department may confirm whether a child abuse or neglect investigation has been commenced, but may not divulge, except as permitted under this part, any details about the case, including, but not limited to, the name of the reporter, the alleged victim, or the alleged perpetrator.

(e) The department shall adopt such rules as may be necessary to carry out the following purposes:

(1) The establishment of administrative and due process procedures for the disclosure of the contents of its files and the results of its investigations for the purpose of protecting children from child sexual abuse, physical abuse, emotional abuse, or neglect; and

(2) For other purposes directly connected with the administration of this chapter, including, but not limited to, cooperation with schools, child care agencies, residential and institutional child care providers, child protection agencies, individuals providing care or protection for the child, medical and mental health personnel providing care for the child and the child's family and the perpetrator of any form of child abuse or neglect, law enforcement agencies, the judicial and correctional systems, and for cooperation with scientific and governmental research on child abuse and neglect.

(f) Except as specifically provided in this chapter, nothing in this chapter shall prevent the department from sharing information with the district attorney general and law enforcement personnel for the purpose of cooperating with a law enforcement investigation. Information from departmental records that is shared with the district attorney general or law enforcement by the department shall remain confidential to the same extent that information not shared with the district attorney general and law enforcement is confidential. Unless otherwise ordered by a court, or to the extent that such information is used for criminal prosecution, or to the extent required under the Tennessee rules of criminal procedure after criminal charges have been filed, any portion of shared information that does not become part of a court record shall remain confidential to the same extent as information not shared by the department remains confidential.

(g) A violation of this section is a Class B misdemeanor.

History.

Acts 1973, ch. 81, § 1; 1977, ch. 343, § 4; Acts 1978, ch. 886, § 4; T.C.A., §§ 37-1208, 37-1209; Acts 1985, ch. 478, § 42; 1987, ch. 145, §§ 15, 23; 1988, ch. 964, § 3; 1989, ch. 591, § 112; 2000, ch. 981, § 51; 2005, ch. 391, § 11; 2008, ch. 1146, § 3; 2009, ch. 358, § 3.

37-1-410. Immunity from civil or criminal liability for reporting abuse — Damages for employment change because of making report.

(a)(1) IF a health care provider makes a report of harm, as required by § 37-1-403; AND

IF the report arises from an examination of the child performed by the health care provider in the course of rendering professional care or treatment of the child; OR

IF the health care provider who is highly qualified by experience in the field of child abuse and neglect, as evidenced by special training or credentialing, renders a second opinion at the request of the department or any law enforcement agency, whether or not the health care provider has examined the child, rendered care or treatment, or made the report of harm; THEN

The health care provider shall not be liable in any civil or criminal action that is based solely upon:

(A) The health care provider's decision to report what the provider believed to be harm;

(B) The health care provider's belief that reporting the harm was required by law;

(C) The fact that a report of harm was made; or

(D) The fact that an opinion as described in this subdivision (a)(1) was requested and provided.

(2) For the purposes of this subsection (a), by providing a second opinion, a report, information or records at the request of the department or any law enforcement agency the health care provider has satisfied all requirements to make a report of harm as required by §§ 37-1-403 and 37-1-605.

(3) As used in this subsection (a), "health care provider" means any physician, osteopathic physician, medical examiner, chiropractor, nurse, hospital personnel, mental health professional or other health care professional.

(4) Nothing in this subsection (a) shall be construed to confer any immunity upon a health care provider for a criminal or civil action arising out of the treatment of the child about whom the report of harm was made.

(5)(A) IF absolute immunity is not conferred upon a person pursuant to subdivision (a)(1); AND

IF, acting in good faith, the person makes a report of harm, as required by § 37-1-403; THEN

The person shall not be liable in any civil or criminal action that is based solely upon:

(i) The person's decision to report what the person believed to be harm;

(ii) The person's belief that reporting the harm was required by law; or

(iii) The fact that a report of harm was made.

(B) Because of the overriding public policy to encourage all persons to report the neglect of or harm or abuse to children, any person upon whom good faith immunity is conferred pursuant to this subdivision (a)(5) shall be presumed to have acted in good faith in making a report of harm.

(6) No immunity conferred pursuant to this subsection (a) shall attach if the person reporting the harm perpetrated or inflicted the abuse or caused the neglect.

(7) A person furnishing a report, information or records as required, requested, or authorized under this part shall have the same immunity and the same scope of immunity with respect to testimony such person may be required to give or may give in any judicial or administrative proceeding or in any communications with the department or any law enforcement official as is otherwise conferred by this subsection (a) upon the person for making the report of harm.

(8) If the person furnishing a report, information or records during the normal course of the person's duties as required or authorized or requested under this part is different from the person originally reporting the harm, then the person furnishing the

report, information or records shall have the same immunity and the same scope of immunity with respect to testimony the person may be required to give or may give in any judicial or administrative proceeding or in any communications with the department or any law enforcement official as is otherwise conferred by this subsection (a) upon the person who made the original report of harm.

(b) Any person reporting under this part shall have a civil cause of action against any person who causes a detrimental change in the employment status of the reporting party by reason of the report.

History.
Acts 1973, ch. 81, § 1; 1977, ch. 343, §§ 3, 4; T.C.A., §§ 37-1209, 37-1210; Acts 2001, ch. 351, § 2; 2008, ch. 1060, § 1.

37-1-411. Evidentiary privileges not applicable to child abuse cases.

Neither the husband-wife privilege as preserved in § 24-1-201, nor the psychiatrist-patient privilege as set forth in § 24-1-207, nor the psychologist-patient privilege as set forth in § 63-11-213 is a ground for excluding evidence regarding harm or the cause of harm to a child in any dependency and neglect proceeding resulting from a report of such harm under § 37-1-403 or a criminal prosecution for severe child abuse.

History.
Acts 1973, ch. 81, § 1; 1977, ch. 343, § 4; T.C.A., §§ 37-1210, 37-1211; Acts 1985, ch. 478, § 20.

37-1-412. Violation of duty to report — Power of juvenile court — Penalty.

(a) Any person who knowingly fails to make a report required by § 37-1-403 commits a Class A misdemeanor.

(b) A juvenile court having reasonable cause to believe that a person is guilty of violating this section may have the person brought before the court either by summons or by warrant. If the defendant pleads not guilty, the juvenile court judge shall bind the defendant over to the grand jury. If the defendant pleads guilty and waives, in writing, indictment, presentment, grand jury investigation, and trial by jury, the juvenile court judge shall sentence the defendant under this section with a fine not to exceed two thousand five hundred dollars ($2,500).

History.
Acts 1973, ch. 81, § 1; 1977, ch. 343, § 4; T.C.A., §§ 37-1211, 37-1-1212; Acts 1989, ch. 591, § 111; 2005, ch. 256, § 1.

37-1-413. False reporting of child sexual abuse or false accusation that a child has sustained any wound, injury, disability or physical or mental condition caused by brutality, abuse or neglect — Penalty.

Any person who either verbally or by written or printed communication knowingly and maliciously reports, or causes, encourages, aids, counsels or procures another to report, a false accusation of child sexual abuse or false accusation that a child has sustained any wound, injury, disability or physical or mental condition caused by brutality, abuse or neglect commits a Class E felony.

History.
Acts 1985, ch. 478, § 43; 1989, ch. 591, § 33; 2008, ch. 1171, § 1.

37-1-414. Persons working with children — Fingerprinting — Release of investigative and criminal records.

(a) A religious, charitable, scientific, educational, athletic or youth service institution or organization may require any person, who applies to work with children as a volunteer or as a paid employee, to do one (1) or more of the following:

(1) Agree to the release of all investigative records to such religious, charitable, scientific, educational, athletic, or youth service institution or organization for examination for the purpose of verifying the accuracy of criminal violation information contained on an application to work for such institution or organization;

(2) Supply fingerprint samples and submit to a criminal history records check to be conducted by the Tennessee bureau of investigation and the federal bureau of investigation; or

(3) Attend a comprehensive youth protection training program that includes adult training on recognition, disclosure, reporting and prevention of abuse and submit to character, employment, education and reference checks.

(b) Any costs incurred by the Tennessee bureau of investigation or the federal bureau of investigation in conducting such investigation of applicants shall be paid by the religious, charitable, scientific, educational, or athletic institution or organization requesting such investigation and information. Payment of such costs are to be made in accordance with the provisions of § 38-6-103.

History.
Acts 1993, ch. 350, § 2; 1995, ch. 325, § 1; 2003, ch. 30, §§ 1, 2.

PART 5

COUNCIL OF JUVENILE AND FAMILY COURT JUDGES

37-1-501. Creation and membership of council.

(a) There is created the Tennessee council of juvenile and family court judges, which shall be the official organization of the judges having juvenile and family court jurisdiction in this state.

(b) The membership of the council shall consist of all judges of juvenile courts in this state.

History.
Acts 1972, ch. 833, § 1; 1983, ch. 131, § 1; T.C.A., § 37-278.

37-1-502. Rules, regulations and by-laws — Officers — Recommending rules to supreme court — Development of plan to establish demonstration sites.

(a)(1) The council is authorized to adopt and, from time to time, amend such rules, regulations or by-laws as it considers necessary for the conduct of its affairs.

(2) Such rules, regulations or bylaws may provide for such officers as the council considers advisable, for the method of selection of such officers, for the selection of a time and place within this state for annual meetings of the council, and for such other matters consistent with the general laws of the state as the council may choose.

(b)(1) The council shall make recommendations to the supreme court as to rules governing the practice and procedure in juvenile courts of this state. The supreme court may consider the council's recommendations in prescribing rules as provided in § 16-3-402.

(2) Prior to submitting its recommended rules to the supreme court, the council shall send a draft of its recommendation to the commission on children and youth. The commission shall distribute the draft to state agencies that, in the commission's opinion, may be affected by the recommended rules, and the commission will be responsible for accumulating and transmitting the comments of such agencies promptly to the council, so that the comments can be taken into account by the council in an orderly manner when preparing its final proposal of rules to be submitted to the supreme court. Thereafter, the commission shall present such accumulated comments to the court in such manner as the court may provide for receiving comment upon the proposed rules.

(c) Notwithstanding any law to the contrary, the council shall assist the council on children's mental health care in developing a plan that will establish demonstration sites in certain geographic areas where children's mental health care is child-centered, family-driven, and culturally and linguistically competent and that provides a coordinated system of care for children's mental health needs in this state.

History.
Acts 1972, ch. 833, § 2; 1982, ch. 790, § 1; T.C.A., § 37-279; Acts 2008, ch. 1062, § 7.

Compiler's Notes.
For the Preamble to the act regarding to the mental health needs of Tennessee's children and youth, please refer to Acts 2008, ch. 1062.

37-1-503. Executive secretary of council.

The president of the council, with the approval of a majority of the executive committee, shall appoint an executive secretary, a staff attorney and such other personnel as may be necessary to conduct its affairs, whose specific duties and responsibilities shall be as prescribed by the council in its rules, regulations or bylaws.

History.
Acts 1982, ch. 937, § 1; T.C.A., § 37-282; Acts 1998, ch. 892, § 1.

37-1-504. Annual meeting — Subject matter.

(a) The council shall meet annually for the consideration of any and all matters pertaining to the discharge of the official duties and obligations of its members, to the end that there shall be a more efficient and prompt administration of justice in the juvenile courts of this state, and to the end that the causes of dependency, neglect and delinquency of juveniles be consistently better understood and dealt with through the use of all available sources, including the resources of the departments of education, mental health and substance abuse services, intellectual and developmental disability, and children's services.

(b) It is the legislative intent and direction that the council actively pursue the ends and purposes set out in this section.

History.
Acts 1972, ch. 833, § 3; impl. am. Acts 1975, ch. 219, § 1; impl. am. Acts 1975, ch. 248, § 1; T.C.A., § 37-280; Acts 1996, ch. 1079, § 73; imp. am. Acts 2000, ch. 947, § 6; 2010, ch. 1100, § 52; 2012, ch. 575, § 1.

Compiler's Notes.
Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

37-1-505. Annual meeting — Expenses.

(a) It is the official duty of each member of the council to attend upon its meetings unless otherwise officially engaged, or for other good and sufficient reasons.

(b) Each member who attends the annual meeting or training sessions shall be compensated for the member's actual and reasonable expenses in attending such meeting or training sessions. Unless such funds are provided by the state, such expenses shall be paid upon a verified statement of expenses being filed with the county mayor by any member incurring such expenses. Expenses shall be paid by the trustee upon warrant of the county mayor from the general fund of the county in which the member serves as judge; provided, that funds for such purpose have been appropriated by the county legislative body.

History.
Acts 1972, ch. 833, § 4; 1982, ch. 937, §§ 2, 3; 1983, ch. 387, § 1; T.C.A., § 37-281; Acts 2003, ch. 90, § 2.

Compiler's Notes.
Acts 2003, ch. 90, § 2, directed the code commission to change all references from "county executive" to "county mayor" and to include all such changes in supplements and replacement volumes for the Tennessee Code Annotated.

37-1-506. Report and publishing of juvenile court information, including cases, informal adjustments, pretrial diversions and identifying information — Expungement of child's information upon order of expunction of charge that had resulted in probation or prevention services.

(a) The clerk of each juvenile court shall, each month, report to the executive secretary such information as the council may require concerning cases handled by such court, including, but not limited to, informal adjustments, pretrial diversions, and all other dispositions made by the court. Notwithstanding § 37-1-153 or any other law to the contrary, the council may require identifying information to be reported in order that the council may more accurately track recidivism rates and other pertinent trends relating to juveniles. Notwithstanding any law to the contrary, identifying information received by the council shall be confidential; shall not be published, released, or otherwise disseminated; and shall be maintained in accordance with state and federal laws and regulations regarding confidentiality. The council may publish data and make such data available to properly concerned agencies and individuals, or to any person upon request. Any such publication or release of data shall be limited to non-identifying information. The council shall develop guidelines and procedures to expunge identifying information collected on juveniles; provided, that such expunction shall occur only after the juvenile reaches the age that is beyond jurisdiction of the juvenile court.

(b) On or before September 1 of each year, the clerk of each juvenile court operating county probation programs shall furnish to the department the names and birthdates of all children receiving county probation services, and the length of probation for each child. Upon receipt of an order of expunction of the charge for which the child was placed on county probation, the department shall expunge that child's information from its records.

(c) On or before September 1 of each year, the clerk of each juvenile court receiving prevention grants or other prevention funding through the department shall furnish to the department the names and birthdates of all children receiving prevention services, the amount of time each child was provided services, and the percentage of prevention services provided that are evidence-based for the previous fiscal year. Upon receipt of an order of expunction of the charge for which the child received prevention services, the department shall expunge that child's information from its records.

(d) Nothing in this section shall be construed to mandate any change in a county's decision regarding the division of reporting responsibility between the juvenile court clerk and the youth services officer.

History.
Acts 1982, ch. 937, § 1; T.C.A., § 37-283; Acts 1990, ch. 1024, § 19; 1999, ch. 264, §§ 1, 2; 2016, ch. 1005, § 2.

37-1-507. Program to reimburse counties for costs of inpatient mental health evaluations, examinations and detention of juveniles charged as adults — Rules and regulations.

(a) The council of juvenile and family court judges is authorized to establish and administer a program to reimburse counties for the costs associated with inpatient mental health evaluations and examinations conducted on juveniles charged with an offense which would constitute a felony if committed by an adult. Such a program is subject to available state funding and may include full or partial reimbursements to counties for the costs of inpatient mental health examinations or evaluations ordered by a juvenile court judge, as well as the costs of transportation of the child for a mental health examination or evaluation. The program may also include reimbursement to counties for costs of detention incurred pursuant to § 37-1-116(f) for the purposes of obtaining an outpatient evaluation or examination at a detention facility located in another county.

(b) The council may adopt rules and regulations governing such a reimbursement program pursuant to § 37-1-502.

History.
Acts 2009, ch. 593, § 1.

PART 6

CHILD SEXUAL ABUSE

37-1-601. Prevention of child sexual abuse deemed priority of state — Comprehensive approach — Purpose and construction of part.

(a) The general assembly finds and declares that:

(1) The incidence of child sexual abuse has a tremendous impact on the victimized child, siblings, family structure, and inevitably on all citizens of this state;

(2) The detection, intervention, prevention and treatment of child sexual abuse, including a focus on the sexual abuse that occurs within the home, shall be a priority of this state;

(3) Sexual abuse in any form is destructive to the physical and mental health of a child;

(4) Ninety-three percent (93%) of all sexual abuse is inflicted by a family member or acquaintance in the child's home environment;

(5) It is necessary that curriculum addressing sexual abuse include a focus on the in-home abuse;

and

(6) A comprehensive approach for the detection, intervention, prevention and treatment of child sexual abuse, including such abuse that may occur in the home, should be developed for the state and that this planned, comprehensive approach should be used as a basis for funding.

(b) The purpose of this part shall be the same as that of part 4 of this chapter, and, except as may be expressly herein provided, the provisions of this part shall not be construed as repealing any provisions of part 4 of this chapter or of any other statute, but shall be supplementary thereto and cumulative thereof.

History.
Acts 1985, ch. 478, § 2; 1987, ch. 145, § 1; 2014, ch. 706, § 2.

Compiler's Notes.
Acts 2014, ch. 706, § 1 provided that this act shall be known and may be cited as "Erin's Law."

37-1-602. Part definitions — Harm to child's health or welfare.

(a) For purposes of this part and §§ 8-7-109, 37-1-152, 37-1-403, 37-1-406, 37-1-413 and 49-7-117, unless the context otherwise requires:

(1) "Child care agency" is as defined in §§ 71-3-501 and 37-5-501;

(2) "Child protection team" means the investigation team created by § 37-1-607;

(3)(A) "Child sexual abuse" means the commission of any act involving the unlawful sexual abuse, molestation, fondling or carnal knowledge of a child under thirteen (13) years of age that prior to November 1, 1989, constituted the criminal offense of:

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

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

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

(iv) Begetting child on wife's sister under § 39-4-307 [repealed];

(v) Crimes against nature under § 39-2-612 [repealed];

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

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

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

(ix) Sexual battery under § 39-2-607 [repealed]; or

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

(B) "Child sexual abuse" also means the commission of any act involving the unlawful sexual abuse, molestation, fondling or carnal knowledge of a child under thirteen (13) years of age that on or after November 1, 1989, constituted the criminal offense of:

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

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

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

(iv) Criminal attempt as provided in § 39-12-101 for any of the offenses in (a)(3)(B)(i)-(iii);

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

(vi) Incest under § 39-15-302;

(vii) Rape under § 39-13-503;

(viii) Sexual battery under § 39-13-505; or

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

(C) "Child sexual abuse" also means one (1) or more of the following acts:

(i) Any penetration, however slight, of the vagina or anal opening of one (1) person by the penis of another person, whether or not there is the emission of semen;

(ii) Any contact between the genitals or anal opening of one (1) person and the mouth or tongue of another person;

(iii) Any intrusion by one (1) person into the genitals or anal opening of another person, including the use of any object for this purpose, except that it shall not include acts intended for a valid medical purpose;

(iv) The intentional touching of the genitals or intimate parts, including the breasts, genital area, groin, inner thighs, and buttocks, or the clothing covering them, of either the child or the perpetrator, except that it shall not include:

(a) Acts that may reasonably be construed to be normal caretaker responsibilities, interactions with, or affection for a child; or

(b) Acts intended for a valid medical purpose;

(v) The intentional exposure of the perpetrator's genitals in the presence of a child, or any other sexual act intentionally perpetrated in the presence of a child, if such exposure or sexual act is for the purpose of sexual arousal or gratification, aggression, degradation, or other similar purpose;

(vi) The sexual exploitation of a child, which includes allowing, encouraging, or forcing a child to:

(a) Solicit for or engage in prostitution; or

(b) Engage in an act prohibited by § 39-17-1003; and

(D) For the purposes of the reporting, investigation, and treatment provisions of §§ 37-1-603 — 37-1-615 "child sexual abuse" also means the commission of any act specified in subdivisions (a)(3)(A)-(C) against a child thirteen (13) years of age through seventeen (17) years of age if such act is committed against the child by a parent, guardian, relative, person residing in the child's home, or other person responsible for the care and custody of the child;

(4) "Department" means the department of children's services;

(5) "Guardian ad litem" means a responsible adult who is appointed by the court to represent the best interests of a child in a proceeding as provided for by law, who shall be a party to any judicial proceeding as a representative of the child, and who shall serve until discharged by the court;

(6) "Institutional child sexual abuse" means situations of known or suspected child sexual abuse in which the person allegedly perpetrating the child sexual abuse is an employee of a public or private child care agency, public or private school, or any other person responsible for the child's care;

(7) "Mental injury" means an injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in the child's ability to function within the child's normal range of performance and behavior, with due regard to the child's culture; and

(8) "Other person responsible for a child's care or welfare" includes, but is not limited to, the child's legal guardian, legal custodian, or foster parent; an employee of a public or private child care agency, public or private school; or any other person legally responsible for the child's welfare in a residential setting.

(b) Harm to a child's health or welfare can occur when the parent or other person responsible for the child's welfare:

(1) Commits, or allows to be committed, child sexual abuse as defined in subdivisions (a)(3)(A)-(C); or

(2) Exploits a child under eighteen (18) years of age, or allows such child to be exploited, as provided in §§ 39-17-1003 — 39-17-1005.

History.

Acts 1985, ch. 478, § 3; 1988, ch. 953, § 12; 1996, ch. 1079, § 73; 2000, ch. 981, §§ 51, 55; 2008, ch. 893, §§ 1, 2.

Compiler's Notes.

Sections in title 39, chs. 1-6, referred to in this section, were repealed by Acts 1989, ch. 591.

37-1-603. Comprehensive state plan.

(a) The department shall develop a state plan that encompasses and complies with the scope of all provisions of this part for the detection, intervention, prevention and treatment of child sexual abuse. The department of education and the state board of education shall participate and fully cooperate in the development of the state plan. Furthermore, appropriate state and local agencies and organizations shall be provided an opportunity to participate in the development of the state plan. Appropriate groups and organizations shall include, but not be limited to, community mental health centers; the juvenile courts; the school boards of the local school districts; private or public organizations or programs with recognized expertise in working with children who are sexually abused, physically abused, emotionally abused, or neglected and with expertise in working with the families of such children; private or public programs or organizations with expertise in maternal and infant health care; multi-disciplinary child protection teams; child care centers; and law enforcement agencies. The state plan to be provided to the general assembly, the appropriate committees and the governor shall include, as a minimum, the information required of the various groups in subsection (b).

(b) The development of the comprehensive state plan shall be accomplished in the following manner:

(1) The department of children's services shall establish a task force composed of representatives from the department of mental health and substance abuse services, department of intellectual and developmental disabilities, the commission on children and youth created by § 37-3-102, a child abuse agency as defined in § 37-5-501, a treatment resource as defined in § 33-1-101, and a local child service agency. Representatives of the departments of children's services, education, health, the Tennessee bureau of investigation, district attorneys general conference, Tennessee council of juvenile and family court judges, and local law enforcement agencies shall serve as ex officio members of the task force. The task force shall be responsible for:

(A) Developing a plan of action for better coordination and integration of the goals, activities, and funding of the department pertaining to the detection, intervention, prevention, and treatment of child sexual abuse in order to maximize staff and resources, including the effective utilization of licensure personnel in determining whether children are properly cared for and protected by the child care agencies licensed by the department of children's services or human services. The department shall develop ways not only to inform and instruct all personnel in the child care agencies in the detection, intervention, prevention and treatment of child sexual abuse, but shall develop ways for licensure personnel at least annually to require that all such agencies present a prevention program to the children enrolled in and cared for by the agency. Licensing staff shall provide training to such agencies if needed to assist them in presenting such a program and shall review and approve the materials to be presented. The department shall formulate an effective and efficient method for updating files of victims of child sexual abuse. The plan for accomplishing this end shall be included in the comprehensive state plan;

(B) Preparing the state plan for submission to the members of the general assembly and the governor. Such preparation shall include the cooperative plans as provided in this section and the plan of action for coordination and integration of departmental activities into one (1) comprehensive plan. The comprehensive plan shall include a section reflecting general conditions and needs, an analysis of variations based on population or geographic areas, identified problems, and recommendations for change; and

(C) Working with the specified agency in fulfilling the requirements of subdivisions (b)(2), (3), (4), (5) and (6);

(2) The department of education and the state board of education and the department of children's services shall work together in developing ways to inform and instruct appropriate school personnel and children in all school districts in the detection, intervention, prevention and treatment of child sexual abuse and in the proper action that should be taken in a suspected case of child sexual abuse. The plan for accomplishing this end shall be included in the comprehensive state plan;

(3) The departments of education and children's services, and the state board of education, shall work together on the enhancement or adaptation of curriculum materials to assist instructional personnel in providing instruction through a multi-disciplinary approach on the detection, intervention, prevention and treatment of child sexual abuse, including such abuse that may occur in the home. The curriculum materials shall be geared toward a sequential program of instruction at progressional levels for kindergarten through grade twelve (K-12). Strategies for utilizing the curriculum shall be included in the comprehensive plan;

(4)(A) The Jerry F. Agee Tennessee Law Enforcement Academy, the Tennessee peace officer standards and training commission, and the department of children's services shall work together in developing ways to inform and instruct appropriate local law enforcement personnel in the detection of child sexual abuse and in the proper action that should be taken in a suspected case of child sexual abuse:

(i) Guidelines shall be prepared establishing a standard procedure that may be followed by police agencies in the investigation of cases involving sexual abuse of children, including police response to, and treatment of, victims of such crimes;

(ii) The course of training leading to the basic certificate issued by the Tennessee peace officer standards and training commission shall include adequate instruction in the procedures described in subdivision (b)(4)(A) and shall be included as a part of the in-service training requirement to be eligible for the salary supplement authorized in § 38-8-111;

(iii) A course of study pursuant to such procedures for the training of specialists in the investigation of child sexual abuse cases shall be implemented by the Jerry F. Agee Tennessee Law Enforcement Training Academy. Officers assigned as investigation specialists for these crimes shall successfully complete their training;

(iv) The peace officers standards and training commission may authorize the certification of officers under this section if the officers have received training meeting the criteria established in subdivision (b)(4)(A) from any other approved training course at sites other than the Jerry F. Agee Tennessee Law Enforcement Training Academy; and

(v) It is the intent of the general assembly to encourage the establishment of child sex crime investigation units in sheriffs' departments and police agencies throughout the state, which units shall include investigating crimes involving sexual abuse of children;

(B) The plan for accomplishing this end shall be included in the comprehensive state plan;

(5) The department of children's services shall work with other appropriate public and private agencies to emphasize efforts to educate the general public about the problem of and ways to detect, intervene in, prevent and treat child sexual abuse, and in the proper action that should be taken in a suspected case of child sexual abuse. Such plan shall include a method for publicizing and notifying the general public of the resources and agencies available to provide help and services for victimized children and their families. The plan for accomplishing this end shall be included in the comprehensive state plan; and

(6) The department of children's services and the judicial council shall work together in developing a mechanism to inform and instruct judges with juvenile, divorce and criminal jurisdiction in the detection, intervention, prevention and treatment of child sexual abuse and in the proper action that should be taken in a known or suspected case of child sexual abuse. The plan for accomplishing this end shall be included in the comprehensive state plan.

(c)(1) All budget requests submitted by the department of children's services, the department of education, or any other agency to the general assembly for funding of efforts for the detection, intervention, prevention, and treatment of child sexual abuse shall be based on the state comprehensive plan developed pursuant to this section.

(2) The department of children's services shall readdress the plan one (1) year following its initial presentation and at least biennially thereafter, and shall make necessary revisions. No later than January 31, 1987, and no later than January 31 of every uneven year thereafter, such revisions shall be submitted to the government operations committees of both houses of the general assembly and to the governor.

History.

Acts 1985, ch. 478, § 4; 1987, ch. 145, § 27; 1988, ch. 953, § 13; 1989, ch. 278, § 36; 1996, ch. 1079, § 73; 2000, ch. 947, § 6; 2000, ch. 981, §§ 51, 56; 2009, ch. 238, § 2; 2010, ch. 1100, § 53; 2012, ch. 575, § 1; 2014, ch. 706, § 3.

Compiler's Notes.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Acts 2014, ch. 706, § 1 provided that this act shall be known and may be cited as "Erin's Law."

37-1-604. Legislative intent relating to investigations, protective services and reports.

The intent of §§ 37-1-604 — 37-1-615 is to provide for the investigation of child sexual abuse by the child protection team, and to provide for comprehensive protective services for sexually abused children found in the state by requiring that reports of each sexually abused child be made to the department and the office of the district attorney general in an effort to prevent further harm to the child or any other children living in the home and to preserve the family life of the parents and children, to the maximum extent possible, by enhancing the parental capacity for adequate child care.

History.
Acts 1985, ch. 478, § 5.

37-1-605. Reports of known or suspected child sexual abuse — Investigations — Notification to parents of abuse on school grounds or while under school supervision — Confidentiality of records.

(a) Any person including, but not limited to, any:

(1) Physician, osteopathic physician, medical examiner, chiropractor, nurse or hospital personnel engaged in the admission, examination, care or treatment of persons;

(2) Health or mental health professional other than one listed in subdivision (1);

(3) Practitioner who relies solely on spiritual means for healing;

(4) School teacher or other school official or personnel;

(5) Judge of any court of the state;

(6) Social worker, day care center worker, or other professional child care, foster care, residential or institutional worker;

(7) Law enforcement officer;

(8) Authority figure at a community facility, including any facility used for recreation or social assemblies, for educational, religious, social, health, or welfare purposes, including, but not limited to, facilities operated by schools, the boy or girl scouts, the YMCA or YWCA, the boys and girls club, or church or religious organizations; or

(9) Neighbor, relative, friend or any other person;

who knows or has reasonable cause to suspect that a child has been sexually abused shall report such knowledge or suspicion to the department in the manner prescribed in subsection (b).

(b)(1) Each report of known or suspected child sexual abuse pursuant to this section shall be made immediately to the local office of the department responsible for the investigation of reports made pursuant to this section or to the judge having juvenile jurisdiction or to the office of the sheriff or the chief law enforcement official of the municipality where the child resides. Each report of known or suspected child sexual abuse occurring in a facility licensed by the department of mental health and substance abuse services, as defined in § 33-2-403, or any hospital, shall also be made to the local law enforcement agency in the jurisdiction where such offense occurred. In addition to those procedures provided by this part, § 37-1-405 shall also apply to all cases reported hereunder.

(2) If a law enforcement official or judge becomes aware of known or suspected child sexual abuse, through personal knowledge, receipt of a report or otherwise, such information shall be reported to the department immediately and the child protective team shall be notified to investigate the report for the protection of the child in accordance with this part. Further criminal investigation by such official shall be appropriately conducted.

(3) Reports involving known or suspected institutional child sexual abuse shall be made and received in the same manner as all other reports made pursuant to this section.

(c) Any person required to report or investigate cases of suspected child sexual abuse who has reasonable cause to suspect that a child died as a result of child sexual abuse shall report such suspicion to the appropriate medical examiner. The medical examiner shall accept the report for investigation and shall report the medical examiner's findings, in writing, to the local law enforcement agency, the appropriate district attorney general, and the department. Autopsy reports maintained by the medical examiner shall not be subject to the confidentiality requirements provided for in § 37-1-612.

(d)(1) Notwithstanding § 37-5-107 or § 37-1-612 or any other law to the contrary, if a school teacher, school official or any other school personnel has knowledge or reasonable cause to suspect that a child who attends such school may be a victim of child abuse or child sexual abuse sufficient to require reporting pursuant to this section and that the abuse occurred on school grounds or while the child was under the supervision or care of the school, then the principal or other person designated by the school shall verbally notify the parent or legal guardian of the child that a report pursuant to this section has been made and shall provide other information relevant to the future well-being of the child while under the supervision or care of the school. The verbal notice shall be made in coordination with the department of children's services to the parent or legal guardian within twenty-four (24) hours from the time the school, school teacher, school official or other school personnel reports the abuse to the department of children's services; provided, that in no event may the notice be later than twenty-four (24) hours from the time the report was made. The notice shall not be given to any parent or legal guardian if there is reasonable cause to believe that the parent or legal guardian may be the perpetrator or in any way responsible for the child abuse or child

sexual abuse.

(2) Once notice is given pursuant to subdivision (d)(1), the principal or other designated person shall provide to the parent or legal guardian all school information and records relevant to the alleged abuse or sexual abuse, if requested by the parent or legal guardian; provided, that the information is edited to protect the confidentiality of the identity of the person who made the report, any other person whose life or safety may be endangered by the disclosure, and any information made confidential pursuant to federal law or § 10-7-504(a)(4). The information and records described in this subdivision (d)(2) shall not include records of other agencies or departments.

(3) For purposes of this subsection (d), "school" means any public or privately operated child care agency, as defined in § 71-3-501, preschool, nursery school, kindergarten, elementary school or secondary school.

History.

Acts 1985, ch. 478, § 6; 1987, ch. 145, §§ 2, 11; 1988, ch. 953, § 14; 1993, ch. 439, § 2; 1994, ch. 901, § 2; 2000, ch. 947, §§ 6, 8M; 2008, ch. 1011, § 2; 2009, ch. 283, §§ 4, 5; 2010, ch. 1100, § 54; 2012, ch. 575, § 1; 2014, ch. 761, § 1.

Compiler's Notes.

Acts 2008, ch. 1011, § 4 provided that the state board of education, acting in consultation with the department of children's services, is authorized to promulgate rules and regulations to effectuate the purposes of the act. The rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

37-1-606. Departmental availability for receiving reports — Commencement of investigations — Institutional abuse.

(a) The department shall be capable of receiving and investigating reports of known or suspected child sexual abuse twenty-four (24) hours a day, seven (7) days a week. If it appears that the immediate safety or well-being of a child is endangered, that the family may flee or the child will be unavailable for purposes of conducting a child protective investigation, or that the facts otherwise so warrant, the department shall commence an investigation immediately, regardless of the time of day or night. In all other child sexual abuse cases, a child protective investigation shall be commenced within twenty-four (24) hours of receipt of the report.

(b) If, as a result of an investigation of a report of institutional child sexual abuse, the department removes children under its care from such institution, the department shall notify parents who have children enrolled in such institution on such date of its action. The institution's records shall be utilized to obtain such information. The notification shall be sufficient if it states that children under the care of the department are being removed. If the department validates child sexual abuse in such institution or revokes or suspends the license of a child care agency as a result of child sexual abuse occurring in the agency, the department, in accordance with administrative and due process rules, shall notify the parents of the children accordingly.

History.

Acts 1985, ch. 478, § 7; 1987, ch. 145, §§ 3, 4; 1988, ch. 953, §§ 15-17; 2000, ch. 981, § 51.

Compiler's Notes.

Former subdivisions (a)(2) and (4), concerning reports and investigations of child sexual abuse, were transferred to § 37-1-607(b)(2) and (3) in 1987.

37-1-607. Child protective teams — Investigations — Services.

(a)(1)(A) The department shall coordinate the services of child protective teams. At least one (1) child protective team shall be organized in each county. The district attorney general of each judicial district shall, by January 15 of each year, report to the judiciary committee of the senate and the civil justice committee of the house of representatives on the status of the teams in the district attorney general's district as required by this section, and the progress of the child protective teams that have been organized in the district attorney general's district. The department shall, with the cooperation of all statutorily authorized members of the child protective team, establish a procedure and format for data collection. The procedure and format developed shall include at a minimum the following information:

(i) The number of reports received for investigation by type (i.e., sexual abuse, serious physical abuse, life-threatening neglect);

(ii) The number of investigations initiated by type;

(iii) The number of final dispositions of cases obtained in the current reporting year by type of disposition as follows:

(a) Unsubstantiated, closed, no service;

(b) Unsubstantiated, referred for non-custodial support services;

(c) Substantiated, closed, no service;

(d) Substantiated, service provided, no prosecution;

(e) Substantiated, service provided, prosecution, acquittal; or

(f) Substantiated, service provided, prosecution, conviction;

(iv) Age, race, gender, and relationship to the victim of perpetrators identified in cases that are included in subdivisions (a)(1)(A)(iii)(*c*)-(*f*); and

(v) The type and amount of community-based support received by child protective teams through linkages with other local agencies and organizations and through monetary or in-kind, or both, donations.

(B) Such data shall be reported by January 15 of each year to the judiciary committee of the senate

and the civil justice committee of the house of representatives, along with a progress report on the teams and any recommendations for enhancement of the child sexual abuse plan and program.

(2) Each team shall be composed of one (1) person from the department, one (1) representative from the office of the district attorney general, one (1) juvenile court officer or investigator from a court of competent jurisdiction, and one (1) properly trained law enforcement officer with countywide jurisdiction from the county where the child resides or where the alleged offense occurred. The team may also include a representative from one (1) of the mental health disciplines. It is in the best interest of the child that, whenever possible, an initial investigation shall not be commenced unless all four (4) disciplines are represented. An initial investigation may, however, be commenced if at least two (2) of the team members are present at the initial investigation. In those geographical areas in which a child advocacy center meets the requirements of § 9-4-213(a) or (b), child advocacy center directors, or their designees, shall be members of the teams under this part and part 4 of this chapter for the purposes of provision of services and functions established by § 9-4-213 or delegated pursuant to that section. In such event, child advocacy center directors, or their designees, may access and generate all necessary information, which shall retain its confidential status, consistent with § 37-1-612.

(3) It is the intent of the general assembly that the child protective investigations be conducted by the team members in a manner that not only protects the child but that also preserves any evidence for future criminal prosecutions. It is essential, therefore, that all phases of the child protective investigation be appropriately conducted and that further investigations, as appropriate, be properly conducted and coordinated.

(b)(1) The department shall convene the appropriate team when a report of child sexual abuse has been received. Nothing in this section shall be construed to remove or reduce the duty and responsibility of any person to report all suspected or actual cases of child sexual abuse. The role of the teams shall be to conduct child protective investigations of reported child sexual abuse and to support and provide services to sexually abused children upon referral as deemed by the teams to be necessary and appropriate for such children.

(2)(A) For each child sexual abuse report it receives, the department shall immediately notify the child protection investigation team, which shall commence an on-site child protective investigation. The team shall:

(i) Determine the composition of the family or household, including the name, address, age, sex and race of each child named in the report; any siblings or other children in the same household or in the care of the same adults; the parents or other persons responsible for the child's welfare; and any other adults in the same household;

(ii) Determine whether there is any indication that any child in the family or household is sexually abused, including a determination of harm or threatened harm to each child; the nature and extent of present or prior injuries, or abuse, and any evidence thereof; and a determination as to the person or persons apparently responsible for the abuse;

(iii) Determine the immediate and long-term risk to each child if the child remains in the existing home environment; and

(iv) Determine the protective, treatment and ameliorative services necessary to safeguard and ensure the child's well-being and development and, if possible, to preserve and stabilize family life.

(B) The team shall seek to interview the child in a neutral setting, other than where the alleged abuse occurred, whenever possible.

(3) Immediately upon receipt of a report alleging, or immediately upon learning during the course of an investigation, that:

(A) Child sexual abuse has occurred; or

(B) An observable injury or medically diagnosed internal injury occurred as a result of the sexual abuse;

the department shall orally notify the team, the appropriate district attorney general and the appropriate law enforcement agency whose criminal investigations shall be coordinated, whenever possible, with the child protective team investigation. In all cases, the team and the department shall make a full written report to the district attorney general within three (3) days of the oral report. If, as a result of an investigation, there is cause to believe a violation of title 39, chapter 17, part 10 has occurred, an appropriate report shall be filed by the district attorney general requesting an investigation by the Tennessee bureau of investigation. If independent criminal investigations are made, interviews with the victimized child shall be kept to an absolute minimum and, whenever possible, reference to the videotape or tapes made by the child protective teams should be utilized.

(4) In addition to the requirements of this part, the provisions of § 37-1-406 shall apply to any investigation conducted hereunder.

(5) As a result of its investigation, the team may recommend that criminal charges be filed against the alleged offender. Any interested person who has information regarding the offenses described in this subsection (b) may forward a statement to the district attorney general as to whether prosecution is warranted and appropriate. Within fifteen (15) days of the completion of the district attorney general's investigation, the district attorney general shall advise the department and the team whether or not prosecution is justified and appropriate in the district attorney general's opinion in view of the circumstances of the specific case.

(c)(1) The specialized diagnostic assessment, evaluation, coordination, consultation, and other supportive services that the team shall be capable of provid-

ing, to the extent funds are specifically appropriated therefor, or by referral shall be capable of obtaining for the protection of the child, include, but are not limited to, the following:

(A) Telephone consultation services in emergencies and in other situations;

(B) Medical evaluation related to the sexual abuse;

(C) Such psychological and psychiatric diagnosis and evaluation services for the child, siblings, parent or parents, guardian or guardians, or other care givers, or any other individual involved in a child sexual abuse case, as a child protection team may determine to be needed;

(D) Short-term psychological treatment. It is the intent of the general assembly that the department provide or refer a child whose case has been validated by the department, and the child's family, for short-term psychological treatment before the department may close its case. Such short-term treatment shall be limited to no more than six (6) months' duration after treatment is initiated, except that the commissioner may authorize such treatment for individual children beyond this limitation if the commissioner deems it appropriate;

(E) Expert medical, psychological and related professional testimony in court cases;

(F) Case staffings to develop, implement and monitor treatment plans for a child whose case has been validated by the department. In all such case staffings, consultations, or staff activities involving a child, at least one (1) member of the team involved in the initial investigation shall continue to monitor the progress and status of the child whenever possible and within the same geographic area; and

(G) Case service coordination and assistance, including the location of services available from other public and private agencies in the community.

(2) In all instances where a child protection team is providing or has obtained by referral certain services to sexually abused children, other offices and units of the department shall avoid duplicating the provision of those services.

History.

Acts 1985, ch. 478, § 8; 1987, ch. 145, §§ 3, 5; T.C.A., § 37-1-606(a)(2), (4); Acts 1988, ch. 953, §§ 9, 18-20; 1996, ch. 675, § 17; 1999, ch. 453, §§ 1, 2; 2001, ch. 401, § 1; 2011, ch. 410 , § 3(f); 2012, ch. 925, § 5; 2013, ch. 236, § 81.

Compiler's Notes.

Acts 2001, ch. 401, § 4, provided that the amendment to this section, which added subdivision (a)(1)(B), shall apply to any investigation or any civil cause of action pending or filed on or after June 19, 2001.

For the Preamble to the act concerning the prohibition against establishment of a special committee if there is a standing committee on the same subject, please refer to Acts 2011, ch. 410.

37-1-608. Protective custody of children.

(a) A law enforcement officer, authorized person of the department, or other authorized person may take a child into custody as provided in part 1 of this chapter.

(b) Any person in charge of a hospital or similar institution or any physician treating a child may keep that child in custody until the next regular weekday session of the juvenile court without the consent of the parents, legal guardian or legal custodian, whether or not additional medical treatment is required, if the circumstances are such, or if the condition of the child is such, that continuing the child in the child's place of residence or in the care or custody of the parents, legal guardian or legal custodian presents an imminent danger to the child's life or physical or mental health. Any person taking a child into protective custody shall immediately notify the department, whereupon the department shall immediately begin a child protective investigation in accordance with the provisions of § 37-1-606, and shall make every reasonable effort to immediately notify the parents, legal guardian or legal custodian that such child has been taken into protective custody. If the department determines, according to the criteria set forth in § 37-1-114, that the child should remain in protective custody longer than the next regular weekday session of the juvenile court, it shall petition the court for an order authorizing such custody in the same manner as if the child were placed in a shelter. The department shall attempt to avoid the placement of a child in an institution whenever possible.

History.

Acts 1985, ch. 478, § 9.

37-1-609. Photographs and examinations of suspected abuse — Video recordings.

(a) Any person required to investigate cases of suspected child sexual abuse may take or cause to be taken photographs of the areas of trauma visible on a child who is the subject of a report and, if the condition of the child indicates a need for a medical examination, may cause the child to be referred for diagnosis to a licensed physician or an emergency department in a hospital without the consent of the child's parents, legal guardian or legal custodian. Any licensed physician who, based on information furnished by the investigator, the parents or other persons having knowledge of the situation, or the child, or on personal observation of the child, suspects that a child has been sexually abused may authorize appropriate examinations to be performed on the child without the consent of the child's parents, legal guardian or legal custodian.

(b) Any photograph or report on examinations made or x-rays taken pursuant to this section, or copies thereof, shall be sent to the department as soon as possible, at which point such records shall be available to the members of the team. All state, county and local agencies shall give the team or the department access to records in their custody and shall otherwise cooperate fully with the investigation.

(c) At the initial investigation of child sexual abuse by the child protection team, and at any subsequent investigations as deemed appropriate by the team, when a justifiable suspicion of sexual abuse exists, a videotape recording that meets the standards as estab-

lished by § 24-7-117 may be taken of the traumatized victim. The video recording shall be taken for the purpose of indicating the child's physical or mental condition at the time the report is investigated and shall be made available for future reference and for utilization as provided in this part.

History.
Acts 1985, ch. 478, § 10; 1987, ch. 145, § 20; 1988, ch. 953, § 11.

37-1-610. Guardian ad litem — Parental reimbursement of costs and expenses.

(a) A guardian ad litem shall be appointed to represent the child in any child sexual abuse civil or juvenile judicial proceeding and in general sessions or criminal court at the discretion of the court. Any person participating in such proceeding resulting from such appointment shall be presumed prima facie to be acting in good faith and in so doing shall be immune from any liability, civil or criminal, that otherwise might be incurred or imposed.

(b) In those cases in which the parents are financially able, the court may order such parent or parents to reimburse the court to the extent of insurance coverage; provided, that the court shall order the perpetrator in all cases, whether such person is a parent or other person, to fully reimburse the court for such expenses, for the cost of provision of guardian ad litem services and any medical and treatment costs resulting from the child sexual abuse. Reimbursement to the individual providing such services shall not be contingent upon successful collection by the court from the parent or parents.

History.
Acts 1985, ch. 478, § 11.

37-1-611. Duties of department of children's services — Cooperation with department — Publicity and education program.

(a) The department shall:

(1) Have prime responsibility for strengthening and improving child sexual abuse detection, prevention and treatment efforts;

(2) Seek and encourage the development of improved or additional programs and activities, the assumption of prevention and treatment responsibilities by additional agencies and organizations, and the coordination of existing programs and activities;

(3) To the fullest extent possible, cooperate with and seek cooperation of all appropriate public and private agencies, including health, education, social services, and law enforcement agencies, and courts, organizations, or programs providing or concerned with children's services related to the prevention, detection, intervention or treatment of child sexual abuse; and

(4) Provide ongoing protective, treatment and ameliorative services to, and on behalf of, children in need of protection to safeguard and ensure their well-being and, whenever possible, to preserve and stabilize family life.

(b) All state, county, and local agencies have a duty to give such cooperation, assistance, and information to the department as will enable it to fulfill its responsibilities.

(c) The department shall conduct a continuing publicity and education program to encourage the fullest degree of reporting of suspected child sexual abuse for staff and officials required to report and any other appropriate persons. The program shall include, but not be limited to, information concerning the responsibilities, obligations, and powers provided under this part; the methods for diagnosis of child sexual abuse; and the procedures of the child protective service program, the juvenile court, and other duly authorized agencies. In developing training programs for staff, the department shall place emphasis on preservice and inservice training for single intake, protective services, and foster care staff, which would include skills in diagnosis and treatment of child sexual abuse and procedures of the child protective system and judicial process.

History.
Acts 1985, ch. 478, § 12; 1996, ch. 1079, § 73.

37-1-612. Confidentiality of records and reports — Violations — Access to records — Confirmation of investigation — Anonymity of abuse reporters.

(a) In order to protect the rights of the child and the child's parents or other persons responsible for the child's welfare, all records concerning reports of child sexual abuse, including files, reports, records, communications and working papers related to investigations or providing services; video tapes; reports made to the abuse registry and to local offices of the department; and all records generated as a result of such processes and reports, shall be confidential and exempt from other provisions of law, and shall not be disclosed, except as specifically authorized by chapter 5, part 5 of this title, this part and part 4 of this chapter.

(b) Except as otherwise provided in § 37-5-107, this part or part 4 of this chapter, it is unlawful for any person, except for purposes directly connected with the administration of this part, to disclose, receive, make use of, authorize or knowingly permit, participate in, or acquiesce to the use of any list or name, or any information concerning a report or investigation of a report of harm under this part, directly or indirectly derived from the records, papers, files or communications of the department or other entities authorized by law to assist the department when such information was acquired in the course of the performance of official duties. Disclosure may be made to persons and entities directly involved in administration of this part, including:

(1) Department employees, medical professionals, and contract or other agency employees who provide services, including those from child advocacy centers, to children and families; and

(2) The attorney or guardian ad litem for a child who is the subject of the records. Information shared

with such persons and entities does not lose its character as confidential.

(c) In addition to such other purposes as may be directly connected with the administration of this part, access to such records, excluding the name of the reporter, which shall be released only as provided in subsection (g), shall be granted to the following persons, officials, or agencies for the following purposes:

(1) A law enforcement agency investigating a report of known or suspected child sexual abuse;

(2) The district attorney general of the judicial district in which the child resides or in which the alleged abuse occurred;

(3) A grand jury, by subpoena, upon its determination that access to such records is necessary in the conduct of its official business;

(4) Any person engaged in bona fide research or audit purposes. However, no information identifying the subjects of the report shall be made available to the researcher unless such information is absolutely essential to the research purpose, suitable provision is made to maintain the confidentiality of the data and the department has given written approval;

(5) A court official, probation and parole officer, designated employee of the department of correction or board of probation and parole or other similarly situated individual charged with the responsibility of preparing information to be presented in any administrative or judicial proceeding concerning any individual charged with or convicted of any offense involving child abuse or neglect or child sexual abuse;

(6) An attorney or next friend who is authorized to act on behalf of the child, who is the subject of the records, for the purpose of recovering damages or other remedies authorized by law in a civil cause of action against the perpetrator or other person or persons who may be responsible for the actions of the perpetrator;

(7) An attorney or next friend who is authorized to act on behalf of another child, who has been the victim of other abuse by the same perpetrator, for the purpose of recovering damages or other remedies authorized by law in a civil cause of action against the perpetrator or other person or persons who may be responsible for the actions of the perpetrator against such other child; provided, however, that:

(A) The name and identity of such other child shall be revealed only to the attorney or next friend of such other child, to the parties and to their respective counsel in the civil cause of action in which such damages or other remedies are sought, and to the trial judge who presides over the action;

(B) An appropriate protective order must be entered prior to such disclosure; and

(C) Before any attempt is made to introduce into evidence in the civil cause of action either the records or information obtained from the records, written consent must be obtained from:

(i) Each parent or guardian having sole or joint custody of such other child, if the child has not yet attained the age of majority; or

(ii) The former child, if such child has now attained the age of majority; and

(8) Members of the Tennessee claims commission, its staff and employees of the division of claims administration for the purpose of determining if:

(A) A claim filed with the commission based on facts contained in the record constitutes a compensable criminal offense under the Criminal Injuries Compensation Act, compiled in title 29, chapter 13;

(B) The offense alleged occurred; and

(C) The claimant's injuries were the result of the offense.

(d) The department may release to professional persons such information as is necessary for the diagnosis and treatment of the child or the person perpetrating the sexual abuse.

(e) The department may confirm whether a child sexual abuse investigation has been commenced, but may not divulge, except as permitted under this part, any details about the case, including, but not limited to, the name of the reporter, the alleged victim, or the alleged perpetrator.

(f) The department shall adopt such rules as may be necessary to carry out the following purposes:

(1) The establishment of administrative and due process procedures for the disclosure of the contents of its files and the results of its investigations for the purpose of protecting children from child sexual abuse; and

(2) For other purposes directly connected with the administration of this chapter, including, but not limited to, cooperation with schools, child care agencies, residential and institutional child care providers, child protection agencies, individuals providing care or protection for the child, medical and mental health personnel providing care for the child and the child's family and the perpetrator of any form of child abuse or neglect, law enforcement agencies, the judicial and correctional systems, and for cooperation with scientific and governmental research on child abuse and neglect.

(g) The name of any person reporting child sexual abuse shall in no case be released to any person other than employees of the department or other child protection team members responsible for child protective services, the abuse registry, or the appropriate district attorney general upon subpoena of the Tennessee bureau of investigation without the written consent of the person reporting. This shall not prohibit the subpoenaing of a person reporting child sexual abuse when deemed necessary by the district attorney general or the department to protect a child who is the subject of a report; provided, that the fact that such person made the report is not disclosed. Any person who reports a case of child sexual abuse may, at the time the person makes the report, request that the department notify such person that a child protective investigation occurred as a result of the report. The department shall mail such a notice to the reporter within ten (10) days of the completion of the child protective investigation.

(h) For purposes directly connected with the administration of this part and part 4 of this chapter, the

department may disclose any relevant information to the court, administrative board or hearing officer, the parties, or their legal representatives in any proceeding that may be brought in any court, or before any administrative board or hearing officer, for the purpose of protecting a child or children from child abuse or neglect or child sexual abuse. In the event of any disagreement between the department and any other parties as to what information should be disclosed, the court, administrative board or hearing officer may enter an order allowing access to any information that it finds necessary for the proper disposition of the case. The court, administrative board or hearing officer may order any information disclosed in such proceeding to be placed and kept under seal and not to be open to public inspection to the extent it finds it necessary to protect the child. This provision shall not be construed to allow any person to gain access to any identifying information about a child who is not the subject of the proceeding.

History.
Acts 1985, ch. 478, § 13; 1987, ch. 145, §§ 12-14, 16, 17, 24; 1988, ch. 953, § 10; 1998, ch. 1049, § 5; 1999, ch. 522, §§ 1, 2; 2000, ch. 981, §§ 51, 74; 2001, ch. 401, § 3; 2007, ch. 476, § 1; 2008, ch. 1146, § 2.

Compiler's Notes.
Acts 2001, ch. 401, § 4 provided that the act, which added subdivisions (c)(6) and (7), shall apply to any investigation or any civil cause of action pending or filed on or after June 19, 2001.
Acts 2007, ch. 476, § 2 provided that the act, which added subdivision (c)(8), shall apply to claims for compensation filed on or after January 1, 2006.

37-1-613. Immunity from civil or criminal liability.

Any person making a report of child sexual abuse shall be afforded the same immunity and shall have the same remedies as provided by § 37-1-410 for other persons reporting harm to a child. Any other person, official or institution participating in good faith in any act authorized or required by this part shall be immune from any civil or criminal liability that might otherwise result by reason of such action.

History.
Acts 1985, ch. 478, § 14.

37-1-614. Evidentiary privileges inapplicable in child sexual abuse cases.

The privileged quality of communication between husband and wife and between any professional person and the professional person's patient or client, and any other privileged communication, except that between attorney and client, as such communication relates both to the competency of the witness and to the exclusion of confidential communications, shall not apply to any situation involving known or suspected child sexual abuse and shall not constitute grounds for failure to report as required by this part, failure to cooperate with the department in its activities pursuant to this part, or failure to give evidence in any judicial proceeding relating to child sexual abuse.

History.
Acts 1985, ch. 478, § 15.

37-1-615. Violations — Penalties.

(a) Any person required to report known or suspected child sexual abuse who knowingly and willfully fails to do so, or who knowingly and willfully prevents another person from doing so, commits a Class A misdemeanor.

(b) Any person who knowingly and willfully makes public or discloses any confidential information contained in the abuse registry or in the records of any child sexual abuse case, except as provided in this part, commits a Class A misdemeanor.

History.
Acts 1985, ch. 478, § 16; 1989, ch. 591, § 111.

37-1-616. Rules and regulations.

The department may promulgate necessary rules and regulations in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, in furtherance of this part.

History.
Acts 1985, ch. 478, § 17.

PART 7

TENNESSEE TEEN COURT PROGRAM OF 2000

37-1-701. Short title.

This part shall be known and may be cited as the "Tennessee Teen Court Program of 2000."

History.
Acts 2000, ch. 792, § 1.

37-1-702. Authority to establish teen court — Procedure for participation — Determining factors for participation — Authority of teen court.

(a) Any juvenile court judge is authorized to establish a teen court program pursuant to this part. In a jurisdiction in which there are multiple juvenile court judges, each judge may establish a teen court program. In any jurisdiction in which a teen court program is established, a teen charged with an offense specified under this part may receive a deferred judgment, a condition of which is successful completion of the teen court program. As a part of such program, the teen shall receive a disposition recommended by a five-member teen court and confirmed by the juvenile court judge. The teen court shall be held at a place to be determined by the local juvenile court judge.

(b) The procedure for the court to determine participation in the teen court is as follows:

(1) Pursuant to local, written procedures adopted by the juvenile court, participation in the teen court program may be initiated by an officer of the court under the informal adjustment or pretrial diversion process of § 37-1-110;

(2)(A) After the court places a child on judicial diversion or adjudicates a child delinquent or un-

ruly pursuant to § 37-1-129, the court may direct that the disposition determination will be made by the teen court;

(B) When a juvenile court determines that a case is appropriate to be handled by the teen court, the teen shall be informed by the court of the procedures for teen court disposition and shall be given an opportunity to enter a waiver of rights to participate in a teen court disposition. The court shall inform the teen that if the teen enters a waiver, including a waiver of any right for an attorney to be present during the dispositional stage, juvenile court proceedings shall be suspended for a period of six (6) months or such other time authorized by the local, written procedures of the juvenile court and a teen court may be empanelled to hear evidence on disposition; such teen court shall deliberate, and shall make a recommendation to the judge for disposition of the case, which may be confirmed by the juvenile court without further proceedings. If the teen elects to not enter a waiver, the judge shall proceed with the case as provided by law without referral to the teen court.

(c) In choosing cases to be referred to the teen court for disposition, the juvenile court shall determine that:

(1) The offense or attempted offense underlying the juvenile petition was one (1) of the following:

(A) Assault, § 39-13-101;

(B) Burglary, § 39-14-402;

(C) Theft of property, § 39-14-103;

(D) Vandalism, § 39-14-408;

(E) Forgery, § 39-14-114;

(F) Cruelty to animals, § 39-14-202;

(G) Unauthorized use of vehicle, § 39-14-106;

(H) [Deleted by 2016 amendment.]

(I) Disorderly conduct, § 39-17-305;

(J) Harassment, § 39-17-308;

(K) Criminal trespass, § 39-14-405;

(L) Traffic offense, § 37-1-146;

(M) Runaway, § 37-1-102(b)(24)(D);

(N) Truancy, § 37-1-102(b)(24)(A);

(O) Violation of curfew, § 39-17-1702;

(P) Unruly, § 37-1-102(b)(24);

(Q) Violation of any of the following sections of the Tennessee Drug Control Act, compiled in title 39, chapter 17, part 4:

(i) § 39-17-418(a) or (b), relative to simple possession or casual exchange of a controlled substance;

(ii) § 39-17-422(a) or (b), relative to smelling or inhaling fumes of any glue, paint, gasoline, aerosol, chlorofluorocarbon gas or other substance containing a solvent having the property of releasing toxic vapors or fumes, or possessing any glue containing a solvent having the property of releasing toxic vapors or fumes for the purpose of smelling or inhaling fumes or vapors;

(iii) § 39-17-426, relative to possession of gentiana lutea, also known as jimsonweed, on the premises or grounds of any school; or

(iv) § 39-17-454, relative to simple possession or casual exchange of a controlled substance analogue;

(R) Any criminal offense, status offense, violation, infraction or other prohibited conduct involving the possession, use, sale or consumption of any alcoholic beverage, wine or beer; or

(S) A second or subsequent violation, within a one (1) year period, of § 39-17-1505, regarding possession, purchase or acceptance of tobacco products, or offering false or fraudulent proof of age for the purpose of purchasing or receiving any tobacco product;

(2) The teen will benefit more from participation in the teen court and any disposition that may be recommended than from any other disposition that may be imposed;

(3) The teen, in the presence of at least one (1) of the teen's parents or guardian, has executed an informed waiver of rights, including any right to have an attorney present at the dispositional stage; and

(4) The particular case does not have any special circumstances, such as suspected mental illness or developmental disability of the teen, or special needs of the victim of the offense, that make the case inappropriate for referral to the teen court.

(d)(1) A teen court has the authority to conduct proceedings and to receive evidence and hear testimony related to the dispositional stage. The teen court shall consist of five (5) teen members chosen by the juvenile court as set out in § 37-1-704. The teen members shall choose a presiding officer who shall conduct the proceeding under the supervision of the juvenile court judge. After hearing all evidence and testimony, the teen court shall retire to deliberate and a written decision shall be written by the presiding officer.

(2) The written decision shall be transmitted to the juvenile court judge as a recommendation, together with all papers relating to the case. The written recommendation will specify a proposed disposition together with reasons therefor.

(3) Upon receipt of the recommendation, the judge shall review it, along with all papers relating to the case. The judge may accept, modify or reject the recommendation. If the judge accepts the recommendation as presented or modified, the judge shall confirm it by order. If the judge rejects the recommendation, the judge shall permit any additional hearing as may be necessary and shall enter an order as necessary.

(4) The juvenile court shall dismiss the petition or charges at the conclusion of the deferral period if the court determines that the teen has successfully completed the teen court program. If the teen fails to successfully complete the prescribed program, or if a new delinquent or unruly petition is filed against the teen during the deferral period, the petition under which the teen court disposition was ordered may be reinstated and the case may proceed as if the teen court disposition had never been entered.

History.
Acts 2000, ch. 792, § 1; imp. am. Acts 2000, ch. 947, § 6; Acts 2001, ch. 341, §§ 1-9; 2012, ch. 848, § 9; 2016, ch. 600, §§ 13-16.

Compiler's Notes.
Former subdivisions (e)(1) and (e)(2) of this section were redesignated in 2001 as § 37-1-703(a) and (b).
Former subsection (f) of this section was redesignated in 2001 as § 37-1-704 (a) and (b).
Former subsections (g) through (j) of this section were redesignated in 2001 as § 37-1-705(a)-(d).
Section 39-17-1505, referred to in (c)(1)(S), was amended in 2015 and now includes a prohibition against purchasing or receiving vapor products.

37-1-703. Authority of teen court.

(a) The teen court has the authority, in a case referred by the juvenile court, to recommend disposition of the case as permitted by this part. The teen court shall have no authority to recommend transfer of temporary legal custody to any person or entity or to require placement or treatment in any specific program. If the teen court determines that such transfer of temporary legal custody or placement is the only appropriate remedy, the case shall be referred back to the juvenile court for further proceedings. The teen court may recommend:

(1) Restitution, as defined in § 37-1-102, and subject to the provisions of § 37-1-131(b);

(2) Performance of community service work, subject to the requirements of § 37-1-131(a)(7);

(3) Limitations upon driving privileges; provided, that any disposition governed by § 55-10-701 shall include an order of denial of driving privileges;

(4) Participation as a teen court member;

(5) Attendance at court-approved education workshops on subjects such as substance abuse, safe driving, or victim awareness, or any of these things;

(6) Curfew limitations;

(7) School attendance; and

(8) Essay writing or similar research or school projects.

(b) Any dispositional recommendation shall comply with the requirements of this title, unless contrary to the express provisions of this part. Dispositional alternatives shall be chosen from a list approved by the juvenile court or shall be similar in kind to those set forth in subsection (a)(1).

History.
Acts 2000, ch. 792, § 1; imp. am. Acts 2000, ch. 947, § 6; Acts 2001, ch. 341, § 7.

37-1-704. Empaneling teen court members.

(a) Any juvenile court judge who establishes a teen court shall choose, at the beginning of the school year, a panel of twelve (12) or more teenagers to serve as teen court members. Each teen court for a specific case shall consist of five (5) members chosen from the panel of twelve (12). Such teens shall be chosen from the local public and private high schools or middle schools. They shall be selected by the juvenile court judge in consultation with the local principal or principals. The judge shall attempt to choose teens who are not otherwise active in extracurricular activities.

(b) Youth participating in teen court programs may not receive any compensation for their service; provided, however, that youth participating in teen court may receive unsolicited tokens or awards of appreciation, or bona fide awards in recognition of public service in the form of a plaque, trophy, desk item, tee-shirt, beverage mug, plastic cup, wall memento and similar items so long as any such item is not in a form that can be readily converted to cash. In the event a youth participating in teen court attends a conference, training, retreat or similar event as a part of the youth's participation in teen court, the youth may be reimbursed for such travel expenses in conformity with comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter. The juvenile court shall certify the name, address, and school attended of each teen court member to the secretary of state who shall issue a certificate of participation for each to the juvenile court judge.

History.
Acts 2000, ch. 792, § 1; imp. am. Acts 2000, ch. 947, § 6; Acts 2001, ch. 341, § 8; 2002, ch. 539, § 1.

37-1-705. Legislative intent — Location of teen court proceedings — Immunity of participants — Confidentiality.

(a) It is the legislative intent that teen court proceedings shall be, to the extent possible, conducted by teens with limited adult participation. The Tennessee Rules of Juvenile Procedure shall not apply. The juvenile court judge shall have the authority to appoint teens to serve as prosecuting and defense attorneys. It is further the legislative intent that the juvenile court shall have the flexibility to establish procedures, not inconsistent with this part, to assure fairness and equity and to protect the rights of all parties.

(b) Every juvenile court judge, whether or not such judge establishes a teen court, may hold juvenile court proceedings at a public high school or middle school in the county of the court's jurisdiction for at least one (1) day per year. Such court proceeding shall be publicized in cooperation with the local school authorities in a manner to encourage teen observation and, where appropriate, participation.

(c) Each participant in teen court proceedings has the same immunity provided by law for judicial proceedings.

(d) All records used in, or otherwise related to, teen court proceedings shall be confidential to the full extent provided by current law, except as necessary to permit functioning of the teen court. Nothing contained in this section shall, in any manner, alter the confidentiality of records or proceedings under current juvenile court law.

History.
Acts 2000, ch. 792, § 1; imp. am. Acts 2000, ch. 947, § 6; Acts 2001, ch. 341, § 9.

37-1-706. Construction of part.

(a) Nothing in this part shall be deemed to impair the authority of juvenile courts to adopt different or alter-

native procedures for the establishment of or the operation of an existing teen court program within their respective jurisdictions. Any such teen court program shall meet due process standards including, but not limited to, those pertaining to informed and voluntary participation in the program and any necessary waiver of rights.

(b) Upon adoption of local, written procedures, a juvenile court may delegate responsibility for operation of a teen court program to a person licensed to practice law in this state.

(c) Any reference to "juvenile court" or "juvenile court judge" in this part shall be interpreted to include a magistrate under § 37-1-107.

History.
Acts 2001, ch. 341, § 10; 2009, ch. 235, § 1.

Compiler's Notes.
Acts 2009, ch. 235, § 1 directed the code commission to revise appropriate references from "child support referees" and "juvenile referees" to "child support magistrates" and "juvenile magistrates" in the code as supplements are published and volumes are replaced.

PART 8

PERMANENT GUARDIANSHIP

37-1-801. Power of the juvenile courts to appoint a permanent guardian.

The juvenile courts of Tennessee are empowered to appoint an individual a permanent guardian; provided, that the individual qualifies under the provisions of this part. The juvenile court may establish a permanent guardianship at a permanency planning hearing or at any other hearing in which a permanent legal disposition of the child can be made, including a child protection proceeding or a delinquency proceeding.

History.
Acts 2005, ch. 389, § 1.

37-1-802. Who may be appointed permanent guardian — Criteria for children and permanent guardian — Best interests determination.

(a) The court may consider any adult, including a relative, foster parent, or another adult with a significant relationship with the child as a permanent guardian. If the child is in the department's custody, the court shall seek the department's opinion on both the proposed permanent guardianship and the proposed permanent guardian. An agency or institution may not be a permanent guardian.

(b) The court may issue a permanent guardianship order only if the court finds that:

(1) The child has been previously adjudicated dependent and neglected, unruly or delinquent;

(2) The child has been living with the proposed permanent guardian for at least six (6) months;

(3) The permanent guardianship is in the child's best interests;

(4) Reunification of the parent and child is not in the child's best interests; and

(5) The proposed permanent guardian:

(A) Is emotionally, mentally, physically and financially suitable to become the permanent guardian;

(B) Is suitable and able to provide a safe and permanent home for the child;

(C) Has expressly committed to remain the permanent guardian for the duration of the child's minority;

(D) Has expressly demonstrated a clear understanding of the financial implications of becoming a permanent guardian, including an understanding of any potential resulting loss of state or federal benefits or other assistance; and

(E) Will comply with all terms of any court order to provide the child's parent with visitation, contact or information.

(c) In determining whether it is in the child's best interests that a permanent guardian be designated, in addition to any other evidence the court finds relevant, the court shall consider each of the following factors:

(1) The child's need for continuity of care and caregivers, and for timely integration into a stable and permanent home, taking into account the differences in the development and the concept of time of children of different ages;

(2) The physical, mental, and emotional health of all individuals involved to the degree that each affects the welfare of the child, the decisive consideration being the physical, mental, and emotional needs of the child; and

(3) The quality of the interaction and interrelationship of the child with the child's parent, siblings, relatives, and caregivers, including the proposed permanent guardian.

(d) Appointment of a permanent guardian under this part is not limited to children in the custody of the department.

(e) If the child is twelve (12) years of age or older, the court shall consider the reasonable preference of the child. The court may hear the preference of a younger child. The preferences of older children should normally be given greater weight than those of younger children.

(f) The parent may voluntarily consent to the permanent guardianship, and shall demonstrate an understanding of the implications and obligations of such consent prior to the court entering an order establishing a permanent guardianship in accordance with the provisions of this part.

History.
Acts 2005, ch. 389, § 1.

37-1-803. Permanent guardianship not a termination of parent child relationship — Visitation, contact and sharing of information.

(a) Entry of a permanent guardianship order does not terminate the parent and child relationship, including:

(1) The right of the child to inherit from the child's

parents;

(2) The parents' right to visit or contact the child, as defined by the court;

(3) The parents' right to consent to the child's adoption; and

(4) The parents' responsibility to provide financial, medical, and other support for the child.

(b) The permanent guardianship order shall specify the frequency and nature of visitation or contact or the sharing of information with parents and the child. The court shall issue an order regarding visitation, contact and the sharing of information based on the best interests of the child. The order may restrict or prohibit visitation, contact and the sharing of information. The order may incorporate an agreement reached among the parties.

(1) Upon a showing by affidavit of immediate harm to the child, the court may temporarily stay, for a maximum of thirty (30) days, the order of visitation or contact, on an ex parte basis, until a hearing can be held. A modification of an order of visitation or contact shall be based upon a finding, by a preponderance of evidence, that there has been a substantial change in the material circumstances, and that the proposed modification is in the best interest of the child.

(2) Nothing in this part shall prevent removal of the child by the department from the permanent guardian, based upon allegations of abuse or neglect, pursuant to §§ 37-1-113 and 37-1-128.

History.
Acts 2005, ch. 389, § 1; 2006, ch. 802, § 1.

37-1-804. Custody — Rights and responsibilities of permanent guardian — Liability.

(a) The permanent guardian shall maintain physical custody of the child and shall have the following rights and responsibilities concerning the child:

(1) To protect, nurture, discipline, and educate the child;

(2) To provide food, clothing, shelter, and education as required by law, and necessary health care, including medical, dental and mental health, for the child;

(3) To consent to health care, without liability by reason of the consent for injury to the child resulting from the negligence or acts of third persons, unless a parent would have been liable in the circumstances;

(4) To authorize a release of health care and educational information;

(5) To authorize a release of information when consent of a parent is required by law, regulation, or policy;

(6) To consent to social and school activities of the child;

(7) To consent to military enlistment or marriage;

(8) To obtain representation for the child in legal actions;

(9) To determine the nature and extent of the child's contact with other persons;

(10) To make decisions regarding travel; and

(11) To manage the child's income and assets.

(b) The permanent guardian is not liable to third persons by reason of the relationship for acts of the child.

History.
Acts 2005, ch. 389, § 1.

37-1-805. Jurisdiction of court.

The court shall retain jurisdiction to enforce, modify, or terminate a permanent guardianship order until the child reaches eighteen (18) years of age, or the age of nineteen (19) for children adjudicated delinquent.

History.
Acts 2005, ch. 389, § 1.

37-1-806. Modification or termination.

(a) A modification or termination of the permanent guardianship may be requested by the permanent guardian, by the child if the child is sixteen (16) years of age or older, the parent, or by the state. A modification or termination may also be ordered by the juvenile court on its own initiative.

(b) Where the permanent guardianship is terminated by a juvenile court order, the court shall make further provisions for the permanent guardianship or custody of the child, based upon the best interests of the child.

(c) An order for modification or termination of the permanent guardianship shall be based on a finding, by a preponderance of the evidence, that there has been a substantial change in material circumstances, or a determination by the court that one (1) or more findings required by § 37-1-802(b) no longer can be supported by the evidence. In determining whether there has been a substantial change in circumstances, the court may consider whether the child's parent is currently able and willing to care for the child, or that the permanent guardian is unable to continue to care for the child.

(d) Prior to issuing an order modifying or terminating the order of permanent guardianship, the court shall also find that the proposed modification or termination is in the best interests of the child. In determining whether it is in the child's best interest that the permanent guardianship be modified or terminated, the court shall consider, along with other evidence determined to be relevant, the following factors:

(1) The child's need for continuity of care and caregivers, and for timely integration into a stable and permanent home, taking into account the differences in the development and the concept of time of children of different ages;

(2) The physical, mental, and emotional health of all individuals involved, to the degree that each affects the welfare of the child, the decisive consideration being the physical, mental, and emotional needs of the child; and

(3) The quality of the interaction and interrelationship of the child with the child's parent, siblings, relatives, and caregivers, including the proposed permanent guardian.

(e) Prior to modifying or terminating the permanent guardianship order to return the child to the parent, the court must consider whether there has been resolution of the factors in the home that resulted in the adjudication of the child as dependent and neglected, unruly, or delinquent. Where there has been involvement of the family with the department, consideration may include the parent's history of participation in working toward completion of the permanency plan.

(f) In the event that it is necessary to appoint a successor permanent guardian, appropriate parties may be considered by the court, with the parent having no greater priority than a third party. The court may also consider, where appropriate, return of custody to the parent.

(g) If a child is in partial or permanent guardianship of the department pursuant to title 36, that guardianship may be transferred to a permanent guardian pursuant to this section with the consent of the guardian.

History.
Acts 2005, ch. 389, § 1; 2007, ch. 372, §§ 5, 6.

37-1-807. Monetary support of the child — How child claimed for tax purposes.

(a) Nothing under this part shall preclude the permanent guardian from receiving money paid for the child's support to the child's parent under the terms of any statutory benefit or insurance system or any private contract, settlement, agreement, court order, devise, trust, conservatorship, or custodianship, and money or property of the child.

(b) In the event the income and assets of the parent qualify the child for government benefits, the benefits may be conferred upon the child with the payment to be made to the permanent guardian. The provision of necessities by the permanent guardian shall not disqualify the child for any benefit or entitlement.

(c) The court may order and decree that the parent or other legally obligated person shall pay, in such manner as the court may direct, a reasonable sum that will cover, in whole or in part, the support and medical treatment of the child after the permanent guardianship order is entered. If the parent or other legally obligated person willfully fails or refuses to pay such sum, the court may proceed against that person for contempt, or may file the order, which shall have the effect of a civil judgment.

(d) If applicable, in the order the court shall provide how the child should be claimed as a dependent for the federal income tax purposes.

History.
Acts 2005, ch. 389, § 1.

CHAPTER 2

PLACEMENT OF JUVENILES

Part 1. Tennessee Preparatory School [Repealed]

SECTION.

37-2-101 — 37-2-114. [Repealed.]

Part 2. County Department of Children's Services Act of 1979

37-2-201. Short title.
37-2-202. Authority to establish department.
37-2-203. Appointment of director and other personnel.
37-2-204. Authority to establish and operate homes.
37-2-205. Commitment of dependent and neglected, delinquent or unruly children — Contracts for per diem allowance — Records — Minimum qualifications and standards.
37-2-206. Modification of court order.
37-2-207. Use of facilities of another county.
37-2-208. Authority to appropriate funds.

Part 3. Subsidized Receiving Homes

37-2-301. Authority to provide.
37-2-302. Appropriations and tax levy for subsidizing homes.
37-2-303. State's contribution to cost of subsidizing homes.
37-2-304. Rules and regulations of department of human services.
37-2-305. Inspection and license by department of human services required.
37-2-306. Licensed home requirements — Approval by health and fire prevention departments.
37-2-307. Contents of license — Limitation on number of children.
37-2-308. Record of license kept by department of human services and county mayor.
37-2-309. License must be maintained on premises.
37-2-310. Revocation of license.
37-2-311. License necessary to receive child or subsidy therefor.
37-2-312. Contract with licensed receiving homes — Terms.
37-2-313. Quarterly reports made by county to department of human services.
37-2-314. Commitment of children to homes.
37-2-315. Period of commitment.
37-2-316. Case record kept on each child.
37-2-317. Investigation by department of human services.
37-2-318. Exceeding number of children authorized prohibited — Keeping children in place not designated in license prohibited.
37-2-319. Violation of part — False statements or reports — Penalty.

Part 4. Foster Care

37-2-401. Legislative intent — Construction of part.
37-2-402. Part definitions.
37-2-403. Contents of permanency plan — Statement of responsibilities — Collection of information on biological parents.
37-2-404. Progress report to court or review board — Review of permanency plan.
37-2-405. Adoption of guidelines.
37-2-406. Foster care review boards — Request by judges for recommendations in making appointments — Composition — Option for judges to review cases.
37-2-407. Department of children's services — Duties.
37-2-408. Confidentiality of plans and records.
37-2-409. Permanency hearings.
37-2-410. Rehearing — Modification of order.
37-2-411. Annual report on foster care — Confidentiality of report — Injunction and action for damages.
37-2-412. Smoke detectors required in foster care dwellings.
37-2-413. Department rulemaking to comply with federal regulations.
37-2-414. Kinship Foster Care Program.
37-2-415. Foster parents' rights.
37-2-416. Notice of hearing to foster parent, adoptive parent or relative providing care.
37-2-417. Tennessee's Transitioning Youth Empowerment Act of 2010.
37-2-418. Reasonable and prudent parent standard — Definitions — Application — Liability.

Part 5. Tennessee Runaway Act

37-2-501. Short title.
37-2-502. Part definitions.
37-2-503. Registration requirement for runaway houses.
37-2-504. Minimum standards for runaway houses — Establishment.
37-2-505. Minimum standards — Contents.
37-2-506. Shelter for runaways.
37-2-507. Violations — Penalties.

Part 6. Extension of Foster Care

37-2-601. Establishment of extension of foster care services advisory council.

SECTION.
37-2-602. Determination of whether youth applicants for assistance were formerly in state custody — Identification by state agencies on agency forms — Sharing of information.
37-2-603. Establishment of resource centers to provide or facilitate assistance.
37-2-604. Preparing foster children for independent living.
37-2-605. Construction of part.

PART 1

TENNESSEE PREPARATORY SCHOOL [REPEALED]

37-2-101 — 37-2-114. [Repealed.]

Compiler's Notes.
Former part 1, §§ 37-2-101 — 37-2-114, (Acts 1917, ch. 126, §§ 1, 2; Shan., § 4433a; Code 1932, §§ 4663, 4664; Acts 1953, ch. 247, §§ 1-10, 12, 13 (Williams, §§ 4662.1-4662.7, 4662.9, 4662.10, 4662.12, 4662.13); 1967, ch. 33, §§ 1, 2; 1967, ch. 35, § 1; 1972, ch. 469, § 3; 1973, ch. 308, § 1; 1974, ch. 536, § 1; 1981, ch. 251, §§ 1-4; 1982, ch. 621, § 1; T.C.A. (orig. ed.), §§ 37-301 — 37-308, 37-310 — 37-315), concerning the Tennessee Preparatory School, was repealed by Acts 1996, ch. 1079, § 109, effective May 21, 1996.

PART 2

COUNTY DEPARTMENT OF CHILDREN'S SERVICES ACT OF 1979

37-2-201. Short title.

This part shall be known and may be cited as the "County Department of Children's Services Act of 1979."

History.
Acts 1979, ch. 143, § 1; T.C.A., § 37-401.

37-2-202. Authority to establish department.

The various counties are hereby authorized to establish and operate a department of children's services to take custody and guardianship of the person of any child adjudicated dependent and neglected, unruly or delinquent by a juvenile court and placed in the custody of such department.

History.
Acts 1979, ch. 143, § 2; T.C.A., § 37-402.

37-2-203. Appointment of director and other personnel.

The county mayor may, with the approval of the county legislative body, appoint a director and such other personnel as may be deemed necessary to provide efficient management of homes and institutions owned or operated by the county, and to assure that children in custody of such department receive the proper care and services. Each such director shall serve at the will and pleasure of the appointing authority.

History.
Acts 1979, ch. 143, § 3; T.C.A., § 37-403; Acts 2003, ch. 90, § 2.

Compiler's Notes.
Acts 2003, ch. 90, §2, directed the code commission to change all references from "county executive" to "county mayor" and to include all such changes in supplements and replacement volumes for the Tennessee Code Annotated.

37-2-204. Authority to establish and operate homes.

Counties and municipalities within this state are authorized and empowered to establish, erect, operate and maintain homes for the care and treatment of dependent and neglected, unruly and delinquent children, and to purchase services from any agency, public or private, that is authorized by law to receive or provide care or services for children.

History.
Acts 1979, ch. 143, § 4; T.C.A., § 37-404.

37-2-205. Commitment of dependent and neglected, delinquent or unruly children — Contracts for per diem allowance — Records — Minimum qualifications and standards.

(a) In addition to the dispositional alternatives provided by §§ 37-1-130 — 37-1-132, concerning dependent and neglected, delinquent or unruly children, the juvenile court judge of any county within the provisions of this part is hereby authorized and empowered to commit a child to the custody of such county department of children's services. Upon such commitment by the juvenile court judge, guardianship of the person of such child shall immediately transfer to the director of the county department.

(b) When any child is committed to a county department, the state, from available budgetary funds of any state department through which federal or other funds may be provided by law for the purchase of child care, may contract with the county department to pay a per diem allowance for each child so committed for the period of time each such child is in custody of the county department. The per diem allowance shall be determined by negotiation and contract between the county and state department through which such funds are available.

(c) The director of the county department shall keep or cause to be kept all records and reports required to be kept by a comparable state agency. Such records shall include the quarterly review of each child's treatment, rehabilitation and progress, and the procedures for such review prescribed by the director. Failure of the director to keep or maintain any such records and reports required to be kept by law shall relieve the state from its obligation to pay the county department the per diem allowance for any child upon whom inadequate records have been kept.

(d) The county department shall ensure that services provided to children in its care and facilities provided for that purpose shall meet all minimum qualifications and standards established by contract with the contracting department, but in no event shall such qualifications or standards be less stringent than those mandated by applicable state or federal law or regulation for the children in the care of the department. Failure to meet such qualifications and standards shall entitle the contracting department to withhold funds payable to the county pursuant to the contract. In all cases, the contracting state department shall have the authority to conduct such monitoring and inspection as may be necessary to enforce this provision.

(e) The department of children's services is authorized to enter into an agreement to pay a per diem allowance to a county for each delinquent child placed in a local facility for delinquent children operated under the direction of the court or other local public authority. As a condition of such payment, the agreement may require that the county pay to the department of children's services a per diem allowance in the same amount for each child committed from the county to the department of children's services. The per diem allowance shall be as agreed upon, but not less than seventy-five percent (75%) of the current actual cost of maintaining a child in a state correctional institution.

(f)(1)(A) In order to enhance communication between the department of children's services and juvenile court judges across the state, the department shall provide to the juvenile court judge(s) for each county a report which includes:

(i) The number of commitments to state custody for dependent and neglected children, unruly children, and delinquent children for the previous twelve-month period by county; and

(ii) The statewide average commitment rate per thousand youth based on the latest county population data as provided by the department of health.

(B) The report shall be provided to judges on a semiannual basis and shall also be made available on the department's web site.

(2) The department may initiate a collaborative planning process at the time a county's commitment rate is believed to be likely to exceed two hundred percent (200%) of the statewide average commitment rate. Upon request of the court, the department shall partner with the court to develop and implement strategies to address any factors contributing to higher commitment rates in such county.

(3) On or before January 31 of each year, the department of children's services shall provide to the judiciary committee of the senate and the civil justice committee of the house of representatives a report of county commitment data for the previous fiscal year and a description of actions taken as part of the collaborative planning process. The report shall be published as part of the department's annual report required by § 37-5-105(4).

History.

Acts 1979, ch. 143, § 5; 1983, ch. 239, § 1; T.C.A., § 37-405; Acts 1989, ch. 278, § 46; 1996, ch. 1079, § 110; 2009, ch. 531, § 30; 2010, ch. 662, § 1; 2011, ch. 410, § 3(g); 2013, ch. 236, § 21; 2015, ch. 178, § 1.

Compiler's Notes.

For the preamble to the act concerning the operation and funding of state government and to fund the state budget for the fiscal years beginning on July 1, 2008, and July 1, 2009, please refer to Acts 2009, ch. 531.

For the Preamble to the act concerning the prohibition against establishment of a special committee if there is a standing committee on the same subject, please refer to Acts 2011, ch. 410.

37-2-206. Modification of court order.

The director of a county department of children's services, or the director's designee, or any interested party, may petition the committing court to modify an order awarding custody of a child to the county department on the ground that changed circumstances so require in the best interest of the child.

History.

Acts 1979, ch. 143, § 6; T.C.A., § 37-406.

37-2-207. Use of facilities of another county.

Any county legislative body within the provisions of this part is hereby authorized to enter into an agreement with any other county for the use of the facility in its department of children's services. The county having such a department shall be entitled to reimbursement from the state in the same manner for any juvenile committed from such contracting county. Guardianship of all such juveniles committed from another county under this section shall immediately transfer to the director of the department of children's services to which the juvenile is committed.

History.

Acts 1979, ch. 143, § 7; T.C.A., § 37-407.

37-2-208. Authority to appropriate funds.

The county legislative body is hereby authorized to appropriate funds for the operation of the county department of children's services.

History.

Acts 1979, ch. 143, § 8; T.C.A., § 37-408.

PART 3

SUBSIDIZED RECEIVING HOMES

37-2-301. Authority to provide.

Counties, through their county legislative bodies, are authorized and empowered to set up subsidized receiving homes for the care of dependent, neglected or abandoned children, or children without proper parental care or guardianship, whenever an order is made by proper resolution duly adopted by a majority of the members constituting the legislative body and placed on the minutes of the legislative body.

History.
Acts 1949, ch. 222, § 1; C. Supp. 1950, § 4746.1 (Williams, § 4765.119); T.C.A. (orig. ed.), § 37-601.

37-2-302. Appropriations and tax levy for subsidizing homes.

County legislative bodies are authorized and empowered to appropriate from funds on hand not otherwise appropriated, such sums as the legislative body may deem necessary to subsidize such homes and to furnish board and care for children committed to such homes as provided in § 37-2-314; or the legislative bodies may levy a tax on property to meet such appropriations. These sums shall be paid by warrant drawn on the county treasury when proper invoice or bill has been audited and approved by the county mayor or the county mayor's designated agent.

History.
Acts 1949, ch. 222, § 2; C. Supp. 1950, § 4746.2 (Williams, § 4765.120); T.C.A. (orig. ed.), § 37-602; Acts 2003, ch. 90, § 2.

Compiler's Notes.
Acts 2003, ch. 90, § 2, directed the code commission to change all references from "county executive" to "county mayor" and to include all such changes in supplements and replacement volumes for the Tennessee Code Annotated.

37-2-303. State's contribution to cost of subsidizing homes.

The state of Tennessee, through the department of human services, shall set up a grant in aid fund in the support of every licensed receiving home in the amount of fifty percent (50%) of the cost of subsidizing the home and fifty percent (50%) of the boarding care and special needs of any child placed in the home as provided in § 37-2-314.

History.
Acts 1949, ch. 222, § 3; C. Supp. 1950, § 4746.3 (Williams, § 4765.121); T.C.A. (orig. ed.), § 37-603.

Compiler's Notes.
This section may be affected by § 9-1-116, concerning entitlement to funds, absent appropriation.

37-2-304. Rules and regulations of department of human services.

The department of human services is empowered and directed to promulgate and enforce such rules and regulations for the conduct of all such receiving homes as shall be necessary to effect the purpose of this part and other laws of the state relating to children and safeguard the well being of all children kept therein.

History.
Acts 1949, ch. 222, § 13; C. Supp. 1950, § 4746.13 (Williams, § 4765.131); impl. am. Acts 1975, ch. 219, § 1; T.C.A. (orig. ed.), § 37-604.

37-2-305. Inspection and license by department of human services required.

No home in any county shall be approved as a county receiving home until it has been inspected and licensed by the department of human services, and such license shall not be issued for a period longer than one (1) year.

History.
Acts 1949, ch. 222, § 6; C. Supp. 1950, § 4746.6 (Williams, § 4765.124); impl. am. Acts 1975, ch. 219, § 1; T.C.A. (orig. ed.), § 37-605.

37-2-306. Licensed home requirements — Approval by health and fire prevention departments.

No such license shall be issued unless the premises are in a fit sanitary condition, and the home is equipped and staffed to provide properly for the physical, social, moral, mental, educational and religious needs of all children kept therein. The application for such license shall have been approved by the department of health and the fire prevention division of the department of commerce and insurance.

History.
Acts 1949, ch. 222, § 7; C. Supp. 1950, § 4746.7 (Williams, § 4765.125); impl. am. Acts 1971, ch. 137, § 1; T.C.A. (orig. ed.), § 37-606.

37-2-307. Contents of license — Limitation on number of children.

The license shall state the name of the licensee, the particular premises in which the business may be carried on, and the number of children, not to exceed eight (8), that may be properly boarded or cared for therein at any one time.

History.
Acts 1949, ch. 222, § 8; C. Supp. 1950, § 4746.8 (Williams, § 4765.126); T.C.A. (orig. ed.), § 37-607.

37-2-308. Record of license kept by department of human services and county mayor.

A record of the license so issued shall be kept by the department of human services and by the county mayor of the county in which the home is located.

History.
Acts 1949, ch. 222, § 9; C. Supp. 1950, § 4746.9 (Williams, § 4765.127); impl. am. Acts 1975, ch. 219, § 1; T.C.A. (orig. ed.), § 37-608; Acts 2003, ch. 90, § 2.

Compiler's Notes.
Acts 2003, ch. 90, § 2, directed the code commission to change all references from "county executive" to "county mayor" and to include all such changes in supplements and replacement volumes for the Tennessee Code Annotated.

37-2-309. License must be maintained on premises.

Such license shall be kept and maintained upon the premises at all times and exhibited upon request of any member of the general public or representative of the state, county or municipal government.

History.
Acts 1949, ch. 222, § 12; C. Supp. 1950, § 4746.12 (Williams, § 4765.130); T.C.A. (orig. ed.), § 37-609.

37-2-310. Revocation of license.

Any license issued under this part may be revoked by the department of human services acting through the commissioner. The department shall notify the licensee thirty (30) days prior to revoking any license stating the reasons for revocation. A copy of the notice shall be sent to the county mayor of the county in which the home is located. Thirty (30) days after the issuance of the notice the department, by its agent, shall visit the home and, if the reasons set out in the notice for revoking the license have been corrected, the license shall not be revoked; but if the reasons set out in the notice have not been corrected, the license may be revoked by the department acting through the commissioner after an opportunity for a fair hearing before the commissioner or the commissioner's duly designated representative, the juvenile judge and the county attorney.

History.
Acts 1949, ch. 222, § 15; C. Supp. 1950, § 4746.15 (Williams, § 4765.133); impl. am. Acts 1975, ch. 219, § 1; T.C.A. (orig. ed.), § 37-610; Acts 2003, ch. 90, § 2.

Compiler's Notes.
Acts 2003, ch. 90, § 2, directed the code commission to change all references from "county executive" to "county mayor" and to include all such changes in supplements and replacement volumes for the Tennessee Code Annotated.

37-2-311. License necessary to receive child or subsidy therefor.

No person shall receive a child for care in any such home or receive any payment for subsidy or for board or special needs of any child unless it has an unrevoked license issued by the department of human services within twelve (12) months preceding the payment of such subsidy or the placement of such child.

History.
Acts 1949, ch. 222, § 10; C. Supp. 1950, § 4746.10 (Williams, § 4765.128); impl. am. Acts 1975, ch. 219, § 1; T.C.A. (orig. ed.), § 37-611.

37-2-312. Contract with licensed receiving homes — Terms.

The county mayor and the department of human services, through its designated agent, shall enter into a written contract with each licensed receiving home, the contract to state the amount of subsidy to be paid for each bed, the number of beds to be available at all times, and the monthly, weekly and daily amount to be paid for the board of each child placed in the home, and such special needs and the amounts of each that may be provided for each child placed in the home.

History.
Acts 1949, ch. 222, § 4; C. Supp. 1950, § 4746.4 (Williams, § 4765.122); impl. am. Acts 1975, ch. 219, § 1; T.C.A. (orig. ed.), § 37-612; Acts 2003, ch. 90, § 2.

Compiler's Notes.
Acts 2003, ch. 90, § 2, directed the code commission to change all references from "county executive" to "county mayor" and to include all such changes in supplements and replacement volumes for the Tennessee Code Annotated.

37-2-313. Quarterly reports made by county to department of human services.

Each county maintaining a subsidized receiving home shall submit to the department of human services by the tenth of each month or the first of each quarter, that is, January, April, July, and October, respectively, an itemized statement of the cost of subsidizing each licensed receiving home, and an itemized statement of the boarding care and special needs provided each child placed in the home during the preceding month or quarter. Within thirty (30) days after receipt of the statement, the department shall reimburse the county in the amount of fifty percent (50%) of the statement, so long as the cost of the subsidy, boarding care and special needs of any one (1) child does not exceed the amount specified in the contract entered into by the county, the department and the receiving home.

History.
Acts 1949, ch. 222, § 5; C. Supp. 1950, § 4746.5 (Williams, § 4765.123); impl. am. Acts 1975, ch. 219, § 1; T.C.A. (orig. ed.), § 37-613.

37-2-314. Commitment of children to homes.

Any dependent, neglected or abandoned child or any child without proper parental care or guardianship shall be received in the home by commitment of the juvenile judge wherever the juvenile judge's jurisdiction permits, upon a judgment or decree entered in the court showing that the child is dependent, neglected or abandoned or without proper parental care or guardianship, or is likely to become a public charge.

History.
Acts 1949, ch. 222, § 16; C. Supp. 1950, § 4746.16 (Williams, § 4765.134); T.C.A. (orig. ed.), § 37-614.

37-2-315. Period of commitment.

The period of commitment to the home shall be for such time as may be fixed by the juvenile judge, in the order of commitment, pending social study and planning for the best interest of each child committed, but of not longer than the majority of the child.

History.
Acts 1949, ch. 222, § 17; C. Supp. 1950, § 4746.17 (Williams, § 4765.135); T.C.A. (orig. ed.), § 37-615.

37-2-316. Case record kept on each child.

The county office of the department of human services shall prepare a case record on each child committed under the provisions of this part and shall furnish the juvenile judge with a summary of the record, who shall preserve the record in a well-bound book.

History.
Acts 1949, ch. 222, § 18; C. Supp. 1950, § 4746.18 (Williams, § 4765.136); impl. am. Acts 1975, ch. 219, § 1; T.C.A. (orig. ed.), § 37-616.

37-2-317. Investigation by department of human services.

The department of human services, by its agents, has the power to enter, visit and investigate any licensed receiving home at any and all reasonable times without prior notice of its intentions so to do.

History.
Acts 1949, ch. 222, § 14; C. Supp. 1950, § 4746.14 (Williams, § 4765.132); impl. am. Acts 1975, ch. 219, § 1; T.C.A. (orig. ed.), § 37-617.

37-2-318. Exceeding number of children authorized prohibited — Keeping children in place not designated in license prohibited.

No greater number of children shall be kept at any one time on the licensed premises than is authorized by the license, and no child shall be kept in a building or place not designated in the license.

History.
Acts 1949, ch. 222, § 11; C. Supp. 1950, § 4746.11 (Williams, § 4765.129); T.C.A. (orig. ed.), § 37-618.

37-2-319. Violation of part — False statements or reports — Penalty.

Any person who violates this part or the regulations promulgated by the department of human services by direction of this part or who willfully makes any false statements or reports to the department or the county mayor, or both, of any county with reference to any matter embraced by this part commits a Class A misdemeanor.

History.
Acts 1949, ch. 222, § 19; C. Supp. 1950, § 4746.19 (Williams, § 4765.137); impl. am. Acts 1975, ch. 219, § 1; T.C.A. (orig. ed.), § 37-619; Acts 1989, ch. 591, § 111; 2003, ch. 90, § 2.

Compiler's Notes.
Acts 2003, ch. 90, § 2, directed the code commission to change all references from "county executive" to "county mayor" and to include all such changes in supplements and replacement volumes for the Tennessee Code Annotated.

PART 4

FOSTER CARE

37-2-401. Legislative intent — Construction of part.

(a) The primary purpose of this part is to protect children from unnecessary separation from parents who will give them good homes and loving care, to protect them from needless prolonged placement in foster care and the uncertainty it provides, and to provide them a reasonable assurance that, if an early return to the care of their parents is not possible, they will be placed in a permanent home at an early date.

(b) The secondary purpose of this part is to provide a mechanism to monitor the care of children in foster care to ensure that everything reasonably possible is being done to achieve a permanent plan for the child.

(c) When a parent by such parent's actions or failure to act fails to fulfill such parent's responsibilities as a parent, the court shall consider such conduct in determining whether to terminate parental rights, regardless of whether the parent intended such parent's conduct to constitute a relinquishment or forfeiture of such parent's parental rights. When the interests of a child and those of an adult are in conflict, such conflict is to be resolved in favor of a child, and to these ends this part shall be liberally construed.

History.
Acts 1976, ch. 731, § 1; 1982, ch. 811, § 1; 1983, ch. 438, §§ 1-6; T.C.A., § 37-1501(a).

37-2-402. Part definitions.

As used in this part, unless the context otherwise requires:

(1)(A) "Abandonment" means, for purposes of terminating the parental or guardian rights of a parent or parents or a guardian or guardians of a child to that child in order to make that child available for adoption, that:

(i) For a period of four (4) consecutive months immediately preceding the filing of a proceeding or pleading to terminate the parental rights of the parent or parents or a guardian or guardians of the child who is the subject of the petition for termination of parental rights or adoption, that the parent or parents or a guardian or guardians either have willfully failed to visit or have willfully failed to support or make reasonable payments toward the support of the child;

(ii) The child has been removed from the home of the parent or parents or a guardian or guardians as the result of a petition filed in the juvenile court in which the child was found to be a dependent and neglected child, as defined in § 37-1-102, and the child was placed in the custody of the department or a licensed child-

placing agency, that the juvenile court found, or the court where the termination of parental rights petition is filed found, that the department or a licensed child-placing agency made reasonable efforts to prevent removal of the child or that the circumstances of the child's situation prevented reasonable efforts from being made prior to the child's removal; and for a period of four (4) months following the removal, the department or agency has made reasonable efforts to assist the parent or parents or a guardian or guardians to establish a suitable home for the child, but that the parent or parents or a guardian or guardians have made no reasonable efforts to provide a suitable home and have demonstrated a lack of concern for the child to such a degree that it appears unlikely that they will be able to provide a suitable home for the child at an early date. The efforts of the department or agency to assist a parent or guardian in establishing a suitable home for the child may be found to be reasonable if such efforts exceed the efforts of the parent or guardian toward the same goal, when the parent or guardian is aware that the child is in the custody of the department;

(iii) A biological or legal father has either willfully failed to visit or willfully failed to make reasonable payments toward the support of the child's mother during the four (4) months immediately preceding the birth of the child; provided, that in no instance shall a final order terminating the parental rights of a parent as determined pursuant to this subdivision (1)(A)(iii) be entered until at least thirty (30) days have elapsed since the date of the child's birth;

(iv) A parent or guardian is incarcerated at the time of the institution of an action or proceeding to declare a child to be an abandoned child, or the parent or guardian has been incarcerated during all or part of the four (4) months immediately preceding the institution of such action or proceeding, and either has willfully failed to visit or has willfully failed to support or make reasonable payments toward the support of the child for four (4) consecutive months immediately preceding such parent's or guardian's incarceration, or the parent or guardian has engaged in conduct prior to incarceration that exhibits a wanton disregard for the welfare of the child; or

(v) The child, as a newborn infant aged seventy-two (72) hours or less, was voluntarily left at a facility by such infant's mother pursuant to § 68-11-255, and, for a period of thirty (30) days after the date of voluntary delivery, the mother failed to visit or seek contact with the infant; and, for a period of thirty (30) days after notice was given under § 36-1-142(e), and no less than ninety (90) days cumulatively, the mother failed to seek contact with the infant through the department or to revoke her voluntary delivery of the infant;

(B) For purposes of this subdivision (1), "token support" means that the support, under the circumstances of the individual case, is insignificant given the parent's means;

(C) For purposes of this subdivision (1), "token visitation" means that the visitation, under the circumstances of the individual case, constitutes nothing more than perfunctory visitation or visitation of such an infrequent nature or of such short duration as to merely establish minimal or insubstantial contact with the child;

(D) For purposes of this subdivision (1), "willfully failed to support" or "willfully failed to make reasonable payments toward such child's support" means that, for a period of four (4) consecutive months, no monetary support was paid or that the amount of support paid is token support;

(E) For purposes of this subdivision (1), "willfully failed to visit" means the willful failure, for a period of four (4) consecutive months, to visit or engage in more than token visitation;

(F) Abandonment may not be repented of by resuming visitation or support subsequent to the filing of any petition seeking to terminate parental or guardianship rights or seeking the adoption of a child; and

(G) "Abandonment" and "abandonment of infant" do not have any other definition except that which is set forth herein, it being the intent of the general assembly to establish the only grounds for abandonment by statutory definition. Specifically, it shall not be required that a parent be shown to have evinced a settled purpose to forego all parental rights and responsibilities in order for a determination of abandonment to be made. Decisions of any court to the contrary are hereby legislatively overruled;

(2) "Abandonment of an infant" means, for purposes of terminating parental or guardian rights, "abandonment" of a child under one (1) year of age;

(3) "Agency" means a child care agency, as defined in title 71, chapter 3, part 5, or in chapter 5, part 5 of this title, regardless of whether such agency is licensed or approved, and includes the department of children's services;

(4) "Board" means an advisory review board appointed by a juvenile court judge, juvenile court judges, or the department of children's services as provided in this part;

(5) "Court" means the juvenile court having jurisdiction over the person of the child, or, if no juvenile court has jurisdiction over the child, then the juvenile court in the county in which the child resides;

(6) "Date of foster care placement" means the original date on which the child is physically placed in foster care;

(7) "Judge" means a juvenile judge or the judge having jurisdiction over the person of the child;

(8) "Parent" means the natural parent or legal guardian, except in cases when guardianship is held by an agency pursuant to a determination of aban-

donment or surrender of parental rights;

(9) "Plan" or "permanency plan" means a written plan for a child placed in foster care with the department of children's services or in the care of an agency as defined in subdivision (3) and as provided in § 37-2-403; and

(10) "Report" means a written report by an advisory review board as provided in § 37-2-406 or by the department of children's services or by an agency having custody of a child as provided in § 37-2-404.

History.

Acts 1976, ch. 731, § 1; 1982, ch. 811, § 1; 1983, ch. 438, §§ 1-6; T.C.A., § 37-1501(b); Acts 1996, ch. 1079, §§ 73, 112; 1997, ch. 253, § 1; 1998, ch. 1097, §§ 13, 14; 2000, ch. 981, §§ 51, 57; 2001, ch. 388, § 5; 2009, ch. 411, § 9; 2010, ch. 842, § 3; 2010, ch. 887, § 1.

Compiler's Notes.

Acts 2009, ch. 411, § 12 provided that the act, which amended §§ 36-1-102, 36-1-108, 37-1-102, 37-2-402 and added new § 37-1-183, shall apply to conduct covered by the provisions of the act that occurs on or after July 1, 2009. The eighteen (18) month time period set out in § 37-1-102(b)(12)(J) shall not commence until July 1, 2009.

37-2-403. Contents of permanency plan — Statement of responsibilities — Collection of information on biological parents.

(a)(1)(A) Within thirty (30) days of the date of foster care placement, an agency shall prepare a plan for each child in its foster care. Such plan shall include a goal for each child of:

(i) Return of the child to parent;

(ii) Permanent placement of the child with a fit and willing relative or relatives of the child;

(iii) Adoption, giving appropriate consideration to § 36-1-115(g) when applicable;

(iv) Permanent guardianship; or

(v) A planned permanent living arrangement.

(B) Such plans are subject to modification and shall be reevaluated and updated at least annually, except when a long-term agreement has been made in accordance with this part.

(2)(A) The permanency plan for any child in foster care shall include a statement of responsibilities between the parents, the agency and the caseworker of such agency. Such statements shall include the responsibilities of each party in specific terms and shall be reasonably related to the achievement of the goal specified in subdivision (a)(1). The statement shall include the definitions of "abandonment" and "abandonment of an infant" contained in § 36-1-102 and the criteria and procedures for termination of parental rights. Each party shall sign the statement and be given a copy of it. The court must review the proposed plan, make any necessary modifications and ratify or approve the plan within sixty (60) days of the foster care placement. The department of children's services shall, by rules promulgated pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 2, determine the required elements or contents of the permanency plan.

(B)(i) The parents or legal guardians of the child shall receive notice to appear at the court review of the permanency plan and the court shall explain on the record the law relating to abandonment contained in § 36-1-102, and shall explain that the consequences of failure to visit or support the child will be termination of the parents' or guardians' rights to the child, and the court will further explain that the parents or guardians may seek an attorney to represent the parents or guardians in any termination proceeding. If the parents or legal guardians are not at the hearing to review the permanency plan, the court shall explain to the parents or guardians at any subsequent hearing regarding the child held thereafter, that the consequences of failure to visit or support the child will be termination of the parents' or guardians' rights to the child and that they may seek an attorney to represent the parents or guardians in a termination proceeding.

(ii) If the parents or guardians of the child cannot be given notice to appear at the court review of the permanency plan, or if they refuse or fail to appear at the court review of the permanency plan, or cannot be found to provide notice for the court review of the permanency plan, any agency that holds custody of the child in foster care or in any other type of care and that seeks to terminate parental or guardian rights based upon abandonment of that child under § 36-1-102, shall not be precluded from proceeding with the termination based upon the grounds of abandonment, if the agency demonstrates at the time of the termination proceeding:

(a) That the court record shows, or the petitioning party presents to the court a copy of the permanency plan that shows that the defendant parents or legal guardians, subsequent to the court review in subdivision (a)(2)(B)(i), has signed the portion of the permanency plan that describes the criteria for establishing abandonment under § 36-1-102, or that the court record shows that, at a subsequent hearing regarding the child, the court made the statements to the parents or legal guardians required by subdivision (a)(2)(B)(i);

(b) By an affidavit, that the child's permanency plan containing language that describes the criteria for establishing abandonment under § 36-1-102 was presented by the agency party to the parents or guardians at any time prior to filing the termination petition, or that there was an attempt at any time to present the plan that describes the criteria for establishing abandonment under § 36-1-102 to the parents or guardians at any time by the agency party, and that such attempt was refused by the parents or guardians; and

(c) That, if the court record does not contain a signed copy of the permanency plan, or if the

petitioning agency cannot present evidence of a permanency plan showing evidence of such notice having been given or an affidavit showing that the plan was given or that the plan was attempted to be given to the parents or guardians by the agency and was refused by the parents or guardians, and, in this circumstance, if there is no other court record of the explanation by the court of the consequences of abandonment and the right to seek an attorney at any time, then the petitioning agency shall file with the court an affidavit in the termination proceeding that describes in detail the party's diligent efforts to bring such notice required by subdivision (a)(2)(B)(i) to such parent or guardian at any time prior to filing the agency's filing of the termination petition.

(C) Substantial noncompliance by the parent with the statement of responsibilities provides grounds for the termination of parental rights, notwithstanding other statutory provisions for termination of parental rights, and notwithstanding the failure of the parent to sign or to agree to such statement if the court finds the parent was informed of its contents, and that the requirements of the statement are reasonable and are related to remedying the conditions that necessitate foster care placement. The permanency plan shall not require the parent to obtain employment if such parent has sufficient resources from other means to care for the child, and shall not require the parent to provide the child with the child's own bedroom unless specific safety or medical reasons exist that would make bedroom placement of the child with another child unsafe.

(3) At any hearing in which a court orders a child to be placed in foster care, the judge shall determine whether a permanency plan has been prepared and whether the statement of responsibilities has been agreed upon by the parties. If a statement has been agreed upon by the parties, the court shall review it and approve it if the court finds it to be in the best interest of the child. If a plan had not been prepared or parties have not agreed to a statement of responsibilities, the court may continue the hearing for such time, not to exceed thirty (30) days, as may be necessary to give the parties an opportunity to attempt to agree on a suitable plan, which may then be approved by the court without a further hearing if the court finds the plan to be in the best interest of the child, but no longer than sixty (60) days after the foster care placement, except as provided in § 37-1-166.

(4)(A) If the parties are unable to agree on a statement of responsibilities during this period of time, the court shall hold a further informal hearing to decide on a statement of responsibilities. At such hearing, all relevant evidence, including oral and written reports, may be received by the court and relied upon to the extent of its probative value. The parties or their counsel shall be afforded an opportunity to examine and controvert written reports so received and to cross-examine individuals making the reports.

(B) In determining the terms of the statement, the court shall, insofar as possible, in accordance with the best interest of the child, seek to:

(i) Return the child to the parent;

(ii) Permanently place the child with a fit and willing relative or relatives of the child;

(iii) Pursue adoptive placement;

(iv) Pursue permanent guardianship; or

(v) Provide a planned permanent living arrangement for the child.

(C) The court shall take such action as may be necessary to develop and approve a plan that it finds to be in the best interest of the child. The plan shall be approved within sixty (60) days of the foster care placement, except as provided in § 37-1-166.

(5) In cases involving child abuse or child neglect, with such child being placed in foster care, the statement of responsibilities shall stipulate that the abusing or neglecting parent shall receive appropriate rehabilitative assistance through mental health consultation if so ordered by the court.

(6) The plan for a child who remains in foster care for one (1) year may be modified to a long-term agreement between a foster parent and the agency charged with the caring and custody of the child. Such agreements with foster parents shall include:

(A) Appropriate arrangements for the child; and

(B) Procedures for the termination of the agreement by either party when in the best interests of the child. When the department of children's services is a party to the agreement, such agreement must include provisions permitting variation in monetary allowances from fiscal year to fiscal year depending upon appropriations by the general assembly.

(b)(1) In lieu of the provisions of subsection (a), in the event a child is in foster care as a result of a surrender or termination of parental rights, the agency having guardianship of the child shall prepare and submit to the foster care advisory review board or court in the county in which the child is in foster care a plan for each such child.

(2) Such plan shall include a goal for each child of:

(A) Permanent placement of the child with a fit and willing relative or relatives of the child;

(B) Adoption, giving appropriate consideration to § 36-1-115(g) when applicable;

(C) Permanent guardianship; or

(D) A planned permanent living arrangement.

(3) Specific reasons must be included in the plan for any goal other than placement of the child with a relative of the child or adoption. Such plan shall also include a statement of specific responsibilities of the agency and the caseworker of such agency designed to achieve the stated goal.

(c) The statement of responsibilities on a permanency plan that is ordered by the court shall empower the state agency to select any specific residential or

treatment placement or programs for the child according to the determination made by that state agency, its employees, agents or contractors.

(d) Whenever a child is removed from such child's home and placed in the department's custody, the department shall seek to place the child with a fit and willing relative if such placement provides for the safety and is in the best interest of the child. Notwithstanding any provision of this section or any other law to the contrary, whenever return of a child to such child's parent is determined not to be in the best interest of the child, then such relative with whom the child has been placed shall be given priority for permanent placement or adoption of the child prior to pursuing adoptive placement of such child with a nonrelative.

(e) In addition to completing the permanency plan, within thirty (30) days of the date of foster care placement, the placement agency shall collect as much information as possible in order to complete a medical and social history on the child and the child's biological family on the form promulgated by the department pursuant to § 36-1-111(k).

History.

Acts 1976, ch. 731, § 2; 1978, ch. 804, §§ 1, 2; 1979, ch. 272, § 1; 1982, ch. 811, § 2; 1983, ch. 438, §§ 7-12; T.C.A., § 37-1502; Acts 1988, ch. 560, §§ 1-6; 1995, ch. 532, § 15; 1996, ch. 1054, §§ 102, 125; 1996, ch. 1079, §§ 73, 111, 113; 1998, ch. 1097, §§ 15-17, 30; 2002, ch. 629, §§ 1-4; 2007, ch. 372, §§ 7-9; 2010, ch. 842, § 4; 2010, ch. 881, § 1; 2013, ch. 354, § 2.

37-2-404. Progress report to court or review board — Review of permanency plan.

(a) In addition to the plan required in § 37-2-403, the department or agency shall submit to the appropriate court or foster care review board a report for each child in its foster care on progress made in achieving the goals set out in the plan. Such reports shall be prepared by the department or agency having custody of the child within ninety (90) days of the date of foster care placement and no less frequently than every six (6) months thereafter for so long as the child remains in foster care. At the time the progress report is provided to the court or foster care review board, the department or agency shall also provide a copy of the report to the child's parent(s) whose rights have not been terminated or surrendered, the parent's attorney, the guardian ad litem and/or attorney for the child, and the child who is a party to the proceeding.

(b) Within ninety (90) days of the date of foster care placement and no less often than every six (6) months thereafter for so long as the child remains in foster care, the court or foster care review board shall review the plan for each child in foster care. Notice of this review and the right to attend and participate in the review shall be provided to the child's parent(s) whose rights have not been terminated or surrendered, the parent's attorney, the guardian ad litem and/or attorney for the child, foster parents, prospective adoptive parent, relative providing care for the child and the child who is a party to the proceeding. The department and the court shall develop adequate procedures to provide notice of the review to the aforementioned persons. The court or board shall review the safety, permanency and wellbeing of the child by assessing the necessity and appropriateness of continued foster care placement, the appropriateness of services for the child, the compliance of all parties to the statement of responsibilities, the extent of progress in alleviating or mitigating the causes necessitating placement in foster care and in achieving the goals contained in the permanency plan, and project a likely date on which the goal of the plan will be achieved.

History.

Acts 1976, ch. 731, § 3; 1978, ch. 804, § 3; 1979, ch. 272, § 2; 1982, ch. 811, § 3; 1983, ch. 438, § 13; T.C.A., § 37-1503; Acts 1988, ch. 560, §§ 7, 8; 1996, ch. 1079, § 111; 1998, ch. 1097, § 18; 2010, ch. 842, § 5.

37-2-405. Adoption of guidelines.

The department of children's services may, by regulation, adopt and prepare additional guidelines for the plans required of agencies; however, no such guidelines shall apply to a licensed child care agency if not applicable to the department. All plans established for the child shall contain at least the following:

(1) The purpose for which the child has been placed in foster care;

(2) The estimated length of time in which the purpose of foster care will be accomplished;

(3) The description of services that are to be provided in order for the purpose of foster care to be accomplished, including those services to be provided to the family; and

(4) The person within the department or agency who is directly responsible for assuring that the plan is implemented.

History.

Acts 1976, ch. 731, § 3; 1979, ch. 272, § 3; 1983, ch. 438, § 19; T.C.A., § 37-1504; Acts 1988, ch. 979, § 4; 1996, ch. 1079, § 73; 2000, ch. 981, § 51; 2010, ch. 842, § 6.

37-2-406. Foster care review boards — Request by judges for recommendations in making appointments — Composition — Option for judges to review cases.

(a)(1) One (1) or more foster care review boards are hereby established in each county or in a region comprised of contiguous counties, the members being appointed by the judge or judges having juvenile court jurisdiction in such county or region by their mutual agreement. The judge or judges may appoint more than one (1) board and divide the workload in an equitable manner.

(2) The judge or judges may request recommendations from the administrative office of the courts or the department of children's services in making appointments to the foster care review board. Each board may include a nurse, a doctor, a lawyer, a member of a human resource agency, such as the departments of health or human services, a member of a local education agency, a staff member of a local

mental health agency, a youth who was formerly in foster care and shall include a mother or father with a minor child and a person under the age of thirty (30). The members appointed to the board shall serve for two (2) years and shall serve without any form of compensation or reimbursement of expenses. The youth services officer or other designated officer of the court shall serve as a facilitator to each county or regional board. In counties with a population of less than one hundred thousand (100,000), the board shall consist of five (5) members. In counties with a population of more than one hundred thousand (100,000), and in regions, each board shall consist of seven (7) members. A quorum must exist to conduct the review.

(3) In lieu of the provisions of subdivisions (a)(1) and (2), the judge having juvenile court jurisdiction in any county may elect to personally review each case and, therefore, not appoint a foster care review board or to personally review certain cases instead of assigning them to the board for review even though a board is appointed. In the event the judge elects not to appoint a board, the judge shall specify by written order of the court duly entered on the record the guidelines and procedures the judge will use to ensure that the judge conducts the reviews required by this part for every child in foster care under the jurisdiction of the judge's court within ninety (90) days of the child's date of foster care and no less frequently than every six (6) months thereafter until such time as the child is no longer in foster care. A copy of this order shall be furnished to the county director of the department and to the commission on children and youth. The court may elect at any time to rescind this order and appoint a board pursuant to subdivisions (a)(1) and (2).

(4) All board members shall be required to participate in the training related to the performance of their duties.

(5) Nothing in this section shall preclude the court from reviewing a case, in lieu of the foster care review board, on either a motion by any party or on the court's own motion.

(b) It is the responsibility of the foster care review board or court to conduct the reviews specified in subsection (a). The board and the department shall develop adequate procedures to ensure that the case of each child in foster care is reviewed no less frequently than ninety (90) days after placement in foster care and every six (6) months thereafter; provided, that whenever a judicial hearing that addresses the issues specified in § 37-2-404 is held within six (6) months of a review, the next review may be held within six (6) months of the judicial hearing instead of within six (6) months of the previous review, except for the first hearing held within ninety (90) days of the foster care placement.

(c)(1) The foster care review board shall submit a report to the judge on each child reviewed. Such report shall be submitted to the judge within ten (10) calendar days following the review conducted by the board. Such reports are advisory and shall contain the board's findings and recommendations pursuant to the provisions of § 37-2-404(b). The report shall include the date of the next review. A copy of the report shall be provided to the department or agency and to the child's parent(s) whose rights have not been terminated or surrendered, the parent's attorney, the guardian ad litem and/or attorney for the child, and the child who is a party to the proceeding.

(2) The foster care review board may also make a direct referral to the judge or magistrate with such findings and recommendations under the following circumstances and timeframes:

(A) Where conditions persist that constitute a deterrent to reaching the permanency goals in a given case and such conditions indirectly and chronically compromise the health, safety or welfare of the child, such direct referral case shall be heard by the judge or magistrate within thirty (30) calendar days; or

(B) Where issues in a particular case constitute a risk of harm and directly compromise the health, safety or welfare of the child, such direct referral case shall be heard by the judge or magistrate within seventy-two (72) hours, excluding non-judicial days.

History.

Acts 1976, ch. 731, § 4; 1979, ch. 103, § 1; 1979, ch. 272, § 4; 1982, ch. 811, § 4; 1983, ch. 438, §§ 14-16; T.C.A., § 37-1505; Acts 1984, ch. 789, § 4; 1988, ch. 560, §§ 9, 10; 1996, ch. 1079, §§ 73, 111; 1999, ch. 164, § 1; 2009, ch. 235, § 1; 2010, ch. 842, §§ 7-10.

Compiler's Notes.

For tables of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

37-2-407. Department of children's services — Duties.

The department of children's services shall prepare suggestions for review procedures that may be used by each advisory review board. Such suggested procedures may provide a basis for uniform review procedure throughout this state.

History.

Acts 1976, ch. 731, § 5; T.C.A., § 37-1506; Acts 1996, ch. 1079, § 73.

37-2-408. Confidentiality of plans and records.

(a) All records, reports, permanency plans, reviews and reports of the foster care review boards or any material prepared in connection with the planning, placement or care of a child in the care or custody of the department of children's services or in foster care with any agency or person pursuant to this part, shall be confidential and shall not be a public record and shall be disclosed only for the purposes directly related to the administration of this part, or as permitted pursuant to the provisions of § 37-1-409 or § 37-1-612, or as otherwise determined by the department of children's services to be reasonably necessary or reasonably required and as directly related to the provision of any services needed by the child.

(b) A violation of this section is a Class B misdemeanor.

History.
Acts 1976, ch. 731, § 6; T.C.A., § 37-1507; Acts 1996, ch. 1079, § 114.

37-2-409. Permanency hearings.

(a)(1) In addition to the other requirements of this part, the judge or magistrate shall hold a hearing within twelve (12) months of the date of foster care placement for each child in foster care. As long as a child remains in foster care, subsequent permanency hearings conducted pursuant to subsection (b) shall be held no less frequently than every twelve (12) months from the date of the previous permanency hearing for each child, or as otherwise required by federal regulations and notwithstanding subdivision (b)(4).

(2) The child shall be present for the permanency hearing. The court shall confer with the child, who is able to communicate, in an age appropriate manner regarding the child's views on the provisions of the permanency plan developed for the child. For all children, absent or present, evidence shall be presented as to the child's progress and needed services. The only exceptions to the child's mandatory attendance shall be a child who is under a doctor's care preventing the child from attending, is placed outside the state or is on documented runaway status. In such event, the court shall require the guardian ad litem, case manager for the department or other case manager of the child to attest that the child participated in the development of the permanency plan or has been counseled on the provisions of the permanency plan, if age appropriate. In the child's absence, evidence shall be presented as to the child's progress and needed services. To the extent practicable, the court shall schedule such hearings at times intended to be minimally disruptive to daily activities of the child.

(b)(1) In an effort to achieve early permanency, the purpose of these permanency hearings shall be to review the permanency plan and goals for the child. The hearings and plan shall address which goals continue to be appropriate for the child in order to achieve permanent placement and shall include a timeline for achieving each goal. Possible goals include:

(A) Return of the child to parent;

(B) Permanent placement with a fit and willing relative or relatives;

(C) Adoption, giving appropriate consideration to § 36-1-115(g) when applicable;

(D) Permanent guardianship; or

(E) Planned permanent living arrangement.

(2) Placement in another planned permanent living arrangement shall only be appropriate in cases where the state agency has documented a compelling reason for determining that the other goals would not be in the best interests of the child because of the child's special needs or circumstances.

(3) The purpose of these permanency hearings shall also be to determine the extent of compliance of all parties with the terms of the permanency plan, and the extent of progress in achieving the goals of the plan.

(4) In the case of a child who has reached sixteen (16) years of age, the court shall review and ratify an independent living plan for the child. At the hearing for a child who has reached seventeen (17) years of age, the court shall ensure, and the record shall reflect, that the child has notice of and understands the child's opportunity to receive, if eligible, all available voluntary post-custody services from the department by having the department present evidence regarding services that are available to the child beginning at eighteen (18) years of age. Three (3) months prior to the planned release of a child at seventeen (17) years of age or older, a permanency hearing shall be held for the purposes of reviewing the child's transition plan to independent living.

(5) At this hearing, all evidence that would be admissible at a permanency hearing pursuant to § 37-1-129 shall be admissible. In the event the court finds that any party has not complied with the terms of the permanency plan for the child, it may, consistent with §§ 37-1-129(c) and 37-2-403(c), issue such orders as may be appropriate to enforce compliance. Parental rights may not be terminated, except in accordance with a petition filed for that purpose and filed pursuant to title 36, chapter 1, part 1 or this part.

(c) If a hearing is held concerning a child in the juvenile court, or any other court, on a custody petition, petition to terminate parental rights, or for any other reason that addresses the issues in subsection (b), this hearing shall satisfy the requirement for a hearing for that child. If a hearing is not otherwise scheduled, the court shall automatically schedule a hearing for each child in foster care in a timely fashion to ensure that the hearing is held within the time provided in subsection (a).

(d) This section shall not be construed to prevent a judge from holding hearings more frequently if the judge deems it necessary.

History.
Acts 1976, ch. 731, § 8; 1982, ch. 811, § 5; 1983, ch. 438, § 17; T.C.A., § 37-1508; Acts 1988, ch. 560, § 11; 1996, ch. 1054, § 103; 1996, ch. 1079, § 115; 1998, ch. 1097, §§ 19-21; 2000, ch. 805, § 1; 2002, ch. 629, § 5; 2007, ch. 372, § 10; 2008, ch. 1046, § 1; 2009, ch. 235, § 1; 2010, ch. 842, § 11; 2012, ch. 1016, § 3.

Compiler's Notes.
Acts 2009, ch. 235, § 1 directed the code commission to revise appropriate references from "child support referees" and "juvenile referees" to "child support magistrates" and "juvenile magistrates" in the code as supplements are published and volumes are replaced.

37-2-410. Rehearing — Modification of order.

Any interested person, at any time while the child is under the jurisdiction of the court, may file a petition, in writing and under oath, for a rehearing upon all matters coming within this part, and upon rehearing, the court may, consistent with §§ 37-1-129(c) and 37-2-403(d), modify or set aside any order so reviewed.

History.
Acts 1976, ch. 731, § 9; T.C.A., § 37-1509; Acts 1996, ch. 1079, § 116.

37-2-411. Annual report on foster care — Confidentiality of report — Injunction and action for damages.

(a) Each year the department of children's services shall prepare and issue a report on foster care in Tennessee. The report shall include an analysis, evaluation or estimate, as appropriate, of the following, on a statewide basis:

(1) The number of children in foster care;

(2) The amount of funds expended by federal, state and local governments for maintenance payments to foster parents, group homes and institutes;

(3) The amount of funds expended by federal, state and local governments on services to foster children and their natural parents or guardians;

(4) The types of services being offered to parents and their children in order to keep the family together;

(5) The number of foster children eligible for adoption, the number of such children adopted, and the number of foster children determined not to be adoptable and the reasons therefor;

(6) The number of foster children placed in a planned permanent living arrangement or guardianship;

(7) The size of caseloads of probation officers and social workers, the effect such caseloads have on the services offered to parents or their children, and the effectiveness of such services;

(8) The movement of foster children within the program from placement to placement;

(9) The foster care-related qualifications, education, and in-service training of social workers and probation officers who handle such cases; and

(10) Any other matters relating to foster children that the department deems appropriate to be included in the report. The report shall be published as part of the department's annual report required by § 37-5-105(4).

(b) All personal information and records obtained by the department pursuant to this section shall be confidential and may not be disclosed in this report in a way that could identify any individual, adult or child, in foster care or receiving assistance from the department or other child care agency.

(c) Any person may bring an action against an individual who has willingly and knowingly released confidential information or records concerning such person in violation of this section, for the greater of the following amounts:

(1) Five hundred dollars ($500); or

(2) Three (3) times the amount of actual damages, if any, sustained by the plaintiff.

(d) Any person may bring an action to enjoin the release of confidential information or records in violation of this part, and may in the same action seek damages as provided in this section. It is not a prerequisite to an action under this section that the plaintiff suffer or be threatened with actual damages.

History.
Acts 1979, ch. 272, § 5; T.C.A., § 37-1511; Acts 1996, ch. 1079, § 73; 2000, ch. 981, § 51; 2002, ch. 629, § 6; 2015, ch. 178, §§ 2, 3.

37-2-412. Smoke detectors required in foster care dwellings.

(a) As used in this section, unless the context otherwise requires, "approved smoke detector" means a device that senses visible or invisible particles of combustion and has been investigated and listed in accordance with standards prescribed by:

(1) A nationally recognized and approved independent testing agency laboratory, such as Underwriters' Laboratories' Standard for Single and Multiple Station Smoke Detectors (UL 217); or

(2) An agency authorized to make independent inspections by the state fire marshal.

(b) No person, agency, institution or home, whether public or private, shall:

(1) Provide foster care services within any dwelling unless an approved smoke detector is installed and maintained within such dwelling by the person, agency, institution or home. When activated, the detector shall initiate an alarm that is audible in the sleeping rooms of the dwelling; or

(2) Tamper with or remove any smoke detector required by this section, or a component thereof.

(c) All smoke detectors required by this section:

(1) Shall be installed in accordance with the manufacturer's directions, unless they conflict with applicable law; and

(2) May be wired directly (hardwired) to the building's power supply, powered by a self-monitored battery, or operated with a plug-in outlet fitted with a plug restrainer device, provided the outlet is not controlled by any switch other than the main power supply.

(d) Compliance with this section shall not relieve any person, agency, institution or home from the requirements of any other applicable law, ordinance, rule or regulation. Nothing in this section shall be construed to be in derogation of § 68-120-111.

(e)(1) The department of children's services shall enforce this section only for its own foster homes or for agencies that it licenses pursuant to chapter 5, part 5 of this title, and it shall periodically undertake appropriate activities to encourage and ensure compliance.

(2) Any violations noted by the department as a result of its inspections of child care agencies pursuant to § 37-5-513 shall be processed in the manner prescribed in that section.

(3) The provisions of this section as it applies to persons, agencies, institutions or homes licensed by any other departments of this state to provide foster care for children shall be enforced by those departments. Those departments shall periodically under-

take appropriate activities to encourage and ensure compliance.

History.
Acts 1990, ch. 619, § 1; 1996, ch. 1079, § 73; 2000, ch. 981, §§ 51, 58.

37-2-413. Department rulemaking to comply with federal regulations.

(a) The department of children's services is authorized to adopt mandatory rules binding on the courts and agencies subject to this part to implement the provisions of any changes in federal law relative to compliance with any foster care review processes set forth in federal law.

(b) Notwithstanding any other law to the contrary, the department shall have authority to implement any rules that may be required pursuant to subsection (a) by emergency rules to be effective immediately upon approval by the attorney general and reporter and filing with the office of the secretary of state; provided, that any permanent rules must follow the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 2.

History.
Acts 1996, ch. 1079, § 117; 2009, ch. 566, § 12.

Compiler's Notes.
Acts 1996, ch. 1079, § 184 provided: "Any provision of this act, or the application thereof, which is inconsistent with federal law, rule or regulation shall be deemed to be construed as being consistent with federal law, rule or regulation."

Acts 2009, ch. 566, § 12 provided that the Tennessee code commission is directed to change all reference to public necessity rules, wherever such references appear in this code, to emergency rules, as sections are amended and volumes replaced.

37-2-414. Kinship Foster Care Program.

(a) As used in this section, unless the context otherwise requires:

(1) "Department" means the department of children's services; and

(2) "Foster parent" means any person with whom a child in the care, custody or guardianship of the department is placed for temporary or long-term care, but shall not include any persons with whom a child is placed for the purpose of adoption.

(b)(1) There is established a "Kinship Foster Care Program" in the department.

(2) When a child has been removed from such child's home and is in the care, custody or guardianship of the department, the department shall attempt to place the child with a relative for kinship foster care. If the relative is approved by the department to provide foster care services, in accordance with rules and regulations adopted by the department regarding foster care services, and a placement with the relative is made, the relative may receive payment for the full foster care rate for the care of the child and any other benefits that might be available to foster parents, whether in money or in services.

(3) The department shall establish, in accordance with the provisions of this section, eligibility standards for becoming a kinship foster parent.

(A) Relatives within the first, second or third degree to the parent or stepparent of a child who may be related through blood, marriage or adoption may be eligible for approval as a kinship foster parent.

(B) The kinship foster parent shall be twenty-one (21) years of age or older, except that if the spouse or partner of the relative is twenty-one (21) years of age or older and living in the home, and the relative is between eighteen (18) and twenty-one (21) years of age, the department may waive the age requirement.

(C)(i) A person may become a kinship foster parent only upon the completion of an investigation to ascertain if there is a state or federal record of criminal history for the prospective kinship foster parent or any other adult residing in the prospective parent's home;

(ii) A prospective kinship foster parent shall supply fingerprint samples and submit to a criminal history records check to be conducted by the Tennessee bureau of investigation and the federal bureau of investigation;

(iii) The Tennessee bureau of investigation shall conduct the investigation and shall make the results of the investigation available to the department in accordance with this section. The department shall maintain the confidentiality of the investigation results and shall use the results only for purposes of determining a person's eligibility to become a kinship foster parent; and

(iv) It is unlawful, except for the purpose of determining a person's eligibility for kinship foster care, for any person to disclose information obtained under this subdivision (b)(3)(C). Any person violating this section commits a Class A misdemeanor.

(D) The department shall determine whether the person is able to care effectively for the foster child by:

(i) Reviewing personal and professional references;

(ii) Observing during a home visit of the kinship foster parent with household members; and

(iii) Interviewing the kinship foster parent.

(4)(A) The department and the kinship foster parent shall develop a case plan for the foster care of the child. The plan shall be periodically reviewed and updated. If the plan includes the use of an approved child care center, group child care home or family child care home, the department shall pay for child care arrangements, according to established rates.

(B) The kinship foster parent shall cooperate with any activities specified in the case plan for the foster child, such as counseling, therapy or court sessions, or visits with the foster child's parents or other family members.

(5) The commissioner of children's services shall adopt rules and regulations necessary to carry out this section pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(c) The department of children's services and the commission on aging and disability shall collaboratively design and implement a full range of educational, counseling, referral, and other services designed to encourage and support elderly foster parents and disabled relative caregivers who participate in the relative caregiver program. The collective goal of such services shall be maximization of family stability and success within the relative caregiver program.

History.
Acts 1997, ch. 170, §§ 2, 3; 2000, ch. 981, § 59; 2003, ch. 44, § 1; 2005, ch. 196, § 1; 2011, ch. 410, § 3(h).

Compiler's Notes.
For the Preamble to the act concerning the prohibition against establishment of a special committee if there is a standing committee on the same subject, please refer to Acts 2011, ch. 410.

37-2-415. Foster parents' rights.

(a) To the extent not otherwise prohibited by state or federal statute, the department shall, through promulgation of rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, implement each of the following tenets. With respect to the placement of any foster child with a foster parent that is contracted directly with the department of children's services, or through an agency that contracts with the department to place children in foster care, pursuant to this part:

(1) The department shall treat the foster parent or parents with dignity, respect, trust and consideration as a primary provider of foster care and a member of the professional team caring for foster children;

(2) The department shall provide the foster parent or parents with a clear explanation and understanding of the role of the department and the role of the members of the child's birth family in a child's foster care;

(3) The foster parent or parents shall be permitted to continue their own family values and routines;

(4) The foster parent or parents shall be provided training and support for the purpose of improving skills in providing daily care and meeting the special needs of the child in foster care;

(5) Prior to the placement of a child in foster care, the department shall inform the foster parent or parents of issues relative to the child that may jeopardize the health and safety of the foster family or alter the manner in which foster care should be administered. The department shall fully disclose any information regarding past or pending charges of delinquency as a juvenile, criminal charges, if charged as an adult, and previous hospitalizations, whether due to mental or physical issues;

(6) The department shall provide a means by which the foster parent or parents can contact the department twenty-four (24) hours a day, seven (7) days a week for the purpose of receiving departmental assistance;

(7) The department shall provide the foster parent or parents timely, adequate financial reimbursement for the quality and knowledgeable care of a child in foster care, as specified in the plan; provided, that the amount of such financial reimbursement shall, each year, be subject to and restricted by the level of funding specifically allocated for such purpose by the general appropriations act;

(8)(A) The department shall provide clear, written explanation of the plan concerning the placement of a child in the foster parent's home. For emergency placements where time does not allow prior preparation of such explanation, the department shall provide such explanation as it becomes available. This explanation shall include, but is not limited to, all information regarding the child's contact with such child's birth family and cultural heritage, if so outlined;

(B) During an emergency situation when a child must be placed in home-care due to the absence of parents or custodians, the department of children's services may request that a criminal justice agency perform a federal name-based criminal history record check of each adult residing in the home. The results of such check shall be provided to the department, which shall provide a complete set of each adult resident's fingerprints to the Tennessee bureau of investigation within ten (10) calendar days from the date the name search was conducted. The Tennessee bureau of investigation shall either positively identify the fingerprint subject or forward the fingerprints to the federal bureau of investigation within fifteen (15) calendar days from the date the name search was conducted. The child shall be removed from the home immediately if any adult resident fails to provide fingerprints or written permission to perform a federal criminal history check when requested;

(C) When placement of a child in a home is denied as a result of a name-based criminal history record check of a resident and the resident contests that denial, each such resident shall, within five (5) business days, submit to the Tennessee bureau of investigation a complete set of such resident's fingerprints to the Tennessee criminal history record repository for submission to the federal bureau of investigation;

(D) The Tennessee bureau of investigation may charge a reasonable fee, not to exceed seventy dollars ($70.00), for processing a fingerprint-based criminal history record check pursuant to this subdivision (a)(8);

(E) As used in this section, "emergency situation" refers to those limited instances when the department of children's services is placing a child in the home of private individuals, including neighbors, friends, or relatives, as a result of a sudden unavailability of the child's primary caregiver;

(9) Prior to placement, the department shall allow the foster parent or parents to review written information concerning the child and allow the foster parent or parents to assist in determining if such child would be a proper placement for the prospective foster family. For emergency placements where time does not allow prior review of such information, the department shall provide information as it becomes

available;

(10) The department shall permit the foster parent or parents to refuse placement within their home, or to request, upon reasonable notice to the department, the removal of a child from their home for good reason, without threat of reprisal, unless otherwise stipulated by contract or policy;

(11) The department shall inform the foster parent or parents of scheduled meetings and staffing, concerning the foster child, and the foster parent or parents shall be permitted to actively participate in the case planning and decision-making process regarding the child in foster care. This may include individual service planning meetings, foster care reviews, and individual educational planning meetings;

(12) The department shall inform a foster parent or parents of decisions made by the courts or the child care agency concerning the child;

(13) The department shall solicit the input of a foster parent or parents concerning the plan of services for the child; this input shall be considered in the department's ongoing development of the plan;

(14) The department shall permit, through written consent, the ability of the foster parent or parents to communicate with professionals who work with the foster child, including any therapists, physicians and teachers who work directly with the child;

(15) The department shall provide all information regarding the child and the child's family background and health history, in a timely manner to the foster parent or parents. The foster parent or parents shall receive additional or necessary information, that is relevant to the care of the child, on an ongoing basis; provided, that confidential information received by the foster parents shall be maintained as such by the foster parents, except as necessary to promote or protect the health and welfare of the child;

(16) The department shall provide timely, written notification of changes in the case plan or termination of the placement and the reasons for the changes or termination of placement to the foster parent or parents, except in the instances of immediate response for child protective services;

(17) The department shall notify the foster parent or parents, in a complete manner, of all court hearings. This notification may include, but is not limited to, notice of the date and time of the court hearing, the name of the judge or hearing officer hearing the case, the location of the hearing, and the court docket number of the case. Such notification shall be made upon the department's receipt of this information, or at the same time that notification is issued to birth parents. The foster parent or parents shall be permitted to attend such hearings at the discretion of the court;

(18) The department shall provide, upon request by the foster parent or parents, information regarding the child's progress after a child leaves foster care. Information provided pursuant to this subsection (a) shall only be provided from information already in possession of the department at the time of the request;

(19) The department shall provide the foster parent or parents the training for obtaining support and information concerning a better understanding of the rights and responsibilities of the foster parent or parents;

(20) The department shall consider the foster parent or parents as the possible first choice permanent parents for the child, who after being in the foster parent's home for twelve (12) months, becomes free for adoption or a planned permanent living arrangement;

(21) The department shall consider the former foster family as a placement option when a foster child who was formerly placed with the foster parent or parents is to be re-entered into foster care;

(22) The department shall permit the foster parent or parents a period of respite, free from placement of foster children in the family's home with follow-up contacts by the agency occurring a minimum of every two (2) months. The foster parent or parents shall provide reasonable notice, to be determined in the promulgation of rules, to the department for respite;

(23) Child abuse/neglect investigations involving the foster parent or parents shall be investigated pursuant to the department's child protective services policy and procedures. A child protective services case manager from another area shall be assigned investigative responsibility. Removal of a foster child shall be conducted pursuant to Tennessee Code Annotated and departmental policy and procedures. The department, after consultation with statewide foster parent associations, shall promulgate rules pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to govern the operation of a foster parent advocacy program. At a minimum, the rules shall provide that an advocate shall be educated in the procedures relevant to departmental investigations of alleged abuse and neglect, and once trained, the advocate shall be permitted to be present at all portions of investigations where the accused foster parent or parents are present, and that all communication received by such advocates therein shall be strictly confidential. Nothing contained in this subdivision (a)(23) shall be construed to abrogate the provisions of chapter 1 of this title, regarding procedures for investigations of child abuse and neglect and child sexual abuse by the department of children's services and law enforcement agencies;

(24) Upon request, the department shall provide the foster parent or parents copies of all information relative to their family and services contained in the personal foster home record; and

(25) The department shall advise the foster parent or parents of mediation efforts through publication in departmental policy manuals and the Foster Parent Handbook. The foster parent or parents may file for mediation efforts in response to any violations of the preceding tenets.

(b) In promulgation of rules pursuant to subsection (a), the department shall provide forty-five (45) days

written notification of public hearings, held pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to the president of the Tennessee Foster Care Association and the president's designee.

(c)(1) At the time of placement of a child in a foster home, and no later than at the time the foster care placement contract is signed, the foster parent shall be informed, in writing, through a succinct checklist form, of all information that is available to the department regarding the child's:

(A) Pending petitions, or adjudications of delinquency when the conduct constituting the delinquent act, if committed by an adult, would constitute first degree murder, second degree murder, rape, aggravated rape, rape of a child, aggravated robbery, especially aggravated robbery, kidnapping, aggravated kidnapping or especially aggravated kidnapping;

(B) Behavioral issues that may affect the care and supervision of the child;

(C) History of physical or sexual abuse;

(D) Special medical or psychological needs of the child; and

(E) Current infectious diseases.

(2) All information shall remain confidential and not subject to disclosure to any person by the foster parent.

(d)(1)(A)(i) If a foster parent believes that the department, an employee of the department, an agency under contract with the department or an employee of an agency under contract with the department, has failed to follow the tenets listed in subsection (a), and that the failure has harmed or could harm a child who is or was in the custody of the department or that the failure has inhibited the foster parent's ability to meet the needs of a child as written in the permanency plan, then the foster parent may inform the child's case manager, who shall make every attempt to resolve the dispute.

(ii) If the foster parent believes that the dispute has not been adequately resolved by the case manager, the foster parent may contact the case manager's supervisor. The foster parent is encouraged to make such contact in writing and to forward any written communication between the foster parent and the department's employees to the employees' regional administrator and to the commissioner or the commissioner's designee within the department's central office. The department's central office shall maintain a record of any such communication that is received.

(B) If the foster parent believes that the dispute has not been adequately resolved by the case manager's supervisor or supervisors, the foster parent may contact the regional administrator or the regional administrator's designee. This review shall include an in-person interview.

(C) If the foster parent believes that the dispute has not been adequately resolved by the regional administrator or the regional administrator's designee, the foster parent may request, in writing via certified mail, that the department's central office review the actions of the department or the department's employee.

(D) If a review is requested pursuant to subdivision (d)(1)(B), the department shall conduct the review and respond in writing to the foster parent no later than thirty (30) days from the postmarked date of the foster parent's written mailed request. The review shall include, but not be limited to, a review of any previous communication mailed in by the foster parent and an in-person interview with the foster parent.

(2) The department shall transmit to the Tennessee commission on children and youth copies of the written request made pursuant to subdivision (d)(1)(B) no later than ten (10) days from the date the request was received. The department shall also transmit copies of the written response made pursuant to subdivision (d)(1)(C). The copies shall be transmitted no later than ten (10) days from the date the response was sent pursuant to subdivision (d)(1)(C).

(3) If the foster parent believes that the dispute has not been adequately resolved by the department's central office, the foster parent may request in writing via certified mail that the Tennessee commission on children and youth review the actions of the department. The department shall fully comply with the commission in the review, including providing any records requested.

(4) This subsection (d) shall not be construed to limit any rights otherwise granted to foster parents by law.

(e) The department shall train all employees of the department who come in contact with foster parents regarding this section and § 37-2-416. All current employees shall receive such training no later than February 1, 2010, and new employees shall be trained within thirty (30) days from the date of their employment.

History.

Acts 1997, ch. 549, §§ 2, 3; 1999, ch. 493, §§ 1, 2; 1999, ch. 508, §§ 4, 10, 11; 2000, ch. 981, § 51; 2002, ch. 629, § 7; 2004, ch. 877, § 1; 2005, ch. 265, § 6; 2008, ch. 796, § 1; 2009, ch. 270, § 1; 2011, ch. 410, § 3(i); 2015, ch. 199, § 3.

Compiler's Notes.

Acts 1997, ch. 549, § 1 provided that this section may be cited as the "Foster Parent Rights Act."

For the Preamble to the act concerning the prohibition against establishment of a special committee if there is a standing committee on the same subject, please refer to Acts 2011, ch. 410.

37-2-416. Notice of hearing to foster parent, adoptive parent or relative providing care.

(a) The department shall notify the foster parents, if any, or any prospective adoptive parent or relative providing care for the child in state custody with notice of any review or hearing to be held with respect to the child. The foster parents, if any, of such a child and any prospective adoptive parent or relative providing care for the child shall be provided with notice of the right to

be heard in any review or hearing to be held with respect to the child, except that this section shall not be construed to require that any foster parent, prospective adoptive parent, or relative providing care for the child be made a party to such a review or hearing solely on the basis of such notice and right to be heard.

(b) At each hearing, the court shall determine whether the department has complied with this section.

History.
Acts 1998, ch. 1097, § 22; 2007, ch. 372, § 11; 2008, ch. 906, § 3.

37-2-417. Tennessee's Transitioning Youth Empowerment Act of 2010.

(a) This section may be known and cited as "Tennessee's Transitioning Youth Empowerment Act of 2010."

(b) The department of children's services is authorized to develop a program to provide services to youth who are transitioning to adulthood from state custody. Services may be provided on a voluntary basis to any person who is at least eighteen (18) years of age but less than twenty-one (21) years of age, who was in the custody of the department at the time of the person's eighteenth birthday and who is:

(1) Completing secondary education or a program leading to an equivalent credential;

(2) Enrolled in an institution which provides post-secondary or career and technical education;

(3) Participating in a program or activity designed to promote or remove barriers to employment;

(4) Employed for at least eighty (80) hours per month; or

(5) Incapable of doing any of the activities described in subdivisions (b)(1)-(4) due to a medical condition, including a developmental or intellectual condition, which incapability is supported by regularly updated information in the permanency plan of the person. In such a case the person shall be in compliance with a course of treatment as recommended by the department.

(c) Services may also be made available to any person who meets the requirements of subsection (b) but refused such services at the time of the person's eighteenth birthday if at any time the person seeks to regain services prior to the person's twenty-first birthday.

(d) The advisory committee established in § 37-2-601 shall serve as an advisory committee for programs and services established by this section.

(e) The commissioner of children's services shall establish policies and procedures in order to create and implement this program.

(f) The department is authorized to seek federal funding or to participate in federal programs developed for this purpose.

History.
Acts 2010, ch. 1065, §§ 1-3; 2012, ch. 653, § 1; 2015, ch. 55, § 1.

Compiler's Notes.
Acts 2010, ch. 1065, § 5 provided that the act, which enacted this section, shall be repealed June 30, 2012. Acts 2012, ch. 653, § 1 repealed Acts 2010, ch. 1065, § 5, effective April 4, 2012.

37-2-418. Reasonable and prudent parent standard — Definitions — Application — Liability.

(a) As used in this section:

(1) "Age- or developmentally-appropriate" means:

(A) Activities or items that are generally accepted as suitable for children of the same chronological age or level of maturity or that are determined to be developmentally appropriate for a child based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; and

(B) In the case of a specific child, activities or items that are suitable for the child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the child;

(2) "Caregiver" means the child's foster parent, whether the child is in a family foster home or a therapeutic foster home, or the designated official at a child-placing agency; and

(3) "Reasonable and prudent parent standard" means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interest of a child while also encouraging the emotional and developmental growth of the child, that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the department to participate in age- or developmentally-appropriate extracurricular, enrichment, cultural, and social activities.

(b) Every child-placing agency that makes the determinations in subsection (c) shall designate an on-site official who is authorized to apply the reasonable and prudent parent standard and assist a caregiver in application of the reasonable and prudent parent standard.

(c) A caregiver shall use the reasonable and prudent parent standard when determining whether to allow a child in foster care to participate in extracurricular, enrichment, cultural, and social activities.

(d) The caregiver and the child-placing agency, if applicable, shall not be liable for injuries to the child that occur as a result of acting in accordance with the reasonable and prudent parent standard. Any caregiver or child-placing agency acting in good faith in compliance with the reasonable and prudent parent standard shall be immune from civil liability arising from such action.

(e) The immunity provided in subsection (d) shall not apply if the injuries to the child were caused by gross negligence, willful or wanton conduct, or intentional wrongdoing. Any liability under this subsection (e) that may be attributable to the department or any of its employees shall be strictly adjudicated before the claims commission pursuant to title 9, chapter 8, part 3, as applicable.

History.
Acts 2016, ch. 679, § 1.

PART 5

TENNESSEE RUNAWAY ACT

37-2-501. Short title.

This part shall be known and may be cited as the "Tennessee Runaway Act."

History.
Acts 1976, ch. 683, § 1; T.C.A., § 37-1601.

37-2-502. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Department" means the department of children's services;

(2) "Runaway" means any person under eighteen (18) years of age who is away from the home or residence of such person's parents or guardians without such parents' or guardians' consent. "Runaway" does not include persons under eighteen (18) years of age who lawfully reside with a close relative or those attending educational institutions, or those placed by court order, on a contractual agreement with a parent or guardian;

(3) "Runaway house" means any house or institution giving sanctuary or housing to any person under eighteen (18) years of age, who is away from the home or residence of such person's parents or guardians without such parents' or guardians' consent; and

(4) "Sanctuary" means a house, institution or other organization providing housing or accommodations to runaways as set forth in this part.

History.
Acts 1976, ch. 683, § 2; T.C.A., § 37-1602; Acts 1996, ch. 1079, § 73.

37-2-503. Registration requirement for runaway houses.

All houses, institutions or other organizations giving sanctuary to runaway youths shall be registered with the department. No such house or institution shall provide sanctuary to such persons unless it is registered in accordance with this part.

History.
Acts 1976, ch. 683, § 3; T.C.A., § 37-1603.

37-2-504. Minimum standards for runaway houses — Establishment.

The department shall establish minimum standards for runaway houses and shall not issue registration to any runaway house that does not comply with this part or does not meet or exceed the minimum standards established by the department. This part applies to all runaway houses without regard to their title or designation or additional services rendered.

History.
Acts 1976, ch. 683, § 4; T.C.A., § 37-1604.

37-2-505. Minimum standards — Contents.

The standards established by the department shall include, but not be limited to, the following:

(1) Separate quarters for males and females;

(2) Supervision of both sexes;

(3) Complete and accurate records of all runaways housed;

(4) Minimum health and safety requirements as established by the department;

(5) A program for prevention or treatment for the use of drugs and permitting use of medication by runaways only upon the advice of a physician;

(6) An examination for communicable diseases; and

(7) Structured programs for all residents of the facility.

History.
Acts 1976, ch. 683, § 5; T.C.A., § 37-1605.

37-2-506. Shelter for runaways.

(a) Any runaway seeking sanctuary may be given shelter for seventy-two (72) hours; provided, that:

(1) The runaway is not known to have committed, nor is under investigation for the commission of, a delinquent or criminal act;

(2) A good faith attempt is made to notify the juvenile court with jurisdiction in the county in which the runaway house is located, or the runaway's parent or guardian, of the runaway's location within one (1) hour of the runaway's arrival; and

(3) No runaway admitted to a runaway house shall be removed during the seventy-two (72) hours of sanctuary other than by order of the juvenile court in the jurisdiction.

(b) Any juvenile judge in this or another state may release a runaway from a runaway house in another jurisdiction by contacting the juvenile judge having jurisdiction over the receiving runaway house.

History.
Acts 1976, ch. 683, § 6; T.C.A., § 37-1606.

37-2-507. Violations — Penalties.

The owner, operator or agent of any house or facility that operates without registering or otherwise willfully violates this part commits a Class C misdemeanor. If, in the discretion of the trial court, a second or subsequent offense indicates continued or regular noncompliance with this part, the facility may be enjoined from future operations as a runaway house.

History.
Acts 1976, ch. 683, § 7; T.C.A., § 37-1607; Acts 1989, ch. 591, § 113.

PART 6

EXTENSION OF FOSTER CARE

37-2-601. Establishment of extension of foster care services advisory council.

(a)(1) The executive director of the Tennessee commission on children and youth shall establish a non-funded, voluntary, extension of foster care services advisory council, which shall be responsible for:

(A) Identifying strategies to assess and track effectiveness of extension of foster care services and the operation of resources centers authorized by this part; and

(B) Identifying the following:

(i) Strategies for maintaining accurate numbers of children served by extension of foster care services;

(ii) The number of services provided by the department of children's services;

(iii) The number of children who accept these services;

(iv) Reasons why children do not accept these services; and

(v) The number of children who continue their education and the number who do not.

(2) The advisory council shall report no later than October 31 of each year to the Tennessee commission on children and youth, the civil justice committee and health committee of the house of representatives and the health and welfare committee of the senate, making recommendations for the continuing operation of the system of extension of foster care services and supports.

(b) The department of children's services and other state agencies that provide services or supports to youth transitioning out of state custody shall participate fully in the council and shall respond to the recommendations put forth by the council as appropriate.

History.
Acts 2009, ch. 415, § 1; 2011, ch. 410, § 3(j); 2013, ch. 236, § 78; 2014, ch. 508, § 1.

Compiler's Notes.
For the Preamble to the act concerning the prohibition against establishment of a special committee if there is a standing committee on the same subject, please refer to Acts 2011, ch. 410.

37-2-602. Determination of whether youth applicants for assistance were formerly in state custody — Identification by state agencies on agency forms — Sharing of information.

(a) All state agencies that administer cash or in-kind assistance, or both, to youth eighteen (18) to twenty-four (24) years of age within the course of normal business shall make reasonable efforts to determine if an applicant for assistance has ever been in the custody of the state. If the applicant has been in state custody, the state agency shall share information with the applicant regarding possible services to be provided by the department of children's services, other state agencies and community partners.

(b) State agencies shall modify agency forms to identify youth who have been in state custody as the agencies' forms are otherwise revised and updated.

(c) The department of children services may share services information for former foster youth and youth transitioning from state custody through already established models such as, but not limited to, web sites, emails, verbal notifications or other printed material.

History.
Acts 2009, ch. 415, § 1.

37-2-603. Establishment of resource centers to provide or facilitate assistance.

(a) The private, nonprofit community is urged to establish a network to provide information, assistance, services and supports to persons from sixteen (16) to twenty-four (24) years of age who were in foster care on the person's eighteenth birthday and persons from sixteen (16) to twenty-four (24) years of age who have been in foster care at any time after the person's fourteenth birthday.

(b) The resource centers shall provide or facilitate the assistance necessary to:

(1) Deal with the challenges and barriers associated with the transition into adulthood and early adult years;

(2) Support post-secondary education, vocational training and job skills development for such person;

(3) Find and retain employment, housing, transportation, parenting and family support, health care and mental health care; and

(4) Navigate systems and procedures that impact the person's education, employment, health and mental welfare and basic needs.

(c) These services shall be available at any time until the person reaches twenty-four (24) years of age regardless of whether the youth elects to remain in a voluntary extension of foster care arrangement with the department or the youth chooses to terminate any relationship with the state.

(d) The resource centers shall be supported in part by the department in the community where the centers are located, subject to the availability of funds specifically appropriated for this purpose. The department is authorized and encouraged to share staff with the resource centers, as well as provide financial support.

History.
Acts 2009, ch. 415, § 1; 2014, ch. 508, § 2.

37-2-604. Preparing foster children for independent living.

In preparing a foster child for independent living prior to the child reaching eighteen (18) years of age, the department shall provide information on the resource centers established pursuant to this part to all

children over sixteen (16) years of age in foster care. The information shall include the address of the nearest resource center and services available from the center. Each child shall be encouraged to maintain periodic contact with resource center personnel and to provide current and accurate residence and contact information to the resource center. Ninety (90) days before a child leaves state custody the department of children's services shall notify the child of all information, services, web sites and assistance available for post-custody.

History.
Acts 2009, ch. 415, § 1.

37-2-605. Construction of part.

Nothing in this part shall be construed to require a person to have maintained continuous contact with the resource centers or the department in order to be eligible to receive services from the resource centers or the department.

History.
Acts 2009, ch. 415, § 1.

CHAPTER 3

ADMINISTRATION OF CHILDREN AND YOUTH SERVICES

Part 1. Tennessee Commission on Children and Youth Act of 1988

SECTION.
37-3-101. Short title.
37-3-102. Creation — Appointments — Meetings — Reimbursement.
37-3-103. Powers and duties.
37-3-104. Executive director.
37-3-105. Personnel — Travel reimbursement.
37-3-106. Regional councils.
37-3-107. References to predecessors — Prior contracts, rules, etc.
37-3-108. [Repealed.]
37-3-109. Transfer of functions.
37-3-110. Definitions for §§ 37-3-110 — 37-3-115.
37-3-111. Council on children's mental health care — Members — Meetings.
37-3-112. Plan for a statewide system of care — Principles of care — Resource map and cost analysis.
37-3-113. Duties of council.
37-3-114. Additional duties of council.
37-3-115. Report, plan and budget.
37-3-116. Resource mapping of funding sources — Report.

Part 2. Division of Juvenile Probation [Repealed]

37-3-201 — 37-3-209. [Repealed.]

Part 3. Commissioner of Youth Development [Repealed]

37-3-301 — 37-3-303. [Repealed.]

Part 4. Youth Investment Act of 1970

37-3-401. Short title.
37-3-402. Office of community contact — Creation — Director — Personnel.
37-3-403. Duties of office.
37-3-404. Duties of director.
37-3-405. Volunteers' duties.
37-3-406. Application for funds — Authorization.

Part 5. Teenage Pregnancy

37-3-501. Informational clearinghouse — Toll-free telephone service for inquiries — Promotional activities — Annual report.
SECTION.
37-3-502. Information on programs and services — Bibliography of resources.
37-3-503. Statistical and other research information — State reports.
37-3-504. Information concerning conferences, workshops, hearings, meetings.
37-3-505. [Obsolete.]
37-3-506. Similar programs or services operating within state.
37-3-507. Purpose of informational clearinghouse.
37-3-508 — 37-3-520. [Reserved.]
37-3-521. Informational services regarding second or subsequent pregnancies — Targeting potential at-risk first time teen parents.

Part 6. Safe Families and Family Preservation Act

37-3-601. Short title — Funding.
37-3-602. Part definitions.
37-3-603. Program to provide family preservation services.
37-3-604. [Repealed.]
37-3-605. Statute implementation.

Part 7. Early Childhood Development Act of 1994

37-3-701. Short title.
37-3-702. Legislative findings.
37-3-703. Healthy start pilot project established — Objectives — Evaluation — Required disclosures.

Part 8. Tennessee Second Look Commission

37-3-801. Short title.
37-3-802. Part definitions.
37-3-803. Creation — Findings and recommendations — Duties — Reports.
37-3-804. Membership.
37-3-805. Administration — Responsibilities.
37-3-806. Table of profiled cases — Review of cases — Sampling.
37-3-807. Voting — Reimbursement of expenses.
37-3-808. Meetings.
37-3-809. Requests by the commission.
37-3-810. Confidentiality — Public meetings.
37-3-811. Hiring of staff and consultants.
37-3-812. Immunity from civil and criminal liability.
37-3-813. Investigations or reviews authorized by other laws.
37-3-814. Sharing of information regarding criminal violations with officials charged with investigating criminal matters.
37-3-815. Conflicts of interest.

PART 1

TENNESSEE COMMISSION ON CHILDREN AND YOUTH ACT OF 1988

37-3-101. Short title.

This part shall be known and may be cited as the "Tennessee Commission on Children and Youth Act of 1988."

History.
Acts 1988, ch. 979, § 2.

Compiler's Notes.
Former part 1, §§ 37-3-101 — 37-3-110 (Acts 1980, ch. 865, §§ 1, 3-9, 13; 1985, ch. 478, § 34; T.C.A., §§ 37-7-101 — 37-7-109), concerning the children's services commission, was repealed by Acts 1988, ch. 979, § 2.

For creation of cabinet council on services to children and youth, see Executive Order No. 19 (June 10, 1988).

37-3-102. Creation — Appointments — Meetings — Reimbursement.

(a) There is created a permanent commission to be known as the commission on children and youth. The

commission shall serve as an informational resource and advocacy agency for the efficient and effective planning, enhancement and coordination of state, regional and local policies, programs and services to promote and protect the health, well-being and development of all children and youth in Tennessee.

(b) The commission shall consist of twenty-one (21) members, to be appointed by the governor on the basis of broadly based and demonstrated leadership, interest, knowledge and activities concerning the problems and needs of children and youth. At least one (1) member of the commission shall be appointed from each of the state's nine (9) development districts. Membership shall include residents of urban as well as rural areas of the state. In making each appointment to the commission, the governor shall remain cognizant of, and shall give due consideration to, any applicable federal criteria that may be imposed pursuant to the provisions of the Juvenile Justice and Delinquency Prevention Act of 1974, compiled in 42 U.S.C. § 5601 et seq., as amended, and shall also remain cognizant of, and give due consideration to, the intent of this part that the commission shall act to promote and protect the health, well-being and development of all children and youth in Tennessee. In making appointments to the commission, the governor shall strive to ensure that at least one (1) person serving on the commission is sixty (60) years of age or older and that at least one (1) person serving on the commission is a member of a racial minority.

(c) Each regular appointment to the commission shall be for a term of three (3) years, and every appointee shall serve until a successor has been appointed and has qualified. No member of the commission may be appointed to serve more than three (3) consecutive three-year terms. Any vacancy occurring on the commission shall be filled by appointment only for the remainder of the unexpired term. Following any member's three (3) successive absences from commission meetings, the chair may request the governor to declare a vacancy and to fill the unexpired term.

(d) The commission shall maintain a permanent office in Nashville and shall meet at least four (4) times each year to transact business and perform its duties. The commission may meet at such other times and places as it deems necessary.

(e) The governor shall appoint one (1) member of the commission to serve as chair for a term of three (3) years.

(f) The commission may establish such subcommittees and ad hoc committees, and may convene such interdisciplinary advisory groups, as it may deem necessary to efficiently and effectively perform its duties and responsibilities.

(g) Members of the commission shall receive no compensation for their services, but shall be reimbursed for travel and other expenses actually incurred in the performance of their official duties. Such reimbursement shall be paid in accordance with the provisions of the comprehensive out-of-state travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

History.

Acts 1988, ch. 979, § 2; 1988, ch. 1013, § 12; 2015, ch. 422, § 1.

Compiler's Notes.

For creation of the Tennessee juvenile justice commission, and the involvement of the former children's services commission personnel therein, see Executive Order No. 56 (October 26, 1983).

For creation of cabinet council on services to children and youth, see Executive Order No. 19 (June 10, 1988).

The commission on children and youth, created by this section, terminates June 30, 2020. See §§ 4-29-112, 4-29-241.

Former part 1, §§ 37-3-101 — 37-3-110 (Acts 1980, ch. 865, §§ 1, 3-9, 13; 1985, ch. 478, § 34; T.C.A., §§ 37-7-101 — 37-7-109), concerning the children's services commission, was repealed by Acts 1988, ch. 979, § 2.

37-3-103. Powers and duties.

(a)(1) The commission shall perform each of the following duties:

(A) Make recommendations concerning establishment of priorities and needed improvements with respect to programs and services for children and youth;

(B) On or before September 1 of each year, make recommendations for the state budget for the following fiscal year regarding services for children and youth and submit the recommendations to the governor, the finance, ways and means committee of the senate, the finance, ways and means committee of the house of representatives, the legislative office of budget analysis, and the affected state departments;

(C) Implement the provisions of the Juvenile Justice and Delinquency Prevention Act of 1974, compiled in 42 U.S.C. § 5601 et seq., and distribute, consistent with the purpose of the commission as set forth by § 37-3-102(a), such funds as the general assembly shall direct;

(D) Advocate and coordinate the efficient and effective development and enhancement of state, local and regional programs and services for children and youth;

(E) Publish annually, on or before December 31, a comprehensive report on the status of children and youth in Tennessee; and distribute the report to the governor, to each member of the general assembly and to each of the state's depository libraries; and

(F) Promulgate, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, such rules as may be necessary to perform the duties prescribed by this part.

(2) If a new, separate or reorganized department, office or agency is established to administer the duties of youth services in the department of correction, the duties in this subsection (a) and the duties and authority provided by §§ 37-1-161 and 37-1-162, and any funds allocated to the commission on children and youth for distribution, may be transferred by executive order of the governor to such new, separate or reorganized entity.

(b) To the extent that adequate resources are available, the commission is authorized to perform any one (1) or more of the following activities:

(1) Identify and analyze specific problems concerning programs and services for children and youth;

(2) [Deleted by 2015 amendment]

(3) Review licensing or certification standards and program policies, promulgated by entities of state government, that affect children and youth; and make recommendations concerning such standards and policies to the governor, to the entity promulgating any such standard or policy and to each member of the general assembly; and

(4) Monitor foster care review boards; report on the impact of foster care review on children and youth in foster care; and make recommendations for improvement of the state's foster care system to the governor and each member of the general assembly.

History.
Acts 1988, ch. 979, § 2; 1999, ch. 230, § 3; 2010, ch. 1030, § 12; 2015, ch. 259, § 3; 2016, ch. 797, § 4.

Compiler's Notes.
For creation of advisory group to the commission on children and youth, see Executive Order No. 29 (September 26, 1989).

Former part 1, §§ 37-3-101 — 37-3-110 (Acts 1980, ch. 865, §§ 1, 3-9, 13; 1985, ch. 478, § 34; T.C.A., §§ 37-7-101 — 37-7-109), concerning the children's services commission, was repealed by Acts 1988, ch. 979, § 2.

37-3-104. Executive director.

The commission shall be administered by an executive director who is appointed by and serves at the pleasure of the members of the commission. The executive director shall be a full-time employee of the commission and shall be responsible for the administration of commission policies, rules, and guidelines and the proper management and operation of the commission's programs and activities. The executive director shall be an individual who is professionally trained in one (1) or more fields involving services to children and youth, who has a working knowledge of programs for children and youth, and who has previous employment experience in managing and delivering services to children and youth.

History.
Acts 1988, ch. 979, § 2; 2012, ch. 986, § 17; 2015, ch. 422, § 2.

Compiler's Notes.
Former part 1, §§ 37-3-101 — 37-3-110 (Acts 1980, ch. 865, §§ 1, 3-9, 13; 1985, ch. 478, § 34; T.C.A., §§ 37-7-101 — 37-7-109), concerning the children's services commission, was repealed by Acts 1988, ch. 979, § 2.

Acts 2012, ch. 986, § 48 provided that all rules, regulations, orders, and decisions heretofore issued or promulgated by any of the boards or commissions, which the act terminates or merges into another board or commission, shall remain in full force and effect. In the case of the boards or commissions that are merged with another board or commission by the act, all final rules, regulations, orders, and decisions together with any matters that are pending on October 1, 2012, shall hereafter be administered, enforced, modified, or rescinded in accordance with the law applicable to the continuing board or commission.

37-3-105. Personnel — Travel reimbursement.

(a) The executive director, subject to the approval of the commission and the commissioner of finance and administration, shall employ other personnel as may be necessary for the performance of the duties as prescribed by this part.

(b) All reimbursement for travel of commission staff shall be in accordance with the provisions of the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

History.
Acts 1988, ch. 979, § 2.

Compiler's Notes.
Former part 1, §§ 37-3-101 — 37-3-110 (Acts 1980, ch. 865, §§ 1, 3-9, 13; 1985, ch. 478, § 34; T.C.A., §§ 37-7-101 — 37-7-109), concerning the children's services commission, was repealed by Acts 1988, ch. 979, § 2.

37-3-106. Regional councils.

(a) There shall be a regional council on children and youth organized by the commission in each of the nine (9) development districts of the state. The regional councils shall perform each of the following duties:

(1) Provide for mutual exchange of information and networking among service providers, advocates and elected officials;

(2) Educate council members, officials, others involved in services for children and youth, and the general public concerning the needs and problems of children and youth in the region and the state;

(3) Coordinate regional and local efforts between public and private service providers to enhance services for children and youth;

(4) Advocate for legislation, policies and programs at the local and regional level to promote and protect the health, well being and development of children and youth;

(5) Collect, compile and distribute data; and

(6) Make recommendations on the needs and problems of children and youth.

(b) The regional councils on children and youth shall be the ongoing communication links between the commission and the various regional and local areas of the state. The councils shall perform information-gathering and problem solving tasks concerning services for children and youth. Each council shall report to the commission, at least annually, its recommendations for improvements in services for children and youth.

(c) The commission shall establish guidelines for the composition and operation of the regional councils. The commission shall provide at least one (1) locally based staff person for each regional council to assist the council in performing the duties assigned by this part. Such staff person shall coordinate, advise and consult with the council, shall provide technical assistance to the council and community organizations serving children and youth, and shall act as liaison to the commission.

History.
Acts 1988, ch. 979, § 2.

Compiler's Notes.
Former part 1, §§ 37-3-101 — 37-3-110 (Acts 1980, ch. 865, §§ 1, 3-9, 13; 1985, ch. 478, § 34; T.C.A., §§ 37-7-101 — 37-7-109), concerning

the children's services commission, was repealed by Acts 1988, ch. 979, § 2.

37-3-107. References to predecessors — Prior contracts, rules, etc.

References to the commission on children and youth, the office of child development, the children's services commission, and the juvenile justice commission appearing elsewhere in Tennessee Code Annotated are deemed to be references to the commission on children and youth. All contracts and leases entered into by the children's services commission and by the juvenile justice commission shall continue in full force and effect as to all essential provisions in accordance with the terms and conditions of the contract in existence on July 1, 1988, unless and until such contracts or leases expire or are duly amended or modified by the parties thereto. All rules, orders, and decisions promulgated or issued by the children's services commission or the juvenile justice commission prior to, and in effect on July 1, 1988, shall remain in force and effect and shall be administered and enforced by the commission on children and youth until duly amended, repealed, expired, modified or superseded.

History.
Acts 1988, ch. 979, § 2.

Compiler's Notes.
Former part 1, §§ 37-3-101 — 37-3-110 (Acts 1980, ch. 865, §§ 1, 3-9, 13; 1985, ch. 478, § 34; T.C.A., §§ 37-7-101 — 37-7-109), concerning the children's services commission, was repealed by Acts 1988, ch. 979, § 2.

37-3-108. [Repealed.]

Compiler's Notes.
Former § 37-3-108 (Acts 1988, ch. 874, §§ 1, 3, 4; 1988, ch. 979, § 2; 1988, ch. 1005, § 6; 1988, ch. 1011, § 1; 1988, ch. 1012, § 1; 1988, ch. 1021, § 1; 1989, ch. 278, § 43; 1996, ch. 1079, § 183), concerning the interdepartmental coordination council, was repealed by Acts 1999, ch. 230, § 4, effective July 1, 1999.
Former part 1, §§ 37-3-101 — 37-3-110 (Acts 1980, ch. 865, §§ 1, 3-9, 13; 1985, ch. 478, § 34; T.C.A., §§ 37-7-101 — 37-7-109), concerning the children's services commission, was repealed by Acts 1988, ch. 979, § 2.

37-3-109. Transfer of functions.

(a) The provisions of § 4-29-114 shall not apply to this part.

(b) All staff, staff positions, offices, equipment, supplies, property, funds and other resources of the children's services commission and the juvenile justice commission shall be transferred to the commission on children and youth.

(c) The commission on children and youth shall be subject to the provisions of § 4-29-118(a).

History.
Acts 1988, ch. 979, § 3.

Compiler's Notes.
Former part 1, §§ 37-3-101 — 37-3-110 (Acts 1980, ch. 865, §§ 1, 3-9, 13; 1985, ch. 478, § 34; T.C.A., §§ 37-7-101 — 37-7-109), concerning the children's services commission, was repealed by Acts 1988, ch. 979, § 2.

37-3-110. Definitions for §§ 37-3-110 — 37-3-115.

As used in this section and in §§ 37-3-111 — 37-3-115, unless the context otherwise requires:

(1) "Child-centered" means a system in which the needs of the child are at its core and that integrates services and programs offered by various departments of state government, units of local government and public and private agencies to support and serve the child;

(2) "Commission" means the commission on children and youth;

(3) "Council" means the council on children's mental health care;

(4) "Culturally competent" means a system that has the ability to deliver and ensure access to services in a manner that effectively responds to the values and practices present in the various cultures of children;

(5) "Demonstration sites" means certain geographic areas throughout the state where children's mental health care is in keeping with the principles set out in § 37-3-112(b);

(6) "Family" means:

(A) The members of a household living, on a full-time or a part-time basis, in one (1) house, condominium, apartment or other dwelling;

(B) People related by blood or ancestry, marriage, or adoption;

(C) Any person who is held out to the public as being a family member of a child;

(D) Foster parents and foster children;

(E) Stepparents and stepchildren; and

(F) Any other group that the council determines by policy or rule to constitute a family for purposes of this part;

(7) "Family-driven" means a system in which the needs of the family are at its core and that integrates services and programs offered by various departments of state government, units of local government and public and private agencies to support and serve the family;

(8) "Linguistically competent" means a system that has the ability to deliver and ensure access to services in a manner that effectively responds to the languages present in the various cultures of children;

(9) "Mental health care" means all services and programs offered by various departments of state government, units of local government and public and private agencies that support and serve the mental health needs of children and their families; and

(10) "Mental health needs" means any significant behavioral problem or emotional disorder, whether the problem or disorder is biologically-based or due to environmental factors, including, but not limited to, any psychiatric disorder, alcohol or substance abuse,

depression or suicide, hyperactivity or attention-deficit disorder.

History.
Acts 2008, ch. 1062, § 1.

Compiler's Notes.
For the Preamble to the act regarding to the mental health needs of Tennessee's children and youth, please refer to Acts 2008, ch. 1062.

Former part 1, §§ 37-3-101 — 37-3-110 (Acts 1980, ch. 865, §§ 1, 3-9, 13; 1985, ch. 478, § 34; T.C.A., §§ 37-7-101 — 37-7-109), concerning the children's services commission, was repealed by Acts 1988, ch. 979, § 2.

37-3-111. Council on children's mental health care — Members — Meetings.

(a) There shall be a council on children's mental health care organized by the commission that shall design a plan for a statewide system of mental health care for children.

(b) The council shall be co-chaired by the executive director of the commission on children and youth and the commissioner of mental health and substances abuse services, or either of their designees.

(c) Members of the council shall include, but not be limited to:

(1) The commissioners of children's services, finance and administration, health, human services, education, mental health and substance abuse services, and intellectual and developmental disabilities, or their designees;

(2) The director of the bureau of TennCare or the director's designee;

(3) Two (2) persons from the department of mental health and substance abuse services who are selected by the commissioner of mental health and substance abuse services; provided, that one (1) person is familiar with children and youth services and one (1) person is familiar with alcohol and drug abuse services;

(4) The chair of the commission on children and youth or the chair's designee;

(5) One (1) member of the governor's personal staff appointed by the governor;

(6) One (1) legislator appointed by the speaker of the senate and one (1) legislator appointed by the speaker of the house of representatives; and

(7) One (1) representative from the comptroller of the treasury.

(d) Other members of the council shall be selected by the co-chairs and shall include:

(1) Four (4) parents of children who have received mental health services from a state agency or other provider and are chosen from nominations received from representatives of statewide organizations that advocate for or serve children's mental health needs, that provide for representation from each of the three (3) grand divisions of the state and from both urban and rural areas;

(2) Two (2) persons who are under twenty-four (24) years of age and who are receiving or have received mental health services from a state agency or other provider and are chosen from nominations received from representatives of statewide organizations that advocate for or serve children's mental health needs;

(3) Three (3) representatives of the community services agencies, or their successor organizations, as established pursuant to § 37-5-304;

(4) Two (2) representatives of a statewide organization that advocates for children's mental health needs;

(5) Two (2) representatives of providers of children's mental health services; and

(6) Three (3) judges chosen by the Tennessee council of juvenile and family court judges that provide for representation from each of the three (3) grand divisions of the state and both urban and rural areas.

(e) Following three (3) consecutive absences, the co-chairs may declare a vacancy and request that a new member be appointed pursuant to this section who meets the criteria of the replaced member.

(f) The members of the council shall receive no salary. Only members of the council selected pursuant to subdivisions (d)(1) and (2) shall be reimbursed necessary travel and per diem expenses as prescribed in the comprehensive travel regulations by the commissioner of finance and administration for employees of this state; provided, that all other members who are employed by the state or who are holding elected office will be compensated and reimbursed in keeping with the performance of their official roles or capacities.

(g) As well as serving as a voting member on the council, the executive director of the commission or the executive director's designee shall also serve as the chief administrative officer of the council. The executive director shall have the authority to conduct ordinary and necessary business in the name of the council in accordance with this section or as determined by the council.

(h) The council shall meet as necessary to transact business; provided, that meetings shall be held at least quarterly and the meetings shall be open to organizations, agencies, and individuals who work in the area of children's mental health, including, but not limited to, mental health services, educational services, substance abuse services, recreational services, social services, health services, vocational services, operational services and nontraditional services, to seek opportunities to collaborate and improve the statewide system of children's mental health care. The council's quarterly meetings shall pay particular attention to interagency collaboration, funding, accountability, information management, and service array.

(i) All meetings held by the council are subject to the open meeting provisions of title 8, chapter 44.

History.
Acts 2008, ch. 1062, § 1; 2010, ch. 1100, §§ 55–57; 2012, ch. 575, §§ 1, 2.

Compiler's Notes.
The council on children's mental health care, created by this section, terminates June 30, 2018. See §§ 4-29-104, 4-29-239.

For the Preamble to the act regarding to the mental health needs of Tennessee's children and youth, please refer to Acts 2008, ch. 1062.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to

promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Former part 1, §§ 37-3-101 — 37-3-110 (Acts 1980, ch. 865, §§ 1, 3-9, 13; 1985, ch. 478, § 34; T.C.A., §§ 37-7-101 — 37-7-109), concerning the children's services commission, was repealed by Acts 1988, ch. 979, § 2.

37-3-112. Plan for a statewide system of care — Principles of care — Resource map and cost analysis.

(a) The council shall develop a plan for a statewide system of care where children's mental health care is child-centered, family-driven, and culturally and linguistically competent and that provides a coordinated system of care for children's mental health needs in this state.

(b) The plan developed pursuant to subsection (a) shall provide for a service delivery system operated in a manner that provides the following principles of care:

(1) Children with mental health needs should have access to a comprehensive array of services that address the child's physical, emotional, social and educational needs;

(2) Children with mental health needs should receive individualized services in accordance with the unique needs and potentials of each child and guided by an individualized service plan;

(3) Children with mental health needs should receive services within the least restrictive, most normative environment that is therapeutically appropriate;

(4) The families of children with mental health needs should be full participants in all aspects of the planning and delivery of services;

(5) Children with mental health needs should receive services that are integrated, with linkages between child-serving agencies and programs and mechanisms for planning, developing and coordinating the services;

(6) Children with mental health needs should be provided with case management or similar mechanisms to ensure that multiple services are delivered in a coordinated, integrated and therapeutic manner and that each child can move through the system of services in accordance with their changing needs;

(7) Early identification and intervention for children with mental health needs should be promoted by the system of care in order to enhance the likelihood of positive outcomes;

(8) Children with mental health needs whose needs continue beyond adolescence should be ensured smooth transitions to the adult service system as each child reaches adulthood;

(9) The rights of children with mental health needs should be protected; and

(10) Children with mental health needs have access to services without regard to race, religion, national origin, sex, physical disability or other characteristics. Services should be sensitive and responsive to cultural differences and special needs.

(c) The plan shall include a core set of services and supports that appropriately and effectively addresses the mental health needs of children and families.

(d) The council, to guide and support the plan, shall also develop a financial resource map and cost analysis of all federal and state funded programs that support and serve children's mental health needs in this state. The council shall assure the financial resource map and cost analysis are updated annually so as to maintain a current cost analysis of the funds used to support children's mental health care needs in the state from conception through the age of majority or so long as the child receives services provided by these funding streams. The resource map and cost analysis shall include, but not be limited to:

(1) An inventory of all federal and state funding sources that support children's mental health needs in this state;

(2) A description of the manner in which the funds are being used within the agencies or organizations, the performance measures in place to assess the use of the funding and the intended outcomes of the programs and services;

(3) Government mandates for the use of such funds, if any; and

(4) An inventory of the funds for which the state may be eligible, but is currently not receiving or using, and the reasons why the funds are not being used.

History.

Acts 2008, ch. 1062, § 1.

Compiler's Notes.

For the Preamble to the act regarding to the mental health needs of Tennessee's children and youth, please refer to Acts 2008, ch. 1062.

Former part 1, §§ 37-3-101 — 37-3-110 (Acts 1980, ch. 865, §§ 1, 3-9, 13; 1985, ch. 478, § 34; T.C.A., §§ 37-7-101 — 37-7-109), concerning the children's services commission, was repealed by Acts 1988, ch. 979, § 2.

Acts 2008, ch. 1197, § 1 purported to enact a new § 37-3-112; however, since Acts 2008, ch. 1062, § 1 added § 37-3-112, the section enacted by ch. 1197 was added as § 37-3-116.

37-3-113. Duties of council.

In addition to other duties imposed by law, the council shall also perform the following duties:

(1) Facilitate interagency coordination and collaboration in the planning, funding, delivery and evaluation of a statewide system of mental health care for children;

(2) Define accountability standards among all agencies and organizations that provide services and support relative to the mental health needs of children and their families;

(3) Encourage the matching of federal funds required by federal grants for children's mental health initiatives;

(4) Serve as an advocate within government and in the community for children's mental health care in this state;

(5) Stimulate more effective use of existing resources and services for children, and develop programs, opportunities and services that are not otherwise provided for children, with the aim of developing a comprehensive and coordinated system for the delivery of mental health services to children

in the state;

(6) Assist the department of mental health and substance abuse services in the development of interagency agreements on services and supports for children; and

(7) Determine, in consultation with appropriate research experts, which programs that are currently being used to serve or support children's mental health needs in the state are evidence-based, as defined by § 37-5-121, research-based, as defined by § 37-5-121 and theory-based, as defined by § 37-5-121. The council shall provide such findings in its annual report submitted in accordance with § 37-1-115, including an explanation of the support for those findings.

History.

Acts 2008, ch. 1062, § 1; 2010, ch. 1100, § 58; 2012, ch. 575, § 1.

Compiler's Notes.

For the Preamble to the act regarding to the mental health needs of Tennessee's children and youth, please refer to Acts 2008, ch. 1062.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Former part 1, §§ 37-3-101 — 37-3-110 (Acts 1980, ch. 865, §§ 1, 3-9, 13; 1985, ch. 478, § 34; T.C.A., §§ 37-7-101 — 37-7-109), concerning the children's services commission, was repealed by Acts 1988, ch. 979, § 2.

37-3-114. Additional duties of council.

The council may perform each of the following duties:

(1) Promulgate bylaws to provide for the election of council officers, establishment of committees, meetings, and other matters relating to council functions;

(2) Request and receive the cooperation of other state departments and agencies in carrying out the policies and objectives of this part;

(3) Enter into such contracts and make such grants within the limits of appropriated funds as are necessary or appropriate under this section, and in a manner consistent with state or federal law;

(4) Advise the governor and the heads of state departments and agencies regarding policies, programs, services, allocation of funds and children's mental health needs in this state and make recommendations for legislative action to the governor and to the general assembly;

(5) Hold hearings, conduct research and other appropriate activities to determine the mental health needs of children in the state, including particularly, but not limited to, their needs for health and social services, and to determine the existing services and facilities, private and public, available to meet those needs; and

(6) Review data, reports and outcomes of local, state and national system of care implementation, as well as other relevant data or research.

History.

Acts 2008, ch. 1062, § 1.

Compiler's Notes.

For the Preamble to the act regarding to the mental health needs of Tennessee's children and youth, please refer to Acts 2008, ch. 1062.

Former part 1, §§ 37-3-101 — 37-3-110 (Acts 1980, ch. 865, §§ 1, 3-9, 13; 1985, ch. 478, § 34; T.C.A., §§ 37-7-101 — 37-7-109), concerning the children's services commission, was repealed by Acts 1988, ch. 979, § 2.

37-3-115. Report, plan and budget.

(a)(1) No later than February 1, 2009, the council shall submit a report regarding the status of the development of a plan for a statewide system of care for children's mental health. The report shall include, but not be limited to:

(A) The timeline for development of the overall plan;

(B) Barriers to implementation of such a plan, if any;

(C) A list of all programs currently in place to serve and support children's mental health needs and whether those programs are evidence-based, research-based or theory-based;

(D) The status of interagency cooperation relative to a system of children's mental health care throughout the state; and

(E) A financial resource map of all current federal and state funded programs that support or serve children with mental health needs in the state.

(2) The report shall also include cost analysis information produced in accordance with § 37-3-112(d) and shall provide recommendations for improving efficiency in the use of existing state and federal funds by increasing coordination of children's mental health care with other child-focused service delivery systems.

(b) No later than July 1, 2010, the council shall submit a plan prepared in accordance with § 37-3-112 and a budget for implementing the plan. The plan shall provide for demonstration sites in at least three (3) areas of the state, with at least one (1) area to be in each grand division. If the plan submitted by July 1, 2010, is approved and funded by the legislature no later than July 1, 2012, the council shall submit a plan and budget for extending the demonstration sites to a total of no less than ten (10) areas of the state selected by the council. If the plan submitted by July 1, 2012, is approved and funded by the legislature, no later than July 1, 2013, the council shall submit a plan that will accomplish implementation of the system of children's mental health care statewide. The council shall create and submit with each plan current financial resource maps and cost analysis, and the information shall be required to accompany any recommendations the council makes regarding the continued development of a statewide system of children's mental health care.

(c) The plan, budget and report required by subsections (a) and (b) shall be submitted to the governor, the judiciary, education, and health and welfare committees of the senate and the civil justice, education and health committees of the house of representatives.

History.
Acts 2008, ch. 1062, § 1; 2011, ch. 410, § 3(k); 2013, ch. 236, § 79.

Compiler's Notes.
For the Preamble to the act regarding to the mental health needs of Tennessee's children and youth, please refer to Acts 2008, ch. 1062.
Former part 1, §§ 37-3-101 — 37-3-110 (Acts 1980, ch. 865, §§ 1, 3-9, 13; 1985, ch. 478, § 34; T.C.A., §§ 37-7-101 — 37-7-109), concerning the children's services commission, was repealed by Acts 1988, ch. 979, § 2.
For the Preamble to the act concerning the prohibition against establishment of a special committee if there is a standing committee on the same subject, please refer to Acts 2011, ch. 410.

37-3-116. Resource mapping of funding sources — Report.

(a) The commission shall design and oversee a resource mapping of all federal and state funding sources and funding streams that support the health, safety, permanence, growth, development and education of children in this state from conception through the age of majority or so long as they may remain in the custody of the state. The resource mapping shall include, but not be limited to:

(1) An inventory of all federal and state funding sources that support children in this state;

(2) An inventory of all state, federal or government subsidized services and programs offered to children in this state, set out by program, target population, geographical region, agency or any other grouping that would assist the general assembly in determining whether there are overlapping programs that lead to duplication within the state, gaps in service delivery and any administrative inefficiencies generally;

(3) A description of the manner in which the funds are being used within the agencies or organizations, the performance measures in place to assess the use of such funding and the intended outcomes of the programs and services;

(4) Government mandates for the use of the funds, if any; and

(5) An inventory of the funds for which the state may be eligible, but is currently not receiving or using, and the reasons why the funds are not being used.

(b) The commission shall update the report each year and shall subsequently assure that the resource map is periodically and timely updated, so as to maintain a current resource map of the funds used to support children in the state.

(c) The comptroller of the treasury and each department of state government or agency in this state shall provide assistance upon request to the commission in effectuating the purpose of this section.

(d) On or before February 15, 2009, a preliminary report shall be provided by the commission; and on or before April 15, 2010, and each successive year thereafter, the commission shall provide a full report to the judiciary, education, and health and welfare committees of the senate and the civil justice, education and health committees of the house of representatives. The full report shall include, but not be limited to, the resource map and any recommendations, including proposed legislation, for improving the efficiency and effectiveness of programs offered to children in this state.

History.
Acts 2008, ch. 1197, § 1; 2009, ch. 344, § 1; 2011, ch. 410, § 3(*l*); 2013, ch. 236, § 79.

Compiler's Notes.
Acts 2008, ch. 1197, § 1 purported to add this section as § 37-3-112; however, since Acts 2008, ch. 1062, § 1 added § 37-3-112, the section added by ch. 1197 was placed in this location.
For the Preamble to the act regarding resource mapping of funds used to support children, please refer to Acts 2008, ch. 1197.
Former part 1, §§ 37-3-101 — 37-3-110 (Acts 1980, ch. 865, §§ 1, 3-9, 13; 1985, ch. 478, § 34; T.C.A., §§ 37-7-101 — 37-7-109), concerning the children's services commission, was repealed by Acts 1988, ch. 979, § 2.
For the Preamble to the act concerning the prohibition against establishment of a special committee if there is a standing committee on the same subject, please refer to Acts 2011, ch. 410.

PART 2

DIVISION OF JUVENILE PROBATION [REPEALED]

37-3-201 — 37-3-209. [Repealed.]

Compiler's Notes.
Former part 2, §§ 37-3-201 — 37-3-209 (Acts 1957, ch. 278, §§ 1-3; 1965, ch. 347, § 1; 1975, ch. 326, §§ 4, 5; 1980, ch. 865, § 11; T.C.A., §§ 37-901 — 37-903, 37-905 — 37-909; Acts 1989, ch. 278, §§ 13, 75), concerning the division of juvenile probation, was repealed by Acts 1996, ch. 1079, § 118, effective May 21, 1996.

PART 3

COMMISSIONER OF YOUTH DEVELOPMENT [REPEALED]

37-3-301 — 37-3-303. [Repealed.]

Compiler's Notes.
Former § 37-3-301 (Acts 1963, ch. 208, § 1; T.C.A., § 37-1101), concerning assistant commissioner for youth services, was repealed by Acts 1989, ch. 278, § 14, effective July 1, 1989. Former §§ 37-3-302 and 37-3-303 (Acts 1963, ch. 208, §§ 2, 3; 1975, ch. 326, §§ 6, 7; 1977, ch. 59, § 1; T.C.A., §§ 37-1102, 37-1103; Acts 1989, ch. 278, §§ 14, 15), concerning medical service consent and placement of children for rehabilitation, were repealed by Acts 1996, ch. 1079, § 119, effective May 21, 1996.

PART 4

YOUTH INVESTMENT ACT OF 1970

37-3-401. Short title.

This part shall be known and may be cited as the "Youth Investment Act of 1970."

History.
Acts 1970, ch. 602, § 1; T.C.A., § 37-1301.

37-3-402. Office of community contact — Creation — Director — Personnel.

There is created within the department of education, in the division of vocational rehabilitation, an office of

community contact, which shall be headed by a director, appointed by the commissioner of education, to serve at the pleasure of the commissioner and at a salary to be fixed by the commissioner. The commissioner shall employ such stenographic assistants as are necessary to carry out the provisions of this part, and shall fix stenographers' salaries.

History.
Acts 1970, ch. 602, § 2; T.C.A., § 37-1302.

37-3-403. Duties of office.

The office of community contact shall establish programs to provide guidance, training and rehabilitation for juveniles committed to correctional institutions who have been released from such institutions or who are under the care or custody of the juvenile court. The office shall carry out such programs enlisting the use of volunteer citizens, who shall receive no compensation for their services. The director is authorized to recruit and train such volunteer citizens and to administer the programs authorized by this part.

History.
Acts 1970, ch. 602, § 3; T.C.A., § 37-1303.

37-3-404. Duties of director.

(a) It is the duty of the director to:

(1) Solicit volunteer citizens from throughout the state, using the aid of civic and church groups, at the director's discretion;

(2) Work with the administrators of correctional institutions within the state and with state and local juvenile authorities;

(3) Evaluate prospective volunteer citizens and establish screening procedures to make the final determination of which volunteers will be used in the contact program;

(4) Coordinate and control the contact program and conduct training sessions for the volunteer citizens; and

(5) Formulate rules, regulations and procedures for the implementation of this part.

(b) The director may appoint volunteer citizens as the director thinks advisable to aid in these programs.

History.
Acts 1970, ch. 602, § 4; T.C.A., § 37-1304.

37-3-405. Volunteers' duties.

It is the duty of the director to recruit volunteers who will:

(1) Write the juvenile to whom the volunteer is assigned approximately one (1) time per week during the period the juvenile remains within a correctional institution;

(2) Personally contact the juvenile approximately one (1) time per week after the juvenile's release from the correctional institution and until the juvenile reaches twenty-one (21) years of age; and

(3) Prepare periodic reports as required, which shall be submitted to the director, evaluating the progress of the juvenile to whom the volunteer is assigned.

History.
Acts 1970, ch. 602, § 5; T.C.A., § 37-1305.

37-3-406. Application for funds — Authorization.

The director is authorized to make application for and to receive federal funds and funds from any public or private source.

History.
Acts 1970, ch. 602, § 6; T.C.A., § 37-1306.

PART 5

TEENAGE PREGNANCY

37-3-501. Informational clearinghouse — Toll-free telephone service for inquiries — Promotional activities — Annual report.

(a) There shall be created, within the Nashville office of the department of health, the Tennessee informational clearinghouse on teenage pregnancy.

(b) The department shall obtain and operate a toll-free telephone line for the express purpose of receiving and encouraging inquiries for informational services. The department shall assist callers by providing informational services needed to plan programs and presentations, to organize teen pregnancy prevention activities, to organize parenting education and assistance programs for teen parents, and to undertake other activities and programs to address problems associated with teenage pregnancy.

(c) The department shall regularly undertake appropriate activities to inform and remind the citizens of this state of the services provided by the clearinghouse and of the availability of the toll-free telephone line. Such promotional activities shall regularly include, but not necessarily be limited to, press releases, posters, speeches, and public service announcements on radio and television. The department shall undertake special activities to improve public awareness of the clearinghouse within those counties and areas of the state in which teenage pregnancy rates are highest.

(d) In preparing for and responding to requests for information collected and maintained within the clearinghouse, the department shall provide a level of service that is at least comparable to the level of service so provided by the children's services commission prior to July 1, 1988.

(e) [Deleted by 2015 amendment]

History.
Acts 1987, ch. 441, § 1; 1988, ch. 1005, §§ 1, 7, 8; 1988, ch. 1011, § 5; 1988, ch. 1012, § 4; 1988, ch. 1021, § 3; 2011, ch. 410, § 3(m); 2013, ch. 236, § 21; 2015, ch. 212, § 1.

Compiler's Notes.
The Teen Pregnancy Information Clearinghouse serves as a central source of information on teen pregnancy statistics, resource materials, and services. Also available is information on teen pregnancy programs in the state and upcoming conferences and workshops. The toll-free telephone number, within Tennessee only, is 877-461-8277.

Acts 1988, ch. 1005, § 7 provided that all information collected and maintained within the Tennessee informational clearinghouse by the children's services commission prior to July 1, 1988, shall be transferred to the Tennessee informational clearinghouse within the department of health and environment (now department of health).

For the Preamble to the act concerning the prohibition against establishment of a special committee if there is a standing committee on the same subject, please refer to Acts 2011, ch. 410.

37-3-502. Information on programs and services — Bibliography of resources.

(a) The department shall collect and maintain, within the clearinghouse, current information on publicly and privately supported programs and services within the state that address problems associated with teenage pregnancy. Each such program or service shall be engaged in one (1) or more of the following activities: family life education; prevention of teenage pregnancy; counseling services for teenagers who are, or who may think they are, pregnant; prenatal care for teenage mothers; parenting skills education for teenagers; job training and placement for teenage parents; and educational or other support services for teenage parents. For each such program or service, the clearinghouse shall maintain the following information: a description of the program or service, the principal address of such program or service, general eligibility criteria for participation therein, funding sources, the name and telephone of a knowledgeable contact person, and such other information as would be useful to a person or organization in deciding whether to utilize or emulate the program or service.

(b) The department shall also collect and maintain, within the clearinghouse, a current bibliography of books, abstracts, articles, films and other informational resources on the problems associated with teenage pregnancy and methods and techniques for effectively addressing such problems. In selecting items to be included within such bibliography, the commission shall strive to include only such items as are academically reliable and as are likely to prove beneficial to a person or organization wishing to address one (1) or more of the problems associated with teenage pregnancy.

History.
Acts 1987, ch. 441, § 1; 1988, ch. 1005, § 2.

37-3-503. Statistical and other research information — State reports.

(a) The department shall also collect and maintain, within the clearinghouse, statistical and other research information concerning teenage pregnancy, and related problems, in the state as a whole and in its cities, counties and regions.

(b) Furthermore, copies of all Tennessee state government reports concerning teenage pregnancy and related problems shall be available, at cost, through the clearinghouse.

History.
Acts 1987, ch. 441, § 1; 1988, ch. 1005, § 3.

37-3-504. Information concerning conferences, workshops, hearings, meetings.

The department shall also collect and maintain, within the clearinghouse, pertinent information on pending conferences, workshops, public hearings and other meetings concerning teenage pregnancy and related problems.

History.
Acts 1987, ch. 441, § 1; 1988, ch. 1005, § 4.

37-3-505. [Obsolete.]

37-3-506. Similar programs or services operating within state.

To the extent that, during the course of implementing this part, it comes to the attention of the commission that two (2) or more significantly similar programs or services are being operated within the state, the commission shall ensure that the persons or organizations administering such programs and services are so informed.

History.
Acts 1987, ch. 441, § 1.

37-3-507. Purpose of informational clearinghouse.

(a) The Tennessee informational clearinghouse on teenage pregnancy is created strictly for the purpose of providing the people of this state with an accurate, accessible, and centralized repository of information concerning teenage pregnancy and related problems as well as available programs and services.

(b) Nothing contained within this part shall be construed as authorizing or requiring the commission or the clearinghouse to certify or otherwise attest to the quality of any program or service for which it maintains information.

(c) The clearinghouse shall not provide, and shall not be used for, counseling services.

History.
Acts 1987, ch. 441, § 1.

37-3-508 — 37-3-520. [Reserved.]

37-3-521. Informational services regarding second or subsequent pregnancies — Targeting potential at-risk first time teen parents.

(a) The executive director of the commission on children and youth, and the commissioners of education, labor and workforce development, health, and children's services shall jointly develop and administer

a plan to ensure that every teen parent, participating in the assistance programs or services of the departments, receives appropriate information concerning the potential benefits to be realized from delaying a second or subsequent pregnancy and to further ensure that such teen parent receives appropriate referral information if assistance is desired in postponing a second or subsequent pregnancy.

(b) To the maximum extent reasonably possible, such informational services shall be provided by existing personnel and within existing resources.

(c) The plan shall target, at a minimum:

(1) Teen parents receiving homebound instruction pursuant to § 49-10-1101;

(2) Teen parents receiving aid to families with dependent children pursuant to title 71, chapter 3, part 1;

(3) Teen parents receiving medical assistance for themselves or their children pursuant to title 71, chapter 5, parts 1 and 2;

(4) Teen parents receiving food stamp assistance pursuant to title 71, chapter 5, part 3; and

(5) Teen parents receiving federally funded training and assistance administered through the Tennessee department of labor and workforce development.

(d) The plan shall target other teens who are participating in the assistance programs or services of the departments and who are highly at risk of becoming first time teen parents. The plan may also target other teens who are highly at risk of becoming first time teen parents.

History.
Acts 1987, ch. 442, § 1; 1988, ch. 960, §§ 1, 2; 1988, ch. 961, § 1; 1996, ch. 1079, § 73; 1999, ch. 520, § 37.

PART 6

SAFE FAMILIES AND FAMILY PRESERVATION ACT

37-3-601. Short title — Funding.

(a) This part shall be known and may be cited as the "Safe Families and Family Preservation Act."

(b) The family support services and time-limited family reunification services authorized pursuant to this part shall be subject to the funds appropriated to the department by the Tennessee general assembly.

History.
Acts 1991, ch. 185, § 1; 1998, ch. 1097, § 23.

37-3-602. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Family preservation services" mean short-term, highly intensive, services designed to protect, treat, and support a family, with a child at imminent risk of placement, by enabling the family to remain intact and care for the child at home;

(2) "Family support services" means community-based services to promote the safety and well-being of children and families designed to increase the strength and stability of families, including adoptive, foster, and extended families, to increase parents' confidence and competence in their parenting abilities, to afford children a safe, stable and supportive family environment, and otherwise to enhance child development;

(3) "Imminent risk of placement" means circumstances or behavior likely to produce, within a relatively short period of time, a reasonably strong probability that the child will be placed in state custody as a result of being adjudicated dependent and neglected, delinquent and unruly, or in need of mental health services under § 37-1-175; and

(4) "Time-limited family reunification services" means the services and activities described below that are provided to a child that is removed from the child's home and placed in a foster family home or a child care institution and to the parents or primary caregiver of such a child, in order to facilitate the reunification of the child safely and appropriately within a timely fashion, but only during the fifteen-month period that begins on the date that the child, pursuant to § 37-2-402, is considered to have entered foster care. The services and activities described in this subdivision (4) are the following individual, group and family counseling services:

(A) Inpatient, residential, or outpatient substance abuse treatment services;

(B) Mental health services;

(C) Assistance to address domestic violence;

(D) Services designed to provide temporary child care and therapeutic services for families, including crisis nurseries; and

(E) Transportation to or from any of the services and activities described in this subdivision (4).

History.
Acts 1991, ch. 185, § 2; 1996, ch. 1079, § 120; 1998, ch. 1097, § 24; 2000, ch. 947, § 8G.

37-3-603. Program to provide family preservation services.

(a) The department of children's services shall develop, coordinate and implement a program to provide family services to each family with a child at imminent risk of placement; provided, that delivery of family preservation services shall be limited to those families and situations in which the services may be reasonably expected to avoid out-of-home placement of the child and to also afford effective protection of the child, the family, and the community.

(b) The department shall develop, coordinate and implement a program to provide time-limited family reunification services to each family with a child in foster care; provided, that delivery of time-limited family reunification services shall be limited to those foster children or parents or primary caregiver and shall be limited to the fifteen-month period that begins on the date that the child, pursuant to § 37-2-402, is considered to have entered foster care.

History.
Acts 1991, ch. 185, § 3; 1996, ch. 1079, § 73; 1998, ch. 1097, § 25.

37-3-604. [Repealed.]

History.
Acts 1991, ch. 185, § 4; 1998, ch. 1097, § 26; 2011, ch. 410, § 3(n); 2013, ch. 236, § 25; repealed by Acts 2015, ch. 212, § 2, effective April 20, 2015.

Compiler's Notes.
Former § 37-3-604 concerned evaluation of family preservation services; joint report; contents.

37-3-605. Statute implementation.

Beginning with fiscal year 1994-1995, the departments of children's services, mental health and substance abuse services, and intellectual and developmental disabilities shall jointly implement the program of family preservation services at a level sufficient to meet the need for such services across the state. Effective July 1, 1998, the department of children's services shall have sole responsibility for implementing this part.

History.
Acts 1994, ch. 974, § 4; 1996, ch. 1079, § 73; 1998, ch. 1097, § 27; Acts 2000, ch. 947, § 6; 2010, ch. 1100, § 59; 2012, ch. 575, § 1.

Compiler's Notes.
For assignment of implementation of the provisions of Acts 1994, ch. 974 to the office of children's services administration in the department of finance and administration, see Executive Order No. 58 (June 29, 1994).

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

PART 7

EARLY CHILDHOOD DEVELOPMENT ACT OF 1994

37-3-701. Short title.

This part shall be known and may be cited as the "Early Childhood Development Act of 1994."

History.
Acts 1994, ch. 974, § 1.

Compiler's Notes.
For assignment of implementation of the provisions of Acts 1994, ch. 974 to the office of children's services administration in the department of finance and administration, see Executive Order No. 58 (June 29, 1994).

37-3-702. Legislative findings.

(a) The general assembly finds that success in early childhood requires each child to have:

(1) A healthy start through access to adequate prenatal and well-child care;

(2) A well-functioning family that is prepared to assume the responsibilities of parenthood and childbearing;

(3) Early learning experiences that promote child development and foster love of learning; and

(4) Schools that are prepared to educate and nurture every child and ready to offer appropriate support to children and their families.

(b) Therefore, to ensure the success of every child, the general assembly finds that the state of Tennessee and its communities must jointly build a comprehensive system of services to support families and to promote the healthy development of young children.

History.
Acts 1994, ch. 974, § 2.

Compiler's Notes.
For assignment of implementation of the provisions of Acts 1994, ch. 974 to the office of children's services administration in the department of finance and administration, see Executive Order No. 58 (June 29, 1994).

37-3-703. Healthy start pilot project established — Objectives — Evaluation — Required disclosures.

(a) The state of Tennessee shall develop, coordinate, and implement a healthy start pilot project within ten (10) or more counties of the state. The healthy start pilot project shall be based upon the nationally recognized model, shall focus on home visitation and counseling services, and shall improve family functioning and eliminate abuse and neglect of infants and young children within families identified as high risk. Healthy start services for participating families shall extend at least through a child's first three (3) years of life. However, family participation shall be voluntary; and, if a family refuses healthy start services, then such refusal shall not be admissible in evidence for any subsequent cause of action.

(b) Healthy start pilot projects shall ensure that:

(1) Families are educated about child health and child development;

(2) Families receive services to meet child health and development needs;

(3) Families receive services as identified and prioritized by the family and the project; and

(4) Services focus on empowering the family and strengthening life-coping and parenting skills.

(c) Specific objectives for healthy start pilot projects shall include that:

(1) Family stress is reduced and family functioning is improved;

(2) All of the children receive immunizations by two (2) years of age;

(3) All of the children receive developmental screening and follow-up services;

(4) All of the children are free from abuse and neglect; and

(5) Mothers are enrolled in prenatal care by the end of the first trimester of any subsequent pregnancy.

(d) The state of Tennessee shall conduct ongoing evaluations of the healthy start pilot project and shall

file a joint report, on or before December 31 of each year, with the governor and the chairs of the health and welfare committee of the senate and health committee of the house of representatives. All state agencies that provide services to children shall make available non-identifying information about healthy start participants for the purpose of conducting the evaluation. The report shall include the following information for the preceding fiscal year:

(1) The number of families receiving services through the pilot project;

(2) The number of children at risk of abuse and neglect prior to initiative of service to families participating in the pilot project;

(3) Among those children identified in subdivision (2), the number of children who have been the subjects of abuse and neglect reports;

(4) The average cost of services provided under the pilot project;

(5) The estimated cost of out-of-home placement, through foster care, group homes or other facilities, that reasonably would have otherwise been expended on behalf of children who successfully remain united with their families as a direct result of the project, based on average lengths of stay and average costs of such out-of-home placements;

(6) The number of children who remain unified with their families and free from abuse and neglect for one (1), two (2), three (3), and four (4) years, respectively, while receiving project services; and

(7) An overall statement of the achievements and progress of the pilot project during the preceding fiscal year, along with recommendations for improvement or expansion.

(e)(1) When offering healthy start services to a family, the state or its contractor shall provide that family with a written statement and oral explanation. Both the statement and explanation shall describe the following information:

(A) The purpose of the healthy start project;

(B) Project services that may be offered;

(C) The voluntary nature of participation and the family's right to decline services at any time;

(D) The project records to be maintained with respect to participating families; and

(E) The family's right to review project records pertaining to that family.

(2) After providing the oral explanation, the state or its contractor shall, on the written statement, obtain signed consent from the parents or caretakers of a child. The parents or caretakers shall receive a copy of the signed statement and a copy will be maintained in the family's record.

(3) Each participating family shall have the right to review project records pertaining to that family. The state or its contractor shall make such record available for review during regular office hours.

History.
Acts 1994, ch. 974, § 3; 1995, ch. 538, § 1; 2011, ch. 410, § 3(o); 2013, ch. 236, § 52.

Compiler's Notes.
For assignment of implementation of the provisions of Acts 1994, ch. 974 to the office of children's services administration in the department of finance and administration, see Executive Order No. 58 (June 29, 1994).

For the Preamble to the act concerning the prohibition against establishment of a special committee if there is a standing committee on the same subject, please refer to Acts 2011, ch. 410.

PART 8

TENNESSEE SECOND LOOK COMMISSION

37-3-801. Short title.

This part shall be known and may be cited as the "Tennessee Second Look Commission."

History.
Acts 2010, ch. 1060, § 1.

37-3-802. Part definitions.

For purposes of this part, unless the context otherwise requires:

(1) "Appropriate sampling" means cases of a second or subsequent incident of severe child abuse selected by the commission from all profiled cases submitted by the department of children's services;

(2) "Child abuse" has the same meaning as abuse defined in § 37-1-102;

(3) "Commission" means the Tennessee second look commission;

(4) "Investigatory meetings" means commission meetings where information made confidential pursuant to state or federal law is examined by the commission or information is being discussed that is relevant to a pending criminal action;

(5) "Profiled cases" means cases of a second or subsequent incident of severe child abuse provided by the department of children's services to the commission;

(6) "Second or subsequent incident of severe child abuse" means an indicated incident of severe child abuse to a victim who had a prior indicated incident of child abuse or severe child abuse, as determined by the department of children's services; and

(7) "Severe child abuse" has the same meaning as the term is defined in § 37-1-102.

History.
Acts 2010, ch. 1060, § 1.

37-3-803. Creation — Findings and recommendations — Duties — Reports.

(a) There is created the Tennessee second look commission. The commission shall review an appropriate sampling of cases involving a second or subsequent incident of severe child abuse in order to provide recommendations and findings to the general assembly regarding whether or not severe child abuse cases are handled in a manner that provides adequate protection to the children of this state.

(b) The commission's findings and recommendations shall address all stages of investigating and attempting to remedy severe child abuse, including but not limited to:

(1) The reporting, investigating and referring of alleged severe child abuse cases by state agencies and others;

(2) The risk of severe child abuse victims being returned to the custody of the child's abuser or placed by the state in an environment where the child is at risk of being abused a second or subsequent time;

(3) The procedures used by juvenile courts and courts exercising jurisdiction over criminal and civil child abuse, neglect and endangerment cases;

(4) The laws, rules, or guidelines used to determine whether or not an alleged perpetrator of severe child abuse is to be prosecuted;

(5) The causes of severe child abuse in Tennessee and any preventative measures that would reduce the number of severe child abuse cases in this state;

(6) The manner in which severe child abuse data is collected and used by multiple agencies within the state; and

(7) The representation provided to severe child abuse victims, including but not limited to, representation provided by attorneys, guardians and advocates.

(c) The commission may:

(1) Promulgate bylaws to provide for the election of commission officers, establishment of committees, meetings, and other matters relating to commission functions;

(2) Request and receive the cooperation of other state departments and agencies in carrying out the duties of this part; and

(3) Hold hearings, hear testimony, and conduct research and other appropriate activities.

(d)(1) The commission shall provide a report to the general assembly on the commission's progress in fulfilling its duties set out in this section no later than January 1, 2011.

(2) The commission shall provide a report detailing the commission's findings and recommendations from a review of the appropriate sampling no later than January 1, 2012, and annually thereafter, to the general assembly. Such report shall be submitted to the governor, the judiciary and health and welfare committees of the senate and the civil justice committee of the house of representatives.

History.

Acts 2010, ch. 1060, § 1; 2011, ch. 410, § 3(p); 2013, ch. 236, § 80.

Compiler's Notes.

The second look commission, created by this section, terminates June 30, 2017. See §§ 4-29-112, 4-29-238.

For the Preamble to the act concerning the prohibition against establishment of a special committee if there is a standing committee on the same subject, please refer to Acts 2011, ch. 410.

37-3-804. Membership.

(a) Members of the commission shall be as follows:

(1) The director of the Tennessee bureau of investigation or the director's designee;

(2) The executive director of the commission on children and youth or the director's designee;

(3) The executive director of Tennessee's chapter of children's advocacy centers or the director's designee;

(4) The commissioner of children's services or the commissioner's designee;

(5) The director of the administrative office of the courts or the director's designee;

(6) Two (2) members of the house of representatives to be appointed by the speaker of the house of representatives;

(7) Two (2) senators to be appointed by the speaker of the senate;

(8) Two (2) law enforcement officers appointed by the governor with experience investigating severe child abuse cases: one (1) such officer shall be from a county with a population of more than two hundred fifty thousand (250,000), according to the 2000 federal census or any subsequent federal census, and one (1) such officer shall be from a county with a population of less than two hundred fifty thousand (250,000), according to the 2000 federal census or any subsequent federal census;

(9) A district public defender appointed by the district public defenders conference;

(10) A district attorney general appointed by the district attorneys general conference;

(11) A physician with experience conducting exams used to determine whether or not severe child abuse has occurred, appointed by the commission's co-chairs;

(12) An attorney with recognized expertise representing children in child abuse and neglect proceedings, appointed by the commission's co-chairs; and

(13) Two (2) individuals with experience as advocates for children from the nonprofit sector, appointed by the commission's co-chairs.

(b)(1)(A) Members of the commission set out in subdivisions (a)(1)-(5) shall serve on the commission as long as they hold the positions designated in subdivisions (a)(1)-(5).

(B)(i) Except as otherwise provided for in subdivision (b)(2), members of the commission appointed pursuant to subdivisions (a)(6)-(13) shall serve four-year terms.

(ii) Notwithstanding any other provision of this section to the contrary, following three (3) successive absences by a member appointed pursuant to subdivisions (a)(6)-(13) from commission meetings, the co-chairs may declare a vacancy and request that a new member be appointed pursuant to this section who meets the criteria of the replaced member.

(2) The initial members' terms shall be staggered as follows:

(A) Members of the commission appointed pursuant to subdivisions (a)(6) and (7) shall serve initial terms of two (2) years;

(B) Members of the commission appointed pursuant to subdivisions (a)(8)-(10) shall serve initial terms of three (3) years; and

(C) Members of the commission appointed pursuant to subdivisions (a)(11)-(13) shall serve initial terms of four (4) years.

(3) Except as provided in subdivision (b)(4), no commission member shall serve more than two (2)

terms, including any partial term.

(4)(A) Initial appointments shall be made no later than September 1, 2010; all subsequent appointments shall be made no later than February 1 of the year in which an appointment is due to be made. The initial members' terms of office shall commence upon appointment; however, for purposes of calculating the initial terms of the members' offices, the initial appointments shall be deemed to have been made on February 1, 2011.

(B) If a vacancy occurs, it shall be filled by the appointing authority in the same manner as the original appointment and shall be for the unexpired term only.

(C) If a subsequent appointment is not made by the date provided in this subdivision (b)(4), the incumbent member shall serve until the member's successor is appointed.

(c) The speakers of the respective houses each shall appoint a co-chair from the members named to the commission.

History.
Acts 2010, ch. 1060, § 1; 2011, ch. 410, § 3(q).

Compiler's Notes.
For tables of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

For the Preamble to the act concerning the prohibition against establishment of a special committee if there is a standing committee on the same subject, please refer to Acts 2011, ch. 410.

37-3-805. Administration — Responsibilities.

(a) The commission shall be administratively attached to the Tennessee commission on children and youth, but for all purposes other than administration, shall be an independent commission.

(b) The Tennessee commission on children and youth shall be responsible for:

(1) Scheduling and staffing the commission's meetings;

(2) Notifying witnesses of the date upon which they are requested to appear;

(3) Taking minutes at the commission's meetings;

(4) Compensating members and witnesses for travel expenses when appropriate;

(5) Reviewing department of children's services files and case summaries regarding the appropriate sampling of cases upon which the commission expects to hear testimony;

(6) Providing the commission members with any relevant information; and

(7) Assisting the commission in drafting reports.

History.
Acts 2010, ch. 1060, § 1.

37-3-806. Table of profiled cases — Review of cases — Sampling.

(a) The department of children's services shall, no later than October 1, 2010, provide the commission with a table, detailing profiled cases from the previous fiscal year; thereafter, the department shall provide such table no later than October 1, 2011, and by October 1 annually thereafter, for the previous year. The tables shall include, but not be limited to, the county, type of abuse and age of the child.

(b) The commission shall review the table of profiled cases provided pursuant to subsection (a). The commission shall submit a list of the cases to the department after such review, setting out specific cases from the table that the commission selects to review.

(c) The department shall provide each commission member with a thorough written summary of the procedural history of each of the cases selected for review by the commission, including but not limited to, identifying persons whom the commission may wish to testify to provide additional information.

(d) After reviewing the information referenced in subsection (c), the commission shall select the appropriate sampling from the information provided by the department; provided that an appropriate sampling shall be no more than ten percent (10%) of the total number of cases profiled.

(e) The commission shall review the appropriate sampling on a schedule determined by the commission; provided that the commission shall submit its final report containing its recommendations and findings concerning the appropriate sampling each year to the general assembly as provided in § 37-3-803(d).

History.
Acts 2010, ch. 1060, § 1.

37-3-807. Voting — Reimbursement of expenses.

(a) All members of the commission shall be voting members.

(b) The members of the commission shall receive no salary; provided that members of the commission shall be reimbursed for actual expenses incurred in accordance with the state's comprehensive travel regulations promulgated by the department of finance and administration and approved by the attorney general and reporter.

(c) The commission may provide reimbursement for actual expenses incurred in accordance with the state's comprehensive travel regulations promulgated by the department of finance and administration and approved by the attorney general and reporter to witnesses that have been called to testify before the commission.

History.
Acts 2010, ch. 1060, § 1.

37-3-808. Meetings.

The commission shall meet as necessary to transact business; provided, that meetings shall be held at least quarterly, and the first meeting shall be no later than November 1, 2010. The commission shall meet at such time and place as determined by the co-chairs of the commission announced at least one (1) month in advance of meetings with notice to each member. Written minutes shall be kept of all meetings. At all meetings, ten (10) members shall constitute a quorum for the transaction of business.

History.
Acts 2010, ch. 1060, § 1.

37-3-809. Requests by the commission.

The child advocacy center directors or their designees, the department of children's services, the district attorney general of each judicial district, the district public defender of each judicial district, the administrative office of the courts, any law enforcement agency, any juvenile court officer or investigator, any representative of the mental health disciplines involved in investigations conducted by child protective teams, and any other state agency shall, upon request by the commission:

(1) Submit to the commission, in accordance with the procedures and deadlines established by the commission, information and data concerning a second or subsequent incident of severe abuse;

(2) Cause the person most knowledgeable with the case being examined to testify regarding any cases concerning a second or subsequent incident of severe abuse; and

(3) Make recommendations and identify where gaps and deficiencies may exist in the various systems involved in protecting children from severe child abuse.

History.
Acts 2010, ch. 1060, § 1.

37-3-810. Confidentiality — Public meetings.

(a) Notwithstanding any law to the contrary, the commission may access information made confidential pursuant to chapter 1 of this title.

(b)(1) Except as provided in subsection (c), investigatory meetings of the commission shall not be subject to title 8, chapter 44, part 1 and shall be closed to the public. Any minutes or other information made confidential pursuant to state or federal law and generated during an investigatory meeting shall be sealed from public inspection; provided that the commission shall comply with subsection (c).

(2) Each statutory member of the commission and each person otherwise attending an investigatory meeting shall sign a statement prepared by the commission indicating and affirming an understanding of and adherence to the confidentiality requirements, including the possible civil or criminal consequences of any violation or breach of such requirements.

(c) Notwithstanding subsection (b), the commission shall conduct meetings that are open to the public to periodically make available, in a general manner that does not reveal information made confidential pursuant to state or federal law, the aggregate findings of its reviews and its recommendations.

(d) All information made confidential pursuant to state or federal law acquired by the commission in the exercise of its duties:

(1) Remains confidential after being acquired by the commission;

(2) Is not subject to discovery or introduction into evidence in any criminal or civil proceedings; and

(3) May only be disclosed as necessary to carry out the purposes of this part.

(e) Subsection (d) shall not prohibit a person from testifying in a civil or criminal action about matters within such person's knowledge that was obtained independently from any commission meeting.

History.
Acts 2010, ch. 1060, § 1.

37-3-811. Hiring of staff and consultants.

To the extent that funds are available, the commission may hire additional staff or consultants to assist the commission in completing its duties.

History.
Acts 2010, ch. 1060, § 1.

37-3-812. Immunity from civil and criminal liability.

Any person acting in good faith in compliance with this part shall be immune from civil and criminal liability arising from such action.

History.
Acts 2010, ch. 1060, § 1.

37-3-813. Investigations or reviews authorized by other laws.

Nothing in this part shall preclude any investigations or reviews to the extent authorized by other laws.

History.
Acts 2010, ch. 1060, § 1.

37-3-814. Sharing of information regarding criminal violations with officials charged with investigating criminal matters.

If, during the course of the commission's duties under this part, the commission becomes aware of any violations of the criminal laws of this state by any person or agency, the co-chairs of the commission shall share such information with appropriate officials charged with investigating criminal matters.

History.
Acts 2010, ch. 1060, § 1.

37-3-815. Conflicts of interest.

The commission shall adopt and implement a policy related to conflicts of interest, to ensure that all members avoid any situation that creates an actual or perceived conflict of interest related to the work of the commission.

History.
Acts 2010, ch. 1060, § 1.

CHAPTER 4

INTERSTATE COMPACTS

Part 1. Interstate Compact for Juveniles

SECTION.
37-4-101. Interstate Compact for Juveniles.

Part 2. Interstate Compact on the Placement of Children

37-4-201. Text of compact.
37-4-202. Compact terms defined.
37-4-203. Compact administrator.
37-4-204. Determination of financial responsibility.
37-4-205. Authorization of agreements with foreign states.
37-4-206. Chapter 5, part 4 not applicable to this part.
37-4-207. Jurisdiction of courts.

PART 1

INTERSTATE COMPACT FOR JUVENILES

37-4-101. Interstate Compact for Juveniles.

The governor is hereby authorized and directed to execute a contract on behalf of this state with any state or states legally joining therein in the form substantially as follows:

THE INTERSTATE COMPACT FOR JUVENILES

Article I. Purpose.

The compacting states to this Interstate Compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents and status offenders who are on probation or parole and who have absconded, escaped or run away from supervision and control and in so doing have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence. The compacting states also recognize that congress, by enacting the Crime Control Act, codified in 4 U.S.C. § 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime. It is the purpose of this compact, through means of joint and cooperative action among the compacting states to:

(A) Ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state;

(B) Ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected;

(C) Return juveniles who have run away, absconded or escaped from supervision or control or have been accused of an offense to the state requesting their return;

(D) Make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services;

(E) Provide for the effective tracking and supervision of juveniles;

(F) Equitably allocate the costs, benefits and obligations of the compacting states;

(G) Establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or any other criminal or juvenile justice agency which has jurisdiction over juvenile offenders;

(H) Ensure immediate notice to jurisdictions where defined offenders are authorized to travel or to relocate across state lines;

(I) Establish procedures to resolve pending charges (detainers) against juvenile offenders prior to transfer or release to the community under the terms of this compact;

(J) Establish a system of uniform data collection on information pertaining to juveniles subject to this compact that allows access by authorized juvenile justice and criminal justice officials, and regular reporting of compact activities to heads of state executive, judicial, and legislative branches and juvenile and criminal justice administrators;

(K) Monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance;

(L) Coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in such activity; and

(M) Coordinate the implementation and operation of the compact with the Interstate Compact on the Placement of Children, compiled in part 2 of this chapter, the Interstate Compact for Supervision of Adult Offenders, compiled in title 40, chapter 28, part 4, and other compacts affecting juveniles particularly in those cases where concurrent or overlapping supervision issues arise.

It is the policy of the compacting states that the activities conducted by the interstate commission created herein are the formation of public policies and therefore are public business. Furthermore, the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the purposes and policies of the compact.

Article II. Definitions.

As used in this compact, unless the context clearly requires a different construction:

A. "By-laws" means those bylaws established by the interstate commission for its governance, or for directing or controlling its actions or conduct;

B. "Commissioner" means the voting representative of each compacting state appointed pursuant to Article III of this compact;

C. "Compact administrator" means the individual in each compacting state appointed pursuant to the terms

of this compact, responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the interstate commission and policies adopted by the state council under this compact;

D. "Compacting state" means any state which has enacted the enabling legislation for this compact;

E. "Court" means any court having jurisdiction over delinquent, neglected, or dependent children;

F. "Deputy compact administrator" means the individual, if any, in each compacting state appointed to act on behalf of a compact administrator pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the interstate commission and policies adopted by the state council under this compact;

G. "Interstate commission" means the interstate commission for juveniles created by Article III of this compact;

H. "Juvenile" means any person defined as a juvenile in any member state or by the rules of the interstate commission, including:

(1) Accused delinquent — a person charged with an offense that, if committed by an adult, would be a criminal offense;

(2) Adjudicated delinquent — a person found to have committed an offense that, if committed by an adult, would be a criminal offense;

(3) Accused status offender — a person charged with an offense that would not be a criminal offense if committed by an adult;

(4) Adjudicated status offender — a person found to have committed an offense that would not be a criminal offense if committed by an adult; and

(5) Non-offender — a person in need of supervision who has not been accused or adjudicated a status offender or delinquent;

I. "Non-compacting state" means any state which has not enacted the enabling legislation for this compact;

J. "Probation or parole" means any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states;

K. "Rule" means a written statement by the interstate commission promulgated pursuant to Article VI of this compact that is of general applicability, implements, interprets or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the commission, and has the force and effect of statutory law in a compacting state, and includes the amendment, repeal, or suspension of an existing rule; and

L. "State" means a state of the United States, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands.

Article III. Interstate Commission for Juveniles.

A. The compacting states hereby create the Interstate Commission for Juveniles. The commission shall be a body corporate and joint agency of the compacting states. The commission shall have all the responsibilities, powers and duties set forth herein, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

B. The interstate commission shall consist of commissioners appointed by the appropriate appointing authority in each state pursuant to the rules and requirements of each compacting state and in consultation with the state council for interstate juvenile supervision created hereunder. The commissioner shall be the compact administrator, deputy compact administrator or designee from that state who shall serve on the interstate commission in such capacity under or pursuant to the applicable law of the compacting state.

C. In addition to the commissioners who are the voting representatives of each state, the interstate commission shall include individuals who are not commissioners, but who are members of interested organizations. Such non-commissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general, Interstate Compact for Supervision of Adult Offenders, compiled in title 40, chapter 28, part 4, Interstate Compact on the Placement of Children, compiled in part 2 of this chapter, juvenile justice and juvenile corrections officials, and crime victims. All non-commissioner members of the interstate commission shall be ex-officio (non-voting) members. The interstate commission may provide in its bylaws for such additional ex-officio (non-voting) members, including members of other national organizations, in such numbers as shall be determined by the commission.

D. Each compacting state represented at any meeting of the commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission.

E. The commission shall meet at least once each calendar year. The chair may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

F. The interstate commission shall establish an executive committee, which shall include commission officers, members, and others as determined by the bylaws. The executive committee shall have the power to act on behalf of the interstate commission during periods when the interstate commission is not in session, with the exception of rulemaking and/or amendment to the compact. The executive committee shall oversee the day-to-day activities of the administration of the compact managed by an executive director and interstate commission staff; administer enforcement and compliance with the provisions of the compact, its bylaws and rules, and

perform such other duties as directed by the interstate commission or set forth in the bylaws.

G. Each member of the interstate commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the interstate commission. A member shall vote in person and shall not delegate a vote to another compacting state. However, a commissioner, in consultation with the state council, shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication.

H. The interstate commission's bylaws shall establish conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

I. Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate commission and any of its committees may close a meeting to the public where it determines by two-thirds (⅔) vote that an open meeting would be likely to:

1. Relate solely to the interstate commission's internal personnel practices and procedures;
2. Disclose matters specifically exempted from disclosure by statute;
3. Disclose trade secrets or commercial or financial information which is privileged or confidential;
4. Involve accusing any person of a crime, or formally censuring any person;
5. Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
6. Disclose investigative records compiled for law enforcement purposes;
7. Disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of or for the use of, the interstate commission with respect to a regulated person or entity for the purpose of regulation or supervision of such person or entity;
8. Disclose information, the premature disclosure of which would significantly endanger the stability of a regulated person or entity; or
9. Specifically relate to the interstate commission's issuance of a subpoena, or its participation in a civil action or other legal proceeding.

J. For every meeting closed pursuant to this provision, the interstate commission's legal counsel shall publicly certify that, in the legal counsel's opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The interstate commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefore, including a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

K. The interstate commission shall collect standardized data concerning the interstate movement of juveniles as directed through its rules which shall specify the data to be collected, the means of collection and data exchange and reporting requirements. Such methods of data collection, exchange and reporting shall insofar as is reasonably possible conform to up-to-date technology and coordinate its information functions with the appropriate repository of records.

Article IV. Powers and Duties of the Interstate Commission.

The commission shall have the following powers and duties:

1. To provide for dispute resolution among compacting states;
2. To promulgate rules to effect the purposes and obligations as enumerated in this compact, which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact;
3. To oversee, supervise and coordinate the interstate movement of juveniles subject to the terms of this compact and any bylaws adopted and rules promulgated by the interstate commission;
4. To enforce compliance with the compact provisions, the rules promulgated by the interstate commission, and the bylaws, using all necessary and proper means, including, but not limited to, the use of judicial process;
5. To establish and maintain offices which shall be located within one or more of the compacting states;
6. To purchase and maintain insurance and bonds;
7. To borrow, accept, hire or contract for services of personnel;
8. To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by Article III which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties hereunder;
9. To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the interstate commission's personnel policies and programs relating to, inter alia, conflicts of interest, rates of compensation, and qualifications of personnel;
10. To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of it;
11. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed;

12. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal or mixed;

13. To establish a budget and make expenditures and levy dues as provided in Article VIII of this compact;

14. To sue and be sued;

15. To adopt a seal and bylaws governing the management and operation of the interstate commission;

16. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact;

17. To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the interstate commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the interstate commission;

18. To coordinate education, training and public awareness regarding the interstate movement of juveniles for officials involved in such activity;

19. To establish uniform standards of the reporting, collecting and exchanging of data; and

20. The interstate commission shall maintain its corporate books and records in accordance with the bylaws.

Article V. Organization and Operation of the Interstate Commission.

Sec.

A. Bylaws.

B. Officers and Staff.

C. Qualified Immunity, Defense and Indemnification.

Section A. Bylaws.

1. The interstate commission shall, by a majority of the members present and voting, within twelve (12) months after the first interstate commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

a. Establishing the fiscal year of the interstate commission;

b. Establishing an executive committee and such other committees as may be necessary;

c. Provide for the establishment of committees governing any general or specific delegation of any authority or function of the interstate commission;

d. Providing reasonable procedures for calling and conducting meetings of the interstate commission, and ensuring reasonable notice of each such meeting;

e. Establishing the titles and responsibilities of the officers of the interstate commission;

f. Providing a mechanism for concluding the operations of the interstate commission and the return of any surplus funds that may exist upon the termination of the compact after the payment and/or reserving of all of its debts and obligations;

g. Providing start-up rules for initial administration of the compact; and

h. Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

Section B. Officers and Staff.

The commission shall have the following powers and duties:

1. The interstate commission shall, by a majority of the members, elect annually from among its members a chair and a vice-chair, each of whom shall have such authority and duties as may be specified in the bylaws. The chair or, in the chair's absence or disability, the vice-chair shall preside at all meetings of the interstate commission. The officers so elected shall serve without compensation or remuneration from the interstate commission; provided, that, subject to the availability of budgeted funds, the officers shall be reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the interstate commission.

2. The interstate commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the interstate commission may deem appropriate. The executive director shall serve as secretary to the interstate commission, but shall not be a member and shall hire and supervise such other staff as may be authorized by the interstate commission.

Section C. Qualified Immunity, Defense and Indemnification.

1. The commission's executive director and employees shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to any actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided, that any such person shall not be protected from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

2. The liability of any commissioner, or the employee or agent of a commissioner, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees, and agents. Nothing in this subsection shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

3. The interstate commission shall defend the executive director or the employees or representatives of the interstate commission and, subject to the approval of the attorney general of the state represented by any commissioner of a compacting state, shall defend such commissioner or the commissioner's representatives or employees in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment,

duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities; provided, that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

4. The interstate commission shall indemnify and hold the commissioner of a compacting state, or the commissioner's representatives or employees, or the interstate commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities; provided, that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

Article VI. Rulemaking Functions of the Interstate Commission.

A. The interstate commission shall promulgate and publish rules in order to effectively and efficiently achieve the purposes of the compact.

B. Rulemaking shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the Model State Administrative Procedures Act, 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000), or such other administrative procedures act, as the interstate commission deems appropriate consistent with due process requirements under the United States Constitution as now or hereafter interpreted by the United States supreme court. All rules and amendments shall become binding as of the date specified, as published with the final version of the rule as approved by the commission.

C. When promulgating a rule, the interstate commission shall, at a minimum:

1. Publish the proposed rule's entire text stating the reason(s) for that proposed rule;

2. Allow and invite any and all persons to submit written data, facts, opinions and arguments, which information shall be added to the record, and be made publicly available;

3. Provide an opportunity for an informal hearing if petitioned by ten (10) or more persons; and

4. Promulgate a final rule and its effective date, if appropriate, based on input from state or local officials, or interested parties.

D. Allow, not later than sixty (60) days after a rule is promulgated, any interested person to file a petition in the United States district court for the District of Columbia or in the federal district court where the interstate commission's principal office is located for judicial review of such rule. If the court finds that the interstate commission's action is not supported by substantial evidence in the rulemaking record, the court shall hold the rule unlawful and set it aside. For purposes of this subsection, evidence is substantial if it would be considered substantial evidence under the Model State Administrative Procedures Act.

E. If a majority of the legislatures of the compacting states rejects a rule, those states may, by enactment of a statute or resolution in the same manner used to adopt the compact, cause that such rule shall have no further force and effect in any compacting state.

F. The existing rules governing the operation of the Interstate Compact on Juveniles superseded by this act shall be null and void twelve (12) months after the first meeting of the interstate commission created hereunder.

G. Upon determination by the interstate commission that a state of emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption; provided, that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, but no later than ninety (90) days after the effective date of the emergency rule.

Article VII. Oversight, Enforcement and Dispute Resolution by the Interstate Commission.

Sec.

A. Oversight.

B. Dispute Resolution.

Section A. Oversight.

1. The interstate commission shall oversee the administration and operations of the interstate movement of juveniles subject to this compact in the compacting states and shall monitor such activities being administered in non-compacting states which may significantly affect compacting states.

2. The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall be received by all the judges, public officers, commissions, and departments of the state government as evidence of the authorized statute and administrative rules. All courts shall take judicial notice of the compact and the rules. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the interstate commission, it shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

Section B. Dispute Resolution.

1. The compacting states shall report to the interstate commission on all issues and activities necessary for the administration of the compact as well as issues and activities pertaining to compliance with the provisions of the compact and its bylaws and rules.

2. The interstate commission shall attempt, upon the request of a compacting state, to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and between compacting and non-compacting states. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

3. The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact using any or all means set forth in Article XI of this compact.

Article VIII. Finance.

A. The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

B. The interstate commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the interstate commission and its staff which must be in a total amount sufficient to cover the interstate commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the interstate commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state and shall promulgate a rule binding upon all compacting states which governs said assessment.

C. The interstate commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the interstate commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

D. The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the interstate commission.

Article IX. The State Council.

Each member state shall create a state council for interstate juvenile supervision. While each state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and the compact administrator, deputy compact administrator or designee. Each compacting state retains the right to determine the qualifications of the compact administrator or deputy compact administrator. Each state council will advise and may exercise oversight and advocacy concerning that state's participation in interstate commission activities and other duties as may be determined by that state, including, but not limited to, development of policy concerning operations and procedures of the compact within that state.

Article X. Compacting States, Effective Date and Amendment.

A. Any state, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands as defined in Article II of this compact is eligible to become a compacting state.

B. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than thirty-five (35) of the states. The initial effective date shall be the later of July 1, 2004, or upon enactment into law by the thirty-fifth jurisdiction. Thereafter it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state. The governors of non-member states or their designees shall be invited to participate in the activities of the interstate commission on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

C. The interstate commission may propose amendments to the compact for enactment by the compacting states. No amendment shall become effective and binding upon the interstate commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

Article XI. Withdrawal, Default, Termination and Judicial Enforcement.

Sec.

A. Withdrawal.
B. Technical Assistance, Fines, Suspension, Termination and Default.
C. Judicial Enforcement.
D. Dissolution of Compact.

Section A. Withdrawal.

1. Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided, that a compacting state may withdraw from the compact by specifically repealing the statute which enacted the compact into law.

2. The effective date of withdrawal is the effective date of the repeal.

3. The withdrawing state shall immediately notify the chair of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty (60) days of its receipt thereof.

4. The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

5. Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

Section B. Technical Assistance, Fines, Suspension, Termination and Default.

1. If the interstate commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, or the bylaws or duly promulgated rules, the interstate commission may impose any or all of the following penalties:

a. Remedial training and technical assistance as directed by the interstate commission;

b. Alternative dispute resolution;

c. Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the interstate commission; and

d. Suspension or termination of membership in the compact, which shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted and the interstate commission has therefore determined that the offending state is in default. Immediate notice of suspension shall be given by the interstate commission to the governor, the chief justice or the chief judicial officer of the state, the majority and minority leaders of the defaulting state's legislature, and the state council. The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, the bylaws, or duly promulgated rules and any other grounds designated in commission bylaws and rules. The interstate commission shall immediately notify the defaulting state in writing of the penalty imposed by the interstate commission and of the default pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of termination.

2. Within sixty (60) days of the effective date of termination of a defaulting state, the commission shall notify the governor, the chief justice or chief judicial officer, the majority and minority leaders of the defaulting state's legislature, and the state council of such termination.

3. The defaulting state is responsible for all assessments, obligations and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

4. The interstate commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon in writing between the interstate commission and the defaulting state.

5. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the interstate commission pursuant to the rules.

Section C. Judicial Enforcement.

The interstate commission may, by majority vote of the members, initiate legal action in the United States district court for the District of Columbia or, at the discretion of the interstate commission, in the federal district where the interstate commission has its offices, to enforce compliance with the provisions of the compact, its duly promulgated rules and bylaws, against any compacting state in default. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

Section D. Dissolution of Compact.

1. The compact dissolves effective upon the date of the withdrawal or default of the compacting state, which reduces membership in the compact to one (1) compacting state.

2. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be concluded and any surplus funds shall be distributed in accordance with the bylaws.

Article XII. Severability and Construction.

A. The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

B. The provisions of this compact shall be liberally construed to effectuate its purposes.

Article XIII. Binding Effect of Compact and Other Laws.

Sec.

A. Other Laws.

B. Binding Effect of the Compact.

Section A. Other Laws.

1. Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

2. All compacting states' laws other than state constitutions and other interstate compacts conflicting with this compact are superseded to the extent of the conflict.

Section B. Binding Effect of the Compact.

1. All lawful actions of the interstate commission, including all rules and bylaws promulgated by the interstate commission, are binding upon the compacting states.

2. All agreements between the interstate commission and the compacting states are binding in accordance with their terms.

3. Upon the request of a party to a conflict over meaning or interpretation of interstate commission actions, and upon a majority vote of the compacting states, the interstate commission may issue advisory opinions regarding such meaning or interpretation.

4. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers or jurisdiction sought to be conferred by such provision upon the interstate commission shall be ineffective and such obligations, duties, powers or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers or jurisdiction are delegated by law in effect at the time this compact becomes effective.

History.

Acts 2008, ch. 1199, § 2.

Compiler's Notes.

Acts 2008, ch. 1199, § 1 provided that the Interstate Compact for Juveniles shall be enacted into law and entered into on behalf of this state with all other states joining in the compact at its legal formation.

Acts 2008, ch. 1199, § 3 provided that the act, which repealed the former Interstate Juvenile Compact and enacted in its place the Interstate Compact for Juveniles, shall take effect the later of July 1, 2008, or upon enactment by no fewer than thirty-five (35) states. On August 26, 2008, the Interstate Compact for Juveniles was enacted in thirty-five (35) states.

Former part 1, §§ 37-4-101 — 37-4-106 (Acts 1955, ch. 260, § 1; T.C.A., § 37-801; Acts 1997, ch. 540, § 1; 2003, ch. 282, § 1), concerning the Interstate Juvenile Compact, was repealed by Acts 2008, ch. 1199 § 2, effective August 26, 2008. See this section for the Interstate Compact for Juveniles.

The Interstate Compact for Juveniles, created by this section, terminates June 30, 2018. See §§ 4-29-112, 4-29-239.

PART 2

INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

37-4-201. Text of compact.

The Interstate Compact on the Placement of Children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in form substantially as follows:

Article I. Purpose and Policy.

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

Article II. Definitions.

As used in this compact:

(a) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship or similar control;

(b) "Placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility;

(c) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons; and

(d) "Sending agency" means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state.

Article III. Conditions for Placement.

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(1) The name, date and place of birth of the child.

(2) The identity and address or addresses of the parents or legal guardian.

(3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring, or place the child.

(4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information

as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

Article IV. Penalty for Illegal Placement.

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact constitutes a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation constitutes full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

Article V. Retention of Jurisdiction.

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one (1) or more services in respect of such case by the latter as agency for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) of this article.

Article VI. Institutional Care of Delinquent Children.

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to such child being sent to such other party jurisdiction for institutional care and the court finds that:

(1) Equivalent facilities for the child are not available in the sending agency's jurisdiction; and

(2) Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

Article VII. Compact Administrator.

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

Article VIII. Limitations.

This compact shall not apply to:

(a) The sending or bringing of a child into a receiving state by the child's parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or the child's guardian and leaving the child with any such relative or non-agency guardian in the receiving state.

(b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between the states which has the force of law.

Article IX. Enactment and Withdrawal.

This compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of congress, the Government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two (2) years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

Article X. Construction and Severability.

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The

provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstances is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History.
Acts 1974, ch. 477, § 1; 1977, ch. 131, § 1; T.C.A., § 37-1401.

Compiler's Notes.
The Interstate Compact on the Placement of Children, created by this section, terminates June 30, 2022. See §§ 4-29-112, 4-29-243.

37-4-202. Compact terms defined.

(a) As used in paragraph (a) of Article V of the Interstate Compact on the Placement of Children, "appropriate authority in the receiving state," with reference to this state, means the department of children's services.

(b) "Appropriate public authorities," as used in Article III of the Interstate Compact on the Placement of Children, means, with reference to this state, the department of children's services shall receive and act with reference to notices required by Article III.

(c) As used in Article VII of the Interstate Compact on the Placement of Children, "executive head" means the governor.

History.
Acts 1974, ch. 477, §§ 3, 4, 8; impl. am. Acts 1975, ch. 219, § 1; T.C.A., §§ 37-1402 — 37-1404; Acts 1996, ch. 1079, § 73.

37-4-203. Compact administrator.

The commissioner of children's services shall act as compact administrator in accordance with the terms of Article VII.

History.
Acts 1974, ch. 477, § 8; impl. am. Acts 1975, ch. 219, § 2; T.C.A., § 37-1405; Acts 1996, ch. 1079, § 73.

37-4-204. Determination of financial responsibility.

Financial responsibility for any child placed pursuant to the Interstate Compact on the Placement of Children shall be determined in accordance with Article V thereof in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of any laws of the state of Tennessee fixing responsibility for the support of children also may be invoked.

History.
Acts 1974, ch. 477, § 2; T.C.A., § 37-1406.

37-4-205. Authorization of agreements with foreign states.

The officers and agencies of this state and its subdivisions having authority to place children are empowered to enter into agreements with appropriate officers or agencies of or in other party states pursuant to paragraph (b) of Article V of the Interstate Compact on the Placement of Children. Any such agreement which contains a financial commitment or imposes a financial obligation on this state or subdivision or agency thereof shall not be binding unless it has the approval in writing of the commissioner of children's services in the case of the state and of the chief local fiscal officer in the case of a subdivision of the state.

History.
Acts 1974, ch. 477, § 5; impl. am. Acts 1975, ch. 219, § 2; T.C.A., § 37-1407; Acts 1996, ch. 1079, § 73.

37-4-206. Chapter 5, part 4 not applicable to this part.

Chapter 5, part 4 of this title shall not apply to placements made pursuant to the Interstate Compact on the Placement of Children.

History.
Acts 1974, ch. 477, § 6; T.C.A., § 37-1408.

37-4-207. Jurisdiction of courts.

Any court having jurisdiction to place delinquent children may place such a child in an institution of or in another state pursuant to Article VI of the Interstate Compact on the Placement of Children and shall retain jurisdiction as provided in Article V.

History.
Acts 1974, ch. 477, § 7; T.C.A., § 37-1409.

CHAPTER 5

DEPARTMENT OF CHILDREN'S SERVICES

Part 1. General Provisions

SECTION.
37-5-101. Creation of department — Division of juvenile justice — Deputy commissioner of juvenile justice — Powers and duties — Funding.
37-5-102. Purpose.
37-5-103. Chapter definitions.
37-5-104. Commissioner of children's services — Qualifications.
37-5-105. Powers and duties of commissioner.
37-5-106. Powers of the department.
37-5-107. Confidentiality of records.
37-5-108. Conflict of interest.
37-5-109. Licensing.
37-5-110. Contracts/Leases.
37-5-111. Funds.
37-5-112. Rules.
37-5-113. Accreditation.
37-5-114. Transfer from department of youth development.

SECTION.
37-5-115. Review.
37-5-116. Non-discrimination.
37-5-117. Youth service officers — Qualifications.
37-5-118. Oath requirement.
37-5-119. Youth development centers — Special school district — Administration — Teachers.
37-5-120. Library region — Creation.
37-5-121. Pilot programs — Evidence-based programs for the prevention, treatment or care of delinquent juveniles.
37-5-122. Post-adoption services and searches — Fees and charges.
37-5-123. Notification of release of juvenile offender.
37-5-124. Disclosure of the death or near fatality of persons in the custody of the department of children's services.
37-5-125. Model programs for adolescents at risk.
37-5-126. Children's mental health care — Development of plan, projects and programs.
37-5-127. License, certification or registration — Notifications — Prerequisites — Web site — Electronic notices.
37-5-128. Review of department policies and attached protocol and procedures that affect children the department serves — Uniformity of applicability.
37-5-129. Review of new departmental policies.
37-5-130. Cessation of operations — Permanent education records.
37-5-131. Education of youth in juvenile detention facilities of the department of children's services or other facilities for youth at risk.

Part 2. Youth Development Centers

37-5-201. Establishment — Coeducational programs.
37-5-202. Superintendents.
37-5-203. Powers and duties of superintendent.
37-5-204. Education — Character development — Work programs.
37-5-205. Transfer and commitment of children.
37-5-206. Retention of children committed for penitentiary offenses — Transfer to penitentiary — Prosecution for escape.
37-5-207. Commitment for federal offense.
37-5-208. Procedure for commitment — Form.
37-5-209. Records and accounts — Sale of unneeded property — Reports.
37-5-210. Buildings and equipment.
37-5-211. Products of youth centers — Expenditure of receipts.
37-5-212. Instruction in art of barbering.
37-5-213. Authorized courses of instruction.

Part 3. Community Services Agency Act of 1996

37-5-301. Short title.
37-5-302. Purpose.
37-5-303. Part definitions.
37-5-304. Agencies — Establishment — Public function and purpose.
37-5-305. Community services agency board — Statewide community services agency — Creation — Members.
37-5-306. Community services agency board — Powers.
37-5-307. Commissioner — Powers and duties.
37-5-308. Executive director — Employees and expenses.
37-5-309. Contracts for provisions of health care — Termination.
37-5-310. Plan of operation.
37-5-311. Disposition of funds.
37-5-312. Annual reports.
37-5-313. Annual audit — Accounting records.
37-5-314. State employees.
37-5-315. Construction — Generally.
37-5-316. Participation in retirement system.
37-5-317. Transfer of career service employees from community services agencies to the department of children's services or the department of health in certain communities.
37-5-318. Transfer of employees from community services agencies to the department of children's services in counties with a metropolitan form of government.
37-5-319. Transfer of executive service employees whose functions are transferred from community services agencies to the department of children's services.

Part 4. Trafficking in Children

37-5-401. Consent required for importation of child.
37-5-402. Placement of imported child.
37-5-403. Bond on importation of child.
37-5-404. Consent to take child out of state.
37-5-405. Penalty for violations.
37-5-406. Exemption of relatives of child.

Part 5. Child Care Agencies

37-5-501. Part definitions.
37-5-502. Basis for licensing — Regulations — License application — Temporary license — Non-transferability of license — Transfer of operation to circumvent licensing laws or regulations — Fees.
37-5-503. Program and facilities exempt from licensing.
37-5-504. Preexisting agencies subject to chapter.
37-5-505. Receiving children.
37-5-506. Selection and supervision of foster homes.
37-5-507. Unlicensed placement of children for care or adoption.
37-5-508. Injunctions against unlicensed operations.
37-5-509. Criminal violations.
37-5-510. Public agencies — Inspection and report.
37-5-511. Criminal violation information required of persons having access to children — Review of vulnerable persons registry — Verification — Exclusion from access to children.
37-5-512. Abuse, neglect, or sexual abuse.
37-5-513. Inspection of persons or entities providing child care.
37-5-514. Violations of licensing regulations — Probation, suspension, denial and revocation of licenses — Appeal procedures.
37-5-515. Board of review for licensing actions.
37-5-516. Licensing standards committees.
37-5-517. Individual plans — Reports.
37-5-518. Annual reports of child care agencies.
37-5-519. Departmental annual report.

Part 6. Multi-level Response System for Children and Families

37-5-601. Part definitions.
37-5-602. Purposes.
37-5-603. Establishment of demonstration program — State advisory committee — Reporting.
37-5-604. Screening instrument — Assessment — Determination of level of intervention — Investigation of reports of harm or sexual abuse.
37-5-605. Annual report — Collection and maintenance of data.
37-5-606. Training and information.
37-5-607. Independent local advisory board.
37-5-608. Rules and regulations.

PART 1

GENERAL PROVISIONS

37-5-101. Creation of department — Division of juvenile justice — Deputy commissioner of juvenile justice — Powers and duties — Funding.

(a) There is hereby created the department of children's services.

(b)(1) Within the department, there is created a division of juvenile justice to serve children who are adjudicated delinquent.

(2) The deputy commissioner of juvenile justice shall be appointed to lead the division of juvenile justice and shall serve at the pleasure of the commissioner. The commissioner shall appoint a person qualified by training and experience in the area of juvenile justice to perform the duties of deputy commissioner of juvenile justice. The appointee must be a graduate of an accredited college or university and be experienced in the field of juvenile justice.

(3) It is the duty and responsibility of the division of juvenile justice to serve children who are adjudicated delinquent. The deputy commissioner shall have the powers and duties that the commissioner shall prescribe, in order to effectively administer, develop and oversee all state programs and services for delinquent children, their families and their communities.

(4) The commissioner shall earmark a sum sufficient to be used exclusively for the division of juvenile justice. This budget shall include all appropriations for residential and nonresidential services provided for the prevention of delinquency and the rehabilitation, treatment and training of delinquent youth.

History.
Acts 1996, ch. 1079, § 2; 2006, ch. 818, § 1.

Compiler's Notes.
The department of children's services, created by this section and § 4-3-101, terminates June 30, 2017. See §§ 4-29-112, 4-29-238.

For additional provisions relating to the termination of the department of children's services, see the Compiler's Notes under § 4-3-101.

Acts 1996, ch. 1079, § 184 provided: "Any provision of this act, or the application thereof, which is inconsistent with federal law, rule or regulation shall be deemed to be construed as being consistent with federal law, rule or regulation."

37-5-102. Purpose.

(a) Through the department of children's services, the state of Tennessee, in cooperation with juvenile courts, local communities, schools and families will strive to provide timely, appropriate and cost-effective services for children in state custody and at risk of entering state custody so that these children can reach their full potential as productive, competent and healthy adults. The department is created to provide services to those children who are unruly, delinquent, dependent and neglected, and their respective families, as well as for children who are at imminent risk and in need of services to prevent entry into state custody, who are in state custody pending family reunification or other permanent placement, or as otherwise may be required for such children and their families pursuant to state law. In all cases, the services shall be to further the best interest of the child, and when appropriate, to preserve the relationship between the child and the family. Whenever possible, the services shall be provided in the community where the child lives and in a setting that is the least restrictive and, yet, the most beneficial to the child. For the children it serves, the department shall strive to:

(1) Protect children from abuse, mistreatment or neglect;

(2) Provide prevention, early intervention, rehabilitative and educational services;

(3) Pursue appropriate and effective behavioral and mental health treatment;

(4) Ensure that health care needs, both preventive and practical, are met; and

(5) Keep children safe.

(b) The department will work to preserve the safety and protect the standards in Tennessee communities through efforts to combat delinquency and other social ills concerning young people. The department shall work to continuously improve the management and coordination of services for the children and families of Tennessee identified in this section by ensuring thorough evaluations and assessments, appropriate and effective service delivery, timely permanency planning and supportive supervision and monitoring of the progress of children discharged from state custody.

History.
Acts 1996, ch. 1079, § 3; 2008, ch. 1044, § 1; 2012, ch. 831, § 1, 2; 2015, ch. 242, § 1.

37-5-103. Chapter definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Abuse" exists when a person under eighteen (18) years of age is suffering from, has sustained or may be in immediate danger of suffering from or sustaining a wound, injury, disability or physical or mental condition caused by brutality, neglect or other actions or inactions of a parent, relative, guardian or caretaker;

(2) "Adjudication of delinquency" means that a juvenile court has found beyond a reasonable doubt that a child has committed a delinquent act, as defined in § 37-1-102, that is an act designated a crime under the law, including local ordinances of this state, or of another state if the act occurred in that state, or under federal law, and the crime does not fall under § 37-1-102(b)(21)(C) and the crime is not a traffic offense as defined in the traffic code of the state other than failing to stop when involved in an accident pursuant to § 55-10-101, driving while under the influence of an intoxicant or drug, vehicular homicide or any other traffic offense classified as a felony;

(3) "Adult" means, as defined in § 37-1-102, any person eighteen (18) years of age or older;

(4)(A) "Child" means:

(i) A person under eighteen (18) years of age; or

(ii) A person under nineteen (19) years of age for the limited purpose of:

(a) Remaining under the continuing jurisdiction of the juvenile court to enforce a non-custodial order of disposition entered prior to the person's eighteenth birthday;

(b) Remaining under the jurisdiction of the juvenile court for the purpose of being committed, or completing commitment including completion of home placement supervision, to the department with such commitment based on an adjudication of delinquency for an offense that occurred prior to the person's eighteenth birthday; or

(c) Remaining under the jurisdiction of the juvenile court for resolution of delinquent offense(s) committed prior to a person's eighteenth birthday but considered by the juvenile court after a person's eighteenth birthday with the court having the option of retaining juris-

diction for adjudication and disposition or transferring the person to criminal court under § 37-1-134.

(B) In no event shall a person eighteen (18) years of age or older be committed to or remain in the custody of the department of children's services by virtue of being adjudicated dependent and neglected, unruly, or in need of services pursuant to § 37-1-175, except as provided in § 37-5-106(a)(20).

(C) This subdivision (4) shall in no way be construed as limiting the court's jurisdiction to transfer a person to criminal court under § 37-1-134.

(D) A person eighteen (18) years of age is legally an adult for all other purposes including, but not limited to, enforcement of the court's orders under this subdivision (4) through its contempt power under § 37-1-158.

(E) No exception shall be made for a child who may be emancipated by marriage or otherwise.

(5)(A) "Child sexual abuse" means, as defined in § 37-1-602, the commission of any act involving the unlawful sexual abuse, molestation, fondling or carnal knowledge of a child under thirteen (13) years of age 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) Assault with intent to commit rape or attempt to commit rape or sexual battery under § 39-2-608 [repealed];

(vi) Crimes against nature under § 39-2-612 [repealed];

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

(viii) Begetting child on wife's sister under § 39-4-307 [repealed];

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

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

(B) "Child sexual abuse" also means the commission of any act involving the unlawful sexual abuse, molestation, fondling or carnal knowledge of a child under the age of thirteen (13) 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) Rape of a child under § 39-13-522;

(vi) Criminal attempt as provided in § 39-12-101 for any of the offenses listed above;

(vii) Incest under § 39-15-302;

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

(ix) Aggravated sexual exploitation of a minor under § 39-17-1004; or

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

(C) "Child sexual abuse" also means one (1) or more of the following acts:

(i) Any penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is the emission of semen;

(ii) Any contact between the genitals or anal opening of one person and the mouth or tongue of another person;

(iii) Any intrusion by one person into the genitals or anal opening of another person, including the use of any object for this purpose, except that it shall not include acts intended for a valid medical purpose;

(iv) The intentional touching of the genitals or intimate parts, including the breasts, genital area, groin, inner thighs and buttocks, or the clothing covering them, of either the child or the perpetrator, except that it shall not include:

(a) Acts that may reasonably be construed to be normal caretaker responsibilities, interactions with, or affection for a child; or

(b) Acts intended for a valid medical purpose;

(v) The intentional exposure of the perpetrator's genitals in the presence of a child, or any other sexual act intentionally perpetrated in the presence of a child, if such exposure or sexual act is for the purpose of sexual arousal or gratification, aggression, degradation or other similar purpose; or

(vi) The sexual exploitation of a child, which includes allowing, encouraging or forcing a child to:

(a) Solicit for or engage in prostitution; or

(b) Engage in an act prohibited by § 39-17-1003;

(D) For the purposes of the reporting, investigation and treatment provisions of §§ 37-1-603 — 37-1-615, "child sexual abuse" also means the commission of any act specified in subdivisions (5)(A)-(C) against a child thirteen (13) years of age through seventeen (17) years of age if such act is committed against the child by a parent, guardian, relative, person residing in the child's home or other person responsible for the care and custody of the child;

(6) "Commissioner" means the commissioner of children's services;

(7) "Department" means the department of children's services;

(8) "Dependent and neglected" means, as defined in § 37-1-102, a child:

(A) Who is without a parent, guardian or legal custodian;

(B) Whose parent, guardian or person with whom the child lives, by reason of cruelty, mental incapacity, immorality or depravity, is unfit to

properly care for such child;

(C) Who is under unlawful or improper care, supervision, custody or restraint by any person, corporation, agency, association, institution, society or other organization or who is unlawfully kept out of school;

(D) Whose parent, guardian or custodian neglects or refuses to provide necessary medical, surgical, institutional or hospital care for such child;

(E) Who, because of lack of proper supervision, is found in any place the existence of which is in violation of law;

(F) Who is in such condition of want or suffering or is under such improper guardianship or control as to injure or endanger the morals or health of such child or others;

(G) Who is suffering from abuse or neglect;

(H) Who has been in the care and control of an agency or person who is not related to such child by blood or marriage for a continuous period of eighteen (18) months or longer in the absence of a court order and such person or agency has not initiated judicial proceedings seeking either legal custody or adoption of the child; or

(I) Who is or has been allowed, encouraged or permitted to engage in prostitution or obscene or pornographic photographing, filming, posing or similar activity and whose parent, guardian or other custodian neglects or refuses to protect such child from further such activity;

(9) "Guardian" means, for purposes of adoptions and terminations of parental rights, the meanings set forth in § 36-1-102 and, for all other purposes, the meaning set forth in § 34-1-101;

(10) "Imminent risk" means circumstances or behavior likely to produce, within a relatively short period of time, a reasonably strong probability that the child will be placed in state custody;

(11) "Juvenile" means a person under eighteen (18) years of age. No exception shall be made for a child who may be emancipated by marriage or otherwise;

(12) "Legal custodian" means a person or agency to whom legal custody of a child has been given by court order. A legal custodian has the right to physical custody of the child; the right to determine the nature of the care and treatment of the child, including ordinary medical care; and the right and duty to provide for the care, protection, training, education and physical, mental and moral welfare of the child. Such rights and duties are, however, subject to the conditions and limitations of the order granting legal custody and to the remaining rights and duties of the child's parent(s);

(13) "Order of referral" means a juvenile court order entered prior to a child being adjudicated unruly or dependent and neglected, or prior to the disposition of a child who has been adjudicated delinquent, unruly or dependent and neglected, that directs that the department make an assessment of the child and report the findings and recommendations to the court;

(14) "Report of harm" means a report regarding child abuse filed under § 37-1-403 or a report regarding child sexual abuse filed under § 37-1-605;

(15) "Unruly" means, as defined in § 37-1-102, a child in need of treatment and rehabilitation who:

(A) Habitually and without justification is truant from school while subject to compulsory school attendance under § 49-6-3007;

(B) Habitually is disobedient of the reasonable and lawful commands of the child's parent or parents, guardian or other legal custodian to the degree that such child's health and safety are endangered;

(C) Commits an offense that is applicable only to a child; or

(D) Is away from the home, residence or any other residential placement of the child's parent or parents, guardian or other legal custodian without their consent. Such child shall be known and defined as a "runaway;"

(16) "Youth development center" means a hardware secure facility that houses children who have been adjudicated delinquent and who meet the criteria as established by the department for placement at such facility.

History.

Acts 1996, ch. 1079, § 4; 2000, ch. 947, § 8G; 2005, ch. 265, § 7.

Compiler's Notes.

Subdivision (5)(D), as originally enacted by Acts 1996, ch. 1079, § 4, contained a reference to "subdivisions (a)(2)(A)-(C)"; however, that act contained no (a)(2)(A)-(C). The reference has been changed to "(5)(A)-(C)" as a possible interpretation of legislative intent.

The definition in subdivision (b)(23) shall be effective July 1, 1996, before which date the definition of "unruly" shall be the definition found in former § 37-1-102(b)(21), which read: " 'Unruly child' means a child who: (A) While subject to compulsory school attendance is habitually and without justification truant from school; (B) Is habitually disobedient of the reasonable and lawful commands of the child's parent, guardian or other custodian, and is ungovernable; (C) Has committed an offense applicable only to a child; or (D) Is away from the home or residence of his parents or guardians without their consent. Such child shall be known and defined as a 'runaway'; if any of the foregoing is in need of treatment or rehabilitation."

37-5-104. Commissioner of children's services — Qualifications.

(a) The governor shall appoint a person qualified by training and experience in the area of children's services to perform the duties of the commissioner of children's services. The appointee must be a graduate of an accredited college or university.

(b) The commissioner shall hold office at the pleasure of the governor, and the commissioner's compensation shall be fixed by the governor and paid from the appropriation available to the department pursuant to § 8-23-101(c).

(c) The commissioner shall have the necessary offices, equipment and supplies to carry out the duties of the office.

History.
Acts 1996, ch. 1079, § 5.

37-5-105. Powers and duties of commissioner.

The commissioner, or the commissioner's designee, has the following powers and duties in addition to such other powers and duties as may be specifically provided by law in this title or as otherwise provided by law:

(1) Select and recommend to the appropriate state officials the employment or transfer of all personnel required for the operation of the department, except, however, the transfer of any employees pursuant to this chapter or the initial organization of the new department pursuant to this chapter shall not result in any impairment, interruption or diminution of employee rights, privileges, salary, benefits, leave accumulation or employment; and further, such transfer of employees pursuant to this chapter or initial organization of the new department pursuant to this chapter shall not result in a contract employee supervising a preferred service employee or conducting a job performance evaluation for a preferred service employee;

(2) Recommend to the appropriate state officials the salaries and compensation of all officers and employees of the department;

(3) Make and adopt rules, regulations and policies for the government, management and supervision of state children's service agencies or facilities, and children's services; prescribe the powers and duties of the officers and employees thereof; and provide for the care of children served by the department; provided, however, that such rules shall be consistent with and subject to licensing approval authority of any other state agency that has responsibility for licensing or approval of any portion of program services or facilities provided by the department;

(4)(A) Publish, in accordance with the rules, regulations, policies and procedures of the state publication committee, an annual report on the operation of the department and the services and programs under its supervision by January 31 and furnish the report to the governor, members of the general assembly, other persons and relevant entities that may request the report such as the Tennessee council of juvenile and family court judges and the Tennessee commission on children and youth, and others as the governor may consider appropriate;

(B) Such annual report shall contain information regarding foster care services, including definitions, racial composition, and statutory or regulatory authority where appropriate as to the following:

(i) Placement Information. Total number of children in foster care by region and segmented by:

(a) Level of placement (I-IV);

(b) Placement type (department of children's services foster home, continuum contracts, pre-adoptive or adoptive, diagnostic shelter, emergency shelter, medical or surgical hospital, miscellaneous, specialized residential school, trial home visit);

(c) Average length of custody; and

(d) Number of department of children's services foster care placements currently available;

(ii) Social Services Caseload Information. Total social services case managers by region and segmented by:

(a) Case manager slots;

(b) Actual filled slots;

(c) Average salary;

(d) Average social services caseload; and

(e) Range of social services caseload;

(iii) Legal Support by Region. Total number of attorneys and paralegal staff:

(a) Number of attorney slots;

(b) Number of attorney filled slots;

(c) Number of paralegal slots; and

(d) Number of paralegal filled slots;

(5) Direct the placement of children in appropriate state programs or facilities, or contract programs or facilities, in conformity with constitutional, statutory or regulatory requirements;

(6) Assume general responsibility for the proper and efficient operation of the department, its services and programs. The commissioner may establish such divisions and units within the department as necessary for its efficient operation;

(7) Promulgate necessary rules and regulations to govern administrative searches and inspections of employees of the department, juveniles in the custody of the department and visitors to facilities of the department. Such rules shall provide guidelines and standards for the manner in which the searches authorized by this subdivision (7) shall be conducted;

(8) Promulgate rules and regulations concerning drug testing that are not inconsistent with the provisions of § 41-1-121;

(9)(A) Conduct investigations as deemed necessary to the performance of the commissioner's duties, and to that end, the commissioner shall have the same power as a judge of the court of general sessions to administer oaths and to enforce the attendance and testimony of witnesses and the production of books and papers;

(B) The commissioner shall keep a record of such investigations, stating the time, place, nature or subject, witnesses summoned and examined, and the commissioner's conclusions;

(C) In matters involving the conduct of an office, a stenographic report of the evidence may be taken and a copy thereof with all documents introduced kept on file at the office of the department;

(D) The fees of witnesses for attendance and travel shall be the same as in the circuit court, but no officer or employee of the institution under investigation shall be entitled thereto;

(E) Any judge of the circuit or chancery court, either in term time or in vacation, upon application of the commissioner, may compel the attendance of

witnesses, the production of books or papers and the giving of testimony before the commissioner, by a judgment for contempt or otherwise, in the same manner as in the cases before a circuit or chancery court;

(10)(A) The commissioner shall have the authority to conduct or cause to be conducted any administrative hearings relating to any factual determinations that the department is authorized or required to make pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, or pursuant to any other hearing procedures required by law or that may be necessary to provide due process procedures for individuals affected by the programs administered by the department;

(B) The commissioner, or any officer or employee of the department upon written authorization from the commissioner, has the power to administer oath and affirmations, take depositions, issue subpoenas and require the production of documents and any books and records that may be necessary in the conduct of such hearings;

(11) Perform all duties and exercise all authority set forth in part 3 of this chapter, regarding community services agencies;

(12)(A) Establish a children's services advisory council having fifteen (15) members appointed by the commissioner to act in an advisory capacity on any matter within the jurisdiction of the department. Appointees to the council shall include, but not be limited to, representatives of local law enforcement, mental health professionals, local education agencies, juvenile court officials, social workers, health care providers, consumers of services such as parents, foster parents or family members of children who are or have been recipients of services from the department, child advocates, persons having specialized knowledge or experience and public and private agencies that provide services to children. The members of the council shall be appointed with a conscious intention of reflecting a diverse mixture with respect to race and gender. Each community services agency region shall be represented by at least one (1) individual on the council;

(B) The term of a member of the children's services advisory council shall be three (3) years with the terms staggered so as to replace no more than one third (⅓) of the members each year. Members of the council may be reappointed after their terms expire. Members of the council shall continue in office until the expiration of the terms for which they were respectively appointed and until such time as their successors are appointed. Vacancies occurring on the council by reasons of death or resignation shall be filled in the same manner as a regular appointment for the remainder of the unexpired term;

(C) Members shall be reimbursed for their actual expenses for attending meetings of the council. All reimbursement for travel expenses shall be in accordance with the provisions of the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter;

(D) The duties of the council shall be to advise the commissioner regarding issues pertaining to the purpose of the department and its work when requested by the commissioner. Annually, the council shall elect one (1) of its members to serve as chair of the council and one (1) member to serve as secretary. Minutes of each meeting shall be kept and sent to the commissioner. Any officer may be elected to consecutive terms;

(13) Establish, from time to time, committees composed of representatives from the public or private sectors, or both, for such purposes and durations as may be deemed appropriate or required by the commissioner. Members of such committees shall be reimbursed for their actual expenses for attending meetings of their respective committees. All reimbursement for travel expenses shall be in accordance with the provisions of the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter;

(14)(A) Establish and administer, jointly with the state treasurer, a scholarship program for the sole purpose of providing financial assistance to foster children wishing to pursue opportunities in higher education;

(B) The scholarship program established and administered pursuant to subdivision (14)(A) shall be funded from state appropriations and from such individual and corporate grants, donations and contributions as the commissioner shall solicit and receive specifically for such purpose;

(15) In consultation with the child sexual abuse task force established by § 37-1-603(b)(1), the child advocacy centers, the Tennessee council of juvenile and family court judges, the Tennessee commission on children and youth, the Tennessee supreme court administrative office of the court, the district attorneys general conference and the juvenile and criminal court clerks, develop a plan and recommendations regarding requirements for extensive, detailed information regarding all reports of child maltreatment and the criminal, civil or administrative disposition of all allegations, by type, of child maltreatment and, by type, of disposition, including data regarding the victims and the perpetrators, to be collected by the department and submit the plan and recommendations to the judiciary committee of the senate and the civil justice committee of the house of representatives. Any child-specific information shall be confidential, except as otherwise provided by statute;

(16) Promote collaboration and accountability among local, public, and private programs to improve the lives of children and families, including continuing accreditation with the Council on Accreditation for Children and Family Services, Inc. or its equivalent, to develop strategies consistent with best practice standards for delivery of services. If the depart-

ment fails to maintain accreditation, a report shall be provided to the general assembly outlining the reasons the department is no longer accredited; and

(17)(A) Report to the governor, the chief clerk of the senate, and the chief clerk of the house of representatives on probation and juvenile justice evidence-based treatment services by January 31 of each year for the previous fiscal year;

(B) Such report shall contain the following:

(i) Probation information:

(a) The number of children served by state probation;

(b) The number of children served by county probation as reported to the department in § 37-1-506(b);

(c) The average daily cost per child served by state probation;

(ii) Custodial information:

(a) The total number of children in juvenile justice placements;

(b) The number of children placed in youth development centers;

(c) The number of children placed in community placements;

(d) The average daily cost per child placed in a community placement; and

(e) The average daily cost per child placed in a youth development center;

(iii) Recidivism and system penetration information:

(a) The number of children receiving probation services who entered state custody;

(b) The recidivism rate for children receiving state probation services;

(c) The recidivism rate for children receiving county probation services;

(d) The recidivism rate for children not receiving probation services; and

(e) The recidivism rate for children receiving any probation services; and

(iv) Evidence-based services information:

(a) The number of children receiving evidence-based treatment services;

(b) The percentage of treatment services that are evidence-based;

(c) The number of children receiving prevention services;

(d) The number of children receiving evidence-based prevention services; and

(e) A list of juvenile courts receiving prevention grants or other prevention funding from the department, the amount of funding received, and the percentage of funding being used for evidence-based prevention services.

History.

Acts 1996, ch. 1079, § 6; 1999, ch. 508, § 5; 1999, ch. 521, §§ 1-3; 2001, ch. 401, § 2; 2006, ch. 890, § 4; 2010, ch. 1044, § 1; 2011, ch. 410, § 3(r); 2012, ch. 800, § 49; 2013, ch. 236, § 82; 2016, ch. 1005, § 1.

Compiler's Notes.

Acts 1999, ch. 508, § 12 provided that the department of children's services shall report at least once every sixty (60) days, or as often as requested, to the Special Joint Task Force to study foster care; the general welfare, health and human resources committee of the senate; the health and human resources committee of the house of representatives; the children and family affairs committee of the house of representatives; and the select joint committee on children and youth. Such periodic reports shall describe the current implementation status of the various provisions of this act.

Acts 2001, ch. 401, § 4, provided that the amendment to this section by the act, which amended subdivision (4)(A), shall apply to any investigation or any civil cause of action pending or filed on or after June 19, 2001.

Acts 2006, ch. 890, § 1 provided that the provisions of the act, which added subdivision (15), may be collectively known as the "Child Protection Act of 2006."

For the Preamble to the act concerning the Tennessee department of children's services accreditation from the Council on Accreditation for Children and Family Services, Inc., please refer to Acts 2010, ch. 1044.

For the Preamble to the act concerning the prohibition against establishment of a special committee if there is a standing committee on the same subject, please refer to Acts 2011, ch. 410.

Acts 2012, ch. 800, § 1 provided that the act, which amended subsection (1), shall be known and cited as the "Tennessee Excellence, Accountability, and Management (T.E.A.M.) Act of 2012."

37-5-106. Powers of the department.

(a) The department has the following powers:

(1) Administer, develop or oversee programs, or any of these things including, but not limited to, state children's services agencies, except those operated by the department of mental health and substance abuse services or the department of intellectual and developmental disabilities, assessment services, probation services, aftercare supervision services, child protective services and other services as required by law or as otherwise reasonably necessary for unruly, delinquent, dependent and neglected children, and their respective families, as well as children who are at imminent risk and in need of services to prevent entry into state custody, who are in state custody pending family reunification or other permanent placement, or as otherwise may be required for such children and their families pursuant to state law; provided, however, that such administration shall be consistent with and subject to licensing or approval authority of any other state agency that has responsibility for licensing or approval of any portion of program services or facilities provided by the department. Nothing herein shall preclude the service of at risk children by the department of mental health and substance abuse services who are classified as seriously emotionally disturbed and for whom that department has primary responsibility;

(2) Provide services as required by law to children committed to its custody pursuant to this title or title 33, 34 or 39, or provide services to children who are in need of services as required or permitted by law under the Interstate Compact for Juveniles in chapter 4, part 1 of this title, the Interstate Compact on the Placement of Children in chapter 4, part 2 of this title, or who are committed to the department by any order of the courts as a result of a divorce or adoption or guardianship proceeding;

(3)(A) License or approve and supervise child care agencies, as defined in part 5 of this chapter, that are placed within the department's jurisdiction pursuant to law;

(B) License or approve and supervise all facilities that were previously operated by the department of youth development;

(C) License or approve and supervise any entity that provides services consistent with this chapter and the exceptions set forth therein;

(4) For the purposes of treatment, reunification and rehabilitation, allow delinquent children committed to the department's custody to make home visits to the natural parent(s), relatives or legal guardian. Such visits must be approved by the committing juvenile court, unless such court declines to exercise decision making in regard to home passes, in which case the commissioner has authority to grant passes without any further court approval or action;

(5) Receive and administer state funds appropriated for children being served by the department of children's services;

(6) Seek, apply for, receive and administer federal funds as well as any other grants or funds that can be used for children being served by the department of children's services;

(7) Administer the contractual obligations and functions and the funding arrangements for the department;

(8) Enter into contracts with the departments of human services, mental health and substance abuse services, intellectual and developmental disabilities, education and health, with agencies of such departments, or any other department or agency of state government, with private individuals and corporations, and with associations, organizations or any other entities, governmental or otherwise, for services that the department of children's services may deem necessary to carry out the purposes of this title. Such services may include, but are not limited to, health, psychological, social, education, transportation, program evaluation, placement, detention, prevention, assessment and case management;

(9) Develop and maintain a system for the purpose of handling, coordinating, processing and disseminating the information generated by the department's activities and services;

(10) Provide appropriate training, either through the department or by contract, to individuals within the department and may provide training to those entities delivering services for the department of children's services. All child protective services workers must be trained in their legal duties to protect the constitutional and statutory rights of children and families from the initial time of contact, during the investigation, and through the treatment;

(11) Provide for all adoption services responsibilities as it may be required to perform pursuant to title 36, chapter 1, part 1, and for the operation of the putative father registry pursuant to § 36-2-318;

(12) Administer the Title IV-E Foster Care and Adoption Assistance Program established pursuant to the Social Security Act in 42 U.S.C. § 670 et seq., or any successor entitlements;

(13) Establish rules and regulations concerning the provision of financial assistance to persons who adopt a child who has special needs, is difficult to place because of a disability or other serious impediments to adoption;

(14) Administer the Interstate Compact on Adoption and Medical Assistance pursuant to title 36, chapter 1, part 2;

(15)(A) Establish, notwithstanding any law to the contrary, rules and regulations for charging fees for the department's preparation and presentation, for any purpose, of social reports of homes or the parent or parents or other persons, when ordered by the courts unless:

(i) The order is based upon a finding that the child or children who are the subjects of the order are victims of abuse or neglect;

(ii) The order is based upon a finding that the child or children who are the subjects of the order have been alleged in the proceedings to be victims of abuse or neglect; or

(iii) The department has received a report of harm pursuant to § 37-1-403 or § 37-1-605, concerning the child or children who are the subjects of the order. The department may, for purposes of this section, disclose such fact to the court;

(B) Provide by rule or regulation that the parent or parents of the child or children or any person or persons legally responsible for the child or children or any other party to the case, as the court may determine, shall be assessed the costs of the social report. The costs shall not exceed the department's cost to provide the service;

(C) Provide by rule for waiver of costs for any person or persons who are indigent, as determined by the department;

(D) Costs of such reports shall be reported by the department to the court and such costs shall be assessed by the court as court costs, as determined by the court, against the parent or parents or other parties or person legally responsible for the child or children and such costs shall be enforced accordingly by the court;

(E) Such costs shall be paid by the court clerk to the department, and the funds received by the department shall be deposited to the state treasury pursuant to § 9-4-301;

(16) Establish by policy, rule or regulation appropriate and necessary guidelines for consent to health care treatment for children in state custody or who are being served by the department;

(17) The department may acquire, hold or alienate property or leaseholds necessary or desirable for the performance of any of its functions that are vested in it by law;

(18)(A) The department is specifically authorized to establish any programs for the use of volunteers who may be able to provide assistance to the department in any of the services that are vested in it by law or that it may provide as a necessary part of such services. To the extent funds are available, and if necessary and desirable, the department may reimburse such volunteers for ac-

tual travel or other reasonable expenses for their services. All reimbursement for travel expenses shall be in accordance with the provisions of the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter. Meals may be furnished without charge at department facilities if the scheduled volunteer assignment extends over an established meal period. The department may use any funds available, including federal, state or local funds or private donations, that it has for any expenses associated with these programs;

(B) Any volunteers who are registered by the department with the board of claims shall be accorded the same protections, legal representation authorization and immunities as state employees pursuant to title 8, chapter 42, and § 9-8-307 for civil or criminal actions brought against them within the scope and course of their activities in such volunteer programs; provided, however, that they shall not be covered by workers' compensation pursuant to § 9-8-307; and

(C) Volunteers may use state vehicles when their assignments so require, subject to the approval of the department and in compliance with any policies or rules or regulations that may be promulgated by the department;

(19) Administer and fully implement the multilevel response system for children and families, compiled in part 6 of this chapter, including making such contracts as may be necessary to carry out the evaluations called for in that part;

(20) Review the status of any person who has reached eighteen (18) years of age who was in the legal custody of the department and whose last commitment was based on an adjudication of dependent and neglected, unruly or in need of services pursuant to § 37-1-175, to determine if the person should receive services from the department in order to complete high school or other educational training or for the purpose of receiving other services. The department may provide services to the person who chooses to receive services from the department on a voluntary basis, subject to funding availability, budgetary constraints and compliance with department policy;

(21) Review the status of any person who has reached nineteen (19) years of age who was in the legal custody of the department and whose last commitment was based on an adjudication of delinquency to determine if the person should receive services from the department in order to complete high school or other educational training or for the purpose of receiving other services. The department may continue to provide services to the person who chooses to receive services from the department on a voluntary basis, subject to funding availability, budgetary constraints and compliance with department policy; and

(22)(A) Create a safety reporting system where the department's employees may report information regarding the safety of those served by the department and the safety of the department's employees;

(B) The identity of any individual who reports to or participates in the reporting system shall:

(i) Be sealed from inspection by the public or any other entity or individual who is otherwise provided access to the department's confidential records under this title;

(ii) Not be subject to discovery or introduction into evidence in any civil proceeding; and

(iii) Be disclosed only as necessary to carry out the purposes of the reporting system;

(C) Any criminal act reported into the reporting system shall be disclosed by the department to the appropriate law enforcement agency or district attorney.

(b) The attorney general and reporter shall, upon request, advise the department on matters of law.

History.

Acts 1996, ch. 1079, § 7; 2000, ch. 947, § 6; 2000, ch. 981, §§ 51, 60; 2003, ch. 355, § 24; 2004, ch. 740, § 1; 2005, ch. 391, § 12; 2008, ch. 906, § 4; 2010, ch. 1100, §§ 60, 61; 2011, ch. 47, § 29; 2012, ch. 575, § 1; 2015, ch. 21, § 1.

Compiler's Notes.

Acts 2003, ch. 355, § 66 provided that no expenditure of public funds pursuant to the act shall be made in violation of the provisions of Title VI of the Civil Rights Act of 1964, as codified in 42 U.S.C. § 2000d.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Acts 2011, ch. 47, § 107 provided that nothing in the legislation shall be construed to alter or otherwise affect the eligibility for services or the rights or responsibilities of individuals covered by the provision on the day before July 1, 2011.

Acts 2011, ch. 47, § 108 provided that the provisions of the act are declared to be remedial in nature and all provisions of the act shall be liberally construed to effectuate its purposes.

For the Preamble to the act concerning legislative intent for creation of a system for reporting safety-related information, see Acts 2015, ch. 21.

37-5-107. Confidentiality of records.

(a) All applications, certificates, records, reports and all legal documents, petitions and records made or information received pursuant to this title that directly or indirectly identify a child or family receiving services from the department or that identify the person who made a report of harm pursuant to § 37-1-403 or § 37-1-605 shall be kept confidential and shall not be disclosed, except as provided by this section and §§ 37-1-131, 37-1-409, 37-1-612 and 49-6-3051.

(b) The department may use or release information in the following circumstances:

(1) The department may utilize any information it has or may acquire to provide services to the child; and

(2) The department may release records to a person or entity that may be providing system or program evaluation.

(c) The department shall release information in the following circumstances:

(1) Upon request, the department shall release records to any child abuse review teams or child fatality review teams that are created or authorized by state law to review the activities of the department or to evaluate or investigate the cause of injury to or death of a child;

(2) Records to any law enforcement agency, grand jury or court upon presentation of an appropriate court order;

(3) Upon written request, records to any federal, state or local government entity or agent of such entity that has a need for the information in order to carry out its responsibilities under law to protect children from abuse and neglect in compliance with 42 U.S.C. § 5106a(b)(2)(B)(ix);

(4)(A) To provide for the public disclosure of information about any case that results in a child fatality or near fatality in compliance with 42 U.S.C. § 5106a(b)(2)(B)(x). For purposes of this subdivision (c)(4)(A), "near fatality" means a child had a serious or critical medical condition resulting from child abuse or child sexual abuse, as reported by a physician who has examined the child subsequent to the abuse;

(B) When the department investigates a child fatality for abuse or neglect, the department shall release the following information, to the extent known, within five (5) business days of the fatality:

(i) The child's age;

(ii) The child's gender; and

(iii) Whether the department has had history with the child.

(C) Following the closure of an investigation for a child abuse or neglect fatality, the department shall release the final disposition of the case, whether the case meets criteria for a child death review and the full case file. The case file may be redacted to comply with the confidentiality requirements of this section.

(D) Following the department's final classification of a child abuse or neglect near fatality, the department shall release the full case file. The case file may be redacted to comply with the confidentiality requirements of this section.

(5) Records to any person or entity that provides system or program evaluation at the request of the department;

(6) To the commission on children and youth any and all records requested by the commission that the commission believes necessary to perform its duties and responsibilities pursuant to § 37-3-103, particularly for the purpose of evaluating the delivery of services to children and their families served by the department; and

(7) Upon written request, records to any person who is the subject of a report made to the department, or to the person's parent or legal guardian if the person is a minor and the parent or legal guardian is not the alleged perpetrator of or in any way responsible for the child abuse, child neglect or child sexual abuse against the child whose records are being requested. A person provided access to records pursuant to this subdivision (c)(7) shall maintain the confidentiality of the records except to the extent necessary for proper supervision, care or treatment of the subject of the report.

(d) Pursuant to subdivision (c)(3), the department shall disclose records and information to any member of the general assembly to enable the member to determine whether the laws of this state are being complied with to protect children from abuse and neglect and whether the laws of this state need to be changed to enhance such protection; provided, that the procedures set out in subdivisions (d)(1)-(3) and any other procedures required by law are followed.

(1) If a member of the general assembly receives a written inquiry regarding whether the laws of this state that protect children from abuse and neglect are being complied with or whether the laws of this state need to be changed to enhance protection of children, the member of the general assembly may submit a written request to the department, requesting review of the records and information relating to the inquiry. The member's request shall state the name of the child whose case file is to be reviewed and any other information that will assist the department in locating the information.

(2) The member shall sign a form, before reviewing the records and information, that outlines the state and federal laws regarding confidentiality and the penalties for unauthorized release of the information. All records and information being reviewed by any member shall remain in the department's possession.

(3) After reviewing the records and information, if the member requests additional information, the department shall discuss the circumstances related to the records and information being disclosed.

(e)(1) Any person or entity, including the commission on children and youth, that is provided access to records under this section shall be required to maintain the records in accordance with state and federal laws and regulations regarding confidentiality.

(2) It is an offense for any person who has received or has been provided access to confidential information pursuant to this section to knowingly disclose or knowingly cause to be disclosed the information to any person or entity not otherwise provided access to the records by law.

(3) A violation of this subsection (e) is a Class B misdemeanor.

(f) Upon placement of a child in the custody of the department of children's services, all state, county and local agencies shall, notwithstanding any state laws or regulations to the contrary, grant access to any and all records in their possession that relate to the child for use by the department of children's services to determine a child's condition, needs, treatment or any other area of management; provided, however, that release of health care information must be consistent with the laws and policies of the departments of health, mental health and substance abuse services, and intellectual and developmental disabilities. The department of children's services shall comply with federal statutes and

regulations concerning confidentiality of records. Any records that are confidential by law upon the enactment of this legislation shall be maintained as confidential by the department of children's services.

(g) Except as otherwise provided pursuant to 20 U.S.C. § 1232g(b)(1), prior to the release of student records, the local education agency must give written notice to the student and parent as required by 20 U.S.C. § 1232g(b)(1), and must provide the parent with a copy of all records released.

(h) Release of drug and alcohol records must comply with federal and state laws and regulations regarding the release of these records.

(i) Except as provided for in subsection (c)(2), nothing in this section shall ever be construed to permit or require the department to release or disclose the identification of the person making a report of harm in accordance with § 37-1-403.

(j) The department, in consultation with the commission on children and youth, shall adopt rules and regulations that may be necessary to establish administrative and due process procedures for the disclosure of records and other information pursuant to this section.

History.
Acts 1996, ch. 1079, § 8; imp. am. Acts 2000, ch. 947, § 6; 2008, ch. 1146, § 1; 2009, ch. 86, §§ 1, 2; 2009, ch. 358, § 4; 2010, ch. 1100, § 62; 2012, ch. 575, § 1; 2014, ch. 771, § 1.

Compiler's Notes.
Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

37-5-108. Conflict of interest.

The department has the power and authority to establish by policy, rule or regulation provisions for prohibition of any conflict of interest that may occur within the department of children's services that may affect the constitutional rights of a child being served by the department of children's services. The department shall exercise this power and authority consistent with the provisions regarding conflicts of interest under title 12, chapter 4, part 1.

History.
Acts 1996, ch. 1079, § 9.

37-5-109. Licensing.

The responsibility for licensing children's programs, agencies, group homes, institutions or any other entity serving children that requires a license by law in Tennessee is as follows:

(1) The department of children's services shall license or approve and supervise child abuse agencies, child caring institutions, child placing agencies, detention centers, family boarding or foster care homes, group care homes, maternity homes and temporary holding resources. Not later than January 1, 1999, the department shall develop and implement standards to ensure that children in foster care placements in public or private agencies are provided quality services that protect the safety and health of the children. Exceptions to the department's licensing responsibilities concerning the aforementioned categories are contained in § 37-5-503;

(2) The department of human services shall license or approve and supervise child care centers, family child care homes and group child care homes. Exceptions to the department's licensing responsibilities concerning the aforementioned categories are contained in § 71-3-503;

(3) The department of mental health and substance abuse services shall license or approve and supervise any institution, treatment resource, group residence, boarding home, sheltered workshop, activity center, rehabilitation center, hospital, community mental health center, counseling center, clinic, halfway house or other entity, by these or other names, providing mental health, intellectual disability or developmental disability services, respectively, or as required by title 33, chapter 2, part 4. Exceptions to the licensing responsibilities of the department of mental health and substance abuse services concerning the aforementioned categories are contained in § 33-2-403;

(4) Any programs or portions of programs, or any place, home, facility, institution or other entity that is otherwise subject to licensure or approval by any other agency as required by law, shall continue to be licensed or approved by that agency unless notified to the contrary by the department of children's services; and

(5) Subject to the exemptions set out in § 37-5-503, and pursuant to promulgated rules and regulations, the department will license or approve or supervise any entity that provides residential services to children and is not otherwise subject to licensure, approval, certification or supervision by any other agency as required by state law.

History.
Acts 1996, ch. 1079, § 10; 1998, ch. 1097, § 28; 2000, ch. 947, §§ 6, 8I, 8L, 8M; 2000, ch. 981, § 61; imp. am. Acts 2000, ch. 947, § 6; 2010, ch. 1100, § 63; 2012, ch. 575, § 1.

Compiler's Notes.
Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

37-5-110. Contracts/Leases.

(a) Contracts or leases entered into prior to May 21, 1996, with respect to any program or function transferred to the department of children's services with any entity, corporation, agency, enterprise or person, shall continue in full force and effect as to all essential

provisions in accordance with the terms and conditions of the contracts in existence on May 21, 1996, to the same extent as if such contracts had originally been entered into by and between such entity, corporation, agency, enterprise or person and the department of children's services, unless and until such contracts or leases are amended or modified by the parties thereto or until the expiration of such contract.

(b) This chapter shall not be implemented in any manner that violates the prohibition against impairment of contract obligations as contained in article I, § 20 of the Constitution of Tennessee.

History.
Acts 1996, ch. 1079, § 11.

37-5-111. Funds.

The department, through its commissioner, shall have the authority to receive, administer, allocate, disburse and supervise any grants and funds from whatever sources, including, but not limited to, the federal, state, county and municipal governments on a state, regional, county or any other basis, with respect to any programs or responsibilities outlined in this chapter or assigned to the department by law, regulation or order. Exercise of this authority shall not be inconsistent with laws or regulations governing the appropriation and disbursement of funds as administered by the department of finance and administration.

History.
Acts 1996, ch. 1079, § 12.

37-5-112. Rules.

All current rules, regulations, orders, decisions and policies heretofore issued or promulgated by any departments of state government whose functions have been transferred under this chapter shall remain in full force and effect and shall hereafter be administered and enforced by the department. To this end, the department of children's services, through its commissioner, shall have the authority, consistent with the statutes and regulations pertaining to the programs and functions transferred herein, to modify or rescind orders, rules and regulations, decisions or policies heretofore issued and to adopt, issue or promulgate new orders, rules and regulations, decisions or policies as may be necessary for the administration of the programs or functions herein transferred. The application of rules and regulations and the policies of the department shall be uniform and consistent throughout the state.

History.
Acts 1996, ch. 1079, § 13; 2009, ch. 87, § 1.

37-5-113. Accreditation.

The department shall have its youth development centers accredited by a regionally or nationally recognized accreditation body such as the American Correctional Association, the Council on Accreditation or other accreditation agency.

History.
Acts 1996, ch. 1079, § 14.

37-5-114. Transfer from department of youth development.

(a) Any juvenile program that was administered by the department of youth development prior to May 21, 1996, shall be transferred to, and administered by, the department of children's services on and after May 21, 1996.

(b) All staff, staff positions, offices, equipment, supplies, property, funds and other resources of any juvenile program under the department of youth development shall be transferred to the department of children's services.

(c)(1) References to the department of youth development or the division of juvenile probation relative to programs for juveniles appearing elsewhere in this code shall be deemed to be references to the department of children's services.

(2)(A) The code commission is directed to change references to the existing titles of officials, offices, agencies and entities, whenever they appear in this code, to conform to the titles of officials, offices, agencies and entities created by this chapter.

(B) The code commission is authorized to make grammatical changes in the provisions of this code to effectuate such changes.

(d)(1) All contracts and leases entered into by the department of youth development relative to programs for juveniles shall continue in full force and effect as to all provisions in accordance with the terms and conditions of such contracts or leases in existence on May 21, 1996, unless and until such contracts or leases expire or are duly amended or modified by the parties thereto.

(2) All rules, policies, orders and decisions related to juvenile services promulgated or issued by the department of youth development prior to, and in effect on May 21, 1996, shall remain in force and effect and shall be administered and enforced by the department of children's services until duly amended, repealed, expired, modified or superseded.

History.
Acts 1996, ch. 1079, § 15.

37-5-115. Review.

The department shall be reviewed pursuant to the requirements set out in the Tennessee Governmental Entity Review Law, compiled in title 4, chapter 29. Further, the department shall respond to requests for information from any other legislative committees including, but not limited to, the fiscal review committee, the health and welfare committee of the senate, the health committee of the house of representatives, and the government operations committees of the senate and house of representatives, to ensure that thorough review and oversight of the department is accomplished.

History.
Acts 1996, ch. 1079, § 183; 2013, ch. 236, § 53.

37-5-116. Non-discrimination.

No person shall, on the grounds of race, color, national origin, sex, age or ability to pay, be excluded from participation, be denied the benefits of or be otherwise subjected to discrimination under any program or activity operated by the department of children's services. This shall include, but not be limited to, contracts for services, employment or services to consumers.

History.
Acts 1996, ch. 1079, § 183.

37-5-117. Youth service officers — Qualifications.

After July 1, 1989, any person employed as a youth service officer by the department of children's services shall:

(1) Be at least eighteen (18) years of age;

(2) Be a citizen of the United States;

(3) Have such person's fingerprints on file with the Tennessee bureau of investigation for criminal identification;

(4) Have passed a physical examination by a licensed physician;

(5) Have a good moral character as determined by investigation; and

(6) Have been certified by a Tennessee licensed health care provider qualified in the psychiatric or psychological field as being free from any impairment, as set forth in the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) of the American Psychiatric Association at the time of the examination, that would, in the professional judgment of the examiner, affect the applicant's ability to perform an essential function of the job, with or without a reasonable accommodation.

History.
Acts 1989, ch. 278, § 48; T.C.A., § 4-3-2609; Acts 1996, ch. 1079, § 21; 2013, ch. 137, § 2.

37-5-118. Oath requirement.

(a) All persons employed to control and manage juvenile programs for the state shall, before entering upon the discharge of their duties, take and subscribe the following oath: "I do solemnly swear (or affirm) that I will fully, faithfully, impartially, and diligently perform all the duties required of me as _____ in the department of children's services, that I will execute the laws and regulations prescribed for the government of the department, so far as concerns my office; that I will accept no bribe, or other compensation during my continuance in office, other than such compensation as is allowed by law; and that I will, on no occasion, ill treat or abuse any juvenile in the care of the department."

(b) This oath shall be filed in the office of the secretary of state, and its violation by any of such officers or employees shall be perjury, punishable as in other cases of perjury.

History.
Acts 1989, ch. 278, § 12; T.C.A., § 4-3-2610; Acts 1996, ch. 1079, § 21.

37-5-119. Youth development centers — Special school district — Administration — Teachers.

(a) The youth development centers and any other facilities deemed appropriate by the commissioner shall be a special school district, which shall be given the same funding consideration for federal funds that school districts within the state are given.

(b) The schools within such youth development centers and any other facilities deemed appropriate by the commissioner shall be under the control of the commissioner who shall serve as the board of education and director of schools for such district.

(c)(1) The schools shall meet the requirements of the law for public schools and rules and regulations of the state board of education.

(2) The commissioner of education may grant waivers for such provisions of the laws and regulations with which the schools cannot comply because of the function of the youth development centers and any other facilities deemed appropriate by the commissioner on an annual basis and in response to the commissioner's of children's services written request and justification. Such exceptions shall be in writing.

(d)(1) Each teacher in the special school district shall receive annual compensation at a rate of one tenth ($^1/_{10}$) times twelve (12) of the annual compensation in effect in the county in which the respective youth development center and any other facilities deemed appropriate by the commissioner are located or one tenth ($^1/_{10}$) times twelve (12) of the average of the annual compensation of all the counties that are contiguous with the county in which the respective youth development centers and any other facilities deemed appropriate by the commissioner are located, whichever is greater, solely out of the state appropriations made to the respective youth development centers and any other facilities deemed appropriate by the commissioner.

(2) This provision shall not act to reduce the compensation currently paid any teacher in the special school district.

(3) To the extent such resources are available, federal funding resources shall be utilized to meet increased costs resulting from implementation of this subsection (d).

(4) Longevity shall not be paid to teachers in the special school district under the provisions of both §§ 8-23-206 and 49-5-402.

(e) The commissioner of children's services shall develop and implement a plan whereby there shall be sufficient substitute teachers available for temporary service as needed for each school composing the special school district.

(f)(1) Nothing in the language of this section shall be construed as prohibiting any local school district from issuing a diploma to a resident of a youth development center and any other facilities deemed appropriate by the commissioner, upon certification

of the principal of a youth center school.

(2) School records of any juvenile in the correctional programs who is issued a diploma by a local school district shall be maintained by such local school district; provided, that all references to the juvenile's commitment to and treatment by the department of children's services are expunged.

(g) The special school district of youth development centers and any other facilities deemed appropriate by the commissioner under the department shall have the powers, privileges and authority exercised or capable of exercise by any other school district.

(h) The effect of this section shall not be to provide state funds to the special school district of youth development centers and any other facilities deemed appropriate by the commissioner under the department of children's services through the basic education program (BEP).

History.
Acts 1989, ch. 278, § 9; T.C.A., § 4-3-2620; Acts 1996, ch. 1079, § 23.

37-5-120. Library region — Creation.

There is created a library region to be composed of the youth development centers under the control of the department.

History.
Acts 1989, ch. 278, § 10; T.C.A., § 4-3-2625; Acts 1996, ch. 1079, § 25.

37-5-121. Pilot programs — Evidence-based programs for the prevention, treatment or care of delinquent juveniles.

(a) As used in this section, unless the context otherwise requires:

(1) "Evidence-based" means a program or practice that meets the following requirements:

(A) The program or practice is governed by a program manual or protocol that specifies the nature, quality, and amount of service that constitutes the program; and

(B) Scientific research using methods that meet high scientific standards for evaluating the effects of such programs must have demonstrated with two (2) or more separate client samples that the program improves client outcomes central to the purpose of the program;

(2) "Pilot program" means a temporary research-based or theory-based program or project that is eligible for funding from any source to determine whether or not evidence supports its continuation beyond the fixed evaluation period. A pilot program shall provide for and include:

(A) Development of a program manual or protocol that specifies the nature, quality, and amount of service that constitutes the program; and

(B) Scientific research using methods that meet high scientific standards for evaluating the effects of such programs must demonstrate on at least an annual basis whether or not the program improves client outcomes central to the purpose of the program;

(3) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based; and

(4) "Theory-based" means a program or practice that has general support among treatment providers and experts, based on experience or professional literature, may have anecdotal or case-study support, and has potential for becoming a research-based program or practice.

(b) The department of children's services, and any other state agency that administers funds related to the prevention, treatment or care of delinquent juveniles, shall not expend state funds on any juvenile justice program or program related to the prevention, treatment or care of delinquent juveniles, including any service model or delivery system in any form or by any name, unless the program is evidence-based. The department shall continue the ongoing research and evaluation of sound, theory-based and research-based programs with the goal of identifying and expanding the number and type of available evidence-based programs, and to that end the department may engage in and fund pilot programs as defined in this section.

(c) Implementation of programs shall be accompanied by monitoring and quality control procedures designed to ensure that they are delivered as prescribed in the applicable program manual or protocol and that corrective action shall be taken when those standards are not met.

(d) The department shall include in any contract with a provider of services related to prevention, treatment or care of delinquent juveniles a provision affirming that the provider shall provide only evidence-based services, except for services that are being provided pursuant to a pilot program as defined in this section, and that the services shall be accompanied by monitoring and quality control procedures that ensure that they are delivered according to the applicable standards. The department may use performance requirements or incentives in determining the amounts payable in contracts or grants.

(e) In order to prevent undue disturbance to existing department programs, the department shall ensure that twenty-five percent (25%) of the funds expended for delinquent juveniles meet the requirements of this section during fiscal year 2009-2010, that fifty percent (50%) of such funds meet the requirements of this section during fiscal year 2010-2011, that seventy-five percent (75%) of such funds meet the requirements of this section during fiscal year 2011-2012, and that one hundred percent (100%) of such funds meet the requirements of this section during fiscal year 2012-2013 and each fiscal year thereafter.

(f) The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this section. The rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

History.
Acts 2007, ch. 585, §§ 1-3; 2011, ch. 410, § 3(s).

Compiler's Notes.
Former § 37-5-121 (Acts 1996, ch. 1079, § 183), concerning the Tennessee Preparatory School, was repealed by Acts 2003, ch. 355, § 25, effective June 16, 2003.

For the Preamble to the act concerning the prohibition against establishment of a special committee if there is a standing committee on the same subject, please refer to Acts 2011, ch. 410.

37-5-122. Post-adoption services and searches — Fees and charges.

(a) The commissioner is authorized to promulgate rules and regulations establishing procedures, fees and charges for any service rendered relative to post-adoption search services and records handling services that are at any time required or permitted by law to be provided by the department.

(b) The commissioner is empowered to promulgate rules and regulations to reduce or eliminate fees or charges for services, identified under the provisions of this section, based upon recipients' condition or ability to pay. The amount of any fee or charge established by the commissioner under the provisions of this section shall not exceed the cost of providing the service.

(c) Any fees or charges received by the department under this section shall be deposited with the state treasurer in accordance with § 9-4-301.

History.
Acts 1992, ch. 901, § 1; 1995, ch. 532, § 17; T.C.A., § 71-1-124; Acts 1996, ch. 1079, § 156.

37-5-123. Notification of release of juvenile offender.

(a)(1) The department of children's services shall provide or contract with a private entity to provide to members of the public who have made a notification request, notification of the release of a juvenile adjudicated to have committed a delinquent act that would constitute a felony if committed by an adult from a facility operated by or under contract with the department to home placement as defined in § 37-1-102 [See compiler's note]. The chief administrator, or a person designated by the chief administrator, of a facility operated under contract with the department shall make available to the department, or any private entity under contract with the department, the information necessary to implement this section in a timely manner. The department, or the private entity under contract with the department, shall be responsible for retrieving the information and notifying the requester in accordance with regulations promulgated by the department.

(2) The department may refuse the notification request of a person if, on a case by case basis, it finds that notification of release is not in the best interests of the juvenile being released and that such notification may result in harm to the juvenile.

(b) The department shall promulgate rules in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to implement the provisions of this section.

(c) Notwithstanding §§ 37-1-145, 37-1-155 or 37-5-107 to the contrary, this section shall require the release of information relating to juveniles who have been adjudicated to have committed a delinquent act that would constitute a felony if committed by an adult. The release of information shall be limited to the extent necessary to comply with the provisions of this section.

History.
Acts 1998, ch. 968, § 2.

Compiler's Notes.
Acts 1998, ch. 968, § 3 provided full implementation of the notification program established by this act and full public access to such information shall take place by July 1, 1999.

The definition of "home placement", as referenced in the first sentence of subdivision (a)(1), was deleted from section 37-1-102 by Acts 2011, ch. 486, § 1 effective July 1, 2011.

37-5-124. Disclosure of the death or near fatality of persons in the custody of the department of children's services.

(a) The commissioner of children's services shall provide a report of the fatality or near fatality of:

(1) Any child in the custody of the department;

(2) Any child who is the subject of an ongoing investigation by child protective services or has been the subject of an investigation by child protective services within the forty-five (45) days immediately preceding the child's fatality or near fatality; or

(3) Any child whose fatality or near fatality resulted in an investigation of the safety and well-being of another child in the home;

within ten (10) business days of the fatality or near fatality of such child to the members of the senate and house of representatives representing the child.

(b) The legislators representing the child shall be determined by the home address of the child. If the child was not a resident of Tennessee prior to being placed in the custody of the department, the legislators representing the child shall be determined by the address of the residence or facility in which the child was located at the time of the child's fatality or near fatality.

(c) For the purposes of this section, "near fatality" shall have the same meaning as in § 37-5-107.

History.
Acts 2005, ch. 168, § 2; 2010, ch. 1031, § 1; 2011, ch. 410, § 3(t).

Compiler's Notes.
For the Preamble to the act concerning the prohibition against establishment of a special committee if there is a standing committee on the same subject, please refer to Acts 2011, ch. 410.

37-5-125. Model programs for adolescents at risk.

(a) Through contract with nonprofit corporations, community organizations, volunteer groups, churches, schools and family resource centers, the department of children's services is authorized to establish in each grand division two (2) model after school or summer programs, or both, for young adolescents at risk of placement in the custody of the state. An entity may contract with the department to operate more than one

(1) program. Each such model program shall serve not more than twenty-five (25) adolescents and shall strive to improve self-esteem, motivation, responsibility, achievement and goal setting through a variety of activities including, but not necessarily limited to, counseling, tutoring, mentoring, field trips, cultural enrichment experiences, team sports and team projects and problem solving. State funding for each such model program shall not exceed eight thousand two hundred fifty dollars ($8,250) per program.

(b) The department shall promulgate policies and guidelines defining:

(1) The phrase "young adolescents at risk of placement in the custody of the state;" and

(2) The minimum requirements and components for programs established and funded pursuant to subsection (a).

(c) On or before January 15 of each year, the department shall evaluate the success of such programs and shall report findings and recommendations to the judiciary committee of the senate and the civil justice committee of the house of representatives.

History.

Acts 1993, ch. 246, § 1; 1994, ch. 793, § 1; 1994, ch. 917, § 1; 1996, ch. 1079, § 16; T.C.A. § 4-3-2626; Acts 2011, ch. 410, § 3(u); 2013, ch. 236, § 21.

Compiler's Notes.

Acts 1996, ch. 1079, § 184 provided: "Any provision of this act, or the application thereof, which is inconsistent with federal law, rule or regulation shall be deemed to be construed as being consistent with federal law, rule or regulation."

For the Preamble to the act concerning the prohibition against establishment of a special committee if there is a standing committee on the same subject, please refer to Acts 2011, ch. 410.

37-5-126. Children's mental health care — Development of plan, projects and programs.

Notwithstanding any law to the contrary, the department shall assist the council on children's mental health care in developing a plan that will establish demonstration sites in certain geographic areas where children's mental health care is child-centered, family-driven, and culturally and linguistically competent and that provides a coordinated system of care for children's mental health needs in this state. The department shall also involve the council in the development of interagency projects and programs, whether state or federally funded, related to children's mental health care, except where otherwise prohibited by state or federal law.

History.

Acts 2008, ch. 1062, § 8.

Compiler's Notes.

For the Preamble to the act regarding to the mental health needs of Tennessee's children and youth, please refer to Acts 2008, ch. 1062.

37-5-127. License, certification or registration — Notifications — Prerequisites — Web site — Electronic notices.

(a) The department and each board, commission, agency or other governmental entity created pursuant to this title shall notify each applicant for a professional or occupational license, certification or registration from the department, board, commission, agency or other governmental entity where to obtain a copy of any statutes, rules, guidelines, and policies setting forth the prerequisites for the license, certification or registration and shall, upon request, make available to the applicant a copy of the statutes, rules, guidelines, and policies.

(b) The department and each board, commission, agency or other governmental entity created pursuant to this title shall notify each holder of a professional or occupational license, certification or registration from the board, commission, agency or other governmental entity of changes in state law that impact the holder and are implemented or enforced by the entity, including newly promulgated or amended statutes, rules, policies, and guidelines, upon the issuance and upon each renewal of a holder's license, certification or registration.

(c) The department and each board, commission, agency or other governmental entity created pursuant to this title shall establish and maintain a link or links on the entity's web site to the statutes, rules, policies, and guidelines that are implemented or enforced by the entity and that impact an applicant for, or a holder of, a professional or occupational license, certification, or registration from the entity.

(d)(1) The department and each board, commission, agency, or other governmental entity created pursuant to this title shall allow each holder of a professional or occupational license, certification or registration from the department, board, commission, agency or other governmental entity to have the option of being notified by electronic mail of:

(A) Renewals of the holder's license, certification or registration;

(B) Any fee increases;

(C) Any changes in state law that impact the holder and are implemented or enforced by the entity, including newly promulgated or amended statutes, rules, policies and guidelines; and

(D) Any meeting where changes in rules or fees are on the agenda. For purposes of this subdivision (d)(1)(D), the electronic notice shall be at least forty-five (45) days in advance of the meeting, unless it is an emergency meeting then the notice shall be sent as soon as is practicable.

(2) The department and each board, commission, agency or other governmental entity created pursuant to this title shall notify each holder of a license, certification or registration of the availability of receiving electronic notices pursuant to subdivision (d)(1) upon issuance or renewal of the holder's license, certification or registration.

History.

Acts 2008, ch. 1070, § 10; 2012, ch. 952, § 7.

Compiler's Notes.

Acts 2008, ch. 1070, § 13 provided that each entity subject to the act shall promulgate rules to effectuate the purposes of the act. The rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

37-5-128. Review of department policies and attached protocol and procedures that affect children the department serves — Uniformity of applicability.

Before March 1 of each year, the department shall appear before the judiciary committee of the senate and the civil justice committee of the house of representatives for a review of the policies of the department and attached protocol and procedures for these policies and any provisions that affect the children the department serves. During the review, the committees shall consider the uniformity of applicability across the state of the department's policies and attached protocol and procedures for these policies and any provisions that affect the children the department serves.

History.
Acts 2009, ch. 87, § 2; 2011, ch. 410, § 3(v); 2013, ch. 236, § 21.

Compiler's Notes.
For the Preamble to the act concerning the prohibition against establishment of a special committee if there is a standing committee on the same subject, please refer to Acts 2011, ch. 410.

37-5-129. Review of new departmental policies.

The department shall submit for review by the judiciary committee of the senate and the civil justice committee of the house of representatives any new departmental policies within sixty (60) days of adoption of the policies.

History.
Acts 2009, ch. 87, § 2; 2011, ch. 410, § 3(w); 2013, ch. 236, § 21.

Compiler's Notes.
For the Preamble to the act concerning the prohibition against establishment of a special committee if there is a standing committee on the same subject, please refer to Acts 2011, ch. 410.

37-5-130. Cessation of operations — Permanent education records.

In the event that a department of children's services provider agency school ceases operations, or the department no longer contracts with the provider agency, the permanent educational records for students who have been in state custody shall be forwarded to the department by the contract agency or provider. Such records shall be maintained in accordance with department policies and procedures as to educational records, and may be released to appropriate individuals or entities in accordance with department policy.

History.
Acts 2010, ch. 738, § 1.

37-5-131. Education of youth in juvenile detention facilities of the department of children's services or other facilities for youth at risk.

(a) This section shall apply to the following facilities:

(1) Juvenile detention facilities approved, certified or licensed by the department of children's services; and

(2) Facilities for children who are not in the custody of the department of children's services that provide community-based alternative educational programs whose purposes are prevention of delinquency, rehabilitation of delinquent youth or otherwise addressing unruly behavior that places youth at risk educationally or at risk of coming into state custody.

(b) Each facility shall report no later than August 31, 2010, to the department of education the number of youth detained or served, as well as relevant demographic and service delivery information as specified by the department of education, including, but not limited to, date of entry and date of exit from the facility for the time period of July 1, 2008, through June 30, 2010.

(c) On or before January 15, 2011, the department of education shall provide a report containing a compilation of the data and a detailed analysis of the findings to the chair of the judiciary committee of the senate, the chair of the children and family affairs committee of the house of representatives, the executive director of the commission on children and youth, the chairs of the education committees of the senate and the house of representatives and the commissioner of children's services. Such report shall include, but not be limited to, the following recommendations:

(1) A process to properly determine and direct the allocation of BEP funding for the purpose of education of youth in these facilities; and

(2) A process to ensure grades and attendance records are transferable between local education agencies and these facilities.

(d) The state board of education, in consultation with the department of children's services and the department of education, shall develop or modify curriculum-based standards, as necessary, for the education of children in these facilities consistent with those applicable to all other school systems.

History.
Acts 2010, ch. 870, §§ 1, 2; 2011, ch. 410, § 3(x).

Compiler's Notes.
For the Preamble to the act concerning the prohibition against establishment of a special committee if there is a standing committee on the same subject, please refer to Acts 2011, ch. 410.

PART 2

YOUTH DEVELOPMENT CENTERS

37-5-201. Establishment — Coeducational programs.

(a) For the detention, treatment, rehabilitation and education of children found to be delinquent, there shall be youth development centers. Such centers shall be under the supervision and control of the commissioner of children's services.

(b) Nothing in this chapter shall be construed so as to restrict or prohibit coeducational programs in any youth center for delinquent children.

(c) The youth development center located in Fayette County is hereby renamed "The John S. Wilder Youth Development Center."

History.
Acts 1955, ch. 127, § 1; modified; 1974, ch. 595, § 1; 1975, ch. 160, § 1; T.C.A., § 41-827; Acts 1989; ch. 278, § 57; T.C.A., § 41-5-105; Acts 1996, ch. 1079, § 137.

37-5-202. Superintendents.

There shall be a superintendent of each youth center to be appointed by the commissioner of children's services.

History.
Acts 1955, ch. 127, § 2; impl. am. Acts 1955, ch. 102, § 1; T.C.A., § 41-828; Acts 1989, ch. 278, §§ 54, 56, 58; T.C.A., § 41-5-106; Acts 1996, ch. 1079, § 137.

37-5-203. Powers and duties of superintendent.

(a) The superintendent has charge, control and supervision of the youth center, its employees and students.

(b) Such superintendent has authority to make recommendations to the commissioner of children's services for the release of children placed in the center.

History.
Acts 1955, ch. 127, § 3; 1963, ch. 264, § 3; 1977, ch. 387, § 2; T.C.A., § 41-829; Acts 1989, ch. 278, § 59; T.C.A., § 41-5-107; Acts 1996, ch. 1079, § 137.

37-5-204. Education — Character development — Work programs.

(a) The superintendents of such centers shall have the authority, subject to the approval of the commissioner of children's services, to introduce any branch of educational pursuit that they may deem to be in the best interest of the children, and they shall use their utmost efforts for the moral, physical and mental development of the children, so that they may be molded into good men and women and useful citizens.

(b) Any superintendent may, subject to the approval of the commissioner, establish a work opportunity program for children sixteen (16) years of age or older.

(c) The superintendent shall, before any child is permitted to take employment, ensure that the prospective employment meets all requirements of the department of labor and workforce development pertaining to the employment of children.

(d) The superintendent will ascertain the availability of transportation to and from the place of work and the cooperation of the employer or supervisors with supervision requirements. Hours of release for involvement of the work opportunity program will be the responsibility of the superintendent in keeping with departmental consideration for the good of the child and the welfare of the department.

(e) All moneys earned by the child in the work opportunity program shall be posted to the child's trust fund account. Expenditures under this program from the child's earnings should be limited to transportation, special clothing, tools or lunch and other casual expenses with the approval of the superintendent.

History.
Acts 1955, ch. 127, § 4; impl. am. Acts 1955, ch. 102, § 1; 1973, ch. 18, § 1; T.C.A., § 41-830; Acts 1989, ch. 278, §§ 54, 60; T.C.A., § 41-5-108; Acts 1996, ch. 1079, § 137; 1999, ch. 520, § 37.

37-5-205. Transfer and commitment of children.

(a) Fees that are allowed by law for carrying prisoners to the penitentiary shall be allowed to the sheriffs for taking children found to have committed offenses punishable in the penitentiary to such youth centers.

(b) The state shall only be responsible for the transfer of such children as have been found to have committed offenses punishable by imprisonment in the penitentiary. The expense of transporting delinquent children not found to have committed offenses punishable in the penitentiary shall be paid by the counties from which committed.

(c) When any female child is to be transported to such youth centers, the sheriff shall deputize a suitable woman of good moral character to convey such child. In the event the sheriff shall not find such a woman in the county, the department shall provide a proper and suitable escort for the child, and this escort shall be paid from the allowance provided for the sheriff. The expense of the woman so deputized shall be paid from the allowance for the sheriff.

History.
Acts 1955, ch. 127, § 5; impl. am. 1955, ch. 102, § 1; T.C.A., § 41-831; Acts 1989, ch. 278, § 61; T.C.A., § 41-5-109; Acts 1996, ch. 1079, §§ 133, 137.

Compiler's Notes.
This section may be affected by § 9-1-116, concerning entitlement to funds, absent appropriation.

37-5-206. Retention of children committed for penitentiary offenses — Transfer to penitentiary — Prosecution for escape.

(a) Any child committed to the department for an offense punishable by confinement in the penitentiary may be retained in a youth center until such child's nineteenth birthday, or at any time after the child's eighteenth birthday, when found to be incorrigible by the superintendent, subject to agreement between the commissioner of correction and the commissioner of children's services, may be transferred to the penitentiary. The authority for transferring such children eighteen (18) years of age or older shall be upon warrant issued by the commissioner, such warrant to contain the name of the child, age at conviction and at the transfer, and the offense for which committed. The superintendent shall furnish to the warden of the penitentiary the original commitment papers in the case.

(b) Any child or inmate sixteen (16) years of age or over, confined in a youth center and who escapes therefrom commits a Class A misdemeanor. The superintendent of the youth center, with the approval of the commissioner, may certify to the district attorney general in the district in which the escape was effected, that such escape has occurred and the facts relating

thereto. The child or inmate thus certified as having escaped may be prosecuted as an adult in the court having jurisdiction of the offense, as if the child or inmate were an adult.

History.
Acts 1955, ch. 127, § 6; impl. am. Acts 1955, ch. 102, § 1; 1963, ch. 264, § 4; impl. am. Acts 1981, ch. 120; T.C.A., § 41-832; Acts 1989, ch. 278, § 62; T.C.A., § 41-5-110; Acts 1996, ch. 1079, § 137.

37-5-207. Commitment for federal offense.

Authority is given to the department for commitment of children who may be convicted of any offense against the United States in any district court of the United States within the state and sentenced by such court to the department, and to that end, the commissioner may enter into a contract with the attorney general of the United States for their detention, subsistence and proper employment of such juvenile offenders and the rate of compensation to be paid for the use of the institution by the United States.

History.
Acts 1955, ch. 127, § 7; impl. am. Acts 1955, ch. 102, § 1; T.C.A., § 41-833; Acts 1989, ch. 278, § 63; T.C.A., § 41-5-111; Acts 1996, ch. 1079, § 137.

37-5-208. Procedure for commitment — Form.

(a) A judge committing a child under eighteen (18) years of age to the department shall make out and sign a commitment on a form provided by the department and certified to by the clerk under the seal of the court.

(b) Such commitment form, together with information of a social nature, shall be forwarded with the child.

History.
Acts 1955, ch. 127, § 9; impl. am. Acts 1955, ch. 102, § 1; T.C.A., § 41-835; Acts 1989, ch. 278, § 65; T.C.A., § 41-5-113; Acts 1996, ch. 1079, § 137.

37-5-209. Records and accounts — Sale of unneeded property — Reports.

(a) The superintendents shall:

(1) Keep complete records of all children, their conduct, character and aptitudes;

(2) Keep a set of account books in which all expenses of the youth center shall be entered, and shall sign all vouchers;

(3) Keep a record of all products made or raised on the grounds of the youth center; and

(4) Sell such products as are not used or needed by the youth center, and make reports of such sales to the commissioner of children's services.

(b) Their books and accounts shall at all times be open to the inspection of any state auditor.

(c) They shall give bond payable to the state, for the safekeeping of all money or property belonging to the state coming into their possession.

(d) They shall make quarterly reports to the commissioner of the income and expenditures of their youth centers, the number of children, their terms, names, ages and conduct.

History.
Acts 1955, ch. 127, § 10; impl. am. Acts 1955, ch. 102, § 1; T.C.A., § 41-836; Acts 1989, ch. 278, § 66; T.C.A., § 41-5-114; Acts 1996, ch. 1079, § 137.

37-5-210. Buildings and equipment.

The commissioner shall be authorized, subject to the approval of the governor, to erect all buildings necessary for the proper maintenance of the children committed to the department of children's services, and to purchase all things for the proper equipment of the youth centers, under appropriations made from time to time.

History.
Acts 1955, ch. 127, § 12; T.C.A., § 41-838; Acts 1989, ch. 278, § 68; T.C.A., § 41-5-116; Acts 1996, ch. 1079, § 137.

Compiler's Notes.
This section may be affected by § 9-1-116, concerning entitlement to funds, absent appropriation.

37-5-211. Products of youth centers — Expenditure of receipts.

(a) The commissioner shall keep an account of all products of the youth centers, and shall include a report of same in the commissioner's biennial report.

(b) All money received from the operation of the youth centers shall be expended for the proper maintenance of the youth centers.

History.
Acts 1955, ch. 127, § 13; T.C.A., § 41-839; Acts 1989, ch. 278, § 69; T.C.A., § 41-5-117; Acts 1996, ch. 1079, § 137.

37-5-212. Instruction in art of barbering.

The commissioner is hereby authorized to institute within the youth development centers a course of instruction in the art of barbering as encompassed within the provisions of title 62, chapter 3.

History.
Acts 1961, ch. 66, § 1; T.C.A., § 41-849; Acts 1989, ch. 278, §§ 54, 71; T.C.A., § 41-5-124; Acts 1996, ch. 1079, § 137.

37-5-213. Authorized courses of instruction.

The commissioner is authorized to institute within the youth development centers courses of instruction for:

(1) GED® preparation; and

(2) Vocational and occupational training.

History.
Acts 2007, ch. 195, § 1.

PART 3

COMMUNITY SERVICES AGENCY ACT OF 1996

37-5-301. Short title.

This part shall be known and may be cited as the "Community Services Agency Act of 1996."

History.
Acts 1989, ch. 567, § 1; T.C.A., § 68-2-1101; Acts 1996, ch. 1079, § 149.

37-5-302. Purpose.

The purpose of this part is to provide a mechanism to facilitate the provision of services for children and other citizens in need of services in Tennessee through centralized agencies located throughout the state. The community services agencies may contract with any other agencies to provide assistance wherever needed.

History.
Acts 1989, ch. 567, § 3; T.C.A., § 68-2-1103; Acts 1996, ch. 1079, § 149; 2005, ch. 249, § 1.

37-5-303. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Agency" means the community services agency;

(2) "Board" means the community services agency board;

(3) "Commissioner" means the commissioner of finance and administration, or the commissioner's designee, unless otherwise stated in this part;

(4) "Department" means the department of finance and administration, unless otherwise stated in this part; and

(5) "Executive director" means the chief administrative officer of a community service agency.

History.
Acts 1989, ch. 567, § 2; T.C.A., § 68-2-1102; Acts 1996, ch. 1079, § 149; 2005, ch. 249, § 2; 2006, ch. 1011, § 1.

37-5-304. Agencies — Establishment — Public function and purpose.

(a) The commissioner is authorized to establish community services agencies as provided in this part. These agencies shall provide coordination of funds or programs for the care of the citizens of the state.

(b) The commissioner may establish one (1) community services agency in the metropolitan area of Memphis and Shelby County.

(c) The commissioner may establish multi-county community service agencies with such geographic boundary lines as may be deemed necessary.

(d) The community services agency shall be a political subdivision and instrumentality of the state. As such, it shall be deemed to be acting in all respects for the benefit of the people of the state in the performance of essential public functions, and shall be deemed to be serving a public purpose through improving and otherwise promoting the well-being of the citizens of the state.

History.
Acts 1989, ch. 567, § 4; T.C.A., § 68-2-1104; Acts 1996, ch. 1079, § 149; 2001, ch. 390, § 2; 2005, ch. 249, § 3; 2006, ch. 1011, § 2; 2007, ch. 222, § 2; 2007, ch. 223, § 2; 2007, ch. 478, § 4.

Compiler's Notes.
The Davidson County community service agency, formerly created by this section, terminated pursuant to the provisions of title 4, chapter 29, part 1. Wind-up was complete June 30, 2008.

The East Tennessee community service agency, the Mid-Cumberland community service agency, the Northeast community service agency, the Northwest community service agency, the Shelby County community service agency, the South central community service agency, the Southeast community service agency, the Southwest community service agency, and the Upper Cumberland community service agency, formerly created by this section, terminated pursuant to the provisions of title 4, chapter 29, part 1. Wind-up was complete June 30, 2012. The responsibilities for these agencies were transferred to the statewide community services agency, created by § 37-5-305.

37-5-305. Community services agency board — Statewide community services agency — Creation — Members.

(a) Each community services agency shall be governed by a community services agency board.

(b) There is hereby created and established a statewide community services agency. The statewide board of directors shall consist of the commissioner or the commissioner's designee and twelve (12) members appointed by the governor. The members appointed by the governor shall be as follows:

(1) There shall be one (1) member appointed from each of the nine (9) regional agency areas;

(2) There shall be one (1) member appointed from each of the three (3) grand divisions; and

(3) No two (2) members shall reside in the same county at the time of appointment or reappointment.

(c) The membership of each regional board serving a multi-county community services agency shall be appointed by the governor and shall consist of a representative of each county within the agency boundary and the commissioner or the commissioner's designee.

(d) The membership of each board serving a metropolitan community services agency shall consist of twelve (12) members appointed by the governor, with at least fifty percent (50%) of the appointments made from recommendations by the county mayor. If any municipality within the county has more than sixty percent (60%) of the total population of the county, the governor shall appoint equal number from recommendations submitted by the county mayor and the mayor of the identified municipality.

(e) Appointees to a board governed by subsections (b), (c), and (d) may include, but not be limited to, representatives of the areas of law enforcement, mental health professionals, local education agencies, local courts, social workers, advocates, health care providers, consumers of services provided by the community services agency or persons having specialized knowledge or expertise in the service areas and public and private agencies that provide services to persons in need of services in Tennessee. The members of each board shall be appointed with a good faith effort to reflect a diverse mixture of race and gender.

(f) The term of a member of a board governed by subsections (b), (c), and (d) shall be four (4) years. The terms of initial appointments to the board shall be staggered as follows: one fourth (¼) shall be made for a term of one (1) year, one fourth (¼) for a term of two (2) years, one fourth (¼) for a term of three (3) years, and one fourth (¼) for a term of four (4) years. The governor shall make initial appointments to the statewide board of directors by July 1, 2012.

(g) Members of a board governed by subsections (b), (c), and (d) shall continue in office until the expiration of the terms for which they were respectively appointed and until such time as their successors are appointed.

(h) Vacancies occurring on a board governed by subsections (b), (c), and (d) because of death, resignation or lack of active participation, as determined by the governance policies of the community services agency, shall be filled in the same manner as a regular appointment for the remainder of the unexpired terms.

(i) Members of a board governed by subsections (b), (c), and (d) shall not be compensated for services rendered to the agency, but shall be reimbursed by the agency for actual expenses in accordance with the comprehensive travel regulations promulgated by the commissioner of finance and administration and approved by the attorney general and reporter.

(j) A board governed by subsections (b), (c), and (d) shall elect a chair from among its members. The board shall also elect other officers as the board finds necessary and appropriate. Such positions are for a term of one (1) year, but officers may be reelected to serve additional terms.

(k) If any matter before a board governed by subsections (b), (c), and (d) involves a project, transaction or relationship in which a member or the member's associated institution, business or board has a direct or conflicting interest, the member shall disclose to the board that interest and shall be prohibited from participating in discussions and voting on that matter.

History.

Acts 1989, ch. 567, § 5; T.C.A., § 68-2-1105; Acts 1996, ch. 1079, § 149; 2003, ch. 90, § 2; 2006, ch. 1011, §§ 3-6; 2012, ch. 986, § 18.

Compiler's Notes.

Acts 2003, ch. 90, § 2, directed the code commission to change all references from "county executive" to "county mayor" and to include all such changes in supplements and replacement volumes for the Tennessee Code Annotated.

The statewide community services agency, created by this section, terminates June 30, 2017. See §§ 4-29-112, 4-29-238.

Acts 2012, ch. 986, § 48 provided that all rules, regulations, orders, and decisions heretofore issued or promulgated by any of the boards or commissions, which the act terminates or merges into another board or commission, shall remain in full force and effect. In the case of the boards or commissions that are merged with another board or commission by the act, all final rules, regulations, orders, and decisions together with any matters that are pending on October 1, 2012, shall hereafter be administered, enforced, modified, or rescinded in accordance with the law applicable to the continuing board or commission.

For tables of population of Tennessee municipalities, and for U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

37-5-306. Community services agency board — Powers.

The board has the following powers and duties in addition to the powers and duties granted to or imposed upon it by other sections of this part to:

(1) Adopt written policies, procedures or rules and regulations to govern its internal operations. If such rules and regulations are proposed, they must be submitted for prior approval to the commissioner;

(2) Make and execute contracts and all other instruments necessary or convenient for the exercise of its duties and responsibilities under this part. All contracts pertaining to acquisitions and improvement of real property, pursuant to § 4-15-102, must be approved in advance by the commissioner and the state building commission. Contracts for services must be approved pursuant to rules and regulations promulgated by the commissioner;

(3) Acquire or dispose of in the name of the board, real or personal property or any interest therein, including rights or easements, on either a temporary or long-term basis by gift, purchase, transfer, foreclosure, lease or otherwise, subject to subdivision (2);

(4) Procure insurance in amounts and from insurers that it deems desirable to protect itself in carrying out its duties and responsibilities under this part;

(5) Seek assistance from the commissioner of finance and administration, the comptroller of the treasury, the state treasurer and other state agencies;

(6) Receive, administer, allocate and disburse funds made available under this part, funds and contributions from private or local public sources that may be used in support of a community services program, and funds made available under any federal or state assistance program for which an agency organized in accordance with this part may serve as grantee, contractor or sponsor of projects appropriate for inclusion in community services programs;

(7) Perform other acts necessary or convenient to exercise the powers granted or reasonably implied in this part;

(8) Procure goods, materials, supplies and equipment in accordance with applicable state or federal guidelines, and where practical, on a competitive basis; and

(9) Contract with other state agencies to provide services to those agencies as deemed appropriate by the board.

History.

Acts 1989, ch. 567, § 6; T.C.A., § 68-2-1106; Acts 1996, ch. 1079, § 149.

37-5-307. Commissioner — Powers and duties.

(a) The commissioner has the duty and responsibility to:

(1) Promulgate rules and regulations to carry out the commissioner's responsibilities under this part;

(2) Review and approve plans of operation submitted in accordance with § 37-5-310, with the concurrence of the comptroller of the treasury;

(3) Enter into such contracts, subject to applicable rules and regulations and procedures, as necessary to carry out this part;

(4) Appoint an executive director for each agency with such appointment subject to the approval of the agency board. Nothing in this subdivision (a)(4) shall prohibit a board from submitting recommendations to the commissioner for the appointment of an executive director;

(5) Require each agency to submit annual reports on each preceding fiscal year to reflect the nature and extent of all financial transactions and to assure

financial integrity; and

(6) Perform other acts necessary or convenient to exercise the powers granted or reasonably implied in this part.

(b) All rules concerning community service agencies promulgated by the commissioner of children's services prior to July 1, 2005, and in effect on March 12, 2014, shall remain in full force and effect and shall be administered by the department of finance and administration until duly amended, repealed, expired, modified or suspended.

History.
Acts 1989, ch. 567, § 7; T.C.A., § 68-2-1107; Acts 1996, ch. 1079, § 149; 2001, ch. 390, § 3; 2006, ch. 1011, § 7; 2014, ch. 525, § 3.

Compiler's Notes.
For transfer of certain powers and duties to the office of children's services administration in the department of finance and administration, see Executive Order No. 58 (June 29, 1994).

37-5-308. Executive director — Employees and expenses.

The executive director, subject to approval of the board and approval of the plan of operation pursuant to § 37-5-310, has the authority to hire such employees and incur such expenses as may be necessary for proper discharge of the duties of the agency.

History.
Acts 1989, ch. 567, § 8; T.C.A., § 68-2-1108; Acts 1996, ch. 1079, § 149; 2001, ch. 390, § 4.

37-5-309. Contracts for provisions of health care — Termination.

(a) The agency shall, to the maximum extent possible, contract with private providers, clinics and local governments for the provision of services for the citizens of the state.

(b) The agency shall terminate a contract under the following conditions:

(1) Fraud or misappropriation of funds;

(2) Delivery of services under the contract in a manner not consistent with the appropriate standard of care; or

(3) Other reasons provided under the law and rules and regulations of the commissioner promulgated pursuant to this part.

(c) Additionally, the agency shall have authority to terminate a contract for cause.

History.
Acts 1989, ch. 567, § 9; T.C.A., § 68-2-1109; Acts 1996, ch. 1079, § 149; 2006, ch. 1011, §§ 8, 9.

37-5-310. Plan of operation.

(a) At least ninety (90) days prior to the beginning of each state fiscal year, the board shall submit a plan of operation for review and approval to the commissioner and the comptroller of the treasury. The plan of operation shall be in such form as may be required by the department and shall include, but not be limited to, the following:

(1) A budget for operating and capital expenditure;

(2) Contracts for services;

(3) Appropriate policies and procedures adopted by the board to govern the expenditures of funds; and

(4) Other items as required by the department through rules and regulations.

(b) The plan of operation may be amended during the fiscal year with the written approval of the commissioner and the comptroller of the treasury.

History.
Acts 1989, ch. 567, § 11; T.C.A., § 68-2-1111; Acts 1996, ch. 1079, § 149; 2006, ch. 1011, §§ 10, 11.

37-5-311. Disposition of funds.

(a) The executive director of each agency shall deposit with the state treasurer funds received from the United States treasury and other funds earned, given or granted to the agency, including state funds.

(b) Such funds may be invested in the local government investment pool pursuant to title 9, chapter 4, part 7.

(c) The board may establish such bank accounts pursuant to § 9-4-302, as are necessary for the efficient management of the agency.

History.
Acts 1989, ch. 567, § 12; T.C.A. § 68-2-1112; Acts 1996, ch. 1079, § 149.

37-5-312. Annual reports.

(a) Each board shall make an annual report to the governor and to the commissioner.

(b) This report shall contain an accounting for all money received and expended, statistics on persons served during the year, recommendations and such other matters as the board deems pertinent.

History.
Acts 1989, ch. 567, § 13; T.C.A., § 68-2-1113; Acts 1996, ch. 1079, § 149.

37-5-313. Annual audit — Accounting records.

(a) The comptroller of the treasury shall make an annual audit of the program established by this part as part of the comptroller's annual audit pursuant to § 9-3-211.

(b) The community services agencies shall maintain all books and records in accordance with generally accepted accounting principles, and any additional accounting and reporting requirements published by the comptroller of the treasury. Such records shall be made available for inspection to the department and the comptroller of the treasury, upon request.

History.
Acts 1989, ch. 567, § 14; T.C.A., § 68-2-1114; Acts 1996, ch. 1079, § 149; 2016, ch. 573, § 1.

37-5-314. State employees.

Employees of the community services agencies shall be considered "state employees" for purposes of § 9-8-307. Designated volunteers providing services under

this part shall also be considered "state employees" for purposes of § 9-8-307; provided, that designated volunteers who are medical professionals providing direct health care pursuant to this part shall be considered "state employees" solely for the category of "professional liability" pursuant to § 9-8-307.

History.
Acts 1989, ch. 567, § 15; 1993, ch. 530, § 2; T.C.A., § 68-2-1115; Acts 1996, ch. 1079, § 149; 2012, ch. 798, § 16.

37-5-315. Construction — Generally.

This part shall be given the following construction:

(1) This part shall be construed as remedial legislation and shall be given liberal construction to effectuate its purpose;

(2) This part shall not be construed as creating an employer-employee relationship between the department, the community services agencies or their contractors; and

(3) If any provision of this part or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other provisions or applications of the part that can be given effect without the invalid provisions or applications, and to that end the provisions of this part are declared to be severable.

History.
Acts 1989, ch. 567, § 17; T.C.A., § 68-2-1117; Acts 1996, ch. 1079, § 149.

37-5-316. Participation in retirement system.

(a) Community services agencies shall be eligible to be participating employers in the Tennessee consolidated retirement system.

(b) All liabilities owed by a community health agency and all assets of whatever kind and nature and wherever located, including, but not limited to, real property, personal property, cash, equipment and fund balances held in the name of a community health agency shall be transferred to the appropriate community services agency.

(c) The employees of a community health agency shall be transferred to the appropriate community services agency, and such transfer shall not constitute a break in service for such employees.

(d) No action taken pursuant to this act shall be deemed to change the structure of the organization, formerly known as a community health agency, for federal tax reporting purposes, nor reduce employees' benefit-related plans including, but not limited to, retirement plans, deferred compensation plans, cafeteria plans and health plans.

(e) Contracts or leases entered into prior to May 21, 1996, by and between a community health agency and any entity shall continue in full force and effect as to all essential provisions in accordance with the terms and conditions of such contracts or leases as if such contracts or leases had originally been entered into by and between such entities and the appropriate community services agency, unless and until such contracts or leases are amended or modified by the parties thereto or until the expiration of such contracts or leases.

History.
Acts 1990, ch. 1027, § 13; 1995, ch. 164, § 11; T.C.A., § 68-2-1118; Acts 1996, ch. 1079, § 149.

37-5-317. Transfer of career service employees from community services agencies to the department of children's services or the department of health in certain communities.

(a) Notwithstanding any law to the contrary, including § 8-30-309, and recognizing the years of faithful and dedicated service to the state of Tennessee by the employees of the community services agencies, community services agency employees who serve in jobs that would be classified as career service, as formerly defined in § 8-30-208 [repealed and reenacted], had they been employed in the state service, and whose functions and positions are transferred to either the department of children's services or the department of health by each department's respective commissioner on or before June 30, 2006, shall be transferred into the department of children's services or the department of health. Such employees shall receive the benefits and protection of career service status and shall be eligible for participation in the state health insurance plan without further examination or competition.

(b) All community service agency employees transferred to the department of children's services or the department of health, pursuant to this part, shall be subject to a minimum probationary period of six (6) months, beginning on the first day of service with the respective department, pursuant to §§ 8-30-312 and 8-30-314, unless the transferred community service agency employee has previously served the minimum six-month probationary period.

(c) All such transfers shall take place no later than June 30, 2006.

(d) Transfers of employees from the community services agencies to the department of children's services or the department of health, pursuant to this section, shall not result in any diminution, impairment or interruption of current salary, accrued sick and annual leave, seniority, participation in the Tennessee consolidated retirement system, or amounts already accrued under a deferred compensation plan; however, this shall not impair the department's authority, through establishing policies and procedures, to correct salary disparities through the promotional process.

(e) Any employee so transferred shall be eligible for promotion pursuant to the provisions of title 8, chapter 30, after the transfer takes effect.

(f) This section shall not apply to a county having a metropolitan form of government whose employees provide services for the community service agencies pursuant to § 37-5-304 .

History.
Acts 2001, ch. 390, § 1; 2005, ch. 354, § 1.

Compiler's Notes.
Acts 2006, ch. 1011, § 2, deleted former § 37-5-304(e). The former reference to subsection (e) of the section has been deleted from the section reference in (f).
Former title 8, ch. 30, part 2, §§ 8-30-201 — 8-30-224, concerning career service employees, was repealed and reenacted by Acts 2012, ch. 800, §§ 10-21, effective October 1, 2012. Pursuant to § 8-30-201, state service is now divided into the preferred service and executive service.

37-5-318. Transfer of employees from community services agencies to the department of children's services in counties with a metropolitan form of government.

(a) Notwithstanding any law to the contrary, including § 8-30-309, any county having a metropolitan form of government whose employees provide services for the community services agency, pursuant to § 37-5-304, and who serve in positions funded by the department of children's services may be transferred to the department of children's services by the commissioner, on or before June 30, 2006. Such employees shall receive the benefits and protection of career service status and shall be eligible for participation in the state health insurance plan without further examination or competition. Salaries of transferred employees of a county having a metropolitan form of government shall be within the appropriate salary range for state job classifications and shall be at least equal to, but not less than, the median salary of department of children's services employees in the county having a metropolitan form of government.

(b) All employees of a county having a metropolitan form of government who provide services for the community services agency, pursuant to § 37-5-304, and who are transferred to the department of children's services, pursuant to this section, shall be subject to a minimum probationary period of six (6) months beginning on the first day of service with the department, pursuant to §§ 8-30-312 and 8-30-314, unless the transferred employee has previously served the minimum six-month probationary period.

(c) All such transfers shall take place no later than June 30, 2006.

History.
Acts 2005, ch. 354, § 2.

Compiler's Notes.
Acts 2006, ch. 1011, § 2, deleted former § 37-5-304(e). The former reference to subsection (e) of the section has been deleted from the section reference in (b).

37-5-319. Transfer of executive service employees whose functions are transferred from community services agencies to the department of children's services.

(a) Notwithstanding any provisions of law to the contrary, including § 8-30-309, and recognizing the years of faithful and dedicated service to the state of Tennessee by the employees of the community services agencies, community services agency employees who serve in jobs that would be classified as executive service, as formerly defined in § 8-30-208 [repealed and reenacted], had they been employed in the state service, and whose functions and positions are transferred to the department of children's services by the commissioner on or before June 30, 2006, shall be transferred into the department of children's services. Such employees shall be eligible for participation in the state health insurance plan without further examination or competition.

(b) All such transfers shall take place no later than June 30, 2006.

(c) Transfers of employees from the community services agencies to the department of children's services pursuant to this section shall not result in any diminution, impairment or interruption of accrued sick and annual leave, seniority, participation in the Tennessee consolidated retirement system, or amounts already accrued under a deferred compensation plan.

History.
Acts 2005, ch. 354, § 3.

Compiler's Notes.
Former title 8, ch. 30, part 2, §§ 8-30-201 — 8-30-224, concerning career service employees, was repealed and reenacted by Acts 2012, ch. 800, §§ 10-21, effective October 1, 2012. Pursuant to § 8-30-201, state service is now divided into the preferred service and executive service.

PART 4

TRAFFICKING IN CHILDREN

37-5-401. Consent required for importation of child.

No person, agency, association, institution or corporation shall bring or send into this state any child for the purpose of giving the child's custody to some person, institution, corporation or agency in the state, or procuring its adoption by some person in the state without first obtaining the written consent of the department of human services.

History.
Williams, § 4727.1; impl. am. Acts 1975, ch. 219, § 1 (a, b); T.C.A. (orig. ed.), §§ 14-505, 14-9-201; T.C.A., § 71-3-401; Acts 1996, ch. 1079, § 157.

37-5-402. Placement of imported child.

(a) The person, agency or corporation with whom a child is placed for either of the purposes set out in § 37-5-401 shall be responsible for the child's proper care and training.

(b) The department of human services, through its agents, shall permit the placing of such child only with a licensed child-caring or child-placing agency or maternity home or in a family home that has been studied and approved by the department's own agent.

History.
Acts 1951, ch. 116, § 1 (Williams, § 4737.1); impl. am. Acts 1975, ch. 219, § 1 (a, b); T.C.A. (orig. ed.), §§ 14-1506, 14-9-202; T.C.A., § 71-3-402; Acts 1996, ch. 1079, § 157.

37-5-403. Bond on importation of child.

(a) The department may in its discretion require of a person, agency, association, institution or corporation that brings or sends a child into the state, with the written consent of the department, as provided in § 37-5-401, a continuing bond in a sum not less than one thousand dollars ($1,000), nor more than ten thousand dollars ($10,000), with such condition as may be prescribed and such sureties as may be approved by the department.

(b) Such bond shall be made in favor of, and filed with, the department, with the premium prepaid by the person, agency, association, institution or corporation desiring to place such child in the state.

History.
Acts 1951, ch. 116, § 1 (Williams § 4737.1); impl. am. Acts 1975, ch. 219, § 1 (a, b); T.C.A. (orig. ed.), §§ 14-1507, 14-9-203; T.C.A., § 71-3-403; Acts 1996, ch. 1079, § 157.

37-5-404. Consent to take child out of state.

(a) No child shall be taken or sent out of the state for the purpose of placing the child in a foster home or in a child-caring institution without first obtaining the written consent of the department of human services.

(b) All out-of-state placements shall be cleared with the proper authorities of the receiving state by the department.

(c) The foster home or child-caring institution in which the child is placed shall report to the department at such times and through such agency and in such form as the department may direct as to the location and well-being of such child.

(d) A violation of this section is a Class C misdemeanor.

History.
Acts 1951, ch. 116, § 1 (Williams § 4737.1); impl. am. Acts 1975, ch. 219, § 1 (a, b); T.C.A. (orig. ed.), §§ 14-1508, 14-9-204; Acts 1989, ch. 591, § 113; T.C.A., § 71-3-404; Acts 1996, ch. 1079, § 157.

37-5-405. Penalty for violations.

Every person acting for that person or for any agency who violates any of the provisions of this part, or any agency or corporation that, through its agents, violates any of the provisions of this part, or any person or agency that makes any false statements to the department of human services regarding the placement of such child, as herein set out, commits a Class A misdemeanor and shall be punished by a fine of not more than two hundred dollars ($200), or by imprisonment for not more than six (6) months, or by both fine and imprisonment.

History.
Acts 1951, ch. 116, § 1 (Williams § 4737.1); impl. am. Acts 1975, ch. 219, § 1 (a, b); T.C.A. (orig. ed.), § 14-1509, Acts 1989, ch. 591, §§ 1, 6; T.C.A., § 14-9-205; T.C.A., § 71-3-405; Acts 1996, ch. 1079, § 157.

37-5-406. Exemption of relatives of child.

None of the provisions of this part shall apply when a child is brought into, or sent into, or taken out of, or sent out of the state, by a parent, stepparent, grandparent or other natural or legal guardian of the child.

History.
Acts 1951, ch. 116, § 1 (Williams § 4737.1); T.C.A. (orig. ed.), §§ 14-1510, 14-9-206; T.C.A., § 71-3-406; Acts 1996, ch. 1079, § 157.

PART 5

CHILD CARE AGENCIES

37-5-501. Part definitions.

(a) As used in this part, unless the context otherwise requires, "child care agency" includes "child abuse agency," "child caring institution," "child placing agency," "detention center," "family boarding home or foster home," "group care home," "maternity home," or "temporary holding resource" as defined in subsection (b).

(b) As used in this part, unless otherwise excluded pursuant to § 37-5-503, and unless the context otherwise requires:

(1) "Care giver," "care givers," "care provider," or "care providers" mean the person or persons or entity or entities responsible for providing for the supervision, protection and basic needs of the child;

(2) "Child" or "children" means a person or persons under eighteen (18) years of age;

(3)(A) "Child abuse agency" means and includes any place, facility or service operated by any entity or person, that undertakes to or does provide any services of any nature whatsoever, including, but not limited to, emergency shelter care, homemaker services, or parent training services, designed to prevent or treat child abuse or neglect or to protect children from child abuse or neglect. "Child abuse agency" does not include any entity or a person licensed by the state to practice medicine or psychology while in the course of such practice; nor any school, hospital, mental health center, or similar institution operated or approved by any agency or department of the state; nor any church or church-related organization;

(B) Nothing in subdivision (b)(3)(A) shall be construed, however, to diminish or repeal the duty of any person to report suspected child abuse pursuant to chapter 1, parts 4 and 6 of this title; and

(C) The provisions of this subdivision (b)(3) do not constitute an appropriation of funds, and,

commencing with the fiscal year beginning July 1, 2000, no funds shall be expended under the provisions of this subdivision (b)(3) unless such funds are specifically appropriated in the general appropriations act pursuant to §§ 9-4-5101 — 9-4-5114, or a specific amendment or supplement thereto;

(4) "Child care" means the provision of supervision, protection and the basic needs of a child for twenty-four (24) hours a day including the provision of such temporary services to a child awaiting placement in permanent care. Care for a child of less than twenty-four (24) hours duration is licensed by the department of human services pursuant to title 71, chapter 3, part 5;

(5) "Child care agency" or "agency" means the person or entity that provides child care, regardless of whether such person or entity is licensed;

(6) "Child caring institution" means any place or facility operated by any entity or person providing residential child care for thirteen (13) or more children who are not related to the primary care givers;

(7) "Child placing agency" means any entity or person that places children in foster boarding homes or foster homes for temporary care or for adoption or any other entity or person or group of persons who are engaged in providing adoption studies or foster care studies or placement services as defined by the rules of the department;

(8) "Commissioner" means the commissioner of children's services;

(9) "Department" means the department of children's services;

(10) "Detention center" means a place or facility operated by any entity or person, governmental or otherwise, for the confinement in a hardware secure facility of a child or children who meet the criteria of § 37-1-114(c) or other applicable laws and who:

(A) Are in need of legal temporary placement;

(B) Are awaiting adjudication of a pending petition; or

(C) Are awaiting disposition or placement;

(11) "Family boarding home or foster home" means a home (occupied residence) operated by any entity or person that provides residential child care to at least one (1) child but not more than six (6) children who are not related to the primary care givers;

(12) "Foster child or children" means the person or persons who are living in a child care or residential child care facility as a result of the removal by a court of custody from the child's parent or parents to the department, by a surrender of parental or guardian rights executed by the child's parent or parents or guardian, or as the result of the execution of any legal document transferring legal custody from the parent or parents or guardian of the child to the department, or to the entity or person operating a child care agency;

(13) "Group care home" means any place or facility operated by any entity or person that provides residential child care for at least seven (7) children but not more than twelve (12) children who are not related to the primary care givers;

(14) "Maternity home" means any place or facility operated by any entity or person that receives, treats or cares for more than one (1) child or adult who is pregnant out of wedlock, either before, during or within two (2) weeks after childbirth; provided, that the licensed child placing agencies and licensed maternity homes may use a family boarding home approved and supervised by the agency or home, as a part of their work, for as many as three (3) children or adults who are pregnant out of wedlock; and provided further, that "maternity home" does not include children or women who receive maternity care in the home of a person to whom they are kin within the sixth degree of kindred computed according to civil law, nor does it apply to any maternity care provided by general or special hospitals licensed according to law and in which maternity treatment and care is part of the medical services performed and the care of children is brief and incidental;

(15) "Related" means, for purposes of "child care," the children, step-children, grandchildren, step-grandchildren, siblings of the whole or half-blood, step-siblings, nieces, nephews or foster children of the primary care giver. For purposes of "residential child care," "related" means children, step-children, grandchildren, step-grandchildren, siblings of the whole or half-blood, step-siblings, nieces or nephews of the primary care provider;

(16) "Residential child care" means the provision of supervision or protection, and meeting the basic needs of a child for twenty-four (24) hours per day; and

(17) "Temporary holding resource" means a place or facility housing primarily no more than eight (8) children operated by any entity or person, governmental or otherwise, providing a short-term (less than seventy-two (72) hours, exclusive of non-judicial days) placement alternative for a child or children in a primarily staff-secure facility, as defined by the department, while the child or children await adjudication of a pending petition or disposition following adjudication, or pending return to a dispositional placement. This facility shall have a maximum of two (2) hardware secure rooms. At least one half (½) of the rooms in the facility shall be non-hardware secure.

History.
Acts 2000, ch. 981, § 19.

37-5-502. Basis for licensing — Regulations — License application — Temporary license — Non-transferability of license — Transfer of operation to circumvent licensing laws or regulations — Fees.

(a)(1) Any person or entity operating a child abuse agency, child caring institution, child placing agency, detention center, family boarding home or foster home, group care home, maternity home, or temporary holding resource, as defined in § 37-5-501, must be licensed by the department as provided by this

part.

(2)(A) The department has the authority to issue regulations pursuant to the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 2, for the licensing of any persons or entities subject to any provisions of this part and the enforcement of appropriate standards for the health, safety and welfare of children under the care or supervision of those entities.

(B) To the extent they are not inconsistent with the statutory provisions of this part, the regulations of the department that are in effect on July 1, 2000, shall remain in force and effect until modified by regulatory action of the department.

(3) The department's regulations of child care agencies shall be developed, and the continued approval of the licensing of a child care agency, shall be based upon the following criteria:

(A) The safety, welfare and best interests of the children in the care of the agency;

(B) The capability, training and character of the persons providing or supervising the care to the children;

(C) The quality of the methods of care and instruction provided for the children;

(D) The suitability of the facilities provided for the care of the children;

(E) The adequacy of the methods of administration and the management of the child care agency, the agency's personnel policies, and the financing of the agency; and

(F) The present need for the child care agency.

(b)(1) The department shall provide reasonable assistance to applicants or licensees in meeting the child care standards of the department, unless the circumstances demonstrate that further assistance is not compatible with the continued safety, health or welfare of the children in the agency's care, and that regulatory action affecting the agency's license is warranted. All costs and expenses arising from or related to meeting the child care standards of the department shall be borne entirely by the applicant or licensee.

(2) If a licensee is denied the renewal of a license, or if a license is revoked, or if any applicant for a license cannot meet the standards, then the department shall assist in planning for the placement of such children in licensed child care agencies, or other suitable care, return them to their own homes or make any other plans as seem necessary and advisable to meet the particular needs of the children involved.

(c) Application for a license to operate a child care agency shall be made in writing to the department in such manner as the department determines and shall be accompanied by the appropriate fee set forth in the fee schedule in subsection (f).

(d)(1)(A) If the department determines that the applicant for a license that is not the renewal of an existing license, has presented satisfactory evidence that the facility that is proposed for the care of children has received fire safety and environmental safety approval, that the applicant and the personnel who will care for the children are capable in all substantial respects to care for the children and that the applicant has the ability and intent to comply with the licensing law and regulations, the department shall issue a temporary license to the applicant; provided, that no temporary license shall be issued for child care agencies that federal law or regulations do not permit the department to license until all necessary licensing requirements are met.

(B) If the department determines that the conditions of the applicant's facility, its methods of care or other circumstances warrant, it may issue a restricted license that limits the agency's authority in one (1) or more areas of operation.

(2) The purpose of the temporary license is to permit the license applicant to demonstrate to the department that it has complied with all licensing laws and regulations applicable to its classification prior to the issuance of an initial annual license.

(3) Within ninety (90) days of the issuance of the temporary license, the department shall determine if the applicant has complied with all regulations governing the classification of child care agency for which the application was made.

(4)(A) If the department determines that the applicant has complied with all licensing regulations for the classification of child care agency for which application was made, the department shall issue an annual license.

(B) If the department determines that the conditions of the applicant's facility, its methods of care or other circumstances warrant, it may issue a restricted license that limits the agency's authority in one (1) or more areas of operation.

(5) In granting any license, the department may limit the total number of children who may be enrolled in the agency regardless of whether the agency may have the physical capacity to care for more children.

(6) The licensee shall post the license in a clearly visible location as determined by the department so that persons visiting the agency can readily view the license.

(7) If the department fails to issue or deny an annual license within ninety (90) days of the granting of the temporary license, the temporary license shall remain in effect, unless suspended, as provided in § 37-5-514 until such determination is made. If an annual license is denied following the issuance of a temporary license, and if a timely appeal is made of the denial of the annual license, the temporary license shall remain in effect, unless suspended, until the board of review renders a decision regarding the denial of the annual license.

(8) If a temporary or annual license is denied, or an annual license is restricted, the applicant may appeal the denial or restriction as provided in § 37-5-514.

(e)(1) Except as provided herein, no license for a child care agency shall be transferable, and the

transfer by sale or lease, or in any other manner, of the operation of the agency to any other person or entity shall void the existing license immediately and any pending appeal involving the status of the license, and the agency shall be required to close immediately. If the transferee has made application for, and is granted, a temporary license, the agency may continue operation under the direction of the new licensee. The new licensee in such circumstances may not be the transferor or any person or entity acting on behalf of the transferor.

(2) If the department determines that any person or entity has transferred nominal control of an agency to any persons or entities who are determined by the department to be acting on behalf of the purported transferor in order to circumvent a history of violations of the licensing law or regulations or to otherwise attempt to circumvent the licensing law or regulations or any prior licensing actions instituted by the department, the department may deny the issuance of any license to the applicant. The denial of the license may be appealed as provided in § 37-5-514.

(3)(A) The license of any agency shall not be voided nor shall any pending appeal be voided pursuant to this subsection (e) solely for the reason that the agency is subject to judicial orders directing the transfer of control or management of a child care agency or its license to any receiver, trustee, administrator or executor of an estate, or any similarly situated person or entity.

(B) If the current licensee dies, and provided that no licensing violations require the suspension, denial or revocation of the agency's license, the department may grant family members of the licensee, or administrators or executors of the licensee, a temporary license to continue operation for a period of ninety (90) days. At the end of such period, the department shall determine whether an annual or extended license should be granted to a new licensee as otherwise provided in this section.

(C) Nothing in this subsection (e) shall be construed to prevent the department from taking any regulatory or judicial action as may be required pursuant to the licensing laws and regulations that may be necessary to protect the children in the care of such agency.

(f) The following fees shall apply to applications for licenses for child care agencies licensed pursuant to this part:

(1) Family boarding home or foster care home ... $25.00

(2) Group care home 25.00

(3) Any child caring institution or child placing agency 25.00

(4) Maternity home 25.00

(5) Child abuse agency 25.00

(6) Detention center 25.00

(7) Temporary holding resources 25.00

(g) All licensure application and renewal fees collected by the department pursuant to this part shall be paid into the general fund, but shall be earmarked for and dedicated to the department. Such earmarked fees shall be used by the department exclusively to improve child care quality in this state by funding activities that include, but are not limited to, child care provider training activities, but excluding any costs associated with conducting criminal background checks.

(h) A license issued to a child placing agency by the department shall include all boarding homes, group care homes or foster homes approved, supervised and used by the licensed agency as a part of its work.

(i) Notwithstanding any provisions of title 13, chapter 7, to the contrary, upon adoption of a resolution by a two thirds (⅔) vote of the county legislative body, any zoning authority, in determining the suitability of a request for any use of property for the establishment or alteration of any child care agency, may consider the criminal background of the person or persons making a request to such board or may consider the criminal background of any person or persons who will manage or operate such child care agency. The board may require the person to submit a fingerprint sample and a criminal history disclosure form and may submit the fingerprint sample for comparison by the Tennessee bureau of investigation pursuant to § 38-6-109, or it may conduct the background check by other means as it deems appropriate. The zoning authority shall be responsible for all costs associated with obtaining such criminal background information.

History.

Acts 2000, ch. 981, § 20.

37-5-503. Program and facilities exempt from licensing.

The following entities, facilities or programs are excluded from licensing or approval as child care agencies pursuant to this part:

(1) All child care regulated by the departments of education or human services;

(2) Public or private summer day camps or overnight camps such as those operated by the Boy or Girl Scouts, the YMCA or YWCA, by church or religious organizations or by organizations representing disabled children that operate less than ninety (90) days per year and other similar businesses or programs as determined by the department;

(3) Entities or persons licensed or otherwise regulated by other agencies of the state or federal governments providing health, psychiatric or psychological care or treatment or mental health care or counseling for children while the entity or person is engaged in such licensed or regulated activity;

(4) Schools and educational programs and facilities, the primary purpose of which is to provide a regular course of study necessary for advancement to a higher educational level or completion of a prescribed course of study, and that may, incident to such educational purpose, provide boarding facilities to the students of such programs; provided, that boarding schools that provide services intended to

correct or ameliorate behaviors of youth that prevent or inhibit their ability to function normally in their home, community, or school, or agencies serving children as an alternative to their remaining in a dysfunctional or harmful home environment, shall not be exempted from licensure as a child care agency under this part; and

(5) Orphanages or other similarly designated homes affiliated with, funded, and operated by a church or religious organization, which homes receive their principal financial support from such church or religious affiliation in counties having a population of not less than twelve thousand three hundred (12,300) nor more than twelve thousand three hundred fifty (12,350), according to the 1970 federal census.

History.
Acts 2000, ch. 981, § 21; 2003, ch. 355, § 26.

Compiler's Notes.
Acts 2003, ch. 355, § 66 provided that no expenditure of public funds pursuant to the act shall be made in violation of the provisions of Title VI of the Civil Rights Act of 1964, as codified in 42 U.S.C. § 2000d.

For tables of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

37-5-504. Preexisting agencies subject to chapter.

All child caring institutions, child placing agencies and maternity homes chartered in this state prior to July 1, 2000, shall be subject to all of its requirements.

History.
Acts 2000, ch. 981, § 22.

37-5-505. Receiving children.

Child caring institutions, and child placing agencies, family boarding homes, group care homes or foster homes, when licensed in accordance with this part, may receive needy or dependent children from their parents or legal guardians for special, temporary or continued care. The parents or guardians may sign releases or agreements giving to such institutions or agencies custody and control of the persons of such children during the period of such care, which may be extended until the children arrive at legal age, or they may surrender such children to a licensed child placing agency for purposes of adoption, such surrender to be in conformity with the provisions of the law governing the surrender of children for adoption.

History.
Acts 2000, ch. 981, § 23.

37-5-506. Selection and supervision of foster homes.

(a) Child placing agencies, in placing children in private families, shall safeguard their welfare by a thorough investigation of each applicant and its home and its environment, carefully select the home in which the child is placed, and personally and adequately supervise each home and child until the child is legally adopted or released.

(b) All children placed in private families shall be, as far as it is practicable, placed with those of the same religious faith as the children themselves, or their parents.

History.
Acts 2000, ch. 981, § 24.

37-5-507. Unlicensed placement of children for care or adoption.

(a) Private individuals, including midwives, physicians, nurses, hospital officials, lawyers and the officials of any nonchartered or nonlicensed child caring institution, child placing agency, or maternity home, are forbidden to engage in placing children for temporary care or for adoption.

(b) A violation of this section is a Class A misdemeanor.

History.
Acts 2000, ch. 981, § 25.

37-5-508. Injunctions against unlicensed operations.

(a) The department may, in accordance with the laws of the state of Tennessee governing injunctions, maintain an action in the name of the state of Tennessee to enjoin any person, partnership, association, corporation or other entity from establishing, conducting, managing or operating any place or facility providing services to children without having a license as required by law, or from continuing to operate any such place or facility following suspension of a license or following the effective date of the denial or revocation of a license.

(b) In charging any defendant in a complaint for such injunction, it shall be sufficient to charge that such defendant did, upon a certain day and in a certain county, establish, conduct, manage or operate a place, home or facility of any kind that is a child care agency as defined in this part or to charge that the defendant is about to do so without having in effect a license as required by law, or that the defendant continues to operate any such place or facility following suspension of a license, or following the effective date of the denial or revocation of a license, without averring any further or more particular facts concerning the case. Refusal to obey the inspection order may be punished as contempt.

History.
Acts 2000, ch. 981, § 26.

37-5-509. Criminal violations.

(a) Any person or entity, as defined in § 37-5-501, operating a child care agency without being licensed by the department or who continues to operate while a suspension of the license is in effect, or who operates a child care agency following the effective date of a denial or revocation of a license, commits a Class A misdemeanor.

(b) Each day of operation without an effective license constitutes a separate offense.

(c)(1) It is unlawful for any person who is an operator, licensee or employee of a child care agency to make any statement, whether written or verbal, knowing such statement is false, including, but not limited to, statements regarding:

(A) The number of children in the child care agency;

(B) The area of the child care agency used for child care; or

(C) The credentials, licensure or qualification of any care giver, employee, substitute or volunteer of the child care agency, when such statement is made to a parent or guardian of a child in the care of such agency, to any state or local official having jurisdiction over such agencies, or to any law enforcement officer.

(2) In order for subdivision (c)(1) to apply, the falsity of the statement must place at risk the health or safety of a child in the care of the child care agency.

(3) A violation of subdivision (c)(1) is a Class A misdemeanor.

(4) This subsection (c) includes statements made in any child care agency license application that misrepresents or conceals a material fact that would have resulted in the license's being denied.

(5) In addition to any punishment authorized under this subsection (c), the department may also take any licensure action authorized under this part.

History.
Acts 2000, ch. 981, § 27.

37-5-510. Public agencies — Inspection and report.

(a) Any child care agency, as defined in § 37-5-501, that is under the direct management of an administrative department of the state, a county, or a municipality, or any combination of these three (3), shall not be subject to licensure, but shall meet the minimum standards for programs and care as required of such child care agencies.

(b)(1) The commissioner, through the commissioner's authorized representative, shall make periodic inspections of such publicly administered child care agencies.

(2) The report of such inspections and recommendations shall be made in writing to the executive head of the publicly administered child care agency, the board of directors, if any, and the division of the state, county or municipal government that has the duty under the law to operate such agency.

(c) It is the duty of the department to cooperate with the publicly administered agencies herein referred to, to implement recommended changes in program and policies.

(d) If, within a reasonable time, such standards and recommendations are not met, it shall be the duty of the commissioner to make public in the community in which this agency is located, the report of the abovementioned inspection.

(e)(1) If violations of the standards for child care agencies are found and are not corrected within a reasonable time, or, if serious violations are found that meet the requirements that would justify the suspension of a child care agency's license pursuant to § 4-5-320, the department may file a complaint in the chancery court of the county in which the child care agency is located.

(2) The chancery court shall have jurisdiction to hear the complaint and to enter any orders or injunctive relief necessary to ensure the correction of such violations or to suspend the operations of the facility for the protection of the children who are in the care of the child care agency.

History.
Acts 2000, ch. 981, § 28.

37-5-511. Criminal violation information required of persons having access to children — Review of vulnerable persons registry — Verification — Exclusion from access to children.

(a)(1) Each person:

(A) Applying to work with children as a paid employee with a child care agency as defined in § 37-5-501, or with the department in any position in which any significant contact with children is likely in the course of the person's employment; or

(B) A new volunteer who is expected to provide volunteer services in excess of twenty (20) hours per month in a child care agency, or with the department, in any position in which any significant contact with children is likely in the course of the person's volunteer status, shall complete a criminal history disclosure form in a manner approved by the department, and shall agree to release all records involving the person relating criminal history of such person to the child care agency and to the department for the purpose of verifying the accuracy of criminal violation information contained on the disclosure form required by this section.

(2) Such persons also shall submit to a criminal history records check to be conducted through the Tennessee bureau of investigation, shall supply fingerprint samples to the Tennessee bureau of investigation and to the federal bureau of investigation, and shall submit to a review of such person's status on the department of health's vulnerable persons registry under title 68, chapter 11, part 10;

(3) The disclosure forms shall include at a minimum the following information:

(A) The social security number of the applicant or volunteer;

(B) The complete name of the applicant or volunteer;

(C) Disclosure of information relative to any violations of the law, including pending criminal charges of any kind, and any conviction involving a sentence or suspended or reduced sentence and a release of all records involving the person's criminal background history; and

(D) A space for the applicant or volunteer to state any circumstances that should be considered

in determining whether to allow the person to be employed or to remain as a resident in the agency or to provide volunteer services.

(4) The form shall notify the applicant or volunteer that falsification of required information may subject the person to criminal prosecution, and that the person's employment or volunteer status with the agency or the department is conditional pending a criminal records history review regarding the person's criminal history status.

(5) A copy of the disclosure form shall be maintained in the child care agency's records for review by the department, and the department shall maintain a copy of the disclosure form in the records of the applicant for employment or volunteer services with the department.

(b)(1) The disclosure form shall be sent to the department by the child care agency and, pursuant to § 38-6-109, the department may directly access the computer files of the Tennessee bureau of investigation's Tennessee crime information center (T.C.I.C.) using only names or other identifying data elements contained in the disclosure form or such other information as may be available to the department to obtain available Tennessee criminal history background information for the purpose of criminal background reviews.

(2) If information obtained by this method indicates that there exists or may exist a criminal record on the individual, the department shall further review the criminal record history with the individual and the entity with whom the individual is associated to obtain further verification, and the department shall request fingerprint samples from the individual and submit the fingerprints for a complete Tennessee and federal criminal history background review pursuant to § 38-6-109. The department shall pay the costs of such fingerprint background checks pursuant to §§ 38-6-103 and 38-6-109.

(3) Pending the outcome of the background check, the applicant for employment or for a volunteer services position shall be conditional with the agency or with the department, and shall be dependent upon the outcome of the background check.

(4) The results of the inquiry to the Tennessee bureau of investigation shall be recorded in the applicant's or volunteer's records.

(5) If the information on the form appears to have been falsified, the Tennessee bureau of investigation shall report such finding to the department. The department shall notify, in writing, the appropriate district attorney general of such falsification.

(c) The agency, and the department for its employees and volunteers, shall utilize the information on the form to conduct an inquiry of the department of health's vulnerable persons registry pursuant to title 68, chapter 11, part 10, for a review of the person's status on such registry. The results of the inquiry to the registry shall be maintained in the applicant's or volunteer's records.

(d)(1) Whether obtained by use of the procedures established in this section or whether such information is obtained by any other means, conviction of an offense, or a lesser included offense, or a finding in a juvenile proceeding, involving the physical, sexual or emotional abuse or gross neglect of a child or that constitutes conviction of an offense, or a finding in a juvenile proceeding, involving violence against a child, or any person, or conviction of an offense determined by the department, pursuant to properly promulgated rules, to present a threat to the health, safety or welfare of children, and any pending warrants, indictments or presentments, or pending juvenile proceedings, for such offenses or acts as a juvenile, as determined by rules of the department, or the identification of the individual on the department of health's vulnerable persons registry pursuant to title 68, chapter 11, part 10, shall disqualify the individual from employment with, as a licensee of a child care agency or from providing any volunteer services to children in, or from having any access whatsoever to children as a resident of, a child care agency as defined by this part, or with the department; provided, that the exclusionary provisions of this section shall not apply to children in the care, custody or control of the department.

(2) No person who is currently charged with or who has been convicted of or pled guilty to a violation of § 39-13-213, § 55-10-101, § 55-10-102 or § 55-10-401, or any felony involving use of a motor vehicle while under the influence of any intoxicant, may, for a period of five (5) years after the date of such conviction or felony plea, be employed as or serve as a driver transporting children for a child care agency.

(3) The child care agency, and the department for its employees, shall immediately exclude an individual from employment or volunteer services with children, if the results of the criminal background check or review of the vulnerable person's registry demonstrate to the agency, or upon review by the department demonstrate, that the criminal history of such individual is within the prohibited categories established in subdivision (d)(1). If an exemption from the exclusion is provided for by rule of the department pursuant to subsection (e), such person shall remain excluded until it is determined by the department whether there is a basis for an exception from the exclusion.

(4) The failure of a child care agency to exclude a person with a prohibited criminal history from employment with, or from the provision of volunteer services, or the failure, as determined by the department, to adequately restrict the access to children of a resident at a child care agency, shall subject the child care agency to immediate suspension of the agency's license by the department.

(5) Any person who is excluded based upon the results of the criminal history background review may appeal the exclusion to the department within ten (10) days of the mailing date of the notice of such exclusion to the subject person.

(6) If timely appealed, the department shall provide an administrative hearing pursuant to the Uniform Administrative Procedures Act, compiled in title

4, chapter 5, part 3, in which the appellant may challenge the accuracy of the report, and may challenge the failure to grant an exception to the exclusion required by this subsection (d) if a rule for such purpose is promulgated by the department pursuant to subsection (e).

(7) The appellant may not collaterally attack the factual basis of an underlying conviction, except to show that the applicant is not the person identified on the record. Further, except to show that the applicant is not the person identified on the record, the appellant may not collaterally attack or litigate the facts that are the basis of a reported pending criminal charge, except to show that such charge was, or, since the report was generated, has been, dismissed, nolled or has resulted in an acquittal.

(e) The department may by rule promulgate standards of review for the purpose of considering exemptions from the criminal background exclusion established by this section.

(f) Nothing in this section shall be construed to prevent the exclusion of any individual from providing care for, from being licensed, approved or certified for the care of children pursuant to this part or from having access to a child in a child caring situation if the discovery of a criminal or juvenile proceeding background is discovered and verified in any manner other than through a procedure established pursuant to this section. All procedures, rules, and appeal processes established pursuant to this section for the protection of children and the due process rights of excluded individuals shall also be applicable to such individuals.

(g) It is unlawful for any person to falsify any information required on the disclosure form required by this section. A person who knowingly fails to disclose on the disclosure form required information or who knowingly discloses false information or who knowingly assists another to do so commits a Class A misdemeanor.

(h) The provisions of this section shall apply to detention centers and temporary holding resources described in § 37-5-109.

History.
Acts 2000, ch. 981, § 29; 2003, ch. 26, §§ 1, 2; 2006, ch. 808, § 2.

37-5-512. Abuse, neglect, or sexual abuse.

(a)(1) Notwithstanding § 71-3-503 or § 37-5-503, the department has the authority and responsibility to fully investigate, in accordance with the provisions of chapter 1, parts 1, 4 and 6 of this title, any allegation of abuse, neglect or sexual abuse that it receives regarding any child or children in the care of, or subject to the supervision, instruction or treatment of, any public or private entity or any person, whether or not such entity or person is subject to licensure or approval pursuant to this part or title 71, chapter 3, part 5, or title 49, chapter 1, part 11.

(2) The departments of education and human services shall immediately report all allegations of abuse or neglect in any child care agency or child care program that they may license, approve, or certify to the department of children's services for investigation and shall cooperate with the department of children's services in any investigations of abuse or neglect involving any such agency or program. If the department of children's services receives a report of abuse or neglect in any child care program certified by the department of education or a child care agency licensed by the department of human services, it shall immediately notify the appropriate department of its investigation.

(3)(A) The departments of children's services, education and human services shall utilize any information obtained in the course of such investigations in the determination of whether appropriate care is being provided to children who may be in the care of any child care agency or child care program that the departments of children's services, education or human services license, approve or certify.

(B) For purposes related to that determination and any appropriate licensing or approval action, the departments of education and human services shall be permitted access to the department of children's services' records; provided, that any information contained in any record of the departments of education or human services, or records relating to the investigation of the report of harm by the department of children's services shall be confidential and shall be released:

(i) Only in the proceedings concerning any certification, licensing or approval action or injunctive action by the department of education or human services permitted by title 49, chapter 1, part 11, or title 71, chapter 3, part 5;

(ii) As otherwise permitted by the restrictions and conditions for the release of confidential records of the department of children's services pursuant to title 4 and chapter 1, part 4 or 6 of this title;

(iii) As otherwise permitted by the department of children's services' regulations concerning procedures for release of information of validated perpetrators of child abuse; or

(iv) Notwithstanding any other law to the contrary, including any provisions related to expunction of records under title 40, the limited release of confidential records pursuant to this section shall not alter the confidential character of such records, which shall be maintained, as necessary, to protect children.

(C) For purposes of this subdivision (a)(3), the rules of the department of children's services concerning release procedures for due process purposes shall apply to the release procedures of the departments of education and human services regarding perpetrators of child abuse validated by the department of children's services. Nothing herein shall be construed to permit the release of the name or identifying information of any person reporting child abuse or neglect under chapter 1, part 4 or 6 of this title.

(4) In the conduct of such investigations involving the alleged abuse or neglect of any child or in the

evaluation of the appropriateness of any child care program or child care agency or the appropriateness of the care provided by any person, the departments of children's services, education and human services shall be granted access to the records of children in the care of the person or entity and to all personnel files of the director and employees of the person or entity and to all records of the person or entity. They shall be allowed to inspect all the premises in which children are kept or cared for and shall be allowed to interview any and all children in the care of such person or entity if the departments of children's services, education or human services determine that it is necessary to do so.

(b) If admission to the places, facilities or homes of the entities or persons involved in the care, supervision, instruction or treatment of the child is denied or delayed for any reason, the chancery, circuit or juvenile court of the county where the entity or person is located shall, upon cause shown by the department of children's services in investigations of abuse or neglect or sexual abuse involving any person or entity or in any of its licensing or approval activities, or upon cause shown by the departments of education or human services in any certification, licensing or approval activities, immediately, by ex parte order, direct the persons in charge of such places, facilities or any persons having responsibility for the care, supervision, instruction or treatment, of the child or children to allow entrance for the review of records, inspection of the premises, and to permit any interviews with or examinations of the children as permitted pursuant to chapter 1 of this title, title 49, chapter 1, part 11, or title 71, chapter 3, part 5.

(c)(1) If the departments of children's services, education or human services determine at any time that any person employed or associated in any manner with any person or entity, or any person providing care, supervision, instruction or treatment, of children has, at any time, abused, neglected or sexually abused a child, the department with certification, licensing or approval authority may take certificate or licensing action to prevent any child care program or child care agency certified, licensed or approved by it from continuing to provide care for children if such program or agency fails or refuses to take appropriate or timely action to prevent future abuse, neglect or sexual abuse by that person.

(2) If the entity or person is subject to certification by the department of education pursuant to title 49, chapter 1, part 11, or is subject to licensure or approval by the department of human services pursuant to title 71, chapter 3, part 5, those departments may, in addition to any certificate, licensing or approval action, bring an action in the chancery, circuit or juvenile court of the county where the abuse, neglect or sexual abuse occurred or where the person resides to enjoin the entity found to have failed to protect the child or children from abuse, neglect or sexual abuse or the person who, at anytime, abused, neglected or sexually abused a child or children, from continuing currently, or in the future, to provide care, supervision, instruction or treatment for children on a full-time or part-time basis, or to enjoin the person who perpetrated the abuse or neglect from being associated in any manner with any entities or persons providing care, supervision, instruction or treatment for children.

(3) If the department of children's services determines at any time that any person employed or associated in any manner with an entity or person, or any person individually, providing care, supervision, instruction or treatment of children, has at any time abused, neglected or sexually abused a child, the department may bring an action for injunctive relief as permitted by subdivision (c)(2), whether or not the entity or person is subject to certification, licensure or approval by the departments of children's services, education or human services.

(4) In order to facilitate the protection of children, the departments of children's services, education and human services are specifically authorized to enter into inter-agency agreements for cooperative arrangements in any investigations or litigation authorized by this part.

History.
Acts 2000, ch. 981, § 30.

37-5-513. Inspection of persons or entities providing child care.

(a) It is the duty of the department, through its duly authorized agents, to inspect at regular intervals, without previous notice, all child care agencies or suspected child care agencies, as defined in § 37-5-501.

(b)(1) The department is given the right of entrance, privilege of inspection, access to accounts, records, and information regarding the whereabouts of children under care for the purpose of determining the kind and quality of the care provided to the children and to obtain a proper basis for its decisions and recommendations.

(2) If refused entrance for inspection of a licensed, approved or suspected child care agency, the chancery or circuit court of the county where the licensed, approved or suspected child care agency may be located may issue an immediate ex parte order permitting the department's inspection upon a showing of probable cause, and the court may direct any law enforcement officer to aid the department in executing such order and inspection. Refusal by the child care agency to obey the inspection order may be punished as contempt.

(c) Any violation of the rights given in this section is a Class A misdemeanor.

History.
Acts 2000, ch. 981, § 31.

37-5-514. Violations of licensing regulations — Probation, suspension, denial and revocation of licenses — Appeal procedures.

(a) If any complaint is made to the department concerning any alleged violation of the laws or regula-

tions governing a child care agency, the department shall investigate such complaint and shall take such action as it deems necessary to protect the children in the care of such agency.

(b)(1) If, during the licensing period, the department determines that a child care agency is not in compliance with the laws or regulations governing its operation, and if, after reasonable written notice to the agency of the violation, the department determines that the violation remains uncorrected, the department may place the licensed agency on probation for a definite period of not less than thirty (30) days nor more than sixty (60) days, as determined by the department, and the department shall require the posting by the agency of the notice of probation. The department shall provide the agency a written basis describing the violation of the licensing rules that supports the basis for the probationary status.

(2)(A) If placed on probation, the agency shall immediately post a copy of the probation notice, together with a list provided by the department of the violations that were the basis for the probation, in a conspicuous place as directed by the department and with the agency's license, and the agency shall immediately notify, in writing, the custodians of each of the children in its care of the agency's status, the basis for the probation and of the agency's right to an informal review of the probationary status.

(B) If the agency requests an informal review within two (2) business days of the imposition of probation, either verbally or in writing to the department's licensing staff that imposed the probation, the department shall informally review the probationary status by a department licensing staff person or other designee who was not involved in the decision to impose the probation. The agency may submit any written or oral statements as argument to such staff person or designee within five (5) business days of the imposition of the probation. Written and oral statements may be received by any available electronic means. The licensing staff person or designee shall render a decision, in writing, upholding, modifying or lifting the probationary status within seven (7) business days of the imposition of the probation.

(3) If the licensing staff person or designee did not lift the probation under subdivision (b)(2)(B), the agency may also appeal such action in writing to the commissioner within five (5) business days of the receipt of the notice of the licensing staff person, or designee's decision regarding the agency's probationary status as determined in subdivision (b)(2)(B). If timely appealed, the department shall conduct an administrative hearing pursuant to the contested case provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, concerning the department's action within fifteen (15) business days of receipt of the appeal, and shall render a decision, in writing, within seven (7) business days following conclusion of the hearing. The hearing officer may uphold, modify or lift the probation.

(4) This subsection (b) shall be discretionary with the department, and shall not be a prerequisite to any licensing action to suspend, deny or revoke a license of a child care agency.

(c)(1) If the department determines that any applicant for a temporary license or for the renewal of an existing license has failed to attain, or an existing licensee has failed to maintain, compliance with licensing laws or regulations after reasonable notice of such failure and a reasonable opportunity to demonstrate compliance with licensing laws or regulations, the department may deny the application for the new or renewed license or may revoke the existing license; provided, that the department at any time may deny a temporary license if the applicant fails to meet the initial requirements for its issuance; and, provided, further, if the department determines that repeated or serious violations of licensing laws or regulations warrant the denial or revocation of the license, then, notwithstanding any provisions of § 4-5-320 or this subsection (c) to the contrary, the department may seek denial or revocation of the license regardless of the licensee's demonstration of compliance either before or after the notice of denial of the application or after notice of the revocation.

(2) Notwithstanding § 4-5-320, the notice of denial or revocation may be served personally by an authorized representative of the department who shall verify service of the notice by affidavit, or the notice may be served by certified mail, return receipt requested.

(3) If application for the temporary or annual license is denied or if an existing license is revoked, the applicant may appeal the denial or revocation by requesting, in writing, to the department a hearing before the child care agency board of review within ten (10) days of the personal delivery or mailing date of the notice of denial or revocation. Failure to timely appeal shall result in the expiration of any existing license immediately upon the expiration of the time for appeal.

(4) The hearing upon the denial or revocation shall be heard by the board of review within thirty (30) days of the date of service of the notice of denial or revocation; provided, that, for good cause as stated in an order entered on the record, the board or the administrative law judge or hearing officer may continue the hearing. In order to protect the children in the care of the agency from any risk to their health, safety and welfare, the board or administrative law judge or hearing officer shall re-set the hearing at the earliest date that circumstances permit.

(5)(A) If timely appeal is made, pending the hearing upon the denial or revocation, the child care agency may continue to operate pending the decision of the board of review unless the license is summarily suspended as provided in subsection (d).

(B) The board, as part of its decision regarding the status of the applicant's application for a license or the licensee's license, may direct that the child care agency be allowed to operate on a pro-

bationary or conditional status, or may grant or continue the license with any restrictions or conditions on the agency's authority to provide care.

(d)(1) Subject to the following provisions of this subsection (d), if the department determines at any time that the health, safety or welfare of the children in care of the child care agency imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of the license may be ordered by the department pending any further proceedings for revocation, denial or other action. If the department determines that revocation or denial of the license is warranted following suspension, those proceedings shall be promptly instituted and determined as authorized by this part.

(2) The department shall set forth with specificity in its order the legal and factual basis for its decision stating therein the specific laws or regulations that were violated by the agency, and shall state with specificity in the order the reasons that the issuance of the order of summary suspension is necessary to adequately protect the health, safety or welfare of children in the care of the child care agency. Summary suspension may be ordered in circumstances that have resulted in death, injury or harm to a child or that have posed or threatened to pose a serious and immediate threat of harm or injury to a child based upon the intentional or negligent failure to comply with licensing laws or regulations.

(3) In issuing an order of summary suspension of a license, the department shall use, at a minimum, the following procedures:

(A) The department shall proceed with the summary suspension of the agency's license and shall notify the licensee of the opportunity for an informal hearing within three (3) business days of the issuance of the order of summary suspension before an administrative law judge or before a hearing officer who is not an employee of the department.

(B) The notice provided to the licensee may be provided by any reasonable means and, consistent with the provisions of subdivision (d)(2), shall inform the licensee of the reasons for the action or intended action by the department and of the opportunity for an informal hearing as permitted by subdivision (d)(3)(C).

(C) The informal hearing described by this subdivision (d)(3) shall not be required to be held under the contested case provisions of the Uniform Administrative Procedures Act. The hearing is intended to provide an informal, reasonable opportunity for the licensee to present to the hearing official the licensee's version of the circumstances leading to the suspension order. The sole issues to be considered are whether the public health, safety or welfare imperatively required emergency action by the department and what, if any, corrective measures have been taken by the child care agency following the violation of licensing laws or regulations and prior to the issuance of the order of summary suspension that eliminate the danger to the health, safety or welfare of the children in the care of the agency. The hearing official may lift, modify or continue the order of summary suspension.

(D) Subsequent to the hearing on the summary suspension, the department may proceed with revocation or denial of the license or other action as authorized by this part, regardless of the decision concerning summary suspension of the license.

(4) The department shall by rule establish any further necessary criteria that it determines are required for the determination of circumstances that warrant imposition of the summary suspension order and any other necessary procedures for implementation of the summary suspension process.

(5) If the conditions existing in the child care agency present an immediate threat to the health, safety or welfare of the children in care, the department may also seek a temporary restraining order from the chancery or circuit court of the county in which the child care agency is located seeking immediate closure of the agency to prevent further harm or threat of harm to the children in care, or immediate restraint against any violations of the licensing laws or regulations that are harming or that threaten harm to the children in care. The department may seek any further injunctive relief as permitted by law in order to protect children from the violations, or threatened violations, of the licensing laws or regulations. The use of injunctive relief as provided by this subdivision (d)(5) may be used as an alternative, or supplementary measure, to the issuance of an order of summary suspension or any other administrative proceeding.

(e)(1) In determining whether to deny, revoke or summarily suspend a license, the department may choose to deny, revoke or suspend only certain authority of the licensee to operate, and may permit the licensee to continue operation, but may restrict or modify the licensee's authority to provide certain services or perform certain functions, including, but not limited to: transportation or food service, enrollment of children at the agency, the agency's hours of operation, the agency's use of certain parts of the agency's physical facilities or any other function of the child care agency that the department determines should be restricted or modified to protect the health, safety or welfare of the children. The board of review, in considering the actions to be taken regarding the license, may likewise restrict a license or place whatever conditions on the license and the licensee it deems appropriate for the protection of children in the care of the agency.

(2) The actions by the department or the board authorized by this subsection (e) may be appealed as otherwise provided in this part for any denial, revocation or suspension.

(f)(1) When an application for a license has been denied, or a license has been revoked, on one (1) occasion, the child care agency may not reapply for a license for a period of one (1) year from the effective date of the denial or revocation order if not appealed or, if appealed, from the effective date of the board's

or reviewing court's order.

(2) If application for a license has been denied, or a license has been revoked, on two (2) occasions, the child care agency may not reapply for a license for a period of two (2) years from the effective date of the denial or revocation if not appealed or, if appealed, from the effective date of the board's or reviewing court's order.

(3) If an application for a license has been denied, or a license has been revoked on three (3) occasions, the agency shall not receive another license for the care of children.

(4) No person who served as full or part owner or as director or as a member of the management of a child care agency shall receive a license to operate a child care agency if that person participated in such capacity in a child care agency that has been denied a license, or that had a license revoked, on three (3) occasions.

(5)(A) The time restrictions of subdivisions (f)(1) and (2) may be waived by the board of review in the hearing in which the denial or revocation is sustained, or, if requested by the former licensee in writing to the commissioner, in a separate subsequent hearing before the board of review or, in the discretion of the commissioner, upon review by the commissioner.

(B) The agency must show to the board's or the commissioner's satisfaction that the agency has corrected the deficiencies that led to the denial or revocation, and that the child care agency can demonstrate that it has the present and future ability, and is willing, to maintain compliance with licensing laws or regulations. The decision of the board or the commissioner shall be reduced to an order, which shall be a final order pursuant to the Uniform Administrative Procedures Act, and may be appealed pursuant to § 4-5-322.

(C) No waiver may be granted for any permanent restriction that has been imposed pursuant to subdivision (f)(3).

(g)(1) In conducting hearings before the board of review on the appeal of a denial or revocation of a license or for review of summary suspension orders, it is the legislative intent that such hearings be promptly determined consistent with the safety of the children in the care of the child care agency appealing the department's licensing action and with the due process rights of the license applicants or licensees.

(2) If, however, the administrative procedures division of the office of the secretary of state certifies by letter to the recording secretary of the board of review that the division's contested case docket prevents the scheduling of a hearing on the appeal of a denial or revocation of a license before the board of review within the initial time frames set forth in this part, then the department shall have authority to appoint a hearing officer from the department to conduct the proceedings before the board. The substitute hearing officer shall have all authority as an administrative law judge of the department of state. The hearing may be continued by order of the board for the purpose of obtaining a substitute hearing officer.

(3) Hearings on summary suspension orders shall be heard by an administrative law judge from the administrative procedures division of the secretary of state's office. The administrative law judge shall have authority, as otherwise permitted in this section, to enter orders binding on the department resulting from show cause hearings involving summary suspension orders. If the administrative procedures division informs the department that the division's contested case docket prevents the scheduling of a hearing on the issuance of a summary suspension order within the initial time frames set forth in this part, the department may utilize a hearing officer from the department to conduct the show cause hearing.

(h) By July 1, 2000, any initial rules to implement this section shall be by emergency rules of the department; provided, that any permanent rules shall be promulgated pursuant to the provisions of the Uniform Administrative Procedures Act.

History.

Acts 2000, ch. 981, § 32; 2009, ch. 566, § 12.

Compiler's Notes.

Acts 2009, ch. 566, § 12 provided that the Tennessee code commission is directed to change all references to public necessity rules, wherever such references appear in this code, to emergency rules, as sections are amended and volumes are replaced.

37-5-515. Board of review for licensing actions.

Actions by the department to deny or revoke or to otherwise limit any license, except for the summary suspension of a license, shall be reviewed by the child care agency board of review established pursuant to title 71, chapter 3, part 5.

History.

Acts 2000, ch. 981, § 33.

37-5-516. Licensing standards committees.

(a) The commissioner shall appoint a standards committee composed of twelve (12) citizens, three (3) from each grand division of the state, and three (3) at-large for the purpose of developing or reviewing standards and regulations for each class of child care agency defined in this part. The classes of child care agencies regulated by the department shall be represented by members of the standards committee.

(b) For any new class of child care agency as defined in this part, the standards committee shall develop and recommend to the commissioner the standards and regulations for that new class of child care agency. The standards and regulations of each existing class of child care agency shall be reviewed by a standards committee beginning every four (4) years following the date of submission of its last recommendations or more frequently as the commissioner may direct.

(c) The standards committee shall act in an advisory capacity to the commissioner in recommending any initial standards or regulations or any changes to the existing standards or regulations of any class of child care agency.

(d) The committee shall cease to exist upon submitting its recommendations to the commissioner, but may be re-established by the commissioner at any time to further review its recommendations or to consider additional standards or regulations or to consider revisions to the standards or regulations.

(e)(1) In making appointments to the committee, the commissioner shall strive to ensure that at least one (1) person serving on the committee is sixty (60) years of age or older and that at least one (1) person serving on the committee is a member of a racial minority.

(2) Except as otherwise provided in this section, in making appointments to the standards committee, the department shall strive to ensure that the membership of the standards committee includes a balance of representatives of the regulated industry and persons whose expertise would be of assistance to the department. The department shall appoint child advocates, social workers, attorneys, and other persons with knowledge and expertise in the specified area, as well as citizen members to the committee.

(f) The members of the committee shall not receive any compensation for their services but shall be reimbursed for their travel to and from the committee meetings and for their meals and lodging in accordance with the state travel procedures and regulations.

History.
Acts 2000, ch. 981, § 34; 2007, ch. 453, § 3; 2011, ch. 281, § 3.

Compiler's Notes.
The standards committee, department of children's services, created by this section, terminates June 30, 2019. See §§ 4-29-112, 4-29-240.

37-5-517. Individual plans — Reports.

(a) An agency shall prepare a written plan for each child in foster care and each child placed in its care by voluntary agreement. Such plans shall be prepared at the time a child comes under the supervision of the agency. Such plan shall be subject to review by the department. Failure to prepare such a plan shall be grounds for revocation of the agency's license.

(b) In its annual report to the department pursuant to § 37-5-519, the agency shall include the number of children in foster care, the total number of children who have been in care during the year, the number of plans prepared, the number of children adopted, and the average length of the stay of the children.

History.
Acts 2000, ch. 981, § 35.

37-5-518. Annual reports of child care agencies.

(a) Each child care agency shall make an annual report of its work to the department in such reasonable form as the department shall prescribe.

(b) The department shall prepare and supply to all child care agencies the necessary printed forms to record the requested information.

History.
Acts 2000, ch. 981, § 36.

37-5-519. Departmental annual report.

The department shall prepare a comprehensive annual report of the status of child care agencies within the state subject to its jurisdiction, accompanied by special comments and recommendations, and the reports shall be published at state expense for the information of the general assembly and for distribution to interested persons. The report shall be published as part of the department's annual report required by § 37-5-105(4).

History.
Acts 2000, ch. 981, § 37; 2015, ch. 178, § 4.

PART 6

MULTI-LEVEL RESPONSE SYSTEM FOR CHILDREN AND FAMILIES

37-5-601. Part definitions.

As used in this part, unless the context requires otherwise:

(1) "Family" means the members of a household living, on a full-time or a part-time basis, in one (1) house, condominium, apartment or other dwelling; people related by blood or ancestry, marriage, or adoption; any person who is holding out to the public as being a family member of a minor; foster parents and foster children; stepparents and stepchildren; and any other group that the department determines by policy or rule to constitute a family for purposes of this part; and

(2) "Maltreatment" means abuse as defined in § 37-1-102, or child sexual abuse as defined in § 37-1-602.

History.
Acts 2005, ch. 391, § 2.

37-5-602. Purposes.

(a) The purposes of this part are to safeguard and enhance the welfare of children and to preserve family life, by preventing harm and sexual abuse to children and by strengthening the ability of families to parent their children effectively through a multi-level response system using available community-based public and private services. It is intended that the department perform its function under this part pursuant to the belief that families can change the circumstances associated with the level of risk to a child, when they are provided with intensive and comprehensive services tailored to their strengths and needs. The department's fundamental assumptions shall be that most children are better off with their own families than in substitute care, and that separation has detrimental effects on both parents and children. Whenever possible, preservation of the family should serve as the framework for

services, but, in any case, the best interests of the child shall be paramount.

(b) The further purpose of this part is to authorize and require the department to develop a demonstration program to carry out the purposes stated in subsection (a). A specific objective of the demonstration program is to reduce the incidence of children who are subjected to maltreatment. Until the program is in effect statewide, this part shall be in effect only in the areas in which the demonstration program is established.

History.
Acts 2005, ch. 391, § 3.

37-5-603. Establishment of demonstration program — State advisory committee — Reporting.

(a)(1) No later than July 1, 2006, the department shall establish a demonstration program that conforms to the requirements of this part and carries out its purposes in at least three (3) but no more than five (5) areas of the state selected by the department. The multi-level response system shall be designed to protect children from maltreatment, through the effective use of available community-based public and private services. The program should be staffed by case managers and other personnel and child protective services investigators, as called for in this part. There shall be at least one (1) area in each grand division of the state. Areas may be composed of any combination of one (1) or more counties. No later than July 1, 2007, the demonstration program shall be expanded to include a total of no less than ten (10) areas of the state selected by the department. No later than July 1, 2010, the program shall be implemented in all areas of the state.

(2) To facilitate accomplishment of the purposes of this part, the department shall establish a state advisory committee composed of representatives from the offices of the commissioners of correction, education, health, human services, mental health and substance abuse services, and intellectual and developmental disabilities, the commission on children and youth, and any other state or community-based public or private agency or office that the department determines serves children or families in ways that might be used in the demonstration program. The department shall pursue the creation of such interagency agreements permitted by law as will enable the department to accomplish the purposes of this part.

(b) The department shall advise the governor, the judiciary committee of the senate, the civil justice committee of the house of representatives and the health and welfare committee of the senate of the progress the department is making toward implementation of the program by providing them with a summary progress report highlighting key implementation activities, including, but not limited to, site selection, timelines, barriers to implementation, identification of needed resources, interagency cooperation, and progress in establishing local advisory committees, on October 1, 2005, and every six (6) months thereafter, until statewide implementation is achieved. After the first year of operation of the program, the department shall include in its report any recommendations for changes in the law, including whether there are any kinds of cases investigated under chapter 1, parts 4 and 6 of this title, that the experience of the department shows can be safely excluded from mandatory investigation under those parts.

History.
Acts 2005, ch. 391, § 4; 2010, ch. 1100, § 64; 2011, ch. 410, § 3(y); 2012, ch. 575, § 2; 2013, ch. 236, § 28.

Compiler's Notes.
Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

For the Preamble to the act concerning the prohibition against establishment of a special committee if there is a standing committee on the same subject, please refer to Acts 2011, ch. 410.

37-5-604. Screening instrument — Assessment — Determination of level of intervention — Investigation of reports of harm or sexual abuse.

(a) Upon receipt of a report of harm pursuant to § 37-1-403, the department shall make an initial screening decision using an approved screening instrument. The screening instrument shall be developed by the department. If the report does not allege that the child has been harmed or that the child has been sexually abused, after reviewing the information available and using the screening instrument, the department shall determine whether the child is at risk of maltreatment. If the child is at risk of maltreatment, the department shall determine whether the appropriate level of intervention is:

(1) Investigation pursuant to chapter 1 of this title;

(2) Assessment of the child and the family's need for and referral to available community-based public or private services;

(3) Referral for available community-based public or private services without assessment or investigation; or

(4) No further action by the department.

(b) If the department receives a report under chapter 1, part 4 or part 6 of this title, that alleges a child has actually been harmed or sexually abused, the department shall investigate such report, with child protective services investigators, to the extent that they are available, pursuant to chapter 1, part 4 or part 6 of this title. The department also may proceed at the same time with assessment under this section.

(c) If the department determines that an assessment of the child and family is appropriate, the department shall give the parents, guardian, or others exercising parental authority, a written and oral explanation of the procedure for assessment of the child and family

and its purposes. The assessment of the child and family and identification of service needs shall be based on information gathered from the family and other sources. The department shall have such face-to-face contact with the child, parents, other family members, and other sources, as is necessary to make the assessment reliable. If the parent is not present during contact with a child, the child's parent or guardian shall be contacted as soon as possible following contact with the child. The assessment of the child and family shall be completed within forty-five (45) days of receipt of the report. However, upon written justification by the department, the assessment of the child and family may be extended up to a total of sixty (60) days. The assessment of the child and family shall be in writing and shall be completed in accordance with department policy or regulations.

(d) Upon completion of the assessment of the child and family, the department shall consult with the family about available community-based public or private services to address the family's needs. When appropriate, families shall be offered services through the department, other public agencies, or community-based private agencies, which may include faith-based organizations, to promote meeting the needs of the family. The department may not require a family to participate in available public or private community-based services that it offers the family. If the family does not cooperate with the provision of community-based public or private services or provide alternative services of its own to meet such needs, then the department shall assess whether further steps should be taken to carry out the purposes of this part. If a family that declines services that are offered to them does not provide adequate alternative services of its own, the department shall inform the parents that their actions in declining services may be considered in future action by the department.

(e) If the department determines, under subsection (a), that the appropriate level of intervention is referral for available community-based public or private services without assessment or investigation, then the department may refer the family for preventive community-based public or private services. Families have the option of declining services offered as a result of a report of harm that did not result in an investigation or assessment of the child and family. If the family declines the services, the case shall be closed, unless the local department determines that sufficient cause exists to redetermine the case as one that needs to be investigated or assessed. Any family that declines services offered to them shall be informed that their actions in declining services may be considered in evaluating any future reports of harm received by the department.

(f) The department shall commence an immediate investigation, if, at any time during the provision of services under this part, the department determines that an investigation is required by chapter 1, part 4 or part 6 of this title, and that investigation shall be conducted under those provisions. The district attorney general and law enforcement officials shall be informed of the investigation as required under those provisions.

History.
Acts 2005, ch. 391, § 5; 2011, ch. 410, § 3(z).

Compiler's Notes.
For the Preamble to the act concerning the prohibition against establishment of a special committee if there is a standing committee on the same subject, please refer to Acts 2011, ch. 410.

37-5-605. Annual report — Collection and maintenance of data.

(a) No later than October 1, 2007, the department shall submit to the governor, the health and welfare committee of the senate, the civil justice committee of the house of representatives, and the judiciary committee of the senate a report on the first full year of the demonstration program. No later than October 1, 2008, and each year thereafter until this part is implemented in all areas of the state, the department shall provide an annual report evaluating the demonstration project to the same parties. Upon request, all persons and groups to whom the annual report is distributed shall be entitled to receive a detailed explanation of the procedures used to evaluate the system and shall be given the raw data used to support the report. Outcomes to be evaluated in each of these reports shall include, but not be limited to, the following:

(1) The safety of children under the program compared with children served under chapter 1, part 4 or part 6 of this title, in light of the following and other factors that may provide useful information about the effectiveness of the program for its purposes:

(A) The number of cases processed under the program, by types of risks and needs addressed;

(B) The number of cases referred for proceedings under chapter 1 of this title, by type;

(C) The number of final dispositions of cases in the current reporting year by disposition as follows:

(i) Closed on initial review;

(ii) Closed after assessment;

(iii) Closed after assessment and referral for available community-based public or private services;

(iv) Numbers and types of cases in which the department proceeded under chapter 1 of this title, after the initial review; and

(v) Numbers and types of cases in which there were reports of harm or sexual abuse under chapter 1, part 4 or part 6 of this title, with respect to children in a family considered or served under this part;

(D) The extent to which the program has reduced the incidence of children who are subjected to harm or sexual abuse that would require a report under chapter 1, part 4 or part 6 of this title, or who otherwise would become eligible for services under chapter 1 of this title;

(E) To whom reports of harm or sexual abuse were determined to show that there had been no harm or sexual abuse or that those reports were invalid; and

(F) The type and amount of community-based public or private services received by families;

(2) The timeliness of response by the department under the program;

(3) The timeliness of services provided to children and families under the program;

(4) The level of coordination with public and private community-based service providers to ensure community-based services are available to the public through the program;

(5) The cost effectiveness of the program with respect to the department, available community-based public and private service resources, and law enforcement and judiciary resources that might otherwise have become involved in the cases; and

(6) The effectiveness of the program in enhancing the welfare of children and keeping families together.

(b) Upon implementation of the multi-level response system in any area, the department shall ensure that all data necessary for compliance with this section is collected and maintained.

History.
Acts 2005, ch. 391, § 6; 2011, ch. 410, § 3(aa); 2013, ch. 236, § 27.

Compiler's Notes.
For the Preamble to the act concerning the prohibition against establishment of a special committee if there is a standing committee on the same subject, please refer to Acts 2011, ch. 410.

37-5-606. Training and information.

Before the demonstration program is instituted in an area, the department shall assure that all personnel in the program in that area are thoroughly trained in matters relating to their role in the program, utilizing, to the extent possible, existing training resources for each profession. The training shall include information on the culturally diverse community, including, but not limited to, religious, dietary, and education requirements of families affected by this part. At a minimum, training should be provided to all departmental personnel involved in the demonstration project, including case managers. In addition, the department shall offer training to community-based service providers, attorneys, prosecutors, guardians ad litem, judges, and law enforcement personnel. Informational materials concerning the demonstration program should be prepared for families and their attorneys.

History.
Acts 2005, ch. 391, § 7.

37-5-607. Independent local advisory board.

In each county in which the multi-level response system is implemented, the department shall facilitate the formation of an independent local advisory board, which shall not be a part of the department, and which shall be composed of appropriate community representatives, including representatives from families in the community, local public agencies, including schools, health departments and other health care providers, juvenile court, and law enforcement officials, and other available community-based resources. Each local advisory board shall recommend ways to bring together the department, families, and available resource providers within that community and shall assist with the development of community-based resources that may be needed by families. The local advisory board may review individual cases, in its discretion, to the extent that such review may be done without jeopardizing the confidentiality of the records or the confidentiality obligations of those who provided the information. The department shall collaborate with the local advisory board and the community to identify or develop local formal and informal services for children and families.

History.
Acts 2005, ch. 391, § 8; 2010, ch. 692, § 1.

37-5-608. Rules and regulations.

The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this part. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

History.
Acts 2005, ch. 391, § 9.

CHAPTERS 6-9

[RESERVED]

CHAPTER 10

MISCELLANEOUS PROVISIONS

Part 1. Liability of Parent or Guardian for Acts of Juveniles

SECTION.
37-10-101. Recovery for injury or damage by juvenile.
37-10-102. Limitation on amount of recovery.
37-10-103. Circumstances under which parent or guardian liable.

Part 2. Tennessee Missing Children Recovery Act

37-10-201. Short title — Part definitions.
37-10-202. Initial missing child report — Statement of identification information.
37-10-203. Formal missing child report — Entry of report into NCIC.
37-10-204. Reports to juvenile court judge — Missing child order.
37-10-205. Forms — File of missing children — Monthly reports of missing children — Dissemination of information.
37-10-206. Child fingerprint cards.
37-10-207. Children's fingerprint card file.
37-10-208. Impact upon interstate compact on juveniles.
37-10-209. Distribution of materials concerning missing children — Solicitation of contributions.

Part 3. Parental Consent for Abortions by Minors

37-10-301. Legislative intent and findings.
37-10-302. Part definitions.
37-10-303. Written consent required — Petition for waiver.
37-10-304. Applicability — Pseudonym — Counsel — Court proceedings — Appeals.
37-10-305. Medical emergencies.
37-10-306. Violations.
37-10-307. Civil actions.
37-10-308. Severability.

Part 4. Childhood Immunizations

37-10-401. Responsibility of parents to have children immunized — Specific vaccines — Immunization registry.
37-10-402. Conflict with religious tenets and practices of parent.
37-10-403. Immunity from criminal and civil liability.

Part 5. Information on Child Abuse Prevention

37-10-501. Promotion of parental help line for prevention of child abuse.

PART 1

LIABILITY OF PARENT OR GUARDIAN FOR ACTS OF JUVENILES

37-10-101. Recovery for injury or damage by juvenile.

Any municipal corporation, county, town, village, school district or department of this state, or any person, or any religious organization, whether incorporated or unincorporated, shall be entitled to recover damages in an action in assumpsit in an amount not to exceed ten thousand dollars ($10,000) in a court of competent jurisdiction from the parents or guardian of the person of any minor under eighteen (18) years of age, living with the parents or guardian of the person, who maliciously or willfully causes personal injury to such person or destroys property, real, personal or mixed, belonging to such municipal corporation, county, town, village, school district or department of this state or persons or religious organizations.

History.
Acts 1957, ch. 76, § 1; 1969, ch. 170, § 1; 1976, ch. 408, § 1; 1981, ch. 161, § 1; T.C.A., § 37-1001; Acts 1985, ch. 439, § 1.

37-10-102. Limitation on amount of recovery.

The recovery shall be limited to the actual damages in an amount not to exceed ten thousand dollars ($10,000), in addition to taxable court costs.

History.
Acts 1957, ch. 76, § 2; 1969, ch. 170, § 2; 1976, ch. 408, § 2; 1981, ch. 161, § 2; T.C.A., § 37-1002.

37-10-103. Circumstances under which parent or guardian liable.

(a) A parent or guardian shall be liable for the tortious activities of a minor child that cause injuries to persons or property where the parent or guardian knows, or should know, of the child's tendency to commit wrongful acts that can be expected to cause injury to persons or property and where the parent or guardian has an opportunity to control the child but fails to exercise reasonable means to restrain the tortious conduct.

(b) A parent or guardian shall be presumed to know of a child's tendency to commit wrongful acts, if the child has previously been charged and found responsible for such actions.

History.
Acts 1957, ch. 76, § 3; 1981, ch. 161, § 3; T.C.A., § 37-1003; Acts 1985, ch. 439, § 2.

PART 2

TENNESSEE MISSING CHILDREN RECOVERY ACT

37-10-201. Short title — Part definitions.

(a) This part shall be referred to as the "Tennessee Missing Children Recovery Act."

(b) As used in this part, unless the context otherwise requires:

(1) "Child" means any person under twenty-one (21) years of age;

(2) "Missing child" means a child who is believed to have been removed by force, persuasion, trick, enticement, false pretense, has voluntarily left the custody of such child's parent without permission or is absent for unexplained or unknown reasons; and

(3) "Parent" means a natural or adoptive parent, guardian, or person or organization standing in a loco parentis position by virtue of an order of a court.

History.
Acts 1985, ch. 158, § 1; 2005, ch. 5, § 1.

37-10-202. Initial missing child report — Statement of identification information.

Whenever the parent knows, learns or believes that a child under the parent's charge and care is missing, such parent shall report the child to a police or sheriff's office, Tennessee bureau of investigation or any law enforcement officer and make a statement to the agency of all available facts that will aid in the recognition, identification or location and recovery of the child.

History.
Acts 1985, ch. 158, § 2.

37-10-203. Formal missing child report — Entry of report into NCIC.

Every law enforcement officer receiving information from a parent or any source that it deems creditable shall prepare a formal missing child report. A law enforcement agency reporting a missing child is further required to enter or cause to be entered the report of the missing child into the National Crime Information Center (NCIC) within two (2) hours of the receipt of the initial missing child report.

History.
Acts 1985, ch. 158, § 3; 2009, ch. 76, § 1; 2012, ch. 856, § 1.

37-10-204. Reports to juvenile court judge — Missing child order.

(a) The law enforcement agency taking or making a report of a missing child shall submit its report, together with any additional data reduced to writing in the form of statements or notes, to a judge of the juvenile court within a reasonable time.

(b) The judge shall review the report and information and determine whether or not there is probable cause to believe the child is a missing child.

(c)(1) If a decision of "missing child" is made, a "missing child" order shall be issued and delivered to any lawful officer or the Tennessee bureau of investigation authorizing the bureau or any officer holding the order, a true copy thereof or possessing knowledge of the existence thereof, to investigate the circumstances relating to the missing child in compliance with existing constitutional, statutory and

case law and upon identification or location of the missing child to take custody of the child, using legal process when necessary, for immediate delivery to a judge of any juvenile or other court of record for appropriate orders and disposition pursuant to law.

(2) If probable cause for issuance of a "missing child" order is not found, the judge shall so order and the missing child report should be cancelled by the bureau, which shall give notice of the cancellation to all appropriate law enforcement agencies.

(d)(1) If the court issues a "missing child" order pursuant to this section and believes that certain telephone records are necessary to or would be of assistance in locating such child, the court may send a copy of the "missing child" order and a written request for any telephone records the court believes to be pertinent to the missing child who is the subject of the order to any telecommunications service provider as defined in § 65-4-101. The request shall state with all reasonable specificity the precise telephone records requested and the reason such records are pertinent to locating the missing child.

(2) Upon receiving such a request, the telecommunications service provider shall, without delay and at no charge, supply the requested telephone records to the juvenile court judge issuing the request.

History.
Acts 1985, ch. 158, § 4; 2004, ch. 627, § 1.

37-10-205. Forms — File of missing children — Monthly reports of missing children — Dissemination of information.

The Tennessee bureau of investigation shall specify a uniform form for the missing child report and data, so that the same may be transmitted by computer or mail. The bureau shall also establish, maintain and manage a file of "missing children" and collect any available relevant data concerning the missing child and disseminate the same by computer, mail or any other reliable communication device to any law enforcement agency. The bureau shall publish a monthly report of all missing children and recovery of children and distribute the same to all full-time law enforcement agencies in the state, the general assembly and executive branches of government, to the news media, and to every director of schools in the state, who shall then distribute the report to the principal of every school within such director's school system. Whenever possible, this report shall contain the photographs of the missing children. The bureau is authorized to transmit information on missing children to the federal bureau of investigation or any other state maintaining missing children files and may conform its reports to any federal agency reports so as to facilitate the automated exchange of information.

History.
Acts 1985, ch. 158, § 5; 1987, ch. 136, § 1.

37-10-206. Child fingerprint cards.

Parents are authorized to have official fingerprint cards made for their children by taking their children to any law enforcement office or by having the same made by any private or public agency upon signing an authorization therefor. The Tennessee bureau of investigation shall deliver appropriate blank child fingerprint cards to law enforcement offices or private agencies upon request without cost. Whenever any child is fingerprinted as authorized in this section, the card shall be delivered to the Tennessee bureau of investigation or the parent as specified by the parent in the authorization form. The bureau shall not be required to accept any nonstandard child fingerprint card.

History.
Acts 1985, ch. 158, § 6.

37-10-207. Children's fingerprint card file.

The Tennessee bureau of investigation shall maintain a separate fingerprint card file for "Children", which shall consist of the "children" fingerprint cards submitted to it pursuant to § 37-10-206, together with any latent prints believed to be children's prints that have been submitted to it for purposes of identifying missing children. Once each year the bureau shall remove and return to the parent or destroy all fingerprint cards from the children's fingerprint file for children who have become eighteen (18) years of age, unless the child has been reported missing or the child requests in writing that such child's fingerprint remain in the file. Also, the bureau shall destroy any child's fingerprint card upon written request of the parent. The bureau is also authorized to receive "children" fingerprint cards or copies thereof from the federal bureau of investigation when the prints may have been sent directly to the bureau without having also been sent to the Tennessee bureau of investigation as herein provided. The bureau shall not file any of the children's fingerprints authorized herein in any other fingerprint card file. The bureau shall only search the children's fingerprint card file for the purpose of trying to locate or identify children who have been reported as missing children, and the file shall never be searched for the purpose of identifying a child as having committed a crime unless the parent so requests in writing.

History.
Acts 1985, ch. 158, § 7.

37-10-208. Impact upon interstate compact on juveniles.

The provisions of §§ 37-10-201 — 37-10-207 are not intended to modify any of the provisions of chapter 4 of this title relating to the Interstate Compact on Juveniles, but the documents herein authorized may be used in aid of proceedings under that chapter.

History.
Acts 1985, ch. 158, § 7.

37-10-209. Distribution of materials concerning missing children — Solicitation of contributions.

(a) No organization shall solicit contributions for the purpose of distributing materials containing information relating to missing children unless it complies with

all of the following requirements:

(1) Such organization has been incorporated under title 48, chapters 51-68, or the nonprofit corporation law of another state prior to the time of the solicitation of contributions, or such organization is an unincorporated charitable association, trust, society, or other group; and

(2) It has been exempt from federal income taxation under 26 U.S.C. § 501(a) and described in 26 U.S.C. § 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10) or 501(c)(19) as now or hereafter amended, prior to the time of the solicitation of contributions.

(b) No organization that solicits contributions for the purpose of distributing materials containing information relating to missing children shall expressly state or imply in any way that it is affiliated with, or is soliciting contributions on behalf of, an organization established to assist in the location of missing children without the express written consent of that organization.

(c) Whoever violates subsection (a) or (b) is guilty of improper solicitation of contributions for missing children, which shall be punishable as a Class A misdemeanor.

(d) "Missing children" or "missing child" means a minor child who has run away from or who is otherwise missing from the home of, or the care, custody and control of, such child's parents, custodial parent, guardian, legal guardian, or other person having responsibility for the minor.

(e) Nothing in this section shall be construed as exempting any person or organization from the requirements of the Solicitation of Charitable Funds Act, compiled in title 48, chapter 101, part 5.

History.
Acts 1986, ch. 759, § 1; 1989, ch. 591, §§ 1, 6.

PART 3

PARENTAL CONSENT FOR ABORTIONS BY MINORS

37-10-301. Legislative intent and findings.

(a) It is the intent of the general assembly in enacting this parental consent provision to further the important and compelling state interests of:

(1) Protecting minors against their own immaturity;

(2) Fostering the family structure and preserving it as a viable social unit; and

(3) Protecting the rights of parents to rear children who are members of their household.

(b) The general assembly finds as fact that:

(1) Immature minors often lack the ability to make fully informed choices that take into account of both immediate and long-range consequences;

(2) The medical, emotional, and psychological consequences of abortion are serious and can be lasting, particularly when the patient is immature;

(3) The capacity to become pregnant and the capacity for mature judgment concerning the wisdom of an abortion are not necessarily related;

(4) Parents ordinarily possess information essential to a physician's exercise of the physician's best medical judgment concerning the child; and

(5) Parents who are aware that their minor daughter has had an abortion may better ensure that their daughter receives adequate medical attention after the abortion.

(c) The general assembly further finds that parental consultation is usually desirable and in the best interests of the minor.

History.
Acts 1988, ch. 929, § 1.

Compiler's Notes.
Acts 1995, ch. 458, §§ 1, 2 provided for the revival, reenactment and placing in full effect the provisions of §§ 37-10-301 — 37-10-307, which require parental consent to perform an abortion on a minor.

37-10-302. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Abortion" means the use of any instrument, medicine, drug, or any other substance or device with intent to terminate the pregnancy of a woman known to be pregnant with intent other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus;

(2) "Emancipated minor" means any minor who is or has been married or has by court order or otherwise been freed from the care, custody and control of the minor's parents; and

(3) "Minor" means any person under eighteen (18) years of age.

History.
Acts 1988, ch. 929, § 2.

Compiler's Notes.
Acts 1995, ch. 458, §§ 1, 2 provided for the revival, reenactment and placing in full effect the provisions of §§ 37-10-301 — 37-10-307, which require parental consent to perform an abortion on a minor.

37-10-303. Written consent required — Petition for waiver.

(a)(1) No person shall perform an abortion on an unemancipated minor unless such person or such person's agent first obtains the written consent of one (1) parent or the legal guardian of the minor. The consent shall be signed. The person shall obtain some written documentation, other than the written consent itself, that purports to establish the relationship of the parent or guardian to the minor and the documentation, along with the signed consent, shall be retained by the person for a period of at least one (1) year. Failure of the person performing the abortion to obtain or retain the documentation and consent is a Class B misdemeanor, punishable only by a fine, unless the failure of the person performing the abortion to retain the required documentation was due to a bona fide, imminent medical emergency to the minor, in which case there is no violation.

(2) A person commits a Class A misdemeanor who impersonates the parent or legal guardian of an unemancipated minor for the purpose of circumventing the requirements of subdivision (a)(1).

(b) If neither a parent nor a legal guardian is available to the person performing the abortion or such person's agent, or the party from whom consent must be obtained pursuant to this section refuses to consent to the performance of an abortion, or the minor elects not to seek consent of the parent or legal guardian whose consent is required, then the minor may petition, on the minor's own behalf, or by next friend, the juvenile court of any county of this state for a waiver of the consent requirement of this section, pursuant to the procedures of § 37-10-304.

(c) If a criminal charge of incest is pending against a parent of such minor pursuant to § 39-15-302, the written consent of such parent, as provided for in subdivision (a)(1), is not required.

History.
Acts 1988, ch. 929, § 3; 1995, ch. 458, § 3; 2006, ch. 932, §§ 1, 3.

Compiler's Notes.
Acts 1995, ch. 458, §§ 1, 2 provided for the revival, reenactment and placing in full effect the provisions of §§ 37-10-301 — 37-10-307, which require parental consent to perform an abortion on a minor.

37-10-304. Applicability — Pseudonym — Counsel — Court proceedings — Appeals.

(a) The requirements and procedures under this part are available and apply to minors, whether or not they are residents of this state.

(b) The court shall ensure that the minor's identity is kept anonymous. The minor shall be allowed to proceed under a pseudonym and shall be allowed to sign all documents, including the petition, by that pseudonym. In any proceedings involving the use of a pseudonym by the minor, the court shall require one (1) copy of the petition to be filed, under seal, that contains the true name of the minor. This copy of the petition shall be kept in a separate file, under seal, and shall not be available for inspection by anyone, except as provided in subsection (h).

(c)(1) The minor may participate in proceedings in the court on the minor's own behalf or through a next friend. The court shall advise the minor that the minor has a right to court-appointed counsel and shall provide the minor with such counsel upon the minor's request. The state shall further provide a court-appointed advocate in each judicial district to give information regarding the legal process to the minor and to coordinate with the court-appointed counsel. Such court-appointed advocates shall be compensated from funds appropriated for the reimbursement of court-appointed counsel.

(2) The department of children's services shall assign from existing staff at least one (1) court advocate in each judicial district to provide minors with information regarding requirements and procedures established by the provisions of this part, to assist in coordination of the activities of court-appointed counsel, to attend legal proceedings with the minor or the minor's next friend, and to make available written material concerning the provisions and applications of this part. The advocate shall be trained in the juvenile court procedures, in the procedures established by this part, and in counseling minors. The department shall provide a toll-free telephone number for minors to use in order to obtain the telephone number and address of a court advocate. The department shall further provide and distribute a written brochure or information sheet that summarizes the provisions and applications of this part and that contains the toll-free telephone number as well as the names, addresses, and telephone numbers of the court advocates in each judicial district.

(d) Court proceedings under this section shall be given such precedence over other pending matters as is necessary to ensure that the court may reach a decision promptly, but in no case shall the court fail to rule within forty-eight (48) hours of the time of application; provided, that the forty-eight-hour limitation may be extended at the request of the minor. If, for any reason except the request of the minor, the court shall not have ruled within forty-eight (48) hours, the minor may deem the petition denied and immediately appeal the denial as provided in subsection (g). This provision is not deemed to restrict or forbid any other remedy now existing or hereafter enacted in such a situation.

(e) The consent requirement shall be waived if the court finds either that:

(1) The minor is mature and well-informed enough to make the abortion decision on the minor's own; or

(2) The performance of the abortion would be in the minor's best interests.

(f) A court that conducts proceedings under this section shall issue written and specific factual findings and legal conclusions supporting its decision and shall order that a confidential record of the evidence be maintained.

(g) An expedited, anonymous appeal shall be available to any minor. The appeal shall be de novo to the circuit court for the county in which the juvenile court is located. The appeal may be heard by the circuit court judge sitting in another county if necessary to meet the time limitations of this section. A notice of appeal shall be filed within twenty-four (24) hours of the decision by the juvenile court, but may be filed at any time, if the juvenile court has not ruled within forty-eight (48) hours of the filing of the petition. The record from the juvenile court must be received in the circuit court and the appeal docketed there within five (5) calendar days of the filing of the notice of appeal. The appeal shall be heard and a decision rendered by the circuit court within five (5) calendar days from when the case is docketed in the circuit court. For the purpose of expediting the appellate procedure under this section, the time requirements of this section may be reduced by the Tennessee supreme court pursuant to its rulemaking authority in order to ensure an expedited appeal. The decision of the circuit court shall be appealable to the Tennessee supreme court in an anonymous and expedited manner as provided by the rules of the

Tennessee supreme court. Jurisdiction under this section will remain in the Tennessee supreme court, notwithstanding any other statute or rule to the contrary.

(h) All court files, documents, exhibits, and all other records lodged in or subject to the control of the court shall be kept confidential and under seal. Statistical summaries of these proceedings may be compiled for such reporting purposes as the supreme court may by rule require or allow. However, no information shall be released for these purposes that would tend to identify any minor who has made use of this procedure.

(i) The supreme court is respectfully requested to promulgate any rules necessary to ensure that proceedings under this part are handled in an expeditious and anonymous manner, including any amendments to the Tennessee Rules of Appellate Procedure, Tennessee Rules of Civil Procedure and Tennessee Rules of Juvenile Procedure.

(j) No fees shall be required of any minor who makes use of the procedures provided by this section.

History.
Acts 1988, ch. 929, § 4; 1989, ch. 412, § 1.

Compiler's Notes.
Acts 1995, ch. 458, §§ 1, 2 provided for the revival, reenactment and placing in full effect the provisions of §§ 37-10-301 — 37-10-307, which require parental consent to perform an abortion on a minor.

37-10-305. Medical emergencies.

The requirements of § 37-10-303 shall not apply when, in the best medical judgment of the physician based on the facts of the case before the physician, a medical emergency exists that so complicates the pregnancy as to require an immediate abortion.

History.
Acts 1988, ch. 929, § 5.

Compiler's Notes.
Acts 1995, ch. 458, §§ 1, 2 provided for the revival, reenactment and placing in full effect the provisions of §§ 37-10-301 — 37-10-307, which require parental consent to perform an abortion on a minor.

37-10-306. Violations.

Any person who intentionally performs an abortion with knowledge that, or with reckless disregard as to whether the person upon whom the abortion is to be performed is an unemancipated minor, and who intentionally or knowingly fails to conform to any requirement of this part, commits a Class A misdemeanor.

History.
Acts 1988, ch. 929, § 6; 1989, ch. 591, §§ 1, 6.

Compiler's Notes.
Acts 1995, ch. 458, §§ 1, 2 provided for the revival, reenactment and placing in full effect the provisions of §§ 37-10-301 — 37-10-307, which require parental consent to perform an abortion on a minor.

37-10-307. Civil actions.

(a) Failure to obtain consent pursuant to the requirements of this part is prima facie evidence of failure to obtain informed consent and of interference with family relations in appropriate civil actions. The law of this state shall not be construed to preclude the award of exemplary damages in any appropriate civil action relevant to violations of this part. Nothing in this part shall be construed to limit the common law rights of parents.

(b) In addition to the action provided for in subsection (a), a person or entity that fails to comply with the notice requirements of § 39-15-202(a)(2) [See Compiler's Notes] shall be subject to the penalties and action provided for in § 39-15-202(a)(3) [See Compiler's Notes].

History.
Acts 1988, ch. 929, § 7; 2010, ch. 790, § 3.

Compiler's Notes.
Acts 2010, ch. 790, § 1 provided that the act shall be known and may be cited as the "Freedom From Coercion Act."

Acts 1995, ch. 458, §§ 1, 2 provided for the revival, reenactment and placing in full effect the provisions of §§ 37-10-301 — 37-10-307, which require parental consent to perform an abortion on a minor.

Section 39-15-202, referred to in (b), was rewritten by Acts 2015, ch. 473, § 1, effective July 1, 2015. Current provisions relating to the notice requirements and penalties formerly found in subdivisions (a)(2) and (a)(3) may now be found in § 39-15-202(i).

37-10-308. Severability.

If any one (1) or more provision, section, subsection, sentence, clause, phrase or word of this part or the application thereof to any person or circumstance is found to be unconstitutional, the same is declared to be severable and the balance of this part shall remain effective notwithstanding the unconstitutionality. The legislature declares that it would have passed this part, and each provision, section, subsection, sentence, clause, phrase or word thereof, irrespective of the fact that any one (1) or more provision, section, subsection, sentence, clause, phrase or word be declared unconstitutional.

History.
Acts 2006, ch. 932, § 2.

PART 4

CHILDHOOD IMMUNIZATIONS

37-10-401. Responsibility of parents to have children immunized — Specific vaccines — Immunization registry.

(a) It is the responsibility of each parent or legal guardian to ensure that such person's child or children receive the vaccines as are recommended by guidelines of the Center for Disease Control or the American Academy of Pediatrics to be administered to a child. The parent or legal guardian is encouraged to obtain the recommended immunizations within the first two (2) years of the child's life. Such vaccines include, without limitation, the following specific vaccines:

(1) Diphtheria-tetanus-pertussis (DTP);

(2) Polio: oral polio vaccine (OPV) or inactivated polio vaccine (IPV);

(3) Measles-mumps-rubella (MMR);

(4) Haemophilus influenzae type b conjugate vaccines (Hib);

(5) Hepatitis B vaccine (Hep B);

(6) Pneumoccocal vaccine, when medically indicated;

(7) Influenza vaccine, when medically indicated; and

(8) Varicella, when available.

(b) Subject to availability of funding for such purpose, the department of health is authorized to provide free vaccine, through the first twenty-four (24) months of life, for Tennessee children born after January 1, 1996. If an administration fee is charged by a health provider receiving this vaccine, such fee may not exceed the administration fee established by the health care financing administration under the Vaccines for Children Program established in the Omnibus Budget Reconciliation Act of 1993. No immunization may be withheld due to a family's inability to pay the fee.

(c) The department shall establish and maintain an immunization registry for children. By January 1, 1996, the department shall incrementally require all local public health departments to report, in a designated format, the record of each immunization given. Other health care providers or any third party payor or health insurance entity regulated by the department of commerce and insurance doing business in Tennessee, or any entity that has elected, organized and qualified as a self-insured entity may likewise report such records. Information from the registry shall be available to parents and legal guardians; health care providers; any third party payor or health insurance entity regulated by the department of commerce and insurance doing business in Tennessee; any entity that has elected, organized and qualified as a self-insured entity; and schools, child care facilities, and other institutions having care or custody of children.

(d) The commissioner of health shall report to the members of the health committee of the house of representatives, and the health and welfare committee of the senate, by March 1 of each year, on the immunization rates in each county and improvements or changes made during the preceding year.

History.
Acts 1993, ch. 377, § 1; 1995, ch. 537, §§ 1, 2; 2003, ch. 40, § 2; 2011, ch. 410, § 3(bb); 2013, ch. 236, § 54.

Compiler's Notes.
The program referred to in (b) is apparently the program for distribution of pediatric vaccines established by 42 U.S.C. § 1396s.

For the Preamble to the act concerning the prohibition against establishment of a special committee if there is a standing committee on the same subject, please refer to Acts 2011, ch. 410.

37-10-402. Conflict with religious tenets and practices of parent.

In the absence of an epidemic or immediate threat thereof, this section does not apply to any child whose parent or guardian files with proper authorities a signed, written statement that such immunization and other preventative measures conflict with the religious tenets and practices of the parent or guardian affirmed under penalties of perjury.

History.
Acts 1993, ch. 377, § 1.

37-10-403. Immunity from criminal and civil liability.

No parent or legal guardian shall be criminally prosecuted nor civilly liable for failure to comply with the provisions of this part.

History.
Acts 1993, ch. 377, § 2.

PART 5

INFORMATION ON CHILD ABUSE PREVENTION

37-10-501. Promotion of parental help line for prevention of child abuse.

In an effort to inform the citizens of Tennessee of a free resource for families and reduce instances of child abuse, the following measures shall be performed. All public transportation buses within the state of Tennessee are urged to promote the existence of a parental help line organized by the nonprofit organization Prevent Child Abuse Tennessee and the telephone numbers for such organization, 1-800-356-6767 and 1-800-CHILDREN, as space allows in interior advertising. The department of education shall require all local education agencies to distribute information on the help line, including the telephone number, to students and the students' parents. The department of human services shall also require any licensed child care facility to distribute information on the help line, including the telephone number, to children who attend the facility and the children's parents. This section shall assist children, parents, teachers and child care workers in providing the information and support necessary for the positive development of children through a currently existing, and free to the public, resource.

History.
Acts 2010, ch. 1105, § 1.

CHAPTER 11

JUVENILE OFFENDER SURCHARGES

SECTION.

37-11-101. Legislative findings and intent.
37-11-102. Part definitions.
37-11-103. Disposition of juvenile fines — Youthful offender system fund.

37-11-101. Legislative findings and intent.

The general assembly hereby finds, determines, and declares that the commission of violent crimes by juveniles exacts an unacceptable toll on the fiscal resources of both state and local governments and thereby increases the financial burden upon the taxpayers of this state. It is the intent of the general assembly in enacting this chapter to require, as much as possible, that juveniles convicted as adults of violent crimes pay for the cost of the rehabilitation, education,

and treatment of juveniles sentenced to the youthful offender system or committed to the department of correction.

History.
Acts 1994, ch. 984, § 1.

37-11-102. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Convicted" and "conviction" means a plea of guilty or a verdict of guilty by a judge or jury, and includes a plea of no contest accepted by the court;

(2) "Juvenile" means a person under eighteen (18) years of age; and

(3) "Violent crime" means a felony enumerated as a violent crime under § 40-35-118 or a felony involving a weapon or firearm.

History.
Acts 1994, ch. 984, § 1.

37-11-103. Disposition of juvenile fines — Youthful offender system fund.

(a) Each juvenile who is convicted as an adult of a violent crime shall be required to pay any fine imposed by the court to the clerk of such court, who shall allocate the fine as follows:

(1) Five percent (5%) shall be retained by the clerk for administrative costs incurred pursuant to this section. Such amount retained shall be transmitted to the state treasurer, who shall credit the same to the general fund, and such amount shall be subject to appropriation by the general assembly for the costs of such administration;

(2) Ninety-five percent (95%) shall be transferred to the state treasurer who shall credit the same to the youthful offender system fund created pursuant to subsection (b).

(b) There is hereby created in the state treasury a youthful offender system fund, which shall consist of moneys received by the state treasurer pursuant to subdivision (a)(2). In accordance with § 8-22-118, all interest derived from the deposit and investment of this fund shall be credited to the general fund. Any moneys not appropriated by the general assembly shall remain in the youthful offender system fund and shall not be transferred or revert to the general fund of the state at the end of any fiscal year. All moneys in the fund shall be subject to annual appropriation by the general assembly to the division of youth services in the department of correction to cover the direct and indirect costs associated with the rehabilitation, education, and treatment of juvenile offenders committed to the department.

History.
Acts 1994, ch. 984, § 1.

Compiler's Notes.
Acts 1994, ch. 984, § 1 potentially authorized the creation of a youthful offender system; however, such system, was not approved by the Ninety-Eighth General Assembly.

TITLE 38

PREVENTION AND DETECTION OF CRIME

CHAPTER 1

MISCELLANEOUS PROVISIONS

Part 3. Statutory Rape Prevention

SECTION.
38-1-301. Purpose of part.
38-1-302. Report of pregnancy and identity of alleged father to judge or law enforcement official.
38-1-303. Contents of report.
38-1-304. Confidentiality of reports and identities.
38-1-305. Notice of statutory rape from public assistance providers to law enforcement agencies.
38-1-306. Immunity of persons making reports.

PART 3

STATUTORY RAPE PREVENTION

38-1-301. Purpose of part.

The purpose of this part is to curtail the crime of statutory rape, to require the reporting of a condition believed to be indicative of statutory rape, and, being necessary for the health, peace and safety of the public, to protect minors in a specified age range, who are not legally competent to consent to sex, from rape.

History.
Acts 1996, ch. 842, § 1.

38-1-302. Report of pregnancy and identity of alleged father to judge or law enforcement official.

(a) If, during any treatment or examination of any child less than eighteen (18) years of age, a determination is made that the child is pregnant, and if it is learned during the course of the treatment or examination that the alleged father is at least four (4) years older than, but not the legal spouse of the victim, in accordance with § 39-13-506, the doctor, physician, surgeon, health care provider or other person examining or treating the child or diagnosing the condition is encouraged to, upon obtaining the consent of the patient, a parent, legal guardian or custodian, and within twenty-four (24) hours of the time of the treatment, examination or diagnosis, report the pregnancy by telephone or otherwise, to the judge having juvenile jurisdiction or to the office of sheriff or the chief law enforcement official of the municipality where the child resides.

(b) Injuries to minors that are required to be reported by § 37-1-403 are not required to be reported under this part.

History.
Acts 1996, ch. 842, § 1.

38-1-303. Contents of report.

The report may include, to the extent known by the doctor, physician, surgeon, health care provider or

other person filing the report, the name, address and age of the child; the name, address and age of the alleged father; the alleged father's whereabouts at the time the report is made; the results of the diagnosis; and the facts requiring the report. The report may include any other pertinent information.

History.
Acts 1996, ch. 842, § 1.

38-1-304. Confidentiality of reports and identities.

Reports made under this part, and the identity of the person filing the report, are confidential, except when the court having jurisdiction determines the testimony of the person reporting to be material to an indictment or conviction.

History.
Acts 1996, ch. 842, § 1.

38-1-305. Notice of statutory rape from public assistance providers to law enforcement agencies.

When a person who is at least thirteen (13) years of age but less than eighteen (18) years of age, or a parent, legal guardian or custodian on behalf of such person, applies to the department of human services for child support services, temporary assistance for needy families (TANF) or any other program designed to provide similar public assistance, and the department determines from the application, or during the course of any interview with the applicant, that the father or alleged father of the child is at least four (4) years older than such child's mother, the department shall report such information indicating the occurrence of a possible statutory rape to the appropriate law enforcement agency and district attorney general.

History.
Acts 1996, ch. 842, § 1.

Compiler's Notes.
Temporary assistance for needy families (TANF), referred to in this section, is compiled at 42. U.S.C. § 601 et seq.

38-1-306. Immunity of persons making reports.

Any person making a report under this part shall be immune from civil liability that might otherwise be imposed for such action.

History.
Acts 1996, ch. 842, § 2.

CHAPTER 6

TENNESSEE BUREAU OF INVESTIGATION

Part 1. General Provisions

SECTION.
38-6-109. Verification of criminal violation information.
38-6-110. Central registry for sexual offenders.
38-6-116. Tennessee internet criminal information center.
38-6-117. Missing children registry.

PART 1

GENERAL PROVISIONS

38-6-109. Verification of criminal violation information.

(a) The Tennessee bureau of investigation shall process requests for criminal background checks from any authorized persons, organizations or entities permitted by law to seek criminal history background checks on certain persons, pursuant to a format and under procedures as it may require.

(b)(1) At the request of any persons, organizations or entities authorized by law to make fingerprint requests, the Tennessee bureau of investigation shall receive fingerprint samples from the persons, organizations or entities permitted by law to make those requests and shall check the prints against its records by using its computer files of criminal offenders contained in the Tennessee crime information center (T.C.I.C.) to process these requests and, to the extent permitted by federal law, shall also check the prints against records maintained by the federal bureau of investigation to determine if prior criminal history or convictions exist.

(2) Upon completion of the search, the bureau shall report its findings to the requesting persons, organizations or entities authorized by law to receive such information.

(c)(1) Agencies or organizations that have an agreement to do so with the Tennessee bureau of investigation and that have any responsibility or authority under law for conducting criminal history background reviews of persons may also access directly the computer files of the T.C.I.C. using only names or other identifying data elements to obtain available Tennessee criminal history background information for purpose of background reviews.

(2) If review by the method permitted by subdivision (c)(1) indicates the need for further verification of the individual's criminal history, and if authorized by the requesting entity's legal authority, the requesting entity may submit fingerprint samples for a criminal history background check by the Tennessee bureau of investigation as otherwise authorized by this section.

(d) The fees for fingerprint searches shall be the same for a Tennessee search as for a federal bureau of investigation search and shall be according to the fee schedule established by the federal bureau of investigation.

(e) The instant check unit of the Tennessee bureau of investigation shall contact the agency making the entry of an order of protection into the national crime information center within one (1) day if the subject of the order of protection attempts to purchase a firearm.

History.
Acts 1985, ch. 478, § 28; 1996, ch. 1079, § 121; 2000, ch. 981, § 15; 2008, ch. 830, § 1; 2016, ch. 729, § 1.

Compiler's Notes.
For transfer of certain duties from the department of human services to the department of health, see Executive Order No. 6 (January 12, 1996).

38-6-110. Central registry for sexual offenders.

(a) The Tennessee bureau of investigation shall establish a central registry of sexual offenders modeled after statutes enacted in other states. The registry shall include all validated offenders from files maintained by the department of children's services, all persons who have been arrested for the commission of a sexual offense, and all persons who have been convicted of a sexual offense.

(b) The departments of correction and children's services and local law enforcement agencies shall cooperate fully in the creation and updating of the central registry.

History.
Acts 1985, ch. 478, § 36; 1989, ch. 278, § 45; 1996, ch. 1079, § 122.

Compiler's Notes.
For transfer of certain duties from the department of human services to the department of health, see Executive Order No. 6 (January 12, 1996).

38-6-116. Tennessee internet criminal information center.

(a) The Tennessee bureau of investigation shall create an office within the bureau to be known as the Tennessee internet criminal information center (TICIC). The purpose of the center is the development, maintenance and updating of an online database, toll-free hotline and such other means as are appropriate to provide easily accessible information to members of the public concerning persons of interest to the public safety and welfare.

(b) Upon creation of the TICIC, the bureau shall compile and maintain databases consisting of a registry and associated information for the following groups of persons:

(1) **The Sexual Offense Registry.**

(A) This registry shall consist of all public information regarding persons who are required to complete a TBI sexual offender registration/monitoring form pursuant to title 40, chapter 39, part 2;

(B) This registry shall include the photograph of all persons who are registered pursuant to title 40, chapter 39, part 2;

(2) **The Tennessee Missing Children Registry.** This registry shall consist of those children who have been placed by the bureau on the Tennessee missing children registry; and

(3) Any other registry, information or database that, in the opinion of the bureau, would be in the interest of the public safety or welfare.

(c) When one (1) or more of the databases comprising the TICIC is complete and in an accessible format, the bureau shall place and maintain each of them on the TICIC's Internet home page which shall be accessible through the state of Tennessee's Internet home page.

History.
Acts 1997, ch. 341, § 1; 2011, ch. 263, § 1; 2011, ch. 268, § 1; 2012, ch. 727, § 4.

Compiler's Notes.
The toll-free hotline referred to in (a) can be reached at 1-888-837-4170.
The URL for the state of Tennessee is http://www.state.tn.us.
The URL of the web site for the TICIC is http://www.ticic.state.tn.us.
For the preamble to the act concerning transfers of certain functions relating to probation and parole services and the community correction grant program from the board of probation and parole to the department of correction, please refer to Acts 2012, ch. 727.

38-6-117. Missing children registry.

(a) The Tennessee bureau of investigation is authorized to create within the bureau a missing children registry. The registry shall contain pertinent information about, a picture of, and the current status of certain children in this state who have been reported missing.

(b) The bureau shall have the sole discretion to determine the number of missing children to be placed on the registry, the criteria for placing a child on the registry and the definition of "missing child."

(c) The bureau shall place, maintain and update the missing children registry on the state of Tennessee's internet home page.

(d) When the Tennessee internet criminal information center is created within the bureau and becomes operational, the missing children registry shall become a part of such center.

(e) The bureau shall update the missing children's web page to reflect that a missing child has been recovered.

History.
Acts 1997, ch. 342, § 1; 2014, ch. 588, § 1.

Compiler's Notes.
The URL for the state of Tennessee is http://www.state.tn.us.
The URL of the web site for the TICIC is http://www.ticic.state.tn.us.

TITLE 39

CRIMINAL OFFENSES

CHAPTER 13

OFFENSES AGAINST PERSON

Part 1. Assaultive Offenses

SECTION.
39-13-108. Rules and regulations regarding transmission of HIV — Quarantine — Violations.
39-13-109. Criminal exposure to HIV, HBV, HCV — Defenses — Penalty.
39-13-110. Female genital mutilation.
39-13-114. Communicating a threat concerning a school employee.

Part 3. Kidnapping and False Imprisonment

39-13-306. Custodial interference.

Part 5. Sexual Offenses

39-13-502. Aggravated rape.
39-13-503. Rape.
39-13-504. Aggravated sexual battery.
39-13-506. Mitigated statutory rape — Statutory rape — Aggravated statutory rape.
39-13-522. Rape of a child.
39-13-527. Sexual battery by an authority figure.
39-13-528. Offense of solicitation of a minor.
39-13-529. Offense of soliciting sexual exploitation of a minor — Exploitation of a minor by electronic means.

PART 1

ASSAULTIVE OFFENSES

39-13-108. Rules and regulations regarding transmission of HIV — Quarantine — Violations.

(a) The department of health, acting pursuant to § 68-10-109, shall promulgate rules regarding transmission of human immunodeficiency virus (HIV). The rules shall include specific procedures for quarantine or isolation, as may be necessary, of any person who clearly and convincingly demonstrates willful and knowing disregard for the health and safety of others, and who poses a direct threat of significant risk to the health and safety of the public regarding transmission of HIV.

(b) The department is authorized to quarantine or isolate a person within a secure facility, after exercising other appropriate measures, if the person continues to pose a direct threat of significant risk to the health and safety of the public. Any person so quarantined or isolated within a secure facility, who intentionally escapes from the facility, commits a Class E felony.

History.
Acts 1993, ch. 322, § 2.

39-13-109. Criminal exposure to HIV, HBV, HCV — Defenses — Penalty.

(a) A person commits the offense of criminal exposure of another to human immunodeficiency virus (HIV), to hepatitis B virus (HBV), or to hepatitis C virus (HCV) when, knowing that the person is infected with HIV, with HBV, or with HCV, the person knowingly:

(1) Engages in intimate contact with another;

(2) Transfers, donates, or provides blood, tissue, semen, organs, or other potentially infectious body fluids or parts for transfusion, transplantation, insemination, or other administration to another in any manner that presents a significant risk of HIV, HBV or HCV transmission; or

(3) Dispenses, delivers, exchanges, sells, or in any other way transfers to another any nonsterile intravenous or intramuscular drug paraphernalia.

(b) As used in this section:

(1) "HIV" means the human immunodeficiency virus or any other identified causative agent of acquired immunodeficiency syndrome;

(2) "Intimate contact with another" means the exposure of the body of one person to a bodily fluid of another person in any manner that presents a significant risk of HIV, HBV or HCV transmission; and

(3) "Intravenous or intramuscular drug paraphernalia" means any equipment, product, or material of any kind that is peculiar to and marketed for use in injecting a substance into the human body.

(c)(1) It is an affirmative defense to prosecution under this section, which must be proven by a preponderance of the evidence, that the person exposed to HIV knew that the infected person was infected with HIV, knew that the action could result in infection with HIV, and gave advance consent to the action with that knowledge.

(2) It is an affirmative defense to prosecution under this section, which must be proven by a preponderance of the evidence, that the person exposed to HBV knew that the infected person was infected with HBV, knew that the action could result in infection with HBV, and gave advance consent to the action with that knowledge.

(3) It is an affirmative defense to prosecution under this section, which must be proven by a preponderance of the evidence, that the person exposed to HCV knew that the infected person was infected with HCV, knew that the action could result in infection with HCV, and gave advance consent to the action with that knowledge.

(d)(1) Nothing in this section shall be construed to require the actual transmission of HIV in order for a person to have committed the offense of criminal exposure of another to HIV.

(2) Nothing in this section shall be construed to require the actual transmission of HBV in order for a person to have committed the offense of criminal exposure to HBV.

(3) Nothing in this section shall be construed to require the actual transmission of HCV in order for a person to have committed the offense of criminal exposure to HCV.

(e)(1) Criminal exposure of another to HIV is a Class C felony.

(2) Criminal exposure of another to HBV or HCV is a Class A misdemeanor, punishable by a fine of not more than one thousand dollars ($1,000), restitution to the victim or victims, or both a fine and restitution. The clerk shall transmit all money collected from a fine imposed for a violation of this section to the criminal injuries compensation fund created pursuant to § 40-24-107. In addition, a victim of criminal exposure HBV or HCV may maintain an action for the expenses and the actual loss of service resulting from such exposure.

History.
Acts 1994, ch. 952, § 2; 2011, ch. 185, §§ 1-7.

39-13-110. Female genital mutilation.

(a) Except as otherwise permitted in subsection (b), whoever knowingly circumcises, excises or infibulates, in whole or in part, the labia majora, labia minora or clitoris of another commits a Class D felony. Consent to the procedure by a minor on whom it is performed or by the minor's parent is not a defense to a violation of this section.

(b) A surgical procedure is not a violation of subsection (a), if the procedure is:

(1) Necessary to the health of the person on whom it is performed and is performed by a licensed physician or physician-in-training under supervision of a licensed physician; or

(2) Performed on a person who is in labor or who has just given birth and is performed for medical

purposes connected with that labor or birth by a licensed physician or a physician-in-training under the supervision of a licensed physician.

History.
Acts 1996, ch. 857, § 2.

Compiler's Notes.
Acts 1996, ch. 857, § 1 provided that the act enacting this section shall be known and may be cited as the "Prohibition of Female Genital Mutilation Act of 1996."

39-13-114. Communicating a threat concerning a school employee.

(a) For purposes of this section, "school" means any:

(1) Elementary school, middle school or high school;

(2) College of applied technology or postsecondary vocational or technical school; or

(3) Two-year or four-year college or university.

(b) A person commits the offense of communicating a threat concerning a school employee if:

(1) The person communicates to another a threat to cause the death of or serious bodily injury to a school employee and the threat is directly related to the employee's scope of employment;

(2) The threat involves the use of a firearm or other deadly weapon;

(3) The person to whom the threat is made reasonably believes that the person making the threat intends to carry out the threat; and

(4) The person making the threat intentionally engages in conduct that constitutes a substantial step in the commission of the threatened act and the threatened act and the substantial step when taken together:

(A) Are corroborative of the person's intent to commit the threatened act; and

(B) Occur close enough in time to evidence an intent and ability to commit the threatened act.

(c) Communicating a death threat concerning a school employee is a Class B misdemeanor punishable by a maximum term of imprisonment of thirty (30) days.

History.
Acts 2008, ch. 1141, § 1; 2013, ch. 473, § 10.

PART 3

KIDNAPPING AND FALSE IMPRISONMENT

39-13-306. Custodial interference.

(a) It is the offense of custodial interference for a natural or adoptive parent, step-parent, grandparent, brother, sister, aunt, uncle, niece, or nephew of a child younger than eighteen (18) years of age to:

(1) Remove the child from this state knowing that the removal violates a child custody determination as defined in § 36-6-205, the rightful custody of a mother as defined in § 36-2-303, or a temporary or permanent judgment or court order regarding the custody or care of the child;

(2) Detain the child within this state or remove the child from this state after the expiration of the noncustodial natural or adoptive parent or guardian's lawful period of visitation, with the intent to violate the rightful custody of a mother as defined in § 36-2-303, or a temporary or permanent judgment or a court order regarding the custody or care of the child;

(3) Harbor or hide the child within or outside this state, knowing that possession of the child was unlawfully obtained by another person in violation of the rightful custody of a mother as defined in § 36-2-303, or a temporary or permanent judgment or a court order;

(4) Act as an accessory to any act prohibited by this section; or

(5) Detain the child within or remove the child from this state during the noncustodial parent's lawful period of visitation, with the intent to violate the court-ordered visitation of the noncustodial parent, or a temporary or permanent judgment regarding visitation with the child.

(b) It is also the offense of custodial interference for a natural or adoptive parent, step-parent, grandparent, brother, sister, aunt, uncle, niece, or nephew of an incompetent person to:

(1) Remove the incompetent person from this state knowing that the removal violates a temporary or permanent judgment or a court order regarding the custody or care of the incompetent person;

(2) Harbor or hide the incompetent person within or outside this state, knowing that possession of the incompetent person was unlawfully obtained by another person in violation of a temporary or permanent judgment or a court order; or

(3) Act as an accessory to any act prohibited by this section.

(c) It is a defense to custodial interference:

(1) That the person who removed the child or incompetent person reasonably believed that, at the time the child or incompetent was removed, the failure to remove the child or incompetent person would have resulted in a clear and present danger to the health, safety, or welfare of the child or incompetent person; or

(2) That the individual detained or moved in contravention of the rightful custody of a mother as defined in § 36-2-303, or of the order of custody or care, was returned by the defendant voluntarily and before arrest or the issuance of a warrant for arrest.

(d) If conduct that is in violation of this section is also a violation of § 39-13-304 or § 39-13-305(a)(1), (a)(3), or (a)(4), the offense may be prosecuted under any of the applicable statutes.

(e)(1) Except as provided in subdivision (e)(2), custodial interference is a Class E felony, unless the person taken from lawful custody is returned voluntarily by the defendant, in which case custodial interference is a Class A misdemeanor.

(2) Custodial interference under subdivision (a)(5) is a Class C misdemeanor.

History.
Acts 1989, ch. 591, § 1; T.C.A., § 39-13-304; Acts 1990, ch. 982, § 1; 2004, ch. 834, § 1; 2016, ch. 725, §§ 1, 2.

Compiler's Notes.
The sentencing commission terminated June 30, 1995. Sentencing Commission Comments have been retained, but do not reflect 1995 or subsequent legislation.

PART 5

SEXUAL OFFENSES

39-13-502. Aggravated rape.

(a) Aggravated rape is unlawful sexual penetration of a victim by the defendant or the defendant by a victim accompanied by any of the following circumstances:

(1) Force or coercion is used to accomplish the act and the defendant is armed with a weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a weapon;

(2) The defendant causes bodily injury to the victim;

(3) The defendant is aided or abetted by one (1) or more other persons; and

(A) Force or coercion is used to accomplish the act; or

(B) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless.

(b) Aggravated rape is a Class A felony.

History.
Acts 1989, ch. 591, § 1; 1990, ch. 980, § 3; 1992, ch. 878, § 3.

Compiler's Notes.
Acts 2005, ch. 353, § 20(b) provided that the Tennessee Code commission is requested to insert a cross reference in §§ 39-13-102, 39-13-502, 39-13-503, 39-13-505, 39-13-506, 39-13-522, 39-14-302 and 39-14-408 to § 40-35-114 stating that the enhancement factor formerly found in each such section was moved to § 40-35-114 so that all enhancement factors are located in one (1) section.

The sentencing commission terminated June 30, 1995. Sentencing Commission Comments have been retained, but do not reflect 1995 or subsequent legislation.

39-13-503. Rape.

(a) Rape is unlawful sexual penetration of a victim by the defendant or of the defendant by a victim accompanied by any of the following circumstances:

(1) Force or coercion is used to accomplish the act;

(2) The sexual penetration is accomplished without the consent of the victim and the defendant knows or has reason to know at the time of the penetration that the victim did not consent;

(3) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or

(4) The sexual penetration is accomplished by fraud.

(b) Rape is a Class B felony.

History.
Acts 1989, ch. 591, § 1; 1995, ch. 484, § 1; 1997, ch. 406, § 1; 2005, ch. 353, § 11.

Compiler's Notes.
Acts 2005, ch. 353, § 18 provided that the act shall apply to sentencing for criminal offenses committed on or after June 7, 2005. Offenses committed prior to June 7, 2005, shall be governed by prior law, which shall apply in all respects. However, for defendants who are sentenced after June 7, 2005, for offenses committed on or after July 1, 1982, the defendant may elect to be sentenced under the provisions of the act by executing a waiver of such defendant's ex post facto protections. Upon executing such a waiver, all provisions of the act shall apply to the defendant.

Acts 2005, ch. 353, § 19 provided that that act shall have no application to sentencing for persons convicted of murder in the first degree, which shall be governed by the provisions of §§ 39-13-202 — 39-13-208.

Acts 2005, ch. 353, § 20(b) provided that the Tennessee Code Commission is requested to insert a cross reference in §§ 39-13-102, 39-13-502, 39-13-503, 39-13-505, 39-13-506, 39-13-522, 39-14-302 and 39-14-408 to § 40-35-114 stating that the enhancement factor formerly found in each such section was moved to § 40-35-114 so that all enhancement factors are located in one (1) section.

39-13-504. Aggravated sexual battery.

(a) Aggravated sexual battery is unlawful sexual contact with a victim by the defendant or the defendant by a victim accompanied by any of the following circumstances:

(1) Force or coercion is used to accomplish the act and the defendant is armed with a weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a weapon;

(2) The defendant causes bodily injury to the victim;

(3) The defendant is aided or abetted by one (1) or more other persons; and

(A) Force or coercion is used to accomplish the act; or

(B) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or

(4) The victim is less than thirteen (13) years of age.

(b) Aggravated sexual battery is a Class B felony.

History.
Acts 1989, ch. 591, § 1; 1993, ch. 289, § 1.

39-13-506. Mitigated statutory rape — Statutory rape — Aggravated statutory rape.

(a) Mitigated statutory rape is the unlawful sexual penetration of a victim by the defendant, or of the defendant by the victim when the victim is at least fifteen (15) but less than eighteen (18) years of age and the defendant is at least four (4) but not more than five (5) years older than the victim.

(b) Statutory rape is the unlawful sexual penetration of a victim by the defendant or of the defendant by the victim when:

(1) The victim is at least thirteen (13) but less than fifteen (15) years of age and the defendant is at least four (4) years but less than ten (10) years older

than the victim; or

(2) The victim is at least fifteen (15) but less than eighteen (18) years of age and the defendant is more than five (5) but less than ten (10) years older than the victim.

(c) Aggravated statutory rape is the unlawful sexual penetration of a victim by the defendant, or of the defendant by the victim when the victim is at least thirteen (13) but less than eighteen (18) years of age and the defendant is at least ten (10) years older than the victim.

(d)(1) Mitigated statutory rape is a Class E felony.

(2)(A) Statutory rape is a Class E felony.

(B) In addition to the punishment provided for a person who commits statutory rape for the first time, the trial judge may order, after taking into account the facts and circumstances surrounding the offense, including the offense for which the person was originally charged and whether the conviction was the result of a plea bargain agreement, that the person be required to register as a sexual offender pursuant to title 40, chapter 39, part 2.

(3) Aggravated statutory rape is a Class D felony.

History.

Acts 1989, ch. 591, § 1; 1990, ch. 980, § 4; 1994, ch. 719, § 1; 2005, ch. 487, § 4; 2006, ch. 890, § 5; 2007, ch. 594, § 7; 2012, ch. 883, § 1.

Compiler's Notes.

Acts 2005, ch. 353, § 20(b) provided that the Tennessee Code commission is requested to insert a cross reference in §§ 39-13-102, 39-13-502, 39-13-503, 39-13-505, 39-13-506, 39-13-522, 39-14-302 and 39-14-408 to § 40-35-114 stating that the enhancement factor formerly found in each such section was moved to § 40-35-114 so that all enhancement factors are located in one (1) section.

Acts 2006, ch. 890, § 1 provided that the provisions of the act may be collectively known as the "Child Protection Act of 2006."

For the Preamble to the act regarding criminal penalties, procedure and sentencing, please refer to Acts 2007, ch. 594.

The sentencing commission terminated June 30, 1995. Sentencing Commission Comments have been retained, but do not reflect 1995 or subsequent legislation.

39-13-522. Rape of a child.

(a) Rape of a child is the unlawful sexual penetration of a victim by the defendant or the defendant by a victim, if the victim is more than three (3) years of age but less than thirteen (13) years of age.

(b)(1) Rape of a child is a Class A felony.

(2)(A) Notwithstanding title 40, chapter 35, a person convicted of a violation of this section shall be punished as a Range II offender; however, the sentence imposed upon such person may, if appropriate, be within Range III but in no case shall it be lower than Range II.

(B) Section 39-13-525(a) shall not apply to a person sentenced under this subdivision (b)(2).

(C) Notwithstanding any law to the contrary, the board of parole may require, as a mandatory condition of supervision for any person convicted under this section, that the person be enrolled in a satellite-based monitoring program for the full extent of the person's term of supervision consistent with the requirements of § 40-39-302.

History.

Acts 1992, ch. 878, § 1; 1997, ch. 406, § 2; 2005, ch. 353, § 14; 2006, ch. 890, § 22; 2007, ch. 501, § 1; 2011, ch. 306, § 1.

Compiler's Notes.

Acts 2005, ch. 353, § 18 provided that the act shall apply to sentencing for criminal offenses committed on or after June 7, 2005. Offenses committed prior to June 7, 2005, shall be governed by prior law, which shall apply in all respects. However, for defendants who are sentenced after June 7, 2005, for offenses committed on or after July 1, 1982, the defendant may elect to be sentenced under the provisions of the act by executing a waiver of such defendant's ex post facto protections. Upon executing such a waiver, all provisions of the act shall apply to the defendant.

Acts 2005, ch. 353, § 19 provided that that act shall have no application to sentencing for persons convicted of murder in the first degree, which shall be governed by the provisions of §§ 39-13-202 — 39-13-208.

Acts 2005, ch. 353, § 20(b) provided that the Tennessee Code Commission is requested to insert a cross reference in §§ 39-13-102, 39-13-502, 39-13-503, 39-13-505, 39-13-506, 39-13-522, 39-14-302 and 39-14-408 to § 40-35-114 stating that the enhancement factor formerly found in each such section was moved to § 40-35-114 so that all enhancement factors are located in one (1) section.

Acts 2006, ch. 890, § 1 provided that: "The provisions of this act, even though not codified together, may collectively be known as the 'Child Protection Act of 2006'."

Acts 2012, ch. 727, § 1 amended § 4-3-104, which concerns name changes of departments and divisions, to provide that references to the board of probation and parole, formerly referred to in subdivision (b)(2)(C), are deemed references to the board of parole.

39-13-527. Sexual battery by an authority figure.

(a) Sexual battery by an authority figure is unlawful sexual contact with a victim by the defendant or the defendant by a victim accompanied by the following circumstances:

(1) The victim was, at the time of the offense, thirteen (13) years of age or older but less then eighteen (18) years of age; or

(2) The victim was, at the time of the offense, mentally defective, mentally incapacitated or physically helpless, regardless of age; and,

(3)(A) The defendant was at the time of the offense in a position of trust, or had supervisory or disciplinary power over the victim by virtue of the defendant's legal, professional or occupational status and used the position of trust or power to accomplish the sexual contact; or

(B) The defendant had, at the time of the offense, parental or custodial authority over the victim and used the authority to accomplish the sexual contact.

(b) Sexual battery by an authority figure is a Class C felony.

History.

Acts 1997, ch. 256, § 1; 1998, ch. 1034, § 1; 2005, ch. 478, § 1; 2006, ch. 897, § 1.

39-13-528. Offense of solicitation of a minor.

(a) It is an offense for a person eighteen (18) years of age or older, by means of oral, written or electronic communication, electronic mail or Internet services, directly or through another, to intentionally command, request, hire, persuade, invite or attempt to induce a person whom the person making the solicitation knows, or should know, is less than eighteen (18) years of age,

or solicits a law enforcement officer posing as a minor, and whom the person making the solicitation reasonably believes to be less than eighteen (18) years of age, to engage in conduct that, if completed, would constitute a violation by the soliciting adult of one (1) or more of the following offenses:

(1) Rape of a child, pursuant to § 39-13-522;

(2) Aggravated rape, pursuant to § 39-13-502;

(3) Rape, pursuant to § 39-13-503;

(4) Aggravated sexual battery, pursuant to § 39-13-504;

(5) Sexual battery by an authority figure, pursuant to § 39-13-527;

(6) Sexual battery, pursuant to § 39-13-505;

(7) Statutory rape, pursuant to § 39-13-506;

(8) Especially aggravated sexual exploitation of a minor, pursuant to § 39-17-1005;

(9) Sexual activity involving a minor, pursuant to § 39-13-529;

(10) Trafficking for commercial sex acts, pursuant to § 39-13-309;

(11) Patronizing prostitution, pursuant to § 39-13-514;

(12) Promoting prostitution, pursuant to § 39-13-515; or

(13) Aggravated sexual exploitation of a minor, pursuant to § 39-17-1004.

(b) It is no defense that the solicitation was unsuccessful, that the conduct solicited was not engaged in, or that the law enforcement officer could not engage in the solicited offense. It is no defense that the minor solicited was unaware of the criminal nature of the conduct solicited.

(c) A violation of this section shall constitute an offense one (1) classification lower than the most serious crime solicited, unless the offense solicited was a Class E felony, in which case the offense shall be a Class A misdemeanor.

(d) A person is subject to prosecution in this state under this section for any conduct that originates in this state, or for any conduct that originates by a person located outside this state, where the person solicited the conduct of a minor located in this state, or solicited a law enforcement officer posing as a minor located within this state.

History.

Acts 1998, ch. 1007, § 1; 2000, ch. 944, § 1; 2005, ch. 496, § 5; 2013, ch. 436, § 1.

39-13-529. Offense of soliciting sexual exploitation of a minor — Exploitation of a minor by electronic means.

(a) It is an offense for a person eighteen (18) years of age or older, by means of oral, written or electronic communication, electronic mail or Internet service, including webcam communications, directly or through another, to intentionally command, hire, persuade, induce or cause a minor to engage in simulated sexual activity that is patently offensive or in sexual activity, where such simulated sexual activity or sexual activity is observed by that person or by another.

(b) It is unlawful for any person eighteen (18) years of age or older, directly or by means of electronic communication, electronic mail or Internet service, including webcam communications, to intentionally:

(1) Engage in simulated sexual activity that is patently offensive or in sexual activity for the purpose of having the minor view the simulated sexual activity or sexual activity, including circumstances where the minor is in the presence of the person, or where the minor views such activity via electronic communication, including electronic mail, Internet service and webcam communications;

(2) Display to a minor, or expose a minor to, any material containing simulated sexual activity that is patently offensive or sexual activity if the purpose of the display can reasonably be construed as being for the sexual arousal or gratification of the minor or the person displaying the material; or

(3) Display to a law enforcement officer posing as a minor, and whom the person making the display reasonably believes to be less than eighteen (18) years of age, any material containing simulated sexual activity that is patently offensive or sexual activity, if the purpose of the display can reasonably be construed as being for the sexual arousal or gratification of the intended minor or the person displaying the material.

(4)(A) Except as provided in subdivision (b)(4)(B), it is an exception to the application of this subsection (b) that the victim is at least fifteen (15) but less than eighteen (18) years of age and the defendant is no more than four (4) years older than the victim.

(B) Subdivision (b)(4)(A) shall not apply or be an exception to the application of this subsection (b), if the defendant intentionally commanded, hired, induced or caused the victim to violate this subsection (b).

(c) A person is subject to prosecution in this state under this statute for any conduct that originates in this state, or for any conduct that originates by a person located outside this state, where the conduct involved a minor located in this state or the solicitation of a law enforcement officer posing as a minor located in this state.

(d) As used in this section:

(1) "Community" means the judicial district, as defined by § 16-2-506, in which a violation is alleged to have occurred;

(2) "Material" means:

(A) Any picture, drawing, photograph, undeveloped film or film negative, motion picture film, videocassette tape or other pictorial representation;

(B) Any statue, figure, theatrical production or electrical reproduction;

(C) Any image stored on a computer hard drive, a computer disk of any type, or any other medium designed to store information for later retrieval; or

(D) Any image transmitted to a computer or other electronic media or video screen, by telephone line, cable, satellite transmission, or other

method that is capable of further transmission, manipulation, storage or accessing, even if not stored or saved at the time of transmission;

(3) "Patently offensive" means that which goes substantially beyond customary limits of candor in describing or representing such matters; and

(4) "Sexual activity" means any of the following acts:

(A) Vaginal, anal or oral intercourse, whether done with another person or an animal;

(B) Masturbation, whether done alone or with another human or an animal;

(C) Patently offensive, as determined by contemporary community standards, physical contact with or touching of a person's clothed or unclothed genitals, pubic area, buttocks or breasts in an act of apparent sexual stimulation or sexual abuse;

(D) Sadomasochistic abuse, including flagellation, torture, physical restraint, domination or subordination by or upon a person for the purpose of sexual gratification of any person;

(E) The insertion of any part of a person's body or of any object into another person's anus or vagina, except when done as part of a recognized medical procedure by a licensed professional;

(F) Patently offensive, as determined by contemporary community standards, conduct, representations, depictions or descriptions of excretory functions; or

(G) Lascivious exhibition of the female breast or the genitals, buttocks, anus or pubic or rectal area of any person.

(e)(1) A violation of subsection (a) is a Class B felony.

(2) A violation of subsection (b) is a Class E felony; provided, that, if the minor is less than thirteen (13) years of age, the violation is a Class C felony.

(f) It shall not be a defense to a violation of this section that a minor victim of the offense consented to the conduct that constituted the offense.

History.

Acts 2005, ch. 496, § 6; 2011, ch. 393, § 1; 2012, ch. 732, §§ 1, 2; 2012, ch. 876, § 1; 2013, ch. 337, § 2; 2013, ch. 350, § 1; 2013, ch. 416, § 2.

CHAPTER 14

OFFENSES AGAINST PROPERTY

Part 1. Theft

SECTION.
39-14-144. Civil liability of adult, parent or guardian for theft of retail merchandise by minor.

Part 4. Burglary and Related Offenses

39-14-407. Trespass by motor vehicle.
39-14-408. Vandalism.

PART 1

THEFT

39-14-144. Civil liability of adult, parent or guardian for theft of retail merchandise by minor.

(a) If the appropriate district attorney general consents to use of this section as provided in subsection (i), in lieu of any criminal penalties imposed by § 39-14-105 for theft offenses, any adult or parent or guardian of a minor who willfully takes possession of merchandise from a retail merchant with the intent to convert the merchandise to personal use without paying the purchase price is subject to civil liability, should the merchant prevail, as follows:

(1) For the adult or emancipated minor:

(A) The greater of one hundred dollars ($100) or an amount three (3) times the listed retail price of the merchandise taken if the merchant does not recover the merchandise;

(B) The greater of one hundred dollars ($100) or an amount three (3) times the difference between the value of the damaged merchandise and the value of the merchandise prior to its conversion if the merchant recovers the merchandise but it is in a damaged state; or

(C) The greater of one hundred dollars ($100) or an amount twice the listed retail price of the merchandise if the merchant recovers the merchandise in the same condition it was in prior to the conversion; or

(2) For the parent or legal guardian having custody of an unemancipated minor who has been negligent in the supervision of the unemancipated minor:

(A) The greater of one hundred dollars ($100) or an amount three (3) times the listed retail price of the merchandise taken if the merchant does not recover the merchandise;

(B) The greater of one hundred dollars ($100) or an amount three (3) times the difference between the value of the damaged merchandise and the value of the merchandise prior to its conversion if the merchant recovers the merchandise but it is in a damaged state; or

(C) The greater of one hundred dollars ($100) or an amount twice the listed retail price of the merchandise if the merchant recovers the merchandise in the same condition it was in prior to the conversion.

(b) Civil liability under this section is not limited by any other law concerning the liability of parents or guardians or minors.

(c) A conviction for the offense of shoplifting is not a prerequisite to the maintenance of a civil action authorized by this section.

(d) The fact that a mercantile establishment may bring an action against an individual as provided in this section shall not limit the right of the establishment to demand, orally or in writing, that a person who is liable for damages and penalties under this section remit the damages prior to the consideration of the commencement of any legal action.

(e) An action for recovery of damages and penalties under this section may be brought in any court of competent jurisdiction, including a court of general sessions, if the total damages do not exceed the jurisdictional limit of the court involved.

(f) If a written agreement is entered into between the merchant and the person responsible for damages and penalties pursuant to this section concerning the liability of the person and the payment of the damages and penalties, the agreement and the contents of the agreement shall remain confidential as long as the parties to the agreement continue to adhere to its terms.

(g) The civil remedy conferred upon merchants by this section shall not apply if the listed retail price of the merchandise taken was in excess of five hundred dollars ($500).

(h) Use of the civil remedy conferred upon merchants by this section shall not be construed to be a violation of § 39-16-604, prohibiting the compounding of an offense.

(i) Any demand in writing or other document sent to the adult, parent or guardian of a minor covered by this section shall also be sent to the district attorney general of the judicial district in which the offense occurred. If the appropriate district attorney general has not, within ten (10) days from the date the document was sent, objected to the use of this section in lieu of criminal prosecution, the district attorney general is deemed to have consented to the use of this section by the mercantile establishment. If the mercantile establishment does not send a written demand or other document to the adult, parent or guardian, the district attorney general must be notified and must consent, either orally or in writing, to the use of this section in lieu of criminal prosecution.

(j) Whenever a retail merchant, the merchant's agent, or the merchant's employee apprehends an adult or minor who has committed theft as described in subsection (a), the merchant, agent, or employee shall not at that time enter into any written agreement to accept civil damages in lieu of criminal penalties or actually accept any civil damages.

History.
Acts 1990, ch. 1007, § 1; 1991, ch. 288, §§ 1, 3, 4, 6, 8.

Compiler's Notes.
The sentencing commission terminated June 30, 1995. Sentencing Commission Comments have been retained, but do not reflect 1995 or subsequent legislation.

PART 4

BURGLARY AND RELATED OFFENSES

39-14-407. Trespass by motor vehicle.

(a) Any person who drives, parks, stands, or otherwise operates a motor vehicle on, through or within a parking area, driving area or roadway located on privately owned property which is provided for use by patrons, customers or employees of business establishments upon that property, or adjoining property or for use otherwise in connection with activities conducted upon that property, or adjoining property, after the person has been requested or ordered to leave the property or to cease doing any of the foregoing actions commits a Class C misdemeanor with no incarceration permitted. A request or order under this section may be given by a law enforcement officer or by the owner, lessee, or other person having the right to the use or control of the property, or any authorized agent or representative thereof, including, but not limited to, private security guards hired to patrol the property.

(b) As used in this section, "motor vehicle" includes an automobile, truck, van, bus, recreational vehicle, camper, motorcycle, motor bike, moped, go-cart, all terrain vehicle, dune buggy, and any other vehicle propelled by motor.

(c) A property owner, lessee or other person having the right to the use or control of property may post signs or other notices upon a parking area, driving area or roadway giving notice of this section and warning that violators will be prosecuted; provided, that the posting of signs or notices shall not be a requirement to prosecution under this section and failure to post signs or notices shall not be a defense to prosecution hereunder.

History.
Acts 1989, ch. 591, § 1.

39-14-408. Vandalism.

(a) For purposes of this section:

(1) "Damage" includes, but is not limited to:

(A) Destroying, polluting, or contaminating property;

(B) Tampering with property and causing pecuniary loss or substantial inconvenience to the owner or a third person;

(C) Intentionally spilling, pouring, or otherwise administering chemicals or other toxic substances to or on the merchandise with the intent to:

(i) Render the merchandise unusable or unsellable; or

(ii) Alter the merchandise from its original or intended form; or

(D) Destroying, harming, or decreasing the value of merchandise offered for sale by a retail merchant in any other manner;

(2) "Merchandise" includes any goods, chattels, foodstuffs, or wares of any type of description, re-

gardless of the value;

(3) "Polluting" means the contamination by man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of the atmosphere, water, or soil to the material injury of the right of another. Pollutants include dredged soil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste;

(4) "Retail merchant" means any person primarily engaged in the business of making retail sales. For purposes of this subdivision (a)(4), "primarily" means that at least fifty percent (50%) of the taxable gross sales of the business are retail sales; and

(5) "Retail sale" or "sale at retail" means any sale other than a wholesale sale.

(b) A person commits the offense of vandalism who knowingly:

(1) Causes damage to or the destruction of any real or personal property of another or of the state, the United States, any county, city, or town knowing that the person does not have the owner's effective consent;

(2) Solicits, directs, aids, or attempts to aid another to commit vandalism of a retail merchant, while acting with the intent to promote or assist the commission of vandalism of a retail merchant, or to benefit in the proceeds or results of the offense;

(3) Damages merchandise offered for retail sale by a retail merchant; or

(4) Facilitates commission of vandalism of a retail merchant or acts as an accessory after the fact to vandalism of a retail merchant.

(c)(1) A person violating subdivision (b)(1) or (b)(3) is a principal under § 39-11-401 and shall be punished as for theft under § 39-14-105, after determining value under § 39-11-106.

(2) A person violating subdivision (b)(2), is a principal under § 39-11-402 and shall be punished as for theft under § 39-14-105, after determining value under § 39-11-106.

(3) A person violating subdivision (b)(4) by facilitating a felony act of vandalism committed under subdivision (b)(1) or (b)(3), shall be punished one (1) classification lower than the value of the act of vandalism committed under subdivision (b)(1) or (b)(3).

(4) A person violating subdivision (b)(4) as an accessory after the fact, under § 39-11-411, to a felony act of vandalism committed under subdivision (b)(1) or (b)(3) commits a Class E felony.

History.

Acts 1989, ch. 591, § 1; 1997, ch. 284, § 3; 2005, ch. 353, § 16; 2015, ch. 183, § 1.

Compiler's Notes.

Acts 2005, ch. 353, § 18 provided that the act shall apply to sentencing for criminal offenses committed on or after June 7, 2005. Offenses committed prior to June 7, 2005, shall be governed by prior law, which shall apply in all respects. However, for defendants who are sentenced after June 7, 2005, for offenses committed on or after July 1, 1982, the defendant may elect to be sentenced under the provisions of the act by executing a waiver of such defendant's ex post facto protections. Upon executing such a waiver, all provisions of the act shall apply to the defendant.

Acts 2005, ch. 353, § 19 provided that the act shall have no application to sentencing for persons convicted of murder in the first degree, which shall be governed by the provisions of §§ 39-13-202 — 39-13-208.

Acts 2005, ch. 353, § 20(b) provided that the Tennessee Code Commission is requested to insert a cross reference in §§ 39-13-102, 39-13-502, 39-13-503, 39-13-505, 39-13-506, 39-13-522, 39-14-302 and 39-14-408 to § 40-35-114 stating that the enhancement factor formerly found in each such section was moved to § 40-35-114 so that all enhancement factors are located in one (1) section.

The sentencing commission terminated June 30, 1995. Sentencing Commission Comments have been retained, but do not reflect 1995 or subsequent legislation.

CHAPTER 15

OFFENSES AGAINST THE FAMILY

Part 1. Nonsupport

SECTION.
39-15-101. Nonsupport and flagrant nonsupport.
39-15-102. Jurisdiction.
39-15-103. Appeal.
39-15-104. Procedure — Enforcement.

Part 2. Abortion

39-15-201. Criminal abortion and attempt to procure criminal miscarriage — Penalties — Lawful abortions and attempts to procure miscarriage — Requirements.
39-15-202. Consent of pregnant woman required prior to abortion — Information provided by doctor — Waiting period — Penalty for violation — Requirements inapplicable in certain cases.
39-15-203. Records and reports of abortions — Disposition of aborted fetus or aborted fetal tissue — Method of disposition — Confidentiality.
39-15-204. Right to refuse to perform abortions.
39-15-205. Right of hospitals to refuse to accept abortion patients.
39-15-206. Rights to medical treatment of infant prematurely born alive during abortion — Penalty for violation — Limitation on wrongful death action.
39-15-207. Custody of infant prematurely born alive during abortion.
39-15-208. Research, photography, and experimentation upon aborted fetuses — Sale of aborted fetuses or aborted fetal tissue prohibited — Penalty for violation.
39-15-209. Partial birth abortions.
39-15-210. Child Rape Protection Act of 2006.

Part 3. Bigamy and Incest

39-15-301. Bigamy.
39-15-302. Incest.

Part 4. Children

39-15-401. Child abuse and child neglect or endangerment.
39-15-402. Haley's Law — Aggravated child abuse and aggravated child neglect or endangerment — Definitions.
39-15-403. Tattooing of minors.
39-15-404. Enticing a child to purchase alcoholic beverages — Purchasing of alcoholic beverages for child.
39-15-405, 39-15-406. [Reserved.]
39-15-407. Definitions for §§ 39-15-407 — 39-15-413.
39-15-408. Dissemination of smoking paraphernalia to minors.
39-15-409. Acquisition of smoking paraphernalia by minor prohibited.
39-15-410. Identification containing proof of age.
39-15-411. Warning sign or decal.
39-15-412. Multiple violations.
39-15-413. Law enforcement efforts.

SECTION.
39-15-414. Offense of harboring or hiding a runaway child.

PART 1

NONSUPPORT

39-15-101. Nonsupport and flagrant nonsupport.

(a) A person commits the crime of nonsupport who fails to provide support which that person is able to provide and knows the person has a duty to provide to a minor child or to a child or spouse who, because of physical or mental disability, is unable to be self-supporting.

(b) "Child" includes legitimate children and children whose parentage has been admitted by the person charged or established by judicial action.

(c) "Support" includes, but is not limited to, financial assistance, food, shelter, clothing, medical attention or, if determined elsewhere by law, other necessary care.

(d) A person commits the offense of flagrant nonsupport who:

(1) Leaves or remains without the state to avoid a legal duty of support; or

(2) Having been convicted one (1) or more times of nonsupport or flagrant nonsupport, is convicted of a subsequent offense under this section.

(e)(1) Nonsupport under subsection (a) is a Class A misdemeanor.

(2) Flagrant nonsupport under subsection (d) is a Class E felony.

History.
Acts 1989, ch. 591, § 1.

39-15-102. Jurisdiction.

(a) The juvenile court is vested with jurisdiction to:

(1) Try, determine, and render final judgment in all misdemeanor cases under § 39-15-101 where the person enters a plea of guilty, nolo contendere, or not guilty and expressly waives indictment, presentment, grand jury investigation, and jury trial in writing. In such cases, the trial shall proceed before the court without the intervention of a jury;

(2) Conduct preliminary hearings in all felony cases under § 39-15-101(d), and if the court finds probable cause and in all other cases where the person pleads not guilty to a felony charge or does not waive the right to a jury trial, bind the person over for the action of the grand jury under appropriate bond; and

(3) Regardless of whether the person is tried in juvenile court or bound over, enter an order of protection and assistance which may require the person to:

(A) Stay away from the home, dependent child or spouse;

(B) Permit the defendant visitation with the child or children at reasonable or stated periods;

(C) Abstain from offensive conduct against the dependent child or spouse or from other acts which tend to make the home an unfit place for the dependent person to live; or

(D) Give proper attention to the care of the home.

(b)(1) In all cases where the person pleads or is found guilty of a misdemeanor under § 39-15-101(a), the court shall sentence the person in accordance with title 40, chapter 35, and enter appropriate orders of support, protection or assistance.

(2) In the event the person's sentence is suspended, the court may require the person to give security by bond with sufficient sureties approved by the court for the payment of the order of support. Should the court subsequently find the person is able to comply with the order and fails to do so, the bond shall be forfeited and the proceeds paid into the court to be applied to the order of support, and the person shall be brought immediately before the court for enforcement of the sentence.

(c) In all cases where the person is bound over to the grand jury, the criminal court shall enforce any order of protection and assistance entered by the juvenile court, and may, if the person is convicted, include the order or modification of the order as part of the judgment and sentence.

History.
Acts 1989, ch. 591, § 1.

39-15-103. Appeal.

(a) An appeal from any final order or decree of the juvenile court pursuant to this part may be perfected to the court of appeals; provided, that any order of actual imprisonment except for contempt may be perfected as are appeals from any other criminal conviction pursuant to § 40-4-112.

(b) No appeal shall operate as a stay of execution, unless the person receives the court's permission, gives the security provided in § 39-15-102(b)(2) and, when necessary, executes an appearance bond.

History.
Acts 1989, ch. 591, § 1.

39-15-104. Procedure — Enforcement.

(a) When complaint on oath is made to the judge of any juvenile court against a person to be charged with a violation of this part, the judge must issue a warrant requiring the arrest of the person charged and that person is to be brought before the judge for examination; provided, that if the person, being duly summoned or voluntarily appearing, acknowledges the obligation of support, the court may in its discretion enter a consent order in lieu of the issuance of a warrant.

(b) No arrest warrant shall issue for the violation of any court order of support if the violation occurred during a period of time in which the person was incarcerated in any penal institution and was otherwise unable to comply with the order; provided, that this section shall not prevent the determining of arrearages under any previous order, and enforcement of the order as is consistent with the person's ability to comply.

(c) It is the duty of the governor to demand the return of any person charged under § 39-15-101(d) from the governor of any other state where the person may be found, upon proper warrant being issued or indictment being returned.

(d) Any court vested with jurisdiction to implement this part may enforce its orders and decrees by execution or in any way in which a court of equity may enforce its orders and decrees, including by imprisonment and fine for contempt. No property of the person, except all statutory homestead rights, shall be exempt from levy and sale under such execution or other process issued from the court. All provisions of title 36, chapter 5 that relate to child support or child support orders that include an order of spousal support and § 50-2-105 shall apply to support orders issued in these proceedings.

History.
Acts 1989, ch. 591, § 1.

PART 2

ABORTION

39-15-201. Criminal abortion and attempt to procure criminal miscarriage — Penalties — Lawful abortions and attempts to procure miscarriage — Requirements.

(a) For the purpose of this section:

(1) "Abortion" means the administration to any woman pregnant with child, whether the child be quick or not, of any medicine, drug, or substance whatever, or the use or employment of any instrument, or other means whatever, with the intent to destroy the child, thereby destroying the child before the child's birth; and

(2) "Attempt to procure a miscarriage" means the administration of any substance with the intention to procure the miscarriage of a woman or the use or employment of any instrument or other means with such intent.

(b)(1) Every person who performs an abortion commits the crime of criminal abortion, unless such abortion is performed in compliance with the requirements of subsection (c). Criminal abortion is a Class C felony.

(2) Every person who attempts to procure a miscarriage commits the crime of attempt to procure criminal miscarriage, unless the attempt to procure a miscarriage is performed in compliance with the requirements of subsection (c). Attempt to procure a criminal miscarriage is a Class E felony.

(3) Every person who compels, coerces, or exercises duress in any form with regard to any other person in order to obtain or procure an abortion on any female commits a misdemeanor. A violation of this section is a Class A misdemeanor.

(c) No person is guilty of a criminal abortion or an attempt to procure criminal miscarriage when an abortion or an attempt to procure a miscarriage is performed under the following circumstances:

(1) During the first three (3) months of pregnancy, if the abortion or attempt to procure a miscarriage is performed with the pregnant woman's consent and pursuant to the medical judgment of the pregnant woman's attending physician who is licensed or certified under title 63, chapter 6 or 9;

(2) After three (3) months, but before viability of the fetus, if the abortion or attempt to procure a miscarriage is performed with the pregnant woman's consent and in a hospital as defined in § 68-11-201, licensed by the state department of health, or a hospital operated by the state of Tennessee or a branch of the federal government, by the pregnant woman's attending physician, who is licensed or certified under title 63, chapter 6 or 9, pursuant to the attending physician's medical judgment; or

(3) During viability of the fetus, if the abortion or attempt to procure a miscarriage is performed with the pregnant woman's consent and by the pregnant woman's attending physician, who is licensed or certified under title 63, chapter 6 or 9; and, if all the circumstances and provisions required for a lawful abortion or lawful attempt to procure a miscarriage during the period set out in subdivision (c)(2) are adhered to; and if, prior to the abortion or attempt to procure a miscarriage the physician has certified in writing to the hospital in which the abortion or attempt to procure a miscarriage is to be performed, that in the physician's best medical judgment, after proper examination, review of history, and such consultation as may be required by either the rules and regulations of the board for licensing health care facilities promulgated pursuant to § 68-11-209, or the administration of the hospital involved, or both, the abortion or attempt to procure a miscarriage is necessary to preserve the life or health of the mother, and shall have filed a copy of the certificate with the district attorney general of the judicial district in which the abortion or attempt to procure a miscarriage is to be performed.

(d) No abortion shall be performed on any pregnant woman unless the woman first produces evidence satisfactory to the physician performing the abortion that she is a bona fide resident of Tennessee. Evidence to support the claim of residence shall be noted in the records kept by the physician and, if the abortion is performed in a hospital, in the records kept by the hospital. A violation of this subsection (d) is punished as provided by subdivision (b)(1).

History.
Acts 1989, ch. 591, § 1.

Compiler's Notes.
The sentencing commission terminated June 30, 1995. Sentencing Commission Comments have been retained, but do not reflect 1995 or subsequent legislation.

39-15-202. Consent of pregnant woman required prior to abortion — Information provided by doctor — Waiting period — Penalty for violation — Requirements inapplicable in certain cases.

(a) Except in a medical emergency that prevents compliance with this subsection (a), no abortion shall be performed or induced upon a pregnant woman unless the woman has provided her informed written consent, given freely and without coercion. Such consent shall be treated as confidential.

(b) In order to ensure that a consent for an abortion is truly informed consent, except in a medical emergency that prevents compliance with this subsection (b) or any of the requirements of subdivisions (b)(1)-(5), no abortion shall be performed or induced upon a pregnant woman unless she has first been informed orally and in person by the attending physician who is to perform the abortion, or by the referring physician, of the following facts and has signed a consent form acknowledging that she has been informed as follows:

(1) That according to the best judgment of her attending physician or referring physician she is pregnant;

(2) The probable gestational age of the unborn child at the time the abortion is to be performed, based upon the information provided by her as to the time of her last menstrual period or after a history, physical examination, and appropriate laboratory tests;

(3) That if twenty-four (24) or more weeks have elapsed from the first day of her last menstrual period or twenty-two (22) or more weeks have elapsed from the time of conception, her unborn child may be viable, that is, capable of sustained survival outside of the womb, with or without medical assistance, and that if a viable child is prematurely born alive in the course of an abortion, the physician performing the abortion has a legal obligation to take steps to preserve the life and health of the child;

(4) That numerous public and private agencies and services are available to assist her during her pregnancy and after the birth of her child, if she chooses not to have the abortion, whether she wishes to keep her child or place the child for adoption, and that her attending physician or referring physician will provide her with a list of the agencies and the services available if she so requests; and

(5) The normal and reasonably foreseeable medical benefits, risks, or both of undergoing an abortion or continuing the pregnancy to term.

(c) Except in a medical emergency that prevents compliance with this subsection (c), at the same time the attending physician or referring physician provides the information required by subsection (b), that physician shall inform the pregnant woman of the particular risks associated with her pregnancy and continuing the pregnancy to term, based upon the information known to the physician, as well as the risks of undergoing an abortion, along with a general description of the method of abortion to be used and the medical instructions to be followed subsequent to the abortion.

(d)(1) Except in a medical emergency that prevents compliance with this subdivision (d)(1), no abortion shall be performed until a waiting period of forty-eight (48) hours has elapsed after the attending physician or referring physician has provided the information required by subsections (b) and (c), including the day on which the information was provided. After the forty-eight (48) hours have elapsed and prior to the performance of the abortion, the patient shall sign the consent form required by subsection (b).

(2) If any court temporarily, preliminarily, or permanently enjoins enforcement of subdivision (d)(1) or declares it unconstitutional, then the waiting period imposed by subdivision (d)(1) shall be twenty-four (24) hours, subject to the same medical emergency exception. If the injunction or declaration is subsequently vacated or reversed, the waiting period shall revert to forty-eight (48) hours.

(e) Except in a medical emergency that prevents compliance with subsection (b), the physician performing or inducing the abortion shall provide the pregnant woman with a duplicate copy of the consent form signed by her.

(f)(1) For purposes of subsections (a), (b), (c), (d), and (e), a medical emergency is a condition that, on the basis of the physician's good faith medical judgment, so complicates a medical condition of a pregnant woman as to necessitate an immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of major bodily function.

(2) When a medical emergency compels the performance of an abortion, the physician shall inform the woman, prior to the abortion if possible, of the medical reasons supporting the physician's judgment that an abortion is necessary to avert her death or to avert substantial and irreversible impairment of major bodily function.

(3) In any case in which a physician has determined that a medical emergency exists that excuses compliance with subsection (a), (b), (c), or (d), the physician shall state in the pregnant woman's medical records the basis for such determination.

(g) For purposes of this section, "the physician", "the attending physician", or "the referring physician" means any person who is licensed to practice medicine or osteopathy in this state.

(h)(1) An intentional or knowing violation of subsection (a), (b), (c), or (d), or subdivision (f)(2) by a physician is a Class E felony.

(2) An intentional, knowing, or reckless violation of subsection (e) or subdivision (f)(3) by a physician is a Class A misdemeanor.

(3) In addition to subdivisions (h)(1) and (2), any physician who intentionally, knowingly, or recklessly violates any of the provisions of this section is guilty of unprofessional conduct and such physician's license for the practice of medicine and surgery or osteopathy shall be subject to suspension or revoca-

tion in accordance with the procedures provided under title 63, chapters 6 and 9.

(i)(1)(A) Any private physician's office, ambulatory surgical treatment center, or other facility or clinic in which abortions, other than abortions necessary to prevent the death of the pregnant female, are performed shall conspicuously post a sign in a location defined in subdivision (i)(1)(C) so as to be clearly visible to patients, which reads:

Notice: It is against the law for anyone, regardless of the person's relationship to you, to coerce you into having or to force you to have an abortion. By law, we cannot perform an abortion on you unless we have your freely given and voluntary consent. It is against the law to perform an abortion on you against your will. You have the right to contact any local or state law enforcement agency to receive protection from any actual or threatened criminal offense to coerce an abortion.

(B) The sign required pursuant to subdivision (i)(1)(A) shall be printed in languages appropriate for the majority of clients of the facility with lettering that is legible and that is Arial font, at least 40-point bold-faced type.

(C) A facility in which abortions are performed that is a private physician's office or an ambulatory surgical treatment center shall post the required sign in each patient waiting room and patient consultation room used by patients on whom abortions are performed. A hospital or any other facility in which abortions are performed that is not a private physician's office or ambulatory surgical treatment center shall post the required sign in the admissions or registration department used by patients on whom abortions are performed.

(2)(A) An ambulatory surgical treatment center or other licensed facility shall be assessed a civil penalty by the board for licensing health care facilities of two thousand five hundred dollars ($2,500) for each day of violation in which:

(i) The sign required in subdivision (i)(1)(A) was not posted during business hours when patients or prospective patients were present; and

(ii) An abortion other than an abortion necessary to prevent the death of the pregnant female was performed in the ambulatory surgical treatment center or other licensed facility.

(B) A licensed physician shall be assessed a civil penalty by the physician's title 63 medical licensing board of one thousand dollars ($1,000) for each day of violation in which:

(i) The sign required in subdivision (i)(1)(A) was not posted during business hours when patients or prospective patients were present at the private physician's office or clinic; and

(ii) The physician performed an abortion in the private physician's office.

(3) The penalty provided for in subdivision (i)(2) is in addition to any other remedies applicable under other law, and subdivision (i)(2) does not preclude prosecution and conviction under any applicable criminal law.

(j)(1) A physician may not perform an abortion unless the physician has admitting privileges at a hospital licensed under title 68 that is located:

(A) In the county in which the abortion is performed; or

(B) In a county adjacent to the county in which the abortion is performed.

(2) The physician who performs an abortion or a healthcare provider licensed pursuant to title 63 under the supervision of the physician shall notify the patient of the location of the hospital at which the physician has privileges and where the patient may receive follow-up care by the physician if complications arise.

History.

Acts 1989, ch. 591, § 1; 1995, ch. 458, § 4; 2010, ch. 790, § 2; 2012, ch. 1008, § 2; 2015, ch. 473, § 1.

Compiler's Notes.

Acts 2010, ch. 790, § 1 provided that the act shall be known and may be cited as the "Freedom From Coercion Act."

Acts 2012, ch. 1008, § 1 provided that the act, which added former subsection (h), now subsection (j), shall be known and may be cited as the "Life Defense Act of 2012."

Acts 2012, ch. 1008, § 3 provided that any provision of the act, which added former subsection (h), now subsection (j), held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable herefrom and shall not affect the remainder hereof or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

Acts 2015, ch. 473, § 2 provided that the attorney general and reporter shall notify the secretary of state and the executive secretary of the Tennessee code commission upon the occurrence of any of the events described in (d)(2).

The sentencing commission terminated June 30, 1995. Sentencing Commission Comments have been retained, but do not reflect 1995 or subsequent legislation.

39-15-203. Records and reports of abortions — Disposition of aborted fetus or aborted fetal tissue — Method of disposition — Confidentiality.

(a) A physician performing an abortion shall keep a record of each procedure and of the disposition of the aborted fetus or aborted fetal tissue. The physician shall make a report to the commissioner of health with respect thereto at the time and in the form as the commissioner may reasonably prescribe. If the procedure is solely a medication termination and the expulsion of the aborted fetus or aborted fetal tissue does not take place at the facility or clinic where the procedure took place, the physician shall not be required to keep a record of the disposition or report such disposition to the commissioner.

(b)(1) The physician shall note in the section regarding the disposition of the aborted fetus or aborted fetal tissue the method of disposition.

(2) If the aborted fetus or aborted fetal tissue is transferred to a third party for disposition, the name and address of that third party, and the date of the transfer, shall be included on the report.

(c) The method of disposition of an aborted fetus or aborted fetal tissue shall be in conformity with the rules of the board for licensing healthcare facilities.

(d) Each record and report made pursuant to this section shall be confidential in nature and shall not be public record open for inspection.

History.
Acts 1989, ch. 591, § 1; 2016, ch. 1003, § 1.

Compiler's Notes.
Acts 2016, ch. 1003, § 7 provided that notwithstanding this act or the Uniform Administrative Procedures Act, compiled in Tennessee Code Annotated, Title 4, Chapter 5, any rule promulgated to implement the provisions of this act shall be provided to the chairs of the health committee of the house of representatives and the health and welfare committee of the senate by the secretary of state, after approval by the attorney general and reporter, at the same time the text of the rule is made available to the government operations committees of the senate and the house of representatives for purposes of conducting the review required by § 4-5-226 in order for the health committee of the house of representatives and the health and welfare committee of the senate to be afforded the opportunity to comment on the rule.

39-15-204. Right to refuse to perform abortions.

No physician shall be required to perform an abortion and no person shall be required to participate in the performance of an abortion. No hospital shall be required to permit abortions to be performed therein.

History.
Acts 1989, ch. 591, § 1.

39-15-205. Right of hospitals to refuse to accept abortion patients.

No section of this part shall be construed to force a hospital to accept a patient for an abortion.

History.
Acts 1989, ch. 591, § 1.

39-15-206. Rights to medical treatment of infant prematurely born alive during abortion — Penalty for violation — Limitation on wrongful death action.

(a) The rights to medical treatment of an infant prematurely born alive in the course of an abortion are the same as the rights of an infant of similar medical status prematurely born spontaneously. Any person who performs or induces an abortion of an infant shall exercise that degree of professional skill, care, and diligence in accordance with good medical practice necessary to preserve the life and health of an infant prematurely born alive in the course of an abortion, except that if it can be determined, through amniocentesis or medical observation, that the fetus is severely malformed, the use of extraneous life support measures need not be attempted.

(b) Any person who violates this section commits a Class E felony.

(c) No cause of action for wrongful death shall be brought which arises out of the death of a fetus or infant during the course of a lawful abortion, whether the fetus or infant is quick or not, so long as the abortion is performed in accordance with this part; however, once an infant is born alive, any person in attendance shall be civilly responsible for providing all reasonable and necessary care reasonable under the circumstances in the general vicinity in which the person in attendance practices.

History.
Acts 1989, ch. 591, § 1.

39-15-207. Custody of infant prematurely born alive during abortion.

An infant prematurely born alive in the course of a voluntary abortion is declared abandoned for purposes of custody only, and the department of children's services shall care for the infant as provided in § 34-1-103.

History.
Acts 1989, ch. 591, § 1; 1996, ch. 1079, § 124.

39-15-208. Research, photography, and experimentation upon aborted fetuses — Sale of aborted fetuses or aborted fetal tissue prohibited — Penalty for violation.

(a) It is unlawful for any person, agency, corporation, partnership or association to engage in medical experiments, research, or the taking of photographs upon an aborted fetus without the prior knowledge and written consent of the mother; provided, however, that prior knowledge and consent of the mother shall not be required when a person is taking photographs of the aborted fetus for the purpose of capturing images that the person reasonably believes depict evidence of a violation of a state or federal law, rule, or regulation.

(b) No person, agency, corporation, partnership, or association shall offer money, or anything of value, for an aborted fetus or aborted fetal tissue; nor shall any person, agency, corporation, partnership, or association accept any money or anything of value for an aborted fetus or aborted fetal tissue, or offer or accept any reimbursement of any costs associated with the preparation, preservation, transfer, shipping, or handling of an aborted fetus or aborted fetal tissue.

(c) It is the express intent of the general assembly that nothing in this section shall be construed to grant to a fetus any legal right not possessed by a fetus prior to July 1, 1979.

(d) A violation of this section is punishable as a Class E felony.

History.
Acts 1989, ch. 591, § 1; 2016, ch. 986, § 1; 2016, ch. 1003, § 2.

Compiler's Notes.
Acts 2016, ch. 1003, § 7 provided that notwithstanding this act or the Uniform Administrative Procedures Act, compiled in Tennessee Code Annotated, Title 4, Chapter 5, any rule promulgated to implement the provisions of this act shall be provided to the chairs of the health committee of the house of representatives and the health and welfare committee of the senate by the secretary of state, after approval by the attorney general and reporter, at the same time the text of the rule is made available to the government operations committees of the senate and the house of representatives for purposes of conducting the review required by § 4-5-226 in order for the health committee of the house of

representatives and the health and welfare committee of the senate to be afforded the opportunity to comment on the rule.

39-15-209. Partial birth abortions.

(a) For purposes of this section, unless the context otherwise requires:

(1) "Partial-birth abortion" means an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery; and

(2) "Vaginally delivers a living fetus before killing the fetus" means deliberately and intentionally delivers into the vagina a living fetus, or a substantial portion of a living fetus, for the purpose of performing a procedure the physician knows will kill the fetus, and kills the fetus.

(b) No person shall knowingly perform a partial-birth abortion.

(c) Subsection (b) shall not apply to a partial-birth abortion that is necessary to save the life of the mother whose life is endangered by a physical disorder, illness or injury.

(d)(1) A defendant accused of an offense under this section may seek a hearing before the state medical board that licenses the physician, on whether the physician's conduct was necessary to save the life of the mother whose life was endangered by a physical disorder, illness or injury.

(2) The findings on that issue are admissible on that issue at the trial of the defendant. Upon a motion of the defendant, the court shall delay the beginning of the trial for not more than thirty (30) days to permit the hearing to take place.

(e)(1) Performance of a partial-birth abortion in knowing or reckless violation of this section shall be a Class C felony.

(2) A woman upon whom a partial-birth abortion is performed may not be prosecuted under this section for violating this section or any of its provisions, or for conspiracy to violate this section or any of its provisions.

History.
Acts 1997, ch. 414, § 1.

39-15-210. Child Rape Protection Act of 2006.

(a) This section shall be known and may be cited as the "Child Rape Protection Act of 2006."

(b) When a physician has reasonable cause to report the sexual abuse of a minor pursuant to § 37-1-605, because the physician has been requested to perform an abortion on a minor who is less than thirteen (13) years of age, the physician shall, at the time of the report, also notify the official to whom the report is made of the date and time of the scheduled abortion and that a sample of the embryonic or fetal tissue extracted during the abortion will be preserved and available to be turned over to the appropriate law enforcement officer conducting the investigation into the rape of the minor.

(c)(1) In the transmission of the embryonic or fetal tissue sample to the appropriate law enforcement officer, in order to protect the identity and privacy of the minor, all identifying information concerning the minor shall be treated as confidential and shall not be released to anyone other than the investigating and prosecuting authorities directly involved in the case of the particular minor.

(2) Where the minor has obtained a judicial waiver of the parental notification requirements pursuant to title 37, chapter 10, part 3, confidentiality shall be maintained as provided in that part.

(d) It is an offense for a physician licensed or certified under title 63, chapter 6 or 9, or other person to knowingly fail to comply with this section or any rule or regulation adopted pursuant to this section.

(1) A first violation of this section is a civil penalty to be assessed by the provider's health related board of not less than five hundred dollars ($500);

(2) A second violation of this section is a civil penalty to be assessed by the provider's health related board of not less than one thousand dollars ($1,000); and

(3) A third or subsequent violation of this section is a Class A misdemeanor.

(e) If the person performing the abortion is a physician licensed or certified under title 63, chapter 6 or 9, the violation constitutes unprofessional conduct. The conduct subjects the physician, in addition to the penalties set out in subsection (d), to disciplinary action.

History.
Acts 2006, ch. 845, § 1.

PART 3

BIGAMY AND INCEST

39-15-301. Bigamy.

(a) A person commits bigamy who:

(1) Is married and purports to marry or be married to a person other than the person's spouse in this state under circumstances that would, but for the person's existing marriage, constitute a marriage; or

(2) Knows that a person other than the person's spouse is married and purports to marry or be married to the person in this state under circumstances that would, but for the person's existing marriage, constitute a marriage.

(b) It is a defense to prosecution under subdivision (a)(1) that the person reasonably believed that the person's marriage had been dissolved by death, divorce or annulment.

(c) For purposes of determining when prosecution for this offense must begin under § 40-2-101:

(1) A violation of this section is a continuing offense; and

(2) Nothing in this section shall be construed as limiting the applicability of § 40-2-103.

(d) Bigamy is a Class A misdemeanor and, in addition to the authorized term of imprisonment, shall be punishable by a fine not to exceed five thousand dollars ($5,000).

History.
Acts 1989, ch. 591, § 1; 2013, ch. 227, §§ 1, 2.

Compiler's Notes.
The sentencing commission terminated June 30, 1995. Sentencing Commission Comments have been retained, but do not reflect 1995 or subsequent legislation.

39-15-302. Incest.

(a) A person commits incest who engages in sexual penetration as defined in § 39-13-501, with a person, knowing the person to be, without regard to legitimacy:

(1) The person's natural parent, child, grandparent, grandchild, uncle, aunt, nephew, niece, stepparent, stepchild, adoptive parent, adoptive child; or

(2) The person's brother or sister of the whole or half-blood or by adoption.

(b) Incest is a Class C felony.

History.
Acts 1989, ch. 591, § 1; 1990, ch. 1030, § 25.

Compiler's Notes.
The sentencing commission terminated June 30, 1995. Sentencing Commission Comments have been retained, but do not reflect 1995 or subsequent legislation.

PART 4

CHILDREN

39-15-401. Child abuse and child neglect or endangerment.

(a) Any person who knowingly, other than by accidental means, treats a child under eighteen (18) years of age in such a manner as to inflict injury commits a Class A misdemeanor; provided, however, that, if the abused child is eight (8) years of age or less, the penalty is a Class D felony.

(b) Any person who knowingly abuses or neglects a child under eighteen (18) years of age, so as to adversely affect the child's health and welfare, commits a Class A misdemeanor; provided, that, if the abused or neglected child is eight (8) years of age or less, the penalty is a Class E felony.

(c)(1) A parent or custodian of a child eight (8) years of age or less commits child endangerment who knowingly exposes such child to or knowingly fails to protect such child from abuse or neglect resulting in physical injury to the child.

(2) For purposes of this subsection (c):

(A) "Knowingly" means the person knew, or should have known upon a reasonable inquiry, that abuse to or neglect of the child would occur which would result in physical injury to the child. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary parent or legal custodian of a child eight (8) years of age or less would exercise under all the circumstances as viewed from the defendant's standpoint; and

(B) "Parent or custodian" means the biological or adoptive parent or any person who has legal custody of the child.

(3) A violation of this subsection (c) is a Class A misdemeanor.

(d)(1) Any court having reasonable cause to believe that a person is guilty of violating this section shall have the person brought before the court, either by summons or warrant. No arrest warrant or summons shall be issued by any person authorized to issue the warrant or summons, nor shall criminal charges be instituted against a child's parent, guardian or custodian for a violation of subsection (a), based upon the allegation that unreasonable corporal punishment was administered to the child, unless the affidavit of complaint also contains a copy of the report prepared by the law enforcement official who investigated the allegation, or independent medical verification of injury to the child.

(2)(A) As provided in this subdivision (d)(2), juvenile courts, courts of general session, and circuit and criminal courts, shall have concurrent jurisdiction to hear violations of this section.

(B) If the person pleads not guilty, the juvenile judge or general sessions judge shall have the power to bind the person over to the grand jury, as in cases of misdemeanors under the criminal laws of this state. Upon being bound over to the grand jury, the person may be prosecuted on an indictment filed by the district attorney general and, notwithstanding § 40-13-103, a prosecutor need not be named on the indictment.

(C) On a plea of not guilty, the juvenile court judge or general sessions judge shall have the power to proceed to hear the case on its merits, without the intervention of a jury, if the person requests a hearing in juvenile court or general sessions court and expressly waives, in writing, indictment, presentment, grand jury investigation and a jury trial.

(D) If the person enters a plea of guilty, the juvenile court or general sessions court judge shall sentence the person under this section.

(E) Regardless of whether the person pleads guilty or not guilty, the circuit court or criminal court shall have the power to proceed to hear the case on its merits, and, if found guilty, to sentence the person under this section.

(e) Except as expressly provided, this section shall not be construed as repealing any provision of any other statute, but shall be supplementary to any other provision and cumulative of any other provision.

(f) A violation of this section may be a lesser included offense of any kind of homicide, statutory assault, or sexual offense, if the victim is a child and the evidence supports a charge under this section. In any case in which conduct violating this section also constitutes assault, the conduct may be prosecuted under this section or under § 39-13-101 or § 39-13-102, or both.

(g) For purposes of this section, "adversely affect the child's health and welfare" may include, but not be limited to, the natural effects of starvation or dehydration.

(h) The court may, in addition to any other punishment otherwise authorized by law, order a person

convicted of child abuse to refrain from having any contact with the victim of the offense, including, but not limited to, attempted contact through Internet services or social networking web sites; provided, that the person has no parental rights to such victim at the time of the court's order.

History.
Acts 1989, ch. 591, § 1; 1994, ch. 978, § 1; 1996, ch. 962, § 1; 1998, ch. 1040, § 2; 2005, ch. 487, § 1; 2006, ch. 939, § 1; 2008, ch. 1024, § 1; 2009, ch. 335, § 1; 2009, ch. 418, § 1; 2009, ch. 585, § 1; 2011, ch. 313, § 1.

Compiler's Notes.
Acts 2008, ch. 1024, § 2 provided that the act shall be known and may be cited as the "Josh Osborne Law."
Acts 2011, ch. 313, § 3 provided that the act, which added subsection (h), shall apply to offenses committed on or after July 1, 2011.

39-15-402. Haley's Law — Aggravated child abuse and aggravated child neglect or endangerment — Definitions.

(a) A person commits the offense of aggravated child abuse, aggravated child neglect or aggravated child endangerment, who commits child abuse, as defined in § 39-15-401(a); child neglect, as defined in § 39-15-401(b); or child endangerment, as defined in § 39-15-401(c) and:

(1) The act of abuse, neglect or endangerment results in serious bodily injury to the child;

(2) A deadly weapon, dangerous instrumentality, controlled substance or controlled substance analogue is used to accomplish the act of abuse, neglect or endangerment;

(3) The act of abuse, neglect or endangerment was especially heinous, atrocious or cruel, or involved the infliction of torture to the victim; or

(4) The act of abuse, neglect or endangerment results from the knowing exposure of a child to the initiation of a process intended to result in the manufacture of methamphetamine as described in § 39-17-435.

(b) A violation of this section is a Class B felony; provided, however, that, if the abused, neglected or endangered child is eight (8) years of age or less, or is vulnerable because the victim is mentally defective, mentally incapacitated or suffers from a physical disability, the penalty is a Class A felony.

(c) [Deleted by 2016 amendment.]

(d) "Serious bodily injury to the child" includes, but is not limited to, second- or third-degree burns, a fracture of any bone, a concussion, subdural or subarachnoid bleeding, retinal hemorrhage, cerebral edema, brain contusion, injuries to the skin that involve severe bruising or the likelihood of permanent or protracted disfigurement, including those sustained by whipping children with objects.

(e) A "dangerous instrumentality" is any item that, in the manner of its use or intended use as applied to a child, is capable of producing serious bodily injury to a child, as serious bodily injury to a child is defined in this section.

(f) This section shall be known and may be cited as "Haley's Law".

(g) The court may, in addition to any other punishment otherwise authorized by law, order a person convicted of aggravated child abuse to refrain from having any contact with the victim of the offense, including, but not limited to, attempted contact through Internet services or social networking web sites; provided, that the person has no parental rights to such victim at the time of the court's order.

History.
Acts 1989, ch. 591, § 1; 1994, ch. 978, §§ 2, 8; 1996, ch. 1069, § 1; 1998, ch. 1040, § 1; 2005, ch. 487, § 2; 2009, ch. 88, § 1; 2009, ch. 89, § 1; 2009, ch. 418, § 2; 2011, ch. 292, §§ 5-7; 2011, ch. 313, § 2; 2012, ch. 848, § 14; 2016, ch. 951, § 1.

Compiler's Notes.
Acts 2011, ch. 292, § 1 provided that the act shall be known and may be cited as the "I Hate Meth Act."
Acts 2011, ch. 313, § 3 provided that the act, which added subsection (g), shall apply to offenses committed on or after July 1, 2011.
The sentencing commission terminated June 30, 1995. Sentencing Commission Comments have been retained, but do not reflect 1995 or subsequent legislation.

39-15-403. Tattooing of minors.

(a) As used in this section, "tattoo" means to intentionally mark or color by pricking or inserting pigment or coloring matter into the skin so as to leave an indelible mark or figure.

(b) Except as provided by § 62-38-211, a person who, for commercial purposes, tattoos the skin of any person under eighteen (18) years of age commits a Class A misdemeanor.

(c) A person who knowingly falsifies documents for the purpose of obtaining tattooing services for a minor commits a Class A misdemeanor.

History.
Acts 1989, ch. 591, § 1; 2008, ch. 803, § 4; 2012, ch. 981, § 1.

39-15-404. Enticing a child to purchase alcoholic beverages — Purchasing of alcoholic beverages for child.

(a) Except as provided in § 39-15-413:

(1) It is an offense for a person to persuade, entice or send a minor to any place where alcoholic beverages, as defined in § 57-3-101(a)(1)(A), or beer, as defined in § 57-5-101(b), are sold, to buy or otherwise procure alcoholic beverages or beer in any quantity, for the use of the minor, or for the use of any other person;

(2) It is an offense for a person to give or buy alcoholic beverages or beer for or on behalf of any minor or to cause alcohol to be given or bought for or on behalf of any minor for any purpose; and

(3)(A) As used in this subdivision (a)(3), "underage adult" means a person who is at least eighteen (18) years of age but less than twenty-one (21) years of age;

(B) It is an offense for any owner, occupant or other person having a lawful right to the exclusive use and enjoyment of property to knowingly allow a person to consume alcoholic beverages, wine or beer on the property; provided, that the owner, occupant or other person knows that, at the time of the offense, the person consuming is an underage

adult;

(C) It is an affirmative defense to prosecution under subdivision (a)(3)(B) that the defendant acted upon a reasonably held belief that the underage adult was twenty-one (21) years of age or older;

(D) Subdivision (a)(3)(B) does not apply to consumption or possession of a de minimis quantity of alcohol or wine by an underage adult as permitted by § 1-3-113(b)(2);

(E) Nothing in this subdivision (a)(3) shall be construed, in any way whatsoever, to affect:

(i) Standards for imposing civil liability on social hosts pursuant to § 57-10-101;

(ii) Standards, established pursuant to § 37-1-156(a), for imposing criminal liability on adults who contribute or encourage the delinquency or unruly behavior of a child, as defined in § 37-1-102(b)(4); or

(iii) Standards, established pursuant to § 39-11-404, for imposing criminal liability on corporations.

(b) As used in this section, "minor" means a person under twenty-one (21) years of age.

(c) It is an affirmative defense to prosecution under this section that any person accused of giving or buying alcoholic beverages or beer for a minor acted upon a reasonably held belief that the minor was of legal age. The belief may be acquired by virtue of the minor making a false statement or presenting false identification that indicates that the minor is twenty-one (21) years of age or older.

(d) A violation of subsection (a) is a Class A misdemeanor and, in addition to the penalties authorized by § 40-35-111, the offender shall be sentenced to one hundred (100) hours of community service work. In addition to the penalties established in this subsection (d), the court having jurisdiction over the offender may, in its discretion, prepare and send an order for denial of the offender's driving privileges to the department of safety, driver control division. The offender may apply to the court for a restricted driver license, which may be issued in accordance with the provisions of § 55-50-502. In the event an offender does not possess a valid driver license, the court having jurisdiction over the offender may, in its discretion, increase the offender's sentence to a maximum of two hundred (200) hours of community service work.

(e) If a person engages in conduct that violates this section, as well as any other section, nothing in this section shall be construed to prohibit the prosecution and conviction of the person under this section or any other applicable section.

(f) Nothing in this section shall be construed to affect §§ 57-10-101 and 57-10-102 in any way whatsoever.

History.
Acts 1989, ch. 591, § 1; 2006, ch. 900, § 1; 2009, ch. 564, § 1.

Compiler's Notes.
The sentencing commission terminated June 30, 1995. Sentencing Commission Comments have been retained, but do not reflect 1995 or subsequent legislation.

39-15-405, 39-15-406. [Reserved.]

39-15-407. Definitions for §§ 39-15-407 — 39-15-413.

As used in §§ 39-15-407 — 39-15-413:

(1) "Disseminate" means to sell, offer to sell, give or otherwise transfer;

(2) "Minor" means any person under eighteen (18) years of age or, in the case of alcoholic beverages, any person under twenty-one (21) years of age;

(3) "Purchase" means to buy, attempt to buy, or offer to buy; and

(4) "Smoking paraphernalia" means a cigarette holder, cigarette papers, smoking pipe, water pipe or other item that is designated primarily to hold smoking material while the smoking material is being smoked.

History.
Acts 1989, ch. 591, § 1; 1994, ch. 872, § 11.

39-15-408. Dissemination of smoking paraphernalia to minors.

(a) It is an offense for a person to disseminate smoking paraphernalia to a minor.

(b) It is an offense to persuade, entice, send, or assist a minor to purchase, acquire, receive or attempt to purchase, acquire or receive smoking paraphernalia.

(c) A violation of this section is a Class C misdemeanor.

History.
Acts 1989, ch. 591, § 1; 1993, ch. 280, §§ 1, 2; 1994, ch. 872, § 11.

39-15-409. Acquisition of smoking paraphernalia by minor prohibited.

A minor shall not, directly or indirectly, purchase or acquire smoking paraphernalia. Any minor purchasing or acquiring smoking paraphernalia is subject to juvenile proceedings.

History.
Acts 1989, ch. 591, § 1; 1990, ch. 980, § 7; 1994, ch. 872, § 11.

39-15-410. Identification containing proof of age.

(a) A person contemplating the dissemination of smoking paraphernalia to an individual whom the person believes or has reason to believe may be a minor shall demand identification containing proof of age from the individual. Failure to do so is a Class C misdemeanor.

(b) A minor who presents identification pursuant to subsection (a) other than the minor's own, or that does not contain the individual's correct age or date of birth, is subject to juvenile court proceedings.

History.
Acts 1989, ch. 591, § 1; 1994, ch. 872, § 11.

39-15-411. Warning sign or decal.

(a) A person who disseminates smoking paraphernalia shall prominently display in the place where the

items are disseminated, either the sign required pursuant to § 39-17-1506(a) or the sign required by this section prior to April 22, 1994.

(b) A violation of this section is a Class C misdemeanor.

History.
Acts 1989, ch. 591, § 1; 1990, ch. 1030, § 26; 1994, ch. 872, § 11.

39-15-412. Multiple violations.

(a) Any vendor of smoking paraphernalia convicted of violating §§ 39-15-408 — 39-15-411 on three (3) separate occasions is prohibited from selling smoking paraphernalia, or from possession of smoking paraphernalia for resale, for a period of five (5) years from the date of the last conviction.

(b) A violation of this prohibition is a Class B misdemeanor.

History.
Acts 1989, ch. 591, § 1; 1994, ch. 872, § 11.

39-15-413. Law enforcement efforts.

(a)(1) It is not a violation of §§ 39-15-404, 39-15-410, 39-17-401 — 39-17-427, 39-17-602, 39-17-603, 39-17-901 — 39-17-908, 39-17-911, 39-17-914, 39-17-918, 39-17-1003 — 39-17-1005, 39-17-1501 — 39-17-1508, or any other offense providing a prohibition for use of or sales to a minor, for a law enforcement officer to use or send a minor, or in the case of alcohol a person under twenty-one (21) years of age, to purchase smoking material, smoking paraphernalia, any smokeless tobacco product, alcohol, illegal drugs, state lottery ticket or share, or any other prohibited material for the purpose of aiding in the enforcement of laws prohibiting sales to or use of minors so long as the law enforcement officer has obtained the prior written approval of the minor's parent or legal guardian. The consent of the minor's parent or legal guardian shall not be required where the person is eighteen (18) years of age or older.

(2) It is not a violation of § 39-15-404, § 39-15-410, or §§ 39-17-1501 — 39-17-1508, or any other statute prohibiting the use, possession or sales of alcohol, beer, lottery tickets, tobacco products, smokeless tobacco or smoking material or paraphernalia to a minor or a person under twenty-one (21) years of age, for a merchant in the business of selling alcohol, beer, lottery tickets, tobacco products, smokeless tobacco or smoking material or paraphernalia, to use or send a minor, or in the case of alcohol or beer, a person under twenty-one (21) years of age, to purchase any such product for the purpose of aiding in the enforcement of laws and policies prohibiting sales by the merchant at the merchant's place of business and preventing sales of such products to or use by individuals under age from occurring.

(b) Prior to using a minor to perform illegal or delinquent acts for the purposes of aiding in the enforcement of the laws of this state as permitted by this section, the law enforcement officer or merchant shall obtain the written approval of the minor's parent or legal guardian; provided, however, that the consent of the minor's parent or legal guardian shall not be required if the person used to make any such purchase is eighteen (18) years of age or older.

(c) In order to use a minor, or in the case of alcohol or beer, a person under twenty-one (21) years of age, for any of the purposes permitted by this section, the requirements of this subsection (c) shall apply.

(1) The minor or person under twenty-one (21) years of age shall not:

(A) Purposely disguise the person's appearance so as to misrepresent the person's actual age; and

(B) Make statements designed to trick, mislead, encourage or confuse the employee.

(2) The minor or person under twenty-one (21) years of age shall:

(A) Be photographed, both before and after the law enforcement or merchant-initiated use of the person, for the purpose of creating a record of the person's appearance during the time of the permitted use of the person;

(B) Except only for those questions relating to the person's employment or purpose for engaging in the conduct, respond truthfully to all questions posed by the location employee, including, but not limited to, inquiries concerning the person's age; and

(C) If identification is demanded by the location employee, produce only a valid state-issued card, which indicates the person's actual date of birth.

(d) No prosecution for the violation of any statute prohibiting the sale of beer for off-premises consumption to a person under twenty-one (21) years of age shall be commenced, if the prosecution is based upon the use of a person under twenty-one (21) years of age, as authorized by this section, unless the person or the law enforcement officer supervising the person obtains the name of the permit holder and the employee of the permit holder from whom the beer was purchased or attempted to be purchased. All "stings" shall be conducted in accordance to state law in order to be valid. In addition, within ten (10) days of the date the action occurred, the law enforcement officer shall notify the permit holder in writing, either by mail or hand delivery, indicating:

(1) That an action recently occurred in which a person under twenty-one (21) years of age was used to purchase or attempt to purchase beer for off-premises consumption;

(2) The date and location of the action;

(3) The name of the permit holder and the employee from whom the beer was purchased or attempted to be purchased; and

(4) Whether the person was successful in making the purchase.

History.
Acts 1989, ch. 591, § 1; 1990, ch. 1030, § 27; 1990, ch. 1092, § 9; 1992, ch. 802, § 1; 1994, ch. 872, § 11; 2003, ch. 198, §§ 1, 2; 2003, ch. 297, §§ 9, 10; 2006, ch. 864, § 13; 2007, ch. 73, § 1; 2013, ch. 319, § 1.

Compiler's Notes.
The sentencing commission terminated June 30, 1995. Sentencing Commission Comments have been retained, but do not reflect 1995 or subsequent legislation.

39-15-414. Offense of harboring or hiding a runaway child.

(a) A person commits an offense who, with knowledge that a child is a runaway, as defined in § 37-1-102(23)(D), harbors or hides the child and:

(1) Fails to notify the child's legal custodian, legal guardian, or law enforcement authorities of the whereabouts of the child within a reasonable amount of time; provided, that no length of time in excess of twenty-four (24) hours shall be considered reasonable;

(2) Conceals the whereabouts of the child; or

(3) Aides the child in escaping from the custody of the child's legal custodian, legal guardian or law enforcement authorities.

(b) A violation of this section is a Class A misdemeanor.

History.
Acts 2010, ch. 1099, § 1.

CHAPTER 17

OFFENSES AGAINST PUBLIC HEALTH, SAFETY AND WELFARE

Part 4. Drugs

SECTION.
39-17-422. Inhaling, selling, giving or possessing glue, paint, gasoline, aerosol, gases, etc., for unlawful purposes.
39-17-440. Sale of product containing dextromethorphan to person under 18 years of age — Exception — Proof of age — Violation.
39-17-451. [Repealed]

Part 9. Obscenity

39-17-911. Sale, loan or exhibition of material to minors.
39-17-912, 39-17-913. [Repealed.]
39-17-914. Display for sale or rental of material harmful to minors.

Part 10. Sexual Exploitation of Children

39-17-1001. Short title.
39-17-1002. Part definitions.
39-17-1003. Offense of sexual exploitation of a minor.
39-17-1004. Offense of aggravated sexual exploitation of a minor.
39-17-1005. Offense of especially aggravated sexual exploitation of a minor.
39-17-1006. Injunctions.
39-17-1007. Issuance of process.
39-17-1008. Forfeiture of any conveyance or real or personal property used in commission of an offense under this part.

Part 13. Weapons

39-17-1303. Unlawful sale, loan or gift of firearm.
39-17-1309. Carrying weapons on school property.
39-17-1311. Carrying weapons on public parks, playgrounds, civic centers and other public recreational buildings and grounds.
39-17-1312. Inaction by persons eighteen (18) years of age or older, including parents or guardians, knowing a minor or student illegally possesses a firearm.
39-17-1313. Transporting and storing a firearm or firearm ammunition in permit holder's motor vehicle.
39-17-1319. Handgun possession prohibited — Exceptions.
39-17-1320. Providing handguns to juveniles — Penalties.
39-17-1323. Commission of certain offenses while wearing a body vest.
39-17-1360. Rules and regulations.
SECTION.
39-17-1362. Imitation firearm — Defined — Offense to display in threatening manner in public place.

Part 15. Prevention of Youth Access to Tobacco and Vapor Products Act

39-17-1501. Short title.
39-17-1502. Purpose and intent.
39-17-1503. Part definitions.
39-17-1504. Sale or distribution to minors unlawful — Proof of age requirement.
39-17-1505. Prohibited purchases or possession by minors — Penalties.
39-17-1506. Required postings.
39-17-1507. Vending machine sales.
39-17-1508. Required packaging.
39-17-1509. Enforcement — Inspections — Reporting — Civil penalties.
39-17-1510. Criminal penalties.
39-17-1511. Maintenance of smoking paraphernalia in area inaccessible to customers.
39-17-1512. Liquid nicotine containers to satisfy federal child-resistant effectiveness standards.
39-17-1513. Department of agriculture encouraged to study effects of sale and distribution of vapor products to persons under 18.
39-17-1514 — 39-17-1550. [Reserved.]
39-17-1551. Purpose of part — Exemptions — Authority to prohibit smoking.

Part 16. Children's Act for Clean Indoor Air

39-17-1601. Short title.
39-17-1602. Purpose.
39-17-1603. Part definitions.
39-17-1604. Places where smoking is prohibited.
39-17-1605. "No smoking" signs — Posting notice.
39-17-1606. Penalty — Enforcement.

Part 17. Child Curfew

39-17-1701. Short title.
39-17-1702. Curfew established — Exceptions — Duties of apprehending authority.
39-17-1703. Applicability, adoption of part.
39-17-1704. Authorization to adopt municipal curfew.

PART 4

DRUGS

39-17-422. Inhaling, selling, giving or possessing glue, paint, gasoline, aerosol, gases, etc., for unlawful purposes.

(a) No person shall, for the purpose of causing a condition of intoxication, inebriation, elation, dizziness, excitement, stupefaction, paralysis, or the dulling of the brain or nervous system, or disturbing or distorting of the audio or visual processes, intentionally smell or inhale the fumes from any glue, paint, gasoline, aerosol, chlorofluorocarbon gas or other substance containing a solvent having the property of releasing toxic vapors or fumes; provided, that nothing in this section shall be interpreted as applying to the inhalation of any anesthesia for medical or dental purposes, or to the use of nitrous oxide to implement the distribution of beverages or other foodstuffs for commercial purposes.

(b) No person shall, for the purpose of violating subsection (a), use, or possess for the purpose of so using, any glue containing a solvent having the property of releasing toxic vapors or fumes.

(c) No person shall sell, or offer to sell, or deliver or give away, to any person any tube or other container of glue, paint, gasoline, aerosol, chlorofluorocarbon gas or any other substance containing a solvent having the property of releasing toxic vapors or fumes, if the person has reasonable cause to suspect that the product sold or offered for sale, or delivered or given away, will be used for the purpose set forth in subsection (a).

(d) As used in this section, "glue, paint, gasoline, aerosol, chlorofluorocarbon gas or other substance containing a solvent having the property of releasing toxic vapors or fumes" means and includes any glue, cement, paint, gasoline, aerosol, or any other substance of whatever kind containing one (1) or more of the following chemical compounds: acetone, an acetate, benzene, butyl alcohol, ethyl alcohol, ethylene dichloride, isopropyl alcohol, methyl alcohol, methyl ethyl ketone, nitrous oxide, pentachlorophenol, petroleum ether, toluene or any group of polyhalogenated hydrocarbons containing fluorine and chlorine.

(e) Nothing contained in this section shall be considered applicable to the sale of a hobby or model kit containing as a part of the kit a tube or other container of glue, nor shall this section be considered applicable to the sale of a tube or other container of glue immediately in conjunction with the sale of a hobby or model kit requiring the use of approximately the quantity of glue for the assembly of a model. Nothing contained in this section shall be applicable to the transfer of a tube or other container of glue from a parent to the parent's own child, or from a guardian to the guardian's own ward.

(f)(1) A violation of subsection (a), (b) or (d) is a Class A misdemeanor.

(2) A violation of subsection (c) is a Class E felony.

History.
Acts 1989, ch. 591, § 1; 1997, ch. 154, §§ 1, 2.

39-17-440. Sale of product containing dextromethorphan to person under 18 years of age — Exception — Proof of age — Violation.

(a) It is unlawful for:

(1) Any commercial entity, or the entity's employee or representative acting on behalf of the entity, to knowingly sell a product containing dextromethorphan to a person that the employee or representative knows or has reason to know is less than eighteen (18) years of age and is not an emancipated minor, as defined in § 39-11-106. However, no employee, representative, or person acting on behalf of a commercial entity shall be in violation of this section, or be subject to an adverse employment action for a violation of this section, unless the employee, representative, or person has completed an employer-provided course of instruction that is specifically designed to enable the employee, representative, or person to identify products containing dextromethorphan and distinguish those products from similar products that do not contain dextromethorphan; or

(2) Any person who is less than eighteen (18) years of age and who is not an emancipated minor, as defined in § 39-11-106, to purchase a product the person knows or should know contains any quantity of dextromethorphan with the intent to use the product in a manner inconsistent with the recommended dosage and manner of use indicated on the container.

(b)(1) This section requires an entity, employee, or representative to manually obtain and verify proof of age or emancipation pursuant to subsection (c) as a condition of sale. Nothing in this section shall be construed to require additional compliance requirements, including placement of products in a specific place within a store, other restrictions on consumers' direct access to products, or the maintenance of transaction records.

(2) This section shall not apply to a product containing dextromethorphan that is sold pursuant to a valid prescription, including a pharmacist-generated prescription issued pursuant to § 63-10-206.

(c) Before completing a retail sale of a product containing dextromethorphan, the seller shall require the purchaser to present:

(1) Valid government-issued photo identification proving that the purchaser is at least eighteen (18) years of age, unless from the purchaser's outward appearance the seller would reasonably believe the purchaser to be thirty (30) years of age or older; or

(2) Proof of emancipation, if the purchaser is less than eighteen (18) years of age but is an emancipated minor.

(d) A violation of subsection (a) is punishable by a civil penalty of not more than one hundred dollars ($100) for a first violation and five hundred dollars ($500) for a second or subsequent violation.

(e) This section shall not apply to a product containing dextromethorphan that is:

(1) Delivered or dispensed at a facility licensed under title 68, chapter 11, part 2, or title 33, chapter 2, part 4; or

(2) Delivered or dispensed by a licensed healthcare practitioner to an inmate at a jail or correctional facility.

(f) This section shall preempt any local ordinance regulating the retail sale of products containing dextromethorphan enacted by a local governmental entity of this state. Products containing dextromethorphan shall not be subject to further regulation by a local governmental entity.

History.
Acts 2015, ch. 82, §§ 1, 2.

39-17-451. [Repealed]

History.
Acts 1998, ch. 1079, § 2; repealed by Acts 2015, ch. 43, § 1, effective March 27, 2015.

Compiler's Notes.
Former § 39-17-451 concerned a report of funds collected under the part, including a report of the amount spent on drug education and treatment.

PART 9

OBSCENITY

39-17-911. Sale, loan or exhibition of material to minors.

(a) It is unlawful for any person to knowingly sell or loan for monetary consideration or otherwise exhibit or make available to a minor:

(1) Any picture, photograph, drawing, sculpture, motion picture film, video game, computer software game, or similar visual representation or image of a person or portion of the human body, that depicts nudity, sexual conduct, excess violence, or sado-masochistic abuse, and that is harmful to minors; or

(2) Any book, pamphlet, magazine, printed matter, however reproduced, or sound recording, which contains any matter enumerated in subdivision (a)(1), or that contains explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, excess violence, or sado-masochistic abuse, and that is harmful to minors.

(b) It is unlawful for any person to knowingly exhibit to a minor for monetary consideration, or to knowingly sell to a minor an admission ticket or pass or otherwise admit a minor to premises whereon there is exhibited a motion picture, show or other presentation which, in whole or in part, depicts nudity, sexual conduct, excess violence, or sado-masochistic abuse, and which is harmful to minors.

(c) A violation of this section is a Class A misdemeanor.

(d) It is an affirmative defense to prosecution under this section that the minor to whom the material or show was made available or exhibited was, at the time, accompanied by the person's parent or legal guardian, or by an adult with the written permission of the parent or legal guardian.

History.
Acts 1989, ch. 591, § 1; 2000, ch. 763, § 1.

39-17-912, 39-17-913. [Repealed.]

Compiler's Notes.
Former §§ 39-17-912 and 39-17-913 (Acts 1989, ch. 591, § 1), concerning injunctions and issuance of process, were repealed by Acts 1990, ch. 1092, § 6.

39-17-914. Display for sale or rental of material harmful to minors.

(a) It is unlawful for a person to display for sale or rental a visual depiction, including a videocassette tape or film, video game, computer software game, or a written representation, including a book, magazine or pamphlet, that contains material harmful to minors anywhere minors are lawfully admitted.

(b) The state has the burden of proving that the material is displayed. Material is not considered displayed under this section if:

(1) The material is:

(A) Placed in "binder racks" that cover the lower two thirds (⅔) of the material and the viewable one third (⅓) is not harmful to minors;

(B) Located at a height of not less than five and one half feet (5½′) from the floor; and

(C) Reasonable steps are taken to prevent minors from perusing the material;

(2) The material is sealed, and, if it contains material on its cover that is harmful to minors, it must also be opaquely wrapped;

(3) The material is placed out of sight underneath the counter; or

(4) The material is located so that the material is not open to view by minors and is located in an area restricted to adults;

(5) Unless its cover contains material which is harmful to minors, a video cassette tape or film is not considered displayed if it is in a form that cannot be viewed without electrical or mechanical equipment and the equipment is not being used to produce a visual depiction; or

(6) In a situation if the minor is accompanied by the minor's parent or guardian, unless the area is restricted to adults as provided for in subdivision (b)(4).

(c) A violation of this section is a Class C misdemeanor for each day the person is in violation of this section.

History.
Acts 1989, ch. 591, § 1; 1990, ch. 1092, § 5; 2000, ch. 763, § 2.

PART 10

SEXUAL EXPLOITATION OF CHILDREN

39-17-1001. Short title.

This part shall be known and may be cited as the "Tennessee Protection of Children Against Sexual Exploitation Act of 1990."

History.
Acts 1990, ch. 1092, § 7.

Compiler's Notes.
The sentencing commission terminated June 30, 1995. Sentencing Commission Comments have been retained, but do not reflect 1995 or subsequent legislation.

39-17-1002. Part definitions.

The following definitions apply in this part, unless the context otherwise requires:

(1) "Community" means the judicial district, as defined by § 16-2-506, in which a violation is alleged to have occurred;

(2) "Material" means:

(A) Any picture, drawing, photograph, undeveloped film or film negative, motion picture film, videocassette tape or other pictorial representation;

(B) Any statue, figure, theatrical production or electrical reproduction;

(C) Any image stored on a computer hard drive, a computer disk of any type, or any other medium designed to store information for later retrieval; or

(D) Any image transmitted to a computer or other electronic media or video screen, by telephone line, cable, satellite transmission, or other method that is capable of further transmission, manipulation, storage or accessing, even if not stored or saved at the time of transmission;

(3) "Minor" means any person who has not reached eighteen (18) years of age;

(4) "Patently offensive" means that which goes substantially beyond customary limits of candor in describing or representing such matters;

(5) "Performance" means any play, motion picture, photograph, dance, or other visual representation that can be exhibited before an audience of one (1) or more persons;

(6) "Promote" means to finance, produce, direct, manufacture, issue, publish, exhibit or advertise, or to offer or agree to do those things;

(7) "Prurient interest" means a shameful or morbid interest in sex; and

(8) "Sexual activity" means any of the following acts:

(A) Vaginal, anal or oral intercourse, whether done with another person or an animal;

(B) Masturbation, whether done alone or with another human or an animal;

(C) Patently offensive, as determined by contemporary community standards, physical contact with or touching of a person's clothed or unclothed genitals, pubic area, buttocks or breasts in an act of apparent sexual stimulation or sexual abuse;

(D) Sadomasochistic abuse, including flagellation, torture, physical restraint, domination or subordination by or upon a person for the purpose of sexual gratification of any person;

(E) The insertion of any part of a person's body or of any object into another person's anus or vagina, except when done as part of a recognized medical procedure by a licensed professional;

(F) Patently offensive, as determined by contemporary community standards, conduct, representations, depictions or descriptions of excretory functions; or

(G) Lascivious exhibition of the female breast or the genitals, buttocks, anus or pubic or rectal area of any person.

History.

Acts 1990, ch. 1092, § 7; 1995, ch. 216, § 1; 1999, ch. 343, §§ 1-4; 2001, ch. 147, § 1; 2005, ch. 496, § 1.

39-17-1003. Offense of sexual exploitation of a minor.

(a) It is unlawful for any person to knowingly possess material that includes a minor engaged in:

(1) Sexual activity; or

(2) Simulated sexual activity that is patently offensive.

(b) A person possessing material that violates subsection (a) may be charged in a separate count for each individual image, picture, drawing, photograph, motion picture film, videocassette tape, or other pictorial representation. Where the number of materials possessed is greater than fifty (50), the person may be charged in a single count to enhance the class of offense under subsection (d).

(c) In a prosecution under this section, the trier of fact may consider the title, text, visual representation, Internet history, physical development of the person depicted, expert medical testimony, expert computer forensic testimony, and any other relevant evidence, in determining whether a person knowingly possessed the material, or in determining whether the material or image otherwise represents or depicts that a participant is a minor.

(d) A violation of this section is a Class D felony; however, if the number of individual images, materials, or combination of images and materials, that are possessed is more than fifty (50), then the offense shall be a Class C felony. If the number of individual images, materials, or combination of images and materials, exceeds one hundred (100), the offense shall be a Class B felony.

(e) In a prosecution under this section, the state is not required to prove the actual identity or age of the minor.

(f) It shall not be a defense to a violation of this section that a minor victim of the offense consented to the conduct that constituted the offense.

History.

Acts 1990, ch. 1092, § 7; 2005, ch. 496, § 2; 2013, ch. 350, § 2.

39-17-1004. Offense of aggravated sexual exploitation of a minor.

(a)(1) It is unlawful for a person to knowingly promote, sell, distribute, transport, purchase or exchange material, or possess with the intent to promote, sell, distribute, transport, purchase or exchange material, that includes a minor engaged in:

(A) Sexual activity; or

(B) Simulated sexual activity that is patently offensive.

(2) A person who violates subdivision (a)(1) may be charged in a separate count for each individual image, picture, drawing, photograph, motion picture film, videocassette tape, or other pictorial representation. Where the number of materials involved in a violation under subdivision (a)(1) is greater than twenty-five (25), the person may be charged in a single count to enhance the class of offense under subdivision (a)(4).

(3) In a prosecution under this section, the trier of fact may consider the title, text, visual representation, Internet history, physical development of the person depicted, expert medical testimony, expert computer forensic testimony, and any other relevant evidence, in determining whether a person knowingly promoted, sold, distributed, transported, purchased, exchanged or possessed the material for these purposes, or in determining whether the material or image otherwise represents or depicts that a participant is a minor.

(4) A violation of this section is a Class C felony; however, if the number of individual images, materi-

als, or combination of images and materials that are promoted, sold, distributed, transported, purchased, exchanged or possessed, with intent to promote, sell, distribute, transport, purchase or exchange, is more than twenty-five (25), then the offense shall be a Class B felony.

(b)(1) It is unlawful for a person to knowingly promote, sell, distribute, transport, purchase or exchange material that is obscene, as defined in § 39-17-901, or possess material that is obscene, with the intent to promote, sell, distribute, transport, purchase or exchange the material, which includes a minor engaged in:

(A) Sexual activity; or

(B) Simulated sexual activity that is patently offensive.

(2) A person who violates subdivision (b)(1) may be charged in a separate count for each individual image, picture, drawing, photograph, motion picture film, videocassette tape, or other pictorial representation. Where the number of materials involved in a violation under subdivision (b)(1) is greater than twenty-five (25), the person may be charged in a single count to enhance the class of offense under subdivision (b)(4).

(3) In a prosecution under this section, the trier of fact may consider the title, text, visual representation, Internet history, physical development of the person depicted, expert medical testimony, expert computer forensic testimony, and any other relevant evidence, in determining whether a person knowingly promoted, sold, distributed, transported, purchased, exchanged or possessed the material for these purposes, or in determining whether the material or image otherwise represents or depicts that a participant is a minor.

(4) A violation of this section is a Class C felony; however, if the number of individual images, materials, or combination of images and materials, that are promoted, sold, distributed, transported, purchased, exchanged or possessed, with intent to promote, sell, distribute, transport, purchase or exchange, is more than twenty-five (25), then the offense shall be a Class B felony.

(c) In a prosecution under this section, the state is not required to prove the actual identity or age of the minor.

(d) A person is subject to prosecution in this state under this section for any conduct that originates in this state, or for any conduct that originates by a person located outside this state, where the person promoted, sold, distributed, transported, purchased, exchanged or possessed, with intent to promote, sell, distribute, transport, purchase or exchange material within this state.

(e) It shall not be a defense to a violation of subsection (a) that the minor victim of the offense consented to the conduct that constituted the offense.

History.

Acts 1990, ch. 1092, § 7; 2005, ch. 496, § 3; 2013, ch. 350, § 3.

39-17-1005. Offense of especially aggravated sexual exploitation of a minor.

(a) It is unlawful for a person to knowingly promote, employ, use, assist, transport or permit a minor to participate in the performance of, or in the production of, acts or material that includes the minor engaging in:

(1) Sexual activity; or

(2) Simulated sexual activity that is patently offensive.

(b) A person violating subsection (a) may be charged in a separate count for each individual performance, image, picture, drawing, photograph, motion picture film, videocassette tape, or other pictorial representation.

(c) In a prosecution under this section, the trier of fact may consider the title, text, visual representation, Internet history, physical development of the person depicted, expert medical testimony, expert computer forensic testimony, and any other relevant evidence, in determining whether a person knowingly promoted, employed, used, assisted, transported or permitted a minor to participate in the performance of or in the production of acts or material for these purposes, or in determining whether the material or image otherwise represents or depicts that a participant is a minor.

(d) A violation of this section is a Class B felony. Nothing in this section shall be construed as limiting prosecution for any other sexual offense under this chapter, nor shall a joint conviction under this section and any other related sexual offense, even if arising out of the same conduct, be construed as limiting any applicable punishment, including consecutive sentencing under § 40-35-115, or the enhancement of sentence under § 40-35-114.

(e) In a prosecution under this section, the state is not required to prove the actual identity or age of the minor.

(f) A person is subject to prosecution in this state under this section for any conduct that originates in this state, or for any conduct that originates by a person located outside this state, where the person promoted, employed, assisted, transported or permitted a minor to engage in the performance of, or production of, acts or material within this state.

(g) It shall not be a defense to a violation of subsection (a) that the minor victim of the offense consented to the conduct that constituted the offense.

History.

Acts 1990, ch. 1092, § 7; 2005, ch. 496, § 4; 2013, ch. 350, § 4.

39-17-1006. Injunctions.

If the district attorney general is of the opinion that §§ 39-17-1001—39-17-1005 are being violated, the district attorney general may file a petition in a circuit,

chancery or criminal court of that district relating the opinion, and request the court to issue a temporary restraining order or a temporary injunction enjoining the person named in the petition from removing the material in question from the jurisdiction of the court pending an adversary hearing on the petition. If a temporary restraining order or, after notice, a temporary injunction is so issued, the person enjoined shall answer within the time set by the court, which time shall be set by the court at not more than sixty (60) days. The adversary hearing on the petition shall be held within two (2) days after the joinder of issues. At the conclusion of the hearing, or within two (2) days thereafter, the court will determine whether or not the material in question is in violation of §§ 39-17-1001 — 39-17-1005. On a finding of a violation, the court shall grant a temporary injunction or continue its injunction in full force and effect for a period not to exceed forty-five (45) days or until an indictment on the matter has been submitted to the grand jury. If forty-five (45) days elapse and the grand jury has taken no action, the injunction terminates. The injunction also terminates on the grand jury returning a no true bill. On the return of a true bill of indictment, the court shall order the material in question delivered into the hands of the court clerk or district attorney general, there to be held as evidence in the case.

History.
Acts 1990, ch. 1092, § 7.

39-17-1007. Issuance of process.

No process, except as otherwise provided, shall be issued for the violation of §§ 39-17-1003 — 39-17-1005 unless it is issued upon the application of the district attorney general of the district.

History.
Acts 1990, ch. 1092, § 7.

39-17-1008. Forfeiture of any conveyance or real or personal property used in commission of an offense under this part.

(a) Any conveyance or real or personal property used in the commission of an offense under this part is subject to forfeiture under title 40, chapter 33, part 2.

(b) Notwithstanding § 40-33-211, the proceeds from all forfeitures made pursuant to this section shall be transmitted to the general fund, where there is established a general fund reserve to be allocated through the general appropriations act, which shall be known as the child abuse fund. Moneys from the fund shall be expended to fund activities authorized by the child abuse fund as set out in § 39-13-530. Any revenues deposited in this reserve shall remain in the reserve until expended for purposes consistent with this section, and shall not revert to the general fund at the end of the fiscal year. Any excess revenues or interest earned by the revenues shall not revert at the end of the fiscal year, but shall remain available for appropriation in subsequent fiscal years. Any appropriation from the reserve shall not revert to the general fund at the end of the fiscal year, but shall remain available for expenditure in subsequent fiscal years.

History.
Acts 2006, ch. 960, § 2.

PART 13

WEAPONS

39-17-1303. Unlawful sale, loan or gift of firearm.

(a) A person commits an offense who:

(1) Intentionally, knowingly, or recklessly sells, loans or makes a gift of a firearm to a minor;

(2) Intentionally, knowingly or recklessly sells a firearm or ammunition for a firearm to a person who is intoxicated; or

(3) Intentionally, knowingly, recklessly or with criminal negligence violates § 39-17-1316.

(b) It is a defense to prosecution under subdivision (a)(1) that:

(1) A firearm was loaned or given to a minor for the purposes of hunting, trapping, fishing, camping, sport shooting or any other lawful sporting activity; and

(2) The person is not required to obtain a license under § 39-17-1316.

(c) For purposes of this section, "intoxicated" means substantial impairment of mental or physical capacity resulting from introduction of any substance into the body.

(d) An offense under this section is a Class A misdemeanor.

History.
Acts 1989, ch. 591, § 1; 1990, ch. 1029, § 3; 2014, ch. 647, § 3.

39-17-1309. Carrying weapons on school property.

(a) As used in this section, "weapon of like kind" includes razors and razor blades, except those used solely for personal shaving, and any sharp pointed or edged instrument, except unaltered nail files and clips and tools used solely for preparation of food, instruction and maintenance.

(b)(1) It is an offense for any person to possess or carry, whether openly or concealed, with the intent to go armed, any firearm, explosive, explosive weapon, bowie knife, hawk bill knife, ice pick, dagger, slingshot, leaded cane, switchblade knife, blackjack, knuckles or any other weapon of like kind, not used solely for instructional or school-sanctioned ceremonial purposes, in any public or private school building or bus, on any public or private school campus, grounds, recreation area, athletic field or any other property owned, operated, or while in use by any board of education, school, college or university board of trustees, regents or directors for the administration of any public or private educational institution.

(2) A violation of this subsection (b) is a Class E felony.

(c)(1)(A) It is an offense for any person to possess or carry, whether openly or concealed, any firearm, not used solely for instructional or school-sanctioned ceremonial purposes, in any public or private school building or bus, on any public or private school campus, grounds, recreation area, athletic field or any other property owned, operated, or while in use by any board of education, school, college or university board of trustees, regents or directors for the administration of any public or private educational institution.

(B) It is not an offense under this subsection (c) for a nonstudent adult to possess a firearm, if the firearm is contained within a private vehicle operated by the adult and is not handled by the adult, or by any other person acting with the expressed or implied consent of the adult, while the vehicle is on school property.

(2) A violation of this subsection (c) is a Class B misdemeanor.

(d)(1) Each chief administrator of a public or private school shall display in prominent locations about the school a sign, at least six inches (6″) high and fourteen inches (14″) wide, stating:

FELONY. STATE LAW PRESCRIBES A MAXIMUM PENALTY OF SIX (6) YEARS IMPRISONMENT AND A FINE NOT TO EXCEED THREE THOUSAND DOLLARS ($3,000) FOR CARRYING WEAPONS ON SCHOOL PROPERTY.

(2) As used in this subsection (d), "prominent locations about a school" includes, but is not limited to, sports arenas, gymnasiums, stadiums and cafeterias.

(e) Subsections (b) and (c) do not apply to the following persons:

(1) Persons employed in the army, air force, navy, coast guard or marine service of the United States or any member of the Tennessee national guard when in discharge of their official duties and acting under orders requiring them to carry arms or weapons;

(2) Civil officers of the United States in the discharge of their official duties;

(3) Officers and soldiers of the militia and the national guard when called into actual service;

(4) Officers of the state, or of any county, city or town, charged with the enforcement of the laws of the state, when in the discharge of their official duties;

(5) Any pupils who are members of the reserve officers training corps or pupils enrolled in a course of instruction or members of a club or team, and who are required to carry arms or weapons in the discharge of their official class or team duties;

(6) Any private police employed by the administration or board of trustees of any public or private institution of higher education in the discharge of their duties;

(7) Any registered security guard/officer who meets the requirements of title 62, chapter 35, and who is discharging the officer's official duties;

(8)(A) Persons possessing a handgun, who are authorized to carry the handgun pursuant to § 39-17-1351, while within or on a public park, natural area, historic park, nature trail, campground, forest, greenway, waterway, or other similar public place;

(B) Subdivision (e)(8)(A) shall not apply if the permit holder:

(i) Possessed a handgun on property described in subdivision (e)(8)(A) that is owned or operated by a board of education, school, college, or university board of trustees, regents, or directors unless the permit holder's possession is otherwise excepted by this subsection (e); or

(ii) Possessed a handgun in the immediate vicinity of property that was, at the time of possession, in use by any board of education, school, college or university board of trustees, regents, or directors for the administration of any public or private educational institution for the purpose of conducting an athletic event or other school-related activity on an athletic field, permanent or temporary, including but not limited to, a football or soccer field, tennis court, basketball court, track, running trail, Frisbee field, or any similar multi-use field; and

(iii) Knew or should have known that:

(a) An athletic event or school-related activity described in subdivision (e)(8)(B)(ii) was taking place on the property at the time of the possession; or

(b) The property on which the possession occurred was owned or operated by a school entity described in subdivision (e)(8)(B)(ii); or

(iv) Failed to take reasonable steps to leave the area of the athletic field or school-related activity or the property after being informed or becoming aware of:

(a) Its use for athletic or school-related purposes; or

(b) That it was, at the time of the possession, owned or operated by a school entity described in (e)(8)(B)(ii);

(9) Persons permitted to carry a handgun on the property of private K-12 schools by § 49-50-803, and persons permitted to carry a handgun on the property of private for-profit or nonprofit institutions of higher education pursuant to § 49-7-161; provided, that this subdivision (e)(9) shall apply only:

(A) To the school or institution where the person is located, when that school or institution has adopted a handgun carry policy pursuant to § 49-50-803 or § 49-7-161;

(B) While the person is on the property or grounds covered by the private school or institution's policy; and

(C) When the person is otherwise in compliance with the policy adopted by the private school or institution;

(10) Persons carrying a handgun pursuant to § 49-6-815 or § 49-6-816; provided, that this subdivision (e)(10) shall apply only within and on the grounds of the school for which the person is authorized;

(11)(A) Employees authorized to carry a handgun pursuant to § 39-17-1351 on property owned, operated, or controlled by the public institution of higher education at which the employee is

employed;

(B)(i) Any authorized employee who elects to carry a handgun pursuant to this subdivision (e)(11) shall provide written notification to the law enforcement agency or agencies with jurisdiction over the property owned, operated, or controlled by the public institution of higher education that employs the employee;

(ii) The employee's name and any other information that might identify the employee as a person who has elected to carry a handgun pursuant to this subdivision (e)(11) shall be confidential, not open for public inspection, and shall not be disclosed by any law enforcement agency with which an employee registers; except that the employee's name and other information may be disclosed to an administrative officer of the institution who is responsible for school facility security; provided, however, that the administrative officer is not the employee's immediate supervisor or a supervisor responsible for evaluation of the employee. An administrative officer to whom such information is disclosed shall not disclose the information to another person. Identifying information about the employee collected pursuant to this subdivision (e)(11) shall not be disclosed to any person or entity other than another law enforcement agency and only for law enforcement purposes; and

(iii) Law enforcement agencies are authorized to develop and implement:

(a) Policies and procedures designed to implement the notification and confidentiality requirements of this subdivision (e)(11)(B); and

(b) A voluntary course or courses of special or supplemental firearm training to be offered to the employees electing to carry a handgun pursuant to this subdivision (e)(11). Firearm safety shall be a component of any firearm course;

(C) Unless carrying a handgun is a requirement of the employee's job description, the carrying of a handgun pursuant to this subdivision (e)(11) is a personal choice of the employee and not a requirement of the employer. Consequently, an employee who carries a handgun on property owned, operated, or controlled by the public institution of higher education at which the employee is employed is not:

(i) Acting in the course of or scope of their employment when carrying or using the handgun;

(ii) Entitled to workers' compensation benefits under § 9-8-307(a)(1)(K) for injuries arising from the carrying or use of a handgun;

(iii) Immune from personal liability with respect to use or carrying of a handgun under § 9-8-307(h);

(iv) Permitted to carry a handgun openly, or in any other manner in which the handgun is visible to ordinary observation; or

(v) Permitted to carry a handgun at the following times and at the following locations:

(a) Stadiums, gymnasiums, and auditoriums when school-sponsored events are in progress;

(b) In meetings regarding disciplinary matters;

(c) In meetings regarding tenure issues;

(d) A hospital, or an office where medical or mental health services are the primary services provided; and

(e) Any location where a provision of state or federal law, except the posting provisions of § 39-17-1359, prohibits the carrying of a handgun on that property;

(D) Notwithstanding any other law to the contrary, a public institution of higher education shall be absolutely immune from claims for monetary damages arising solely from or related to an employee's use of, or failure to use, a handgun; provided the employee is employed by the institution against whom the claim is filed and the employee elects to carry the handgun pursuant to this subdivision (e)(11). Nothing in this section shall expand the existing conditions under which sovereign immunity is waived pursuant to § 9-8-307; and

(E) As used in subdivisions (e)(11)-(13):

(i) "Employee" includes all faculty, staff, and other persons who are employed on a full-time basis by a public institution of higher education; and

(ii) "Employee" does not include a person who is enrolled as a student at a public institution of higher education, regardless of whether the person is also an employee;

(12)(A) Any employee of the University of Tennessee institute of agriculture or a college or department of agriculture at a campus in the University of Tennessee system when in the discharge of the employee's official duties and with prior authorization from the chancellor of the University of Tennessee institute of agriculture; or

(B) Any employee of the University of Tennessee institute of agriculture or a college or department of agriculture at a campus in the University of Tennessee system, and any member of the employee's household, living in a residence owned, used, or operated by the University of Tennessee, if the employee has prior authorization from the chancellor of the University of Tennessee institute of agriculture and the employee and household members are permitted to possess firearms in their residence under Tennessee and federal law; and

(13)(A) Any employee of the university's college or department of agriculture when in the discharge of the employee's official duties and with prior authorization from the president of a university in the board of regents system;

(B) Any employee of the university's college or department of agriculture, and any member of the

employee's household, living in a residence owned, used, or operated by the university, if the employee has prior authorization from the president of a university in the board of regents system and the employee and household members are permitted to possess firearms in their residence under Tennessee and federal law; or

(C) Any employee, with prior authorization of the president of a university in the board of regents system, who is engaged in wildlife biology or ecology research and education for the purpose of capture or collection of specimens.

History.

Acts 1989, ch. 591, § 1; 1990, ch. 1029, § 8; 1991, ch. 510, §§ 1-3; 1996, ch. 1009, § 24; 2015, ch. 250, §§ 3, 4; 2016, ch. 698, § 3; 2016, ch. 1049, § 2; 2016, ch. 1061, § 1.

Compiler's Notes.

Acts 2015, ch. 250, § 6 provided that any department of state government may, but is not required to, change, remove, or replace signs as a result of Sections 1 [which amended § 39-17-1311] or 4 of the act [which added (e)(8) to this section] prior to the time the signs are regularly scheduled to be changed, replaced, or removed or are required to be changed, replaced, or removed by any other law or due to destruction or theft; provided, that the general assembly may specifically provide funds for the purpose of removing or replacing signs in a general appropriations act.

39-17-1311. Carrying weapons on public parks, playgrounds, civic centers and other public recreational buildings and grounds.

(a) It is an offense for any person to possess or carry, whether openly or concealed, with the intent to go armed, any weapon prohibited by § 39-17-1302(a), not used solely for instructional, display or sanctioned ceremonial purposes, in or on the grounds of any public park, playground, civic center or other building facility, area or property owned, used or operated by any municipal, county or state government, or instrumentality thereof, for recreational purposes.

(b)(1) Subsection (a) shall not apply to the following persons:

(A) Persons employed in the army, air force, navy, coast guard or marine service of the United States or any member of the Tennessee national guard when in discharge of their official duties and acting under orders requiring them to carry arms or weapons;

(B) Civil officers of the United States in the discharge of their official duties;

(C) Officers and soldiers of the militia and the national guard when called into actual service;

(D) Officers of the state, or of any county, city or town, charged with the enforcement of the laws of the state, in the discharge of their official duties;

(E) Any pupils who are members of the reserve officers training corps or pupils enrolled in a course of instruction or members of a club or team, and who are required to carry arms or weapons in the discharge of their official class or team duties;

(F) Any private police employed by the municipality, county, state or instrumentality thereof in the discharge of their duties;

(G) A registered security guard/officer, who meets the requirements of title 62, chapter 35, while in the performance of the officer's duties;

(H)(i) Persons possessing a handgun, who are authorized to carry the handgun pursuant to § 39-17-1351, while within or on a public park, natural area, historic park, nature trail, campground, forest, greenway, waterway, or other similar public place that is owned or operated by the state, a county, a municipality, or instrumentality of the state, a county, or municipality;

(ii) Subdivision (b)(1)(H)(i) shall not apply if the permit holder:

(a) Possessed a handgun in the immediate vicinity of property that was, at the time of possession, in use by any board of education, school, college or university board of trustees, regents, or directors for the administration of any public or private educational institution for the purpose of conducting an athletic event or other school-related activity on an athletic field, permanent or temporary, including but not limited to, a football or soccer field, tennis court, basketball court, track, running trail, Frisbee field, or similar multi-use field; and

(b) Knew or should have known the athletic activity or school-related activity described in subdivision (b)(1)(H)(ii)(*a*) was taking place on the property; or

(c) Failed to take reasonable steps to leave the area of the athletic event or school-related activity after being informed of or becoming aware of its use;

(I) Persons possessing a handgun, who are authorized to carry the handgun pursuant to § 39-17-1351, while within or on property designated by the federal government as a national park, forest, preserve, historic park, military park, trail or recreation area, to the extent permitted by federal law; and

(J) Also, only to the extent a person strictly conforms the person's behavior to the requirements of one (1) of the following classifications:

(i) A person hunting during the lawful hunting season on lands owned by any municipality, county, state or instrumentality thereof and designated as open to hunting by law or by the appropriate official;

(ii) A person possessing unloaded hunting weapons while traversing the grounds of any public recreational building or property for the purpose of gaining access to public or private lands open to hunting with the intent to hunt on the public or private lands unless the public recreational building or property is posted prohibiting entry;

(iii) A person possessing guns or knives when conducting or attending "gun and knife shows" when the program has been approved by the administrator of the recreational building or property;

(iv) A person entering the property for the sole purpose of delivering or picking up passengers and who does not remove any weapon from the

vehicle or utilize it in any manner; or

(v) A person who possesses or carries a firearm for the purpose of sport or target shooting and sport or target shooting is permitted in the park or recreational area.

(2) At any time the person's behavior no longer strictly conforms to one (1) of the classifications in subdivision (b)(1), the person shall be subject to subsection (a).

(c) [Deleted by 2015 amendment]

(d) [Deleted by 2015 amendment]

(e) [Deleted by 2015 amendment]

(f) A violation of subsection (a) is a Class A misdemeanor.

(g) For the purposes of this section, a "greenway" means an open-space area following a natural or man-made linear feature designed to be used for recreation, transportation, conservation, and to link services and facilities. A greenway is a paved, gravel-covered, wood-chip covered, or wood-covered path that connects one greenway entrance with another greenway entrance. In the event a greenway traverses a park that is owned or operated by a county, municipality or instrumentality thereof, the greenway shall be considered a portion of that park unless designated otherwise by the local legislative body. Except as provided in this part, the definition of a greenway in this section shall not be applicable to any other provision of law.

History.

Acts 1989, ch. 591, § 1; 1990, ch. 1029, § 9; 1993, ch. 480, §§ 1-3; 1996, ch. 1009, § 23; 2009, ch. 428, §§ 1, 2; 2010, ch. 1006, § 1; 2015, ch. 250, §§ 1, 2, 5.

Compiler's Notes.

Acts 2015, ch. 250, § 6 provided that any department of state government may, but is not required to, change, remove, or replace signs as a result of Sections 1 [which amended (b)(1)(H) of this section] or 4 of the act [which amended § 39-17-1309] prior to the time the signs are regularly scheduled to be changed, replaced, or removed or are required to be changed, replaced, or removed by any other law or due to destruction or theft; provided, that the general assembly may specifically provide funds for the purpose of removing or replacing signs in a general appropriations act.

39-17-1312. Inaction by persons eighteen (18) years of age or older, including parents or guardians, knowing a minor or student illegally possesses a firearm.

(a) It is an offense if a person eighteen (18) years of age or older, including a parent or other legal guardian, knows that a minor or student is in illegal possession of a firearm in or upon the premises of a public or private school, in or on the school's athletic stadium or other facility or building where school sponsored athletic events are conducted, or public park, playground or civic center, and the person, parent or guardian fails to prevent the possession or fails to report it to the appropriate school or law enforcement officials.

(b) A violation of this section is a Class A misdemeanor.

History.

Acts 1992, ch. 907, § 1; 1999, ch. 309, § 1.

39-17-1313. Transporting and storing a firearm or firearm ammunition in permit holder's motor vehicle.

(a) Notwithstanding any provision of law or any ordinance or resolution adopted by the governing body of a city, county or metropolitan government, including any ordinance or resolution enacted before April 8, 1986, that prohibits or regulates the possession, transportation or storage of a firearm or firearm ammunition by a handgun carry permit holder, the holder of a valid handgun carry permit recognized in Tennessee may, unless expressly prohibited by federal law, transport and store a firearm or firearm ammunition in the permit holder's motor vehicle, as defined in § 55-1-103, while on or utilizing any public or private parking area if:

(1) The permit holder's motor vehicle is parked in a location where it is permitted to be; and

(2) The firearm or ammunition being transported or stored in the motor vehicle:

(A) Is kept from ordinary observation if the permit holder is in the motor vehicle; or

(B) Is kept from ordinary observation and locked within the trunk, glove box, or interior of the person's motor vehicle or a container securely affixed to such motor vehicle if the permit holder is not in the motor vehicle.

(b) No business entity, public or private employer, or the owner, manager, or legal possessor of the property shall be held liable in any civil action for damages, injuries or death resulting from or arising out of another's actions involving a firearm or ammunition transported or stored by the holder of a valid handgun carry permit in the permit holder's motor vehicle unless the business entity, public or private employer, or the owner, manager, or legal possessor of the property commits an offense involving the use of the stored firearm or ammunition or intentionally solicits or procures the conduct resulting in the damage, injury or death. Nor shall a business entity, public or private employer, or the owner, manager, or legal possessor of the property be responsible for the theft of a firearm or ammunition stored by the holder of a valid handgun carry permit in the permit holder's motor vehicle.

(c) For purposes of this section:

(1) "Motor vehicle" means any motor vehicle as defined in § 55-1-103, which is in the lawful possession of the permit holder, but does not include any motor vehicle which is owned or leased by a governmental or business entity and that is provided by such entity to an employee for use during the course of employment if the entity has adopted a written policy prohibiting firearms or ammunition not required for employment within the entity's motor vehicles; and

(2)(A) "Parking area" means any property provided by a business entity, public or private em-

ployer, or the owner, manager, or legal possessor of the property for the purpose of permitting its invitees, customers, clients or employees to park privately owned motor vehicles; and

(B) "Parking area" does not include the grounds or property of an owner-occupied, single-family detached residence, or a tenant-occupied single-family detached residence.

(d) A handgun carry permit holder transporting, storing or both transporting and storing a firearm or firearm ammunition in accordance with this section does not violate this section if the firearm or firearm ammunition is observed by another person or security device during the ordinary course of the handgun carry permit holder securing the firearm or firearm ammunition from observation in or on a motor vehicle.

History.
Acts 2013, ch. 16, § 1; 2014, ch. 498, § 1; 2014, ch. 505, §§ 1 – 6; 2014, ch. 768, § 1.

Compiler's Notes.
For the Preamble to the act concerning handgun carry permits, please refer to Acts 2013, ch. 16.

39-17-1319. Handgun possession prohibited — Exceptions.

(a) As used in this section and § 39-17-1320, unless the context otherwise requires:

(1) "Handgun" means a pistol, revolver, or other firearm of any description, loaded or unloaded, from which any shot, bullet, or other missile can be discharged, the length of the barrel of which, not including any revolving, detachable, or magazine breech, does not exceed twelve inches (12″); and

(2) "Juvenile" means any person less than eighteen (18) years of age.

(b) Except as provided in this section, it is an offense for a juvenile to knowingly possess a handgun.

(c)(1) Illegal possession of a handgun by a juvenile is a delinquent act and, in addition to any other disposition authorized by law, the juvenile may be required to perform not more than one hundred (100) hours of community service work to be specified by the judge, and the juvenile's driving privileges shall be suspended for a period of one (1) year in accordance with the procedure set out in title 55, chapter 10, part 7.

(2) A second or subsequent violation of this section is a delinquent act and, in addition to any other disposition authorized by law, the juvenile may be required to perform not less than one hundred (100) nor more than two hundred (200) hours of community service work to be specified by the judge, and the juvenile's driving privileges shall be suspended for a period of two (2) years in accordance with the procedure set out in title 55, chapter 10, part 7.

(3) Any handgun illegally possessed in violation of this section shall be confiscated and disposed of in accordance with § 39-17-1317.

(d)(1) It is a defense to prosecution under this section that the juvenile is:

(A) In attendance at a hunter's safety course or a firearms safety course;

(B) Engaging in practice in the use of a firearm or target shooting at an established range authorized by the governing body of the jurisdiction in which such range is located or any other area where the discharge of a firearm is not prohibited;

(C) Engaging in an organized competition involving the use of a firearm, or participating in or practicing for a performance by an organized group which is exempt from federal income taxation under § 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)(3)), as amended, and which uses firearms as part of the performance;

(D) Hunting or trapping pursuant to a valid license issued to the juvenile pursuant to title 70;

(E) Accompanied by the juvenile's parent or guardian and is being instructed by the adult or guardian in the use of the handgun possessed by the juvenile;

(F) On real property which is under the control of an adult and has the permission of that adult and the juvenile's parent or legal guardian to possess a handgun;

(G) Traveling to or from any activity described in subdivision (d)(1) with an unloaded gun; or

(H) At the juvenile's residence and with the permission of the juvenile's parent or legal guardian, possesses a handgun and is justified in using physical force or deadly force.

(2) For purposes of subdivision (d)(1)(G), a handgun is "unloaded" if:

(A) There is not a cartridge in the chamber of the handgun;

(B) There is not a cartridge in the cylinder of the handgun if the handgun is a revolver; or

(C) The handgun, and the ammunition for the handgun, are not carried on the person of a juvenile or are not in such close proximity to the juvenile that the juvenile could readily gain access to the handgun and the ammunition and load the handgun.

(e) Notwithstanding any other provision of this part to the contrary, this section shall govern a juvenile who possesses a handgun.

History.
Acts 1994, ch. 802, § 1.

39-17-1320. Providing handguns to juveniles — Penalties.

(a) It is an offense for a person intentionally, knowingly or recklessly to provide a handgun with or without remuneration to any person that the person providing the handgun knows or has reason to believe is a juvenile in violation of § 39-17-1319.

(b) It is an offense for a parent or guardian intentionally, knowingly or recklessly to provide a handgun to a juvenile or permit a juvenile to possess a handgun, if the parent or guardian knows of a substantial risk that the juvenile will use a handgun to commit a felony.

(c) Unlawfully providing or permitting a juvenile to possess a handgun in violation of subsection (a) is a

Class A misdemeanor and in violation of subsection (b) is a Class D felony.

History.
Acts 1994, ch. 802, § 1.

39-17-1323. Commission of certain offenses while wearing a body vest.

(a) A person commits an offense who knowingly wears a body vest, when acting either alone or with one (1) or more other persons, while committing:

(1) Any felony whose statutory elements involve the use or threat of violence to a human being;

(2) Any burglary, car-jacking, theft of a motor vehicle, or arson; or

(3) Any felony offense involving a controlled substance or controlled substance analogue.

(b) For purposes of this section, a "body vest" means a bullet-resistant soft armor providing, as a minimum standard, the level of protection known as threat level I which shall mean at least seven (7) layers of bullet-resistant material providing protection from three (3) shots of one hundred fifty-eight-grain lead ammunition fired from a .38 caliber handgun at a velocity of eight hundred fifty feet (850′) per second.

(c) The unlawful wearing of a body vest is a Class E felony.

(d) Nothing in this section shall prohibit the possession of a body vest for lawful purposes.

(e) Any sentence imposed under this section shall run consecutively to any other sentence imposed for the conviction of the underlying offense.

History.
Acts 1997, ch. 321, § 1; 2012, ch. 848, § 23.

39-17-1360. Rules and regulations.

The department of safety is authorized to promulgate rules and regulations pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to implement §§ 39-17-1351 — 39-17-1360.

History.
Acts 1996, ch. 905, § 12.

39-17-1362. Imitation firearm — Defined — Offense to display in threatening manner in public place.

(a) As used in this section, unless the context otherwise requires:

(1) "Imitation firearm" means an object or device substantially similar in coloration and overall appearance to a firearm, as defined in § 39-11-106(a), as to lead a reasonable person to perceive that the object or device is a firearm; and

(2) "Public place" means a place to which the public or a group of persons has access and includes, but is not limited to, highways, transportation facilities, schools, places of amusement, parks, places of business, playgrounds, and hallways, lobbies and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence. An act is deemed to occur in a public place if it produces its proscribed consequences in a public place, even if the person engaging in the prohibited conduct is not in a public place.

(b) A person commits an offense who intentionally displays in a threatening manner an imitation firearm in a public place in a way that would cause a reasonable person to fear bodily injury to themselves or another.

(c) It is a defense to a violation of subsection (b) if the imitation firearm is displayed in connection with, or as a part of, any justifiable defense as set forth in chapter 11, part 6 of this title.

(d) A violation of this section is a Class B misdemeanor.

(e) Nothing in this section shall be construed to prohibit prosecution under any other law.

History.
Acts 2008, ch. 1173, § 1.

PART 15

PREVENTION OF YOUTH ACCESS TO TOBACCO AND VAPOR PRODUCTS ACT

39-17-1501. Short title.

This part shall be known and may be cited as the "Prevention of Youth Access to Tobacco and Vapor Products Act."

History.
Acts 1994, ch. 872, § 1; 2011, ch. 501, § 1; 2015, ch. 353, § 1.

39-17-1502. Purpose and intent.

(a) The purpose of this part is to reduce the access of persons under eighteen (18) years of age to tobacco products by strengthening existing prohibitions against the sale and distribution of tobacco products and prohibiting the purchase or receipt of tobacco products by such persons, limiting the sale of tobacco products through vending machines, restricting the distribution of tobacco product samples, prohibiting the sale of cigarettes or smokeless tobacco products other than in unopened packages, and random, unannounced inspections of locations where tobacco products are sold or distributed, providing for the report required to be submitted to the United States department of health and human services pursuant to Section 1926 of the Public Health Service Act (42 U.S.C. § 300x-26), and ensuring uniform regulations with respect to tobacco products within this state.

(b) The purpose of this part is also to prohibit the sale or distribution of vapor products to, or purchase of vapor products on behalf of, persons under eighteen (18) years of age.

(c) It is the intent of the general assembly that this part be equitably enforced so as to ensure the eligibility for and receipt of any federal funds or grants that the state of Tennessee now receives or may receive relating to this part.

History.
Acts 1994, ch. 872, § 2; 2011, ch. 501, § 2; 2015, ch. 353, § 2.

39-17-1503. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Beedies" or "bidis" means a product containing tobacco that is wrapped in temburni leaf (*dispyros melanoxylon*) or tendu leaf (*diospyros exculpra*), or any other product that is offered to, or purchased by, consumers as beedies or bidis. For purposes of this chapter, beedies or bidis shall be considered a tobacco product;

(2) "Commissioner" means the commissioner of agriculture or the commissioner's duly authorized representative;

(3) "Department" means the department of agriculture;

(4) "Person" means any individual, firm, fiduciary, partnership, corporation, trust, or association;

(5) "Proof of age" means a driver license or other generally accepted means of identification that describes the individual as eighteen (18) years of age or older, contains a photograph or other likeness of the individual, and appears on its face to be valid. Except in the case of distribution by mail, the distributor shall obtain a statement from the addressee that the addressee is eighteen (18) years of age or older;

(6) "Public place" means any public street, sidewalk or park, or any area open to the general public in any publicly owned or operated building;

(7) "Sample" means a tobacco product distributed to members of the general public at no cost for the purpose of promoting the product;

(8) "Sampling" means the distribution of samples to members of the general public in a public place;

(9) "Tobacco product" means any product that contains tobacco and is intended for human consumption, including, but not limited to, cigars, cigarettes and bidis; and

(10) "Vapor product":

(A) Means any noncombustible product containing nicotine or any other substance that employs a mechanical heating element, battery, electronic circuit, or other mechanism, regardless of shape or size, that can be used to produce or emit vapor;

(B) Includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product, and any vapor cartridge or other container of a solution containing nicotine or any other substance that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product; and

(C) Does not include any product regulated under Chapter V of the Food, Drug, and Cosmetic Act (21 U.S.C. § 351 et seq.).

History.
Acts 1994, ch. 872, § 3; 1995, ch. 470, § 1; 1999, ch. 354, § 3; 2002, ch. 511, §§ 1, 2; 2011, ch. 501, § 3; 2015, ch. 353, § 3.

39-17-1504. Sale or distribution to minors unlawful — Proof of age requirement.

(a) It is unlawful for any person to sell or distribute any tobacco or vapor product to another person who has not attained eighteen (18) years of age or to purchase a tobacco or vapor product on behalf of such person under eighteen (18) years of age.

(b) It is unlawful for any person to persuade, entice, send or assist a person who has not attained eighteen (18) years of age to purchase, acquire, receive or attempt to purchase, acquire or receive a tobacco or vapor product. This section and § 39-17-1505 shall not be deemed to preclude law enforcement efforts involving the use of individuals under eighteen (18) years of age if the minor's parent or legal guardian has consented to this action.

(c) No person shall distribute tobacco or vapor product samples in or on any public street, sidewalk, or park.

(d) A person engaged in the sale or distribution of tobacco or vapor products shall demand proof of age from a prospective purchaser or recipient if an ordinary person would conclude on the basis of appearance that the prospective purchaser or recipient may be under twenty-seven (27) years of age. In the case of distribution by mail, the distributor of tobacco or vapor products shall obtain from the addressee an affirmative statement that the person is eighteen (18) years of age or older, and shall inform the recipient that the person is strictly prohibited from distributing any tobacco or vapor product, as defined by this part, to any person under eighteen (18) years of age.

(e) [Deleted by 2015 amendment]

History.
Acts 1994, ch. 872, § 4; 1995, ch. 470, §§ 2, 3; 1999, ch. 354, §§ 1, 2, 4; 2011, ch. 501, § 4; 2013, ch. 319, § 2; 2015, ch. 353, §§ 4-6.

39-17-1505. Prohibited purchases or possession by minors — Penalties.

(a) It is unlawful for a person who has not attained eighteen (18) years of age to possess either a tobacco or vapor product, to purchase or accept receipt of either product, or to present or offer to any person any purported proof of age that is false, fraudulent, or not actually that person's own for the purpose of purchasing or receiving any tobacco or vapor product.

(b) Any person who violates this section shall be issued a citation by a law enforcement officer or school principal who has evidence of the violation. The citation shall require the person to appear in the juvenile court for the county in which the violation is alleged to have occurred. At the time of issuance of the citation,

the product shall be seized as contraband by the law enforcement officer or school principal.

(c) A violation of this section is a civil offense, the penalty for which is a civil penalty of not less than ten dollars ($10.00) nor more than fifty dollars ($50.00). Upon its determination that the person has violated this section, the juvenile court shall determine the amount of the civil penalty and shall order the destruction of the product. The juvenile court may, in its discretion, also impose community service work not to exceed fifty (50) hours or successful completion of a prescribed teen court program for a second or subsequent violation within a one-year period.

(d) A minor who is cooperating with law enforcement officers in an operation designed to test the compliance of other persons with this part shall not be subject to sanctions under this section.

(e) As used in this section, "law enforcement officer" means an officer, employee or agent of government who is authorized by law to investigate the commission or suspected commission of violations of Tennessee law.

(f) It is not unlawful for a person under eighteen (18) years of age to handle or transport:

(1) Tobacco, tobacco products, or vapor products as a part of and in the course of the person's employment; provided, that the person is under the supervision of another employee who is at least twenty-one (21) years of age; or

(2) Tobacco or vapor products as part of an educational project that has been developed by the person for entry and display at an agricultural fair or other agricultural competition or event.

(g) Nothing in this section shall be construed to prohibit a person under eighteen (18) years of age from handling or transporting tobacco as part of and in the course of the person's involvement in any aspect of the agricultural production or storage of tobacco, the sale of raw tobacco at market or the transportation of raw tobacco to a processing facility.

History.
Acts 1994, ch. 872, § 5; 1999, ch. 354, §§ 5-7; 2001, ch. 341, § 11; 2015, ch. 353, §§ 7-10.

39-17-1506. Required postings.

(a) Every person who sells tobacco products at retail shall post conspicuously and keep so posted at the place of business a sign, no smaller than ninety-three and one-half (93½) square inches, to ensure that it is likely to be read at each point of sale, stating the following:

STATE LAW STRICTLY PROHIBITS THE SALE
OF TOBACCO PRODUCTS OR SMOKING PARAPHERNALIA
TO PERSONS UNDER THE AGE OF EIGHTEEN (18) YEARS
PROOF OF AGE MAY BE REQUIRED

(b) Unless another notice is required by federal law, the notice required by this section and the notice required by § 39-15-411 shall be the only notice regarding tobacco products required to be posted or maintained in any store that sells tobacco products at retail.

History.
Acts 1994, ch. 872, § 6; 1999, ch. 354, § 8.

39-17-1507. Vending machine sales.

(a) It is unlawful for any person to sell tobacco products through a vending machine unless the vending machine is located in any of the following locations:

(1) In areas of factories, businesses, offices, or other places that are not open to the public;

(2) In places that are open to the public but to which persons under eighteen (18) years of age are denied access;

(3) In places where alcoholic beverages are sold for consumption on the premises, but only if the vending machine is under the continuous supervision of the owner or lessee of the premises or an employee of the owner or lessee of the premises, and is inaccessible to the public when the establishment is closed; and

(4) In other places, but only if the machine is under the continuous supervision of the owner or lessee of the premises or an employee of the owner or lessee of the premises, or the machine can be operated only by the use of a token purchased from the owner or lessee of the premises or an employee of the owner or lessee of the premises prior to each purchase, and is inaccessible to the public when the establishment is closed.

(b) In any place where supervision of a vending machine, or operation by token is required by this section, the person responsible for that supervision or the sale of the token shall demand proof of age from a prospective purchaser if an ordinary person would conclude on the basis of appearance that the prospective purchaser may be under twenty-seven (27) years of age.

History.
Acts 1994, ch. 872, § 7; 1999, ch. 354, §§ 9, 10.

39-17-1508. Required packaging.

It is unlawful for any person to sell cigarettes or smokeless tobacco products except in the original, sealed package in which they were placed by the manufacturer that bears the health warning required by federal law.

History.
Acts 1994, ch. 872, § 8; 1999, ch. 354, § 11.

39-17-1509. Enforcement — Inspections — Reporting — Civil penalties.

(a) The department shall enforce this part in a manner that may reasonably be expected to reduce the extent to which tobacco products are sold or distributed to persons under eighteen (18) years of age, and shall conduct random, unannounced inspections at locations where tobacco products are sold or distributed to ensure compliance with this part.

(b) A person who violates § 39-17-1504, § 39-17-1506, § 39-17-1507 or § 39-17-1508 shall receive only a warning letter for the person's first violation and shall not receive a civil penalty for the person's first

violation. A person who violates § 39-17-1504, § 39-17-1506, § 39-17-1507 or § 39-17-1508 is subject to a civil penalty of not more than five hundred dollars ($500) for the person's second violation, not more than one thousand dollars ($1,000) for the person's third violation and not more than one thousand five hundred dollars ($1,500) for the person's fourth or subsequent violation. For purposes of determining whether a violation is the person's first, second, third, fourth or subsequent violation, the commissioner shall count only those violations that occurred within the previous five (5) years. A civil penalty shall be assessed in the following manner:

(1) The commissioner shall issue the assessment of civil penalty against any person responsible for the violation;

(2) Any person against whom an assessment has been issued may secure a review of the assessment by filing with the commissioner a written petition setting forth the person's reasons for objection to the assessment and asking for a hearing before the commissioner;

(3) Any hearing before the commissioner shall be conducted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3. An appeal from the final order of the commissioner may be taken by the person to whom the assessment was issued, and the appeal proceedings shall be conducted in accordance with the judicial review provisions of the Uniform Administrative Procedures Act, codified in §§ 4-5-322 and 4-5-323; and

(4) If a petition for review is not filed within thirty (30) days after the date the person received the assessment, the person shall be deemed to have consented to the assessment, and it shall become final. Whenever an assessment has become final, the commissioner may apply to the chancery court of Davidson County for a judgment in the amount of the assessment and seek execution on the judgment. The chancery court of Davidson County shall treat a person's failure to file a petition for review of an assessment as a confession of judgment in the amount of the assessment.

(c) A person who demanded, was shown, and reasonably relied upon proof of age is not liable for a civil penalty for a violation of § 39-17-1504 or § 39-17-1507. In the case of distribution of any tobacco or vapor product by mail, a person who obtained a statement from the addressee that the addressee is at least eighteen (18) years of age is not liable for a civil penalty so long as that distributor of the tobacco or vapor product informed the addressee that § 39-17-1504 prohibits the distribution of tobacco and vapor products to a person under eighteen (18) years of age.

(d) When assessing a civil penalty, the commissioner is authorized to assess the penalty against any person or persons determined by the commissioner to be responsible, in whole or in part, for contributing to or causing the violation to occur, including, but not limited to, the owner, manager or employee of a store at which any tobacco or vapor product is sold at retail, the owner, manager or employee of an establishment in which a vending machine selling tobacco products is located, and a company or any of its employees engaged in the business of sampling.

(e)(1) The owner or manager of a store that sells tobacco products at retail shall provide training to the store's employees concerning the provisions of this part. As a part of this training, each employee shall, prior to selling tobacco products at retail, sign a statement containing substantially the following words:

> I understand that state law prohibits the sale of tobacco products to persons under eighteen (18) years of age and that state law requires me to obtain proof of age from a prospective purchaser of tobacco products who, based on appearance, might be as old as twenty-six (26) years of age. I promise to obey this law, and I understand that monetary or criminal penalties may be imposed on me if I violate this law.

(2) If the commissioner assesses a penalty against the store owner or manager, the owner or manager may present to the commissioner a copy of the statement described in subdivision (e)(1) that was signed by the employee who made the sale to a minor, along with a sworn statement by the owner or manager that the employee had signed the statement prior to the sale to the minor, and the name and address of the employee who made the sale. If the owner or manager does not know which employee made the sale to the minor, the owner or manager may present to the commissioner copies of the statements described in subdivision (e)(1) that were signed by all employees working at the store on the day the sale was made, along with a sworn statement that these employees had signed those statements prior to the sale to the minor.

(3) When the store owner or manager presents to the commissioner the statements described in subdivision (e)(2):

(A) If the violation is the second violation determined to have occurred at that store, the penalty against the store owner or manager shall be eliminated; or

(B) If the violation is the third or subsequent violation determined to have occurred at that store, the commissioner shall consider that evidence and any other evidence with respect to the amount of the penalty against the owner or manager.

(f) The department shall prepare annually for submission by the governor to the secretary of the United States department of health and human services the report required by Section 1926 of subpart I of Part B of Title XIX of the Public Health Service Act, codified as 42 U.S.C. § 300x-26. The department shall prepare for submission to the general assembly and the public an annual report describing in detail the department's enforcement efforts under this part.

History.

Acts 1994, ch. 872, § 10; 1999, ch. 354, § 12; 2015, ch. 353, §§ 11, 12.

39-17-1510. Criminal penalties.

A person who violates § 39-17-1504, § 39-17-1506, § 39-17-1507, or § 39-17-1508 commits a Class C misdemeanor.

History.
Acts 1999, ch. 354, § 13.

39-17-1511. Maintenance of smoking paraphernalia in area inaccessible to customers.

(a) For the purpose of this section:

(1) "Counter" means the point of purchase at a retail establishment;

(2) "Retail establishment" means a place of business open to the general public for the sale of goods or services; and

(3) "Smoking paraphernalia" means:

(A) A cigarette holder;

(B) A smoking pipe made of metal, wood, acrylic, glass, stone, or plastic with or without screens, permanent screens, hashish heads or punctured metal bowls;

(C) A water pipe; or

(D) Rose and pen combinations; and

(4) "Smoking paraphernalia" does not include a smoking pipe or smoking device when sold at retail, if the smoking pipe or smoking device is primarily made of briar, meerschaum, clay or corn cob.

(b) All smoking paraphernalia shall be maintained behind the counter of a retail establishment in an area inaccessible to a customer or in a locked display case that makes the products unavailable to a customer without the assistance of an employee.

(c)(1) A violation of this section is punishable as provided in § 39-17-1509.

(2) If smoking paraphernalia is sold in violation of this section by an employee, the owner or operator of the retail establishment where the employee sold the products shall be in violation of this section.

History.
Acts 2013, ch. 194, § 1.

39-17-1512. Liquid nicotine containers to satisfy federal child-resistant effectiveness standards.

(a) As used in this section, "liquid nicotine container":

(1) Means a bottle or other container that contains liquid nicotine or any other substance containing nicotine, where the liquid or other substance is sold, marketed, or intended for use in a vapor product; and

(2) Does not include a liquid or other substance containing nicotine in a cartridge that is sold, marketed, or intended for use in a vapor product; provided, that such cartridge is prefilled and sealed by the manufacturer, and not intended to be opened by the consumer.

(b) Unless specifically preempted by federal law, a liquid nicotine container used in conjunction with a vapor product that is sold at retail in this state shall satisfy the child-resistant effectiveness standards under 16 CFR 1700.15(b)(1) when tested in accordance with the requirements of 16 CFR 1700.20.

History.
Acts 2015, ch. 353, § 13.

39-17-1513. Department of agriculture encouraged to study effects of sale and distribution of vapor products to persons under 18.

The department of agriculture is urged to study the effects of the sale and distribution of vapor products to persons under eighteen (18) years of age and is encouraged to make recommendations to the legislature with regard to reducing such sale and distribution.

History.
Acts 2015, ch. 353, § 14.

39-17-1514 — 39-17-1550. [Reserved.]

39-17-1551. Purpose of part — Exemptions — Authority to prohibit smoking.

(a) The general assembly intends by this part and other provisions of Tennessee Code Annotated to occupy and preempt the entire field of legislation concerning the regulation of tobacco products. Any law or regulation of tobacco products enacted or promulgated after March 15, 1994, by any agency or political subdivision of the state or any agency thereof is void; provided, that cities, counties and counties having a metropolitan form of government may regulate the use of tobacco products in buildings owned or leased by the political subdivisions; and provided further, that airport authorities created pursuant to title 42; utility districts created pursuant to title 7; and special school districts may regulate the use of tobacco products in buildings owned or leased by the entities. Notwithstanding any other law to the contrary, individual owners or operators of retail establishments located within an enclosed shopping mall shall retain the right to determine the policy on the use of tobacco products within the person's establishment.

(b)(1) Notwithstanding subsection (a) or any other provision of this title, a municipality, a county or a county having a metropolitan form of government is authorized by local ordinance or resolution to prohibit smoking on the grounds of a hospital or in the public areas immediately outside of a hospital building and its entrances, including public sidewalks.

(2) Any regulation or ordinance that is passed or adopted by a local government pursuant to the authority granted by this subsection (b) may prohibit smoking by a distance of up to fifty feet (50′) from a hospital's entrance unless the application of a fifty-foot limit would place hospital patients in a potentially unsafe condition. In which case the fifty-foot limit shall be extended to such distance as is necessary to ensure patient safety as determined by the local government's legislative body in consultation with representatives of any hospitals that are subject to the regulation or ordinance.

(c)(1) Notwithstanding subsection (a) or any other provision of this title, a local government is authorized by ordinance to prohibit smoking on the grounds of a swimming pool owned or operated by such local government or an outdoor amphitheater with a seating capacity of at least six thousand (6,000) owned or operated by such local government.

(2) Subdivision (c)(1) shall only apply to:

(A) Municipalities located in a county having a population of not less than one hundred fifty-six thousand eight hundred (156,800) nor more than one hundred fifty-six thousand nine hundred (156,900), according to the 2010 federal census or any subsequent federal census; or

(B) Any county having a metropolitan form of government with a population of more than five hundred thousand (500,000), according to the 2010 federal census or any subsequent federal census.

History.
Acts 1994, ch. 872, §§ 9, 12; 2011, ch. 296, § 1; 2016, ch. 847, § 1.

Compiler's Notes.
For tables of population of Tennessee municipalities, and for U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

PART 16

CHILDREN'S ACT FOR CLEAN INDOOR AIR

39-17-1601. Short title.

This part shall be known and may be cited as the "Children's Act for Clean Indoor Air."

History.
Acts 1995, ch. 455, § 1.

39-17-1602. Purpose.

It is the intention of the general assembly that this part reduce the extent to which children are exposed to environmental tobacco smoke in facilities where children's services are provided.

History.
Acts 1995, ch. 455, § 2.

39-17-1603. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Children" means individuals who have not attained eighteen (18) years of age;

(2) "Community center" means any center operated by any city or county government that is used for children's activities;

(3) "Day care center" means any place, operated by a person, society, agency, corporation, institution or religious organization, or any other group wherein are received thirteen (13) or more children for group care for less than twenty-four (24) hours per day without transfer of custody;

(4) "Designated smoking area" means an enclosed indoor area or an outdoor area in which smoking is permitted pursuant to this part. If indoors, the smoking area shall be clearly demarcated and separate from any area in which smoking is not permitted, and shall not include more than twenty-five percent (25%) of the area of the building. The indoor smoking area shall be a fully enclosed area;

(5) "Group care home" means a home operated by any person, society, agency, corporation, or institution or any group which receives seven (7) or more children for full-time care outside their own homes in facilities owned or rented and operated by the organization;

(6) "Museum" means those indoor museums and art galleries owned or operated by the state or any political subdivision of the state, and those museums, historical societies, and art galleries owned and operated by not-for-profit corporations;

(7) "Residential treatment facility" means a residential treatment facility licensed under title 33, chapter 2, part 4;

(8) "School grounds" means any building, structure, and surrounding outdoor grounds contained within a public or private preschool, nursery school, kindergarten, elementary or secondary school's legally defined property boundaries as registered in a county register's office, and any publicly owned or leased vehicle used to transport children to or from school or any officially sanctioned or organized school event;

(9) "Smoking" means the burning of a lighted cigarette, cigar, pipe or any other substance containing tobacco;

(10) "Youth development center" means a center established under title 37, chapter 5, part 2, for the detention, treatment, rehabilitation and education of children found to be delinquent; and

(11) "Zoo" means any indoor area open to the public for the purpose of viewing animals.

History.
Acts 1995, ch. 455, § 3; 2000, ch. 947, § 8L.

39-17-1604. Places where smoking is prohibited.

Smoking is not permitted, and no person shall smoke, in the following places:

(1) Child care centers; provided, that the prohibition of this section does not apply to the services provided in a private home. Adult staff members may be permitted to smoke in designated smoking areas to which children are not allowed access. However, written notification shall be given to the parent or legal guardian upon enrollment if the child care center has an indoor designated smoking area;

(2) Any room or area in a community center while the room or area is being used for children's activities;

(3) Group care homes. Adults may smoke in any fully enclosed adult staff residential quarters contained within a group care home, but not in the presence of children who reside as clients in the group care home;

(4) Health care facilities, excluding nursing home facilities. Adult staff members may be permitted to

smoke in designated smoking areas to which children are not allowed access and adults may be permitted to smoke outside the facility;

(5) Museums (except when used after normal operating hours for private functions not attended by children). Adult staff members may be permitted to smoke while at work in designated smoking areas to which children are not allowed access;

(6) All public and private kindergartens, elementary and secondary schools. Adult staff members may be permitted to smoke outdoors but not within fifty feet (50′) of any entrance to any building. Adults may also smoke in any fully enclosed adult staff residential quarters, but not in the presence of children attending the school;

(7) Residential treatment facilities for children and youth. Adult staff members may be permitted to smoke in designated smoking areas to which children are not allowed access;

(8) Youth development centers and facilities. Adult staff members may be permitted to smoke in designated smoking areas to which children are not allowed access;

(9) Zoos. Adult staff members may be permitted to smoke in designated smoking areas to which children are not allowed access; and

(10) School grounds; provided, that after regular school hours, adults are allowed to smoke on the property surrounding the institution, but not blocking any entrance to any building. The property shall not include any public seating areas, including, but not limited to, bleachers used for sporting events, or public restrooms.

History.
Acts 1995, ch. 455, § 4; 2000, ch. 981, § 62.

39-17-1605. "No smoking" signs — Posting notice.

(a) "No Smoking" signs, or the international "No Smoking" symbol, which consists of a pictorial representation of a burning cigarette enclosed in a circle with a bar across it, shall be prominently posted and properly maintained on each main building entrance where smoking is regulated by this part. The "No Smoking" signs or "No Smoking" symbols shall be prominently displayed throughout the building to ensure that the public is aware of the restriction.

(b) The following notice shall be prominently posted, including at each ticket booth, for elementary or secondary school sporting events:

"Smoking is prohibited by law in seating areas and in restrooms."

History.
Acts 1995, ch. 455, § 5.

39-17-1606. Penalty — Enforcement.

(a) An institution violating this part or failing to take reasonable measures to enforce this part commits a Class B misdemeanor, punishable only by a fine not to exceed five hundred dollars ($500).

(b) Any law enforcement officer may issue a citation regarding a violation of this part.

History.
Acts 1995, ch. 455, § 6.

PART 17

CHILD CURFEW

39-17-1701. Short title.

This part shall be known and may be cited as the "Child Curfew Act of 1995."

History.
Acts 1995, ch. 314, § 1.

39-17-1702. Curfew established — Exceptions — Duties of apprehending authority.

(a) It is unlawful for any minor between seventeen (17) and eighteen (18) years of age to remain in or upon any public street, highway, park, vacant lot, establishment or other public place within the county during the following time frames:

(1) Monday through Thursday between the hours of eleven o'clock p.m. (11:00 p.m.) to six o'clock a.m. (6:00 a.m.); and

(2) Friday through Sunday between the hours of twelve o'clock (12:00) midnight to six o'clock a.m. (6:00 a.m.).

(b) It is unlawful for any minor sixteen (16) years of age and under to remain in or upon any public street, highway, park, vacant lot, establishment or other public place within the county during the following time frames:

(1) Monday through Thursday between the hours of ten o'clock p.m. (10:00 p.m.) to six o'clock a.m. (6:00 a.m.); and

(2) Friday through Sunday between the hours of eleven o'clock p.m. (11:00 p.m.) to six o'clock a.m. (6:00 a.m.).

(c) It is unlawful for a parent or guardian of a minor to knowingly permit or by inefficient control to allow the minor to be or remain upon any street or establishment under circumstances not constituting an exception to, or otherwise beyond the scope of subsections (a) and (b). The term "knowingly" includes knowledge that a parent or guardian should reasonably be expected to have concerning the whereabouts of a minor in that parent's legal custody. The term "knowingly" is intended to continue to keep neglectful or careless parents up to a reasonable community standard of parental responsibility through an objective test. It is not a defense that a parent was completely indifferent to the activities or conduct or whereabouts of the minor child.

(d)(1) The following are valid exceptions to the operation of the curfew:

(A) At any time, if a minor is accompanied by the minor's parent or guardian;

(B) When accompanied by an adult authorized by a parent or guardian of the minor to take the parent or guardian's place in accompanying the minor for a designated period of time and purpose within a specified area;

(C) Until the hour of twelve-thirty a.m. (12:30 a.m.), if the minor is on an errand as directed by

the minor's parent;

(D) While engaged in a lawful employment activity, or while going directly to or returning directly from the minor's home and place of lawful employment. This exception shall also apply if the minor is in a public place during the curfew hours in the course of the minor's lawful employment. To come within this exception, the minor must be carrying written evidence of employment that is issued by the employer;

(E) Until the hour of twelve-thirty a.m. (12:30 a.m.) if the minor is on the property of or the sidewalk directly adjacent to the place where the minor resides or the place immediately adjacent to the place where the minor resides, if the owner of the adjacent building does not communicate an objection to the minor and the law enforcement officer;

(F) When returning home by a direct route from (and within thirty (30) minutes of the termination of) a school activity or an activity of a religious or other voluntary association, or a place of public entertainment, such as a movie, play or sporting event. This exception does not apply beyond one o'clock a.m. (1:00 a.m.).

(G) In the case of reasonable necessity, but only after the minor's parent has communicated to law enforcement personnel the facts establishing the reasonable necessity relating to specified streets at a designated time for a described purpose including place or origin and destination. A copy of the communication, or the record of the communication, an appropriate notation of the time it was received and of the names and addresses of the parent or guardian and minor constitute evidence of qualification under this exception;

(H) When exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech and the right of assembly. A minor shall show evidence of the good faith of the exercise and provide notice to the city officials by first delivering to the appropriate law enforcement authority a written communication, signed by the minor, with the minor's home address and telephone number, addressed to the mayor of the county specifying when, where and in what manner the minor will be on the streets at night during hours when the curfew is still otherwise applicable to the minor in the exercise of a First Amendment right specified in the communication; and

(I) When a minor is, with parental consent, in a motor vehicle engaged in good faith interstate travel.

(2) Each of the exceptions contained in subdivision (d)(1), and the limitations are severable.

(e) When any child is in violation of this section, the apprehending officer shall act in one (1) of the following ways:

(1) In the case of a first violation, and if in the opinion of the officer the action would be effective, take the child to the child's home and warn and counsel the parents or guardians;

(2) Take the minor into custody and transport the minor to a designated curfew center;

(3) Issue a summons to the child or parents or guardians to appear at the juvenile court; or

(4) Bring the child into the custody of the juvenile court for disposition.

(f)(1) A minor violating this section shall commit an unruly act disposition of which shall be governed pursuant to title 37.

(2) Any parent, guardian, or other person having the care, custody and control of a minor violating this section commits a Class C misdemeanor and shall be fined no more than fifty dollars ($50.00) for each offense. Each violation of this section shall constitute a separate offense.

History.

Acts 1995, ch. 314, § 2; 2015, ch. 319, §§ 1, 2.

39-17-1703. Applicability, adoption of part.

(a) This part shall apply upon the adoption of a resolution or ordinance by a two-thirds (⅔) vote of the appropriate legislative body of any:

(1) County having a population of not less than eight hundred ninety-seven thousand four hundred (897,400) nor more than eight hundred ninety-seven thousand five hundred (897,500), according to the 2000 federal census or any subsequent federal census;

(2) County having a population of not less than twenty-eight thousand one hundred (28,100) nor more than twenty-eight thousand two hundred (28,200), according to the 2000 federal census or any subsequent federal census; or

(3) Municipality in any county referenced in subdivision (a)(1) or (a)(2).

(b) Section 39-17-1702 shall not apply to a municipality that has a more stringent curfew ordinance.

History.

Acts 1995, ch. 314, § 3; 1999, ch. 31, § 1; 2002, ch. 507, § 1; 2007, ch. 67, § 1; 2007, ch. 586, § 4.

Compiler's Notes.

For table of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

39-17-1704. Authorization to adopt municipal curfew.

The county legislative body of any county having a population of not less than three hundred eighty-two thousand (382,000) nor more than three hundred eighty-two thousand one hundred (382,100), according to the 2000 federal census or any subsequent federal census, is authorized to adopt by a two-thirds (⅔) vote a curfew identical to that which a municipality located

within that county has previously adopted by ordinance.

History.
Acts 2002, ch. 507, § 2.

Compiler's Notes.
For table of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

TITLE 40

CRIMINAL PROCEDURE

CHAPTER 35

TENNESSEE CRIMINAL SENTENCING REFORM ACT OF 1989

Part 1. General Provisions

SECTION.
40-35-121. Criminal gang offenses — Enhanced punishment — Procedure.

PART 1

GENERAL PROVISIONS

40-35-121. Criminal gang offenses — Enhanced punishment — Procedure.

(a) As used in this section, unless the context otherwise requires:

(1) "Criminal gang" means a formal or informal ongoing organization, association or group consisting of three (3) or more persons that has:

(A) As one (1) of its primary activities, the commission of criminal gang offenses;

(B) Two (2) or more members who, individually or collectively, engage in or have engaged in a pattern of criminal gang activity;

(2) "Criminal gang member" is a person who is a member of a criminal gang, as defined in subdivision (a)(1), who meets two (2) or more of the following criteria:

(A) Admits to criminal gang involvement;

(B) Is identified as a criminal gang member by a parent or guardian;

(C) Is identified as a criminal gang member by a documented reliable informant;

(D) Resides in or frequents a particular criminal gang's area, adopts their style or dress, their use of hand signs or their tattoos and associates with known criminal gang members;

(E) Is identified as a criminal gang member by an informant of previously untested reliability and the identification is corroborated by independent information;

(F) Has been arrested more than once in the company of identified criminal gang members for offenses that are consistent with usual criminal gang activity; or

(G) Is identified as a criminal gang member by physical evidence such as photographs or other documentation;

(3) "Criminal gang offense" means:

(A) A criminal offense committed prior to July 1, 2013 that:

(i) During the perpetration of which the defendant knowingly causes, or threatens to cause, death or bodily injury to another person or persons and specifically includes rape of a child, aggravated rape and rape; or

(ii) Results, or was intended to result, in the defendant's receiving income, benefit, property, money or anything of value from the commission of any aggravated burglary, or from the illegal sale, delivery, or manufacture of a controlled substance, controlled substance analogue, or firearm; or

(B) The commission or attempted commission, facilitation of, solicitation of, or conspiracy to commit any of the following offenses on or after July 1, 2013:

(i) First degree murder, as defined in § 39-13-202;

(ii) Second degree murder, as defined in § 39-13-210;

(iii) Voluntary manslaughter, as defined in § 39-13-211;

(iv) Assault, as defined in § 39-13-101;

(v) Aggravated assault, as defined in § 39-13-102;

(vi) Kidnapping, as defined in § 39-13-303;

(vii) Aggravated kidnapping, as defined in § 39-13-304;

(viii) Especially aggravated kidnapping, as defined in § 39-13-305;

(ix) Robbery, as defined in § 39-13-401;

(x) Aggravated robbery, as defined in § 39-13-402;

(xi) Especially aggravated robbery, as defined in § 39-13-403;

(xii) Carjacking, as defined in § 39-13-404;

(xiii) Rape, as defined in § 39-13-503;

(xiv) Aggravated rape, as defined in § 39-13-502;

(xv) Rape of a child, as defined in § 39-13-522;

(xvi) Aggravated burglary, as defined in § 39-14-403;

(xvii) Especially aggravated burglary, as defined in § 39-14-404;

(xviii) Aggravated criminal trespass, as defined in § 39-14-406;

(xix) Coercion of witness, as defined in § 39-16-507;

(xx) Retaliation for past action, as defined in § 39-16-510;

(xxi) Riot, as defined in § 39-17-302;

(xxii) Aggravated riot, as defined in § 39-17-303;

(xxiii) Inciting to riot, as defined in § 39-17-304;

(xxiv) The illegal sale, delivery or manufacture of a controlled substance or controlled substance analogue, as defined in §§ 39-17-417 and 39-17-454;

(xxv) Possession of a controlled substance or controlled substance analogue with intent to sell, deliver, or manufacture, as defined in § 39-17-417(a)(4) and § 39-17-454;

(xxvi) Unlawful carrying or possession of a weapon, as defined in § 39-17-1307;

(xxvii) Trafficking for commercial sex acts, as defined in § 39-13-309.

(4)(A) "Pattern of criminal gang activity" means prior convictions for the commission or attempted commission of, facilitation of, solicitation of, or conspiracy to commit:

(i) Two (2) or more criminal gang offenses that are classified as felonies; or

(ii) Three (3) or more criminal gang offenses that are classified as misdemeanors; or

(iii) One (1) or more criminal gang offenses that are classified as felonies and two (2) or more criminal gang offenses that are classified as misdemeanors; and

(iv) The criminal gang offenses are committed on separate occasions; and

(v) The criminal gang offenses are committed within a five-year period;

(B)(i) As used in this subsection (a), "prior conviction" means a criminal gang offense for which a criminal gang member was convicted prior to the commission of the instant criminal gang offense by the defendant and includes convictions occurring prior to July 1, 1997;

(ii) "Prior conviction" includes convictions under the laws of any other state, government or country that, if committed in this state, would have constituted a criminal gang offense. In the event that a conviction from a jurisdiction other than Tennessee is not specifically named the same as a criminal gang offense, the elements of the offense in the other jurisdiction shall be used by the Tennessee court to determine if the offense is a criminal gang offense;

(iii) Convictions for multiple criminal gang offenses committed as part of a single course of conduct within twenty-four (24) hours are not committed on "separate occasions." However, acts that constitute criminal gang offenses under subdivision (a)(3)(A) shall not be construed to be a single course of conduct.

(b) A criminal gang offense committed by a defendant shall be punished one (1) classification higher than the classification established by the specific statute creating the offense committed if:

(1) The defendant was a criminal gang member at the time of the offense; and

(2) The criminal gang offense was committed at the direction of, in association with, or for the benefit of the defendant's criminal gang or a member of the defendant's criminal gang.

(c) A criminal gang offense committed by a defendant who was not a criminal gang member at the time of the offense but who committed the offense for the purpose of and with the intent to fulfill an initiation or other requirement for joining a criminal gang as defined in subdivision (a)(1) shall be punished one (1) classification higher than the classification established by the specific statute creating the offense committed.

(d) If the criminal gang offense subject to enhancement under subsection (b) or (c) is a Class A felony, the presumptive sentence for the offense shall be the maximum sentence within the range from which the defendant is to be sentenced.

(e) A criminal gang offense committed by a defendant shall be punished two (2) classifications higher than the classification established by the specific statute creating the offense committed if, at the time the offense was committed:

(1) The defendant was a criminal gang member;

(2) The defendant was also a leader or organizer of the criminal gang; and

(3) The offense was at the direction of, in association with, or for the benefit of the defendant's criminal gang or a member of the defendant's criminal gang.

(f) If the criminal gang offense subject to enhancement under subsection (e) is a Class A or B felony, the criminal gang member shall be sentenced as a Class A felon and the presumptive sentence for the offense shall be the maximum sentence within the range from which the defendant is to be sentenced.

(g) If the defendant is charged with a criminal gang offense and the district attorney general intends to seek enhancement of the punishment under subsection (b), (c) or (e), the indictment, in a separate count, shall specify, charge and give notice of the subsection under which enhancement is alleged applicable and of the required prior convictions constituting the gang's pattern of criminal gang activity.

(h)(1) If the defendant is convicted of the underlying criminal gang offense, the jury shall then separately consider whether the defendant was at the time of the offense:

(A) A criminal gang member;

(B) A criminal gang member and a leader or organizer of the gang; or

(C) Not a criminal gang member but committed the offense for the purpose of joining a criminal gang.

(2) If the jury convicts the defendant under subdivision (h)(1)(A), (h)(1)(B) or (h)(1)(C), the court shall pronounce judgment and sentence the defendant as provided in this section.

(i) For purposes of establishing a "pattern of criminal gang activity" the following offenses may be considered:

(1) Criminal gang offenses, as defined by subdivision (a)(3)(A), committed prior to July 1, 2013; and

(2) Criminal gang offenses, as defined by subdivision (a)(3)(B), committed on or after July 1, 2013.

History.
Acts 1997, ch. 437, § 1; 2011, ch. 493, § 2; 2012, ch. 848, § 34; 2013, ch. 357, §§ 1–3; 2013, ch. 415, § 1; 2016, ch. 1034, §§ 1-3.

CHAPTER 39

OFFENDER REGISTRATION AND MONITORING

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

SECTION.
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.
40-39-207. 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.
40-39-215. Offenses — Sexual offenders, violent sexual offenders, or violent juvenile sexual offenders — Defense.

PART 2

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

40-39-202. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "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. An adjudication in another state for a delinquent act committed in another jurisdiction that would be classified as a violent juvenile sexual offense under this section, if committed in this state, shall be considered a violent juvenile sexual offense 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. "Conviction" also includes a juvenile delinquency adjudication for a violent juvenile sexual offense if the offense occurs on or after July 1, 2011;

(2) "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 department of correction or court ordered probation officer;

(3) "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;

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

(A) Community college;

(B) College;

(C) University; or

(D) Independent postsecondary institution;

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

(6) "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;

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

(8) "Month" means a calendar month;

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

(10) "Offender against children" means any sexual offender, violent sexual offender or violent juvenile sexual offender if the victim in one (1) or more of the offender's crimes was a child of twelve (12) years of age or less;

(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 an offender, or the re-registration of an 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(d)(1)-(15);

(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), or if the judge orders the person to register as a sexual offender pursuant to § 39-13-506(d);

(iii) Aggravated prostitution, under § 39-13-516, provided the offense occurred prior to July 1, 2010;

(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, where the victim is a minor, 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);

(xvii) Soliciting sexual exploitation of a minor — exploitation of a minor by electronic means, under § 39-13-529;

(xviii) Promotion of prostitution, under § 39-13-515;

(xix) Patronizing prostitution where the victim is a minor, under § 39-13-514;

(xx) Observation without consent, under § 39-13-607, upon a third or subsequent conviction;

(xxi) Observation without consent, under § 39-13-607 when the offense is classified as a Class E felony;

(xxii) Unlawful photographing under § 39-13-605 when the offense is classified as a Class E or Class D felony;

(xxiii) Sexual contact with inmates, under § 39-16-408; or

(xxiv) Unlawful photographing, under § 39-13-605, when convicted as a misdemeanor if the judge orders the person to register as a sexual offender pursuant to § 39-13-605;

(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) "Social media" means web sites and other online means of communication that are usually used by large groups of people to share information, to develop social and professional contacts, and that customarily require an identifying password and user identification to participate;

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

(23) "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;

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

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

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

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

(28)(A) "Violent juvenile sexual offender" means a person who is adjudicated delinquent in this state for any act that constitutes a violent juvenile sexual offense; provided, that the person is at least fourteen (14) years of age but less than eighteen (18) years of age at the time the act is committed;

(B) Upon an adjudication of delinquency in this state for an act that constitutes a violent juvenile sexual offense, the violent juvenile sexual offender shall also be considered a violent sexual offender under this part, unless otherwise set out in this part;

(29)(A) "Violent juvenile sexual offense" means an adjudication of delinquency, for any act committed on or after July 1, 2011, that, if committed by an adult, constitutes the criminal offense of:

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

(ii) Rape, under § 39-13-503;

(iii) Rape of a child, under § 39-13-522, provided the victim is at least four (4) years younger than the offender;

(iv) Aggravated rape of a child, under § 39-13-531; or

(v) Criminal attempt, under § 39-12-101, to commit any of the offenses enumerated in this subdivision (28)(A);

(B) "Violent juvenile sexual offense" also means an adjudication of delinquency, for any act committed on or after July 1, 2014, that, if committed by an adult, constitutes the criminal offense of:

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

(ii) Criminal attempt, under § 39-12-101, to commit any of the offenses enumerated in this subdivision (28)(B);

(30) "Violent sexual offender" means a person who has been convicted in this state of committing a violent sexual offense or has another qualifying conviction;

(31) "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, § 39-12-501 [repealed], § 39-605 [repealed], or § 39-606 [repealed], to commit any of the offenses enumer-

ated in this subdivision (30);

(Q) Solicitation, under § 39-12-102, to commit any of the offenses enumerated in this subdivision (30);

(R) Conspiracy, under § 39-12-103, to commit any of the offenses enumerated in this subdivision (30);

(S) Criminal responsibility, under § 39-11-402(2), to commit any of the offenses enumerated in this subdivision (30);

(T) Facilitating the commission, under § 39-11-403, to commit any of the offenses enumerated in this subdivision (30);

(U) Being an accessory after the fact, under § 39-11-411, to commit any of the offenses enumerated in this subdivision (30);

(V) Incest, under § 39-15-302;

(W) Aggravated rape of a child under § 39-13-531;

(X) Aggravated prostitution, under § 39-13-516; provided, that the offense occurs on or after July 1, 2010;

(Y) Trafficking for a commercial sex act, under § 39-13-309; or

(Z) Promotion of prostitution, under § 39-13-515, where the person has a prior conviction for promotion of prostitution; and

(32) "Within forty-eight (48) hours" means a continuous forty-eight-hour period, not including Saturdays, Sundays or federal or state holidays.

History.

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; 2010, ch. 1138, §§ 1-5; 2011, ch. 483, §§ 5-9; 2012, ch. 727, §§ 47, 60; 2012, ch. 753, §§ 1, 2; 2012, ch. 883, § 2; 2012, ch. 1075, § 4; 2014, ch. 722, § 1; 2014, ch. 729, § 1; 2014, ch. 744, § 1; 2014, ch. 770, §§ 1, 5, 6; 2014, ch. 977, § 3; 2015, ch. 284, § 1; 2015, ch. 316, § 1; 2015, ch. 516, § 6; 2016, ch. 941, § 2.

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 provided 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.

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.

For the Preamble to the act concerning the transfer of certain functions relating to probation and parole services and the community correction grant program from the board of probation and parole to the department of correction, please refer to Acts 2012, ch. 727.

Acts 2012, ch. 727, § 63 provided that the implementation of the act, which deleted the definition of "board" and amended the definition of "designated law enforcement agency", shall be fully accomplished on or before January 1, 2013.

Pursuant to Article III, Section 18 of the Constitution of Tennessee, Acts 2014, ch. 744 took effect on April 21, 2014.

Acts 2014, ch. 977, § 4 provided that the act, which added (A)(xxi) and (xxii) in the definition of "sexual offense", shall apply only to offenses occurring on or after July 1, 2014.

Title 39, ch. 1, part 3, §§ 39-1-401, 39-1-501, 39-1-601, 39-2-303, 39-2-603 — 39-2-608, 39-4-306, 39-6-1137, 39-6-1138, referred to in this section, were repealed by Acts 1989, ch. 591, § 1, effective November 1, 1989.

Section 39-13-507, referred to in this section, was repealed by Acts 2005, ch. 456, § 2, effective June 18, 2005.

Acts 2015, ch. 284, § 4 provided that the act, which added (20)(A)(xxiii), shall apply to acts committed on or after July 1, 2015.

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, adjudication or discharge from supervision, an offender whose contact with this state is sufficient to satisfy the requirements of subdivision (a)(1) is required to register in person as required by this part, if the person was required to register as any form of sexual offender, juvenile offender or otherwise, 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 department of correction.

(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.

(3) Notwithstanding subdivisions (b)(1) and (2), an offender who is incarcerated in this state in a local, state or federal jail or a private penal institution and who has not registered pursuant to § 40-39-212(a) or any other law shall, by August 1, 2011, be required to report in person, register, complete and sign 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.

(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 for Supervision of Adult Offenders, compiled in 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, including pseudonyms and ethnic or tribal names;

(2) Date and place of birth;

(3) Social security number;

(4) A photocopy of a valid driver 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; or the violent juvenile sexual offense for which the registrant has been adjudicated delinquent, the date of the act for which the adjudication was made and the county and state of each adjudication;

(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, including usernames, any social media accounts the offender uses or intends to use, instant message, other Internet communication platforms or devices, and the offender's username, screen name, or other method by which the offender accesses these accounts or web sites;

(18) Whether any minors reside in the primary or secondary residence;

(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;

(20) Copies of all passports and immigration documents; and

(21) Professional licensing information that authorizes an offender to engage in an occupation or carry out a trade or business.

(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 or by electronic means 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 the 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 the 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.

(p) An offender who is housed in a halfway house or any other facility as an alternative to incarceration where unsupervised contact is permitted outside of the facility is required to register or report with the registering agency as set out in § 40-39-204 in the city or county of the facility in which the offender is housed. The registering agency shall be responsible for the duties set out in § 40-39-205(b) during the time that the offender is housed in the facility.

(q) Any court exercising juvenile jurisdiction that adjudicates a juvenile as delinquent for conduct that qualifies such juvenile as a violent juvenile sexual offender shall transmit the information set out in subsection (i) pertaining to such violent juvenile sexual offender to the TBI for inclusion on the SOR within forty-eight (48) hours of the offender's adjudication for the qualifying offenses set out in § 40-39-202(29).

History.

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; 2010, ch. 1138, §§ 6, 7; 2011, ch. 222, § 1; 2011, ch. 267, § 1; 2011, ch. 483, §§ 10-12; 2012, ch. 727, § 48; 2015, ch. 516, §§ 3, 7.

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 2011, ch. 483, § 12 added a new subsection (p). Acts 2011, ch. 222, § 1 added a new subsection (p); therefore, the new subsection by ch. 483 was added as subsection (q).

For the Preamble to the act concerning the transfer of certain functions relating to probation and parole services and the community correction grant program from the board of probation and parole to the department of correction, please refer to Acts 2012, ch. 727.

Acts 2012, ch. 727, § 63 provided that the implementation of the act, which amended subdivision (a)(5), shall be fully accomplished on or before January 1, 2013.

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 (e), 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) Notwithstanding 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.

(d) 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 (d)(1)-(16) 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 (d)(1)-(16) 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 home page. 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, including pseudonyms and ethnic or tribal names;

(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;

(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) The text of the provision of law or laws defining the criminal offense or offenses for which the offender is registered;

(12) A physical description of the offender, including height, weight, color of eyes and hair, tattoos, scars and marks;

(13) 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;

(14) The address of the offender's employer or employers;

(15) The license plate number and a description of all of the offender's vehicles; and

(16) Whether the offender is an offender against children, as defined by § 40-39-202.

(e) For any violent juvenile sexual offender who is adjudicated for a violent juvenile sexual offense, the information concerning the violent juvenile sexual offender set out in (d) shall be confidential, except as otherwise provided under § 40-39-207(j) and any other provision of law.

(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.

History.

Acts 2004, ch. 921, § 1; 2005, ch. 316, § 1; 2007, ch. 531, §§ 1, 2; 2008, ch. 1164, §§ 5, 6, 15; 2010, ch. 1138, §§ 8-10; 2011, ch. 483, § 14; 2014, ch. 770, § 4.

Compiler's Notes.

The Tennessee Internet Criminal Information Center Hotline phone number is 1-888-837-4170. The sex offender registry may be found at http://www.tbi.tn.gov/sex_ofender_reg/sex_ofender_reg.shtml.

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 provided 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.

40-39-207. Request for termination of registration requirements — Tolling of reporting period — Review of decisions to deny termination of reporting requirements — Lifetime registration.

(a)(1) Except as otherwise provided in subdivision (a)(3), 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.

(3) Notwithstanding subdivision (a)(1), no sooner than three (3) years after termination of active supervision on probation, parole, or any other alternative to incarceration, or no sooner than three (3) years after discharge from incarceration without supervision, an offender required to register under this part due to conviction under § 39-16-408 may file a request for termination of registration requirements with TBI headquarters in Nashville.

(4) Notwithstanding subdivision (a)(1), if a court of competent jurisdiction grants an offender's petition, filed pursuant to § 40-39-218, for termination of the requirements imposed by this part based on the offender's status as a victim of a human trafficking offense, as defined by § 39-13-314, sexual offense, under title 39, chapter 13, part 5, or domestic abuse, as defined by § 36-3-601, the Tennessee bureau of investigation shall, immediately upon receiving a copy of the order, remove the offender from the SOR.

(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;

(B) Has been convicted of a violent sexual offense, as defined in § 40-39-202; or

(C) Has been convicted of an offense in which the victim was a child of twelve (12) years of age or less.

(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.

(3)(A) If a person convicted of an offense was not required to register as an offender prior to July 1, 2010, 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 July 1, 2010, 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)(3)(A).

(C) If a person convicted of an offense was not required to register as an offender prior to July 1, 2010, 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.

(4) Unless otherwise authorized by law, a person required to register as any form of a sexual offender in this state due to a qualifying offense from another jurisdiction which is classified as a sexual offense in this state may apply for removal from the registry pursuant to subdivision (a)(1) following the later of:

(A) Ten (10) years from the date of termination of active supervision or probation, parole or any other alternative to incarceration, or after discharge from incarceration without supervision; or

(B) Five (5) years after being added to the Tennessee sexual offender registry.

(j)(1) Violent juvenile sexual offenders who are currently registered as such and who receive a subsequent adjudication in juvenile court or a court having juvenile court jurisdiction for one of the offenses listed in § 40-39-202(29) or a crime that if committed in this state would require registration shall be required to register for life. Information concerning

the violent juvenile sexual offender who commits a subsequent offense listed in § 40-39-202(29), which was formerly considered confidential under § 40-39-206(e), shall be deemed public information once the offender reaches the offender's eighteenth birthday.

(2) Violent juvenile sexual offenders who are currently registered as such and who, upon reaching the age of eighteen (18), are convicted of a sexual offense as set out in § 40-39-202(20) or a violent sexual offense as set out in § 40-39-202(31) shall be required to register for life. Information concerning the violent juvenile sexual offender who commits a subsequent offense listed in § 40-39-202(20) or § 40-39-202(31), which was formerly considered confidential under § 40-39-206(e), shall be deemed public information.

(3) Violent juvenile sexual offenders who reach the age of twenty-five (25), and who have not been adjudicated or convicted of a subsequent qualifying offense as set out in subdivisions (j)(1) and (2) or any offense set out in subdivision (g)(1)(C), shall be eligible for termination from the SOR. Upon reaching the age of twenty-five (25), the violent juvenile sexual offender may apply for removal from the SOR by use of a form created by the TBI. The form will contain a statement, sworn to by the offender under the penalty of perjury, that the offender has not been convicted of or adjudicated delinquent of any of the offenses set out in subdivisions (j)(1) and (2) or any offense set out in subdivision (g)(1)(C).

(4) TBI shall also conduct fingerprint-based state and federal criminal history checks to determine whether the violent juvenile sexual offender has been convicted of or adjudicated on any prohibited crimes as set out in subdivisions (j)(1) and (2) or any offense set out in subdivision (g)(1)(C), including crimes committed in other jurisdictions.

(5) If the violent juvenile sexual offender has not been convicted or adjudicated delinquent in any of the prohibited crimes, the offender shall be removed from the sex offender registry.

History.

Acts 2004, ch. 921, § 1; 2005, ch. 316, § 1; 2006, ch. 890, § 18; 2008, ch. 1164, § 7; 2010, ch. 1138, § 11; 2011, ch. 483, § 15; 2014, ch. 744, § 2; 2014, ch. 770, §§ 2, 3; 2015, ch. 284, §§ 2, 3; 2015, ch. 469, § 2.

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 provided 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.

Pursuant to Article III, Section 18 of the Constitution of Tennessee, Acts 2014, ch. 744 took effect on April 21, 2014.

Acts 2015, ch. 284, § 4 provided that the act, which amended (a)(1) and added (a)(3), shall apply to acts committed on or after July 1, 2015.

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:

(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 reentry 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 department of correction 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

(i) Sexual offender, violent sexual offender and violent juvenile sexual offender registry files and records maintained by the TBI may be digitized. A digitized copy of any original file or record in the TBI's possession shall be deemed to be an original for all purposes, including introduction into evidence in all courts or administrative agencies.

(j) Notwithstanding any law to the contrary, a violent juvenile sexual offender who knowingly violates this part commits a delinquent act as defined by the juvenile code.

History.

Acts 2004, ch. 921, § 1; 2005, ch. 316, § 1; 2006, ch. 890, § 19; 2008, ch. 1164, § 8; 2009, ch. 145, § 1; 2011, ch. 483, §§ 16, 17; 2012, ch. 727, § 49.

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 provided 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.

For the Preamble to the act concerning the transfer of certain functions relating to probation and parole services and the community correction grant program from the board of probation and parole to the department of correction, please refer to Acts 2012, ch. 727.

Acts 2012, ch. 727, § 63 provided that the implementation of the act, which amended subsection (g), shall be fully accomplished on or before January 1, 2013.

40-39-215. Offenses — Sexual offenders, violent sexual offenders, or violent juvenile sexual offenders — Defense.

(a) While mandated to comply with the requirements of this chapter, it is an offense for a sexual offender, violent sexual offender or a violent juvenile sexual offender, as those terms are 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.

History.

Acts 2008, ch. 1164, § 13; 2011, ch. 483, § 23.

TITLE 49

EDUCATION

CHAPTER 1

STATE ADMINISTRATION

Part 2. Department of Education

SECTION.
49-1-206. Preschool/parenting learning centers for teen parents.
49-1-207. Innovative educational programs.
49-1-208. Standards for parental involvement in public schools.
49-1-214. Safe schools — Advisory guidelines.
49-1-221. Policy on use of Internet — Filing of policy — Contents.

Part 5. Dropout Prevention

49-1-520. Tennessee model dropout prevention program.

PART 2

DEPARTMENT OF EDUCATION

49-1-206. Preschool/parenting learning centers for teen parents.

The departments of education and human services shall develop and implement statewide a joint program of technical assistance, consultative services, workshops, seminars, training opportunities and other appropriate methods of encouragement and support for any LEA that establishes, or that is considering establishment of, a public school based preschool/parenting learning center to provide child care and parenting training for teen parents who are enrolled as students and to reduce dropout rates among such parents. The joint program shall also provide assistance to any such agency in developing a transportation plan that will enable and encourage teen parents and their children to fully participate and benefit from the center. Additionally, the joint program shall provide assistance to any such agency in utilizing the center for parenting and child development course electives for students who are not parents, in order to instruct such students on the realities and difficulties associated with early parenthood. The departments shall jointly undertake

continuing activities to inform and remind all LEAs of the program established pursuant to this section. To the extent that funding is available for such purpose as contained within the general appropriations act, other appropriate methods of encouragement and support may include state implementation grants awarded on a matching fund basis, the dollar amount of any state implementation grant to be determined by the department of education, acting in consultation with the department of human services.

History.
Acts 1988, ch. 1006, §§ 2, 3; 1996, ch. 1079, § 183; 2011, ch. 410, § 3(dd).

Compiler's Notes.
For the Preamble to the act concerning the prohibition against establishment of a special committee if there is a standing committee on the same subject, please refer to Acts 2011, ch. 410.

49-1-207. Innovative educational programs.

(a) The commissioner of education may authorize up to twenty-four (24) school systems or any part thereof to operate as innovative educational programs that emphasize school-based decision making and the creation of small learning communities. Upon authorization of the local board of education, the director of schools on behalf of the school system or the principal on behalf of an individual public school may apply to the commissioner to operate the system or school in accordance with an alternative plan approved under this section by the commissioner. The principal may be authorized by the principal's performance contract to develop such a plan. Prior to application, the principal shall consult with the principal's faculty. Subject to the implementation and funding of the relevant federal program, additional individual schools that emphasize school-based decision making may be approved.

(b) The schools and systems shall be distributed throughout the state and not concentrated in any grand division. The commissioner has the discretion to approve the entire alternative plan or any part of it.

(c)(1) The commissioner, in the commissioner's discretion, is authorized to waive any rules and regulations necessary to accommodate the implementation of a local plan. In exercising such discretion, the commissioner shall consider whether the proposed waiver will improve the educational opportunities and performance of the subject students by the application of a nonconventional curriculum and operational methods in innovative school programs developed by the use of local initiative and decision making.

(2) In these alternative programs, the commissioner may waive certain rules and regulations, including, but not limited to, regulations relative to reporting requirements and premium pay for educators, without giving rise to any contractual right to such pay.

(3) The commissioner of education shall only be authorized to waive regulations relative to health and safety after consultation with either the commissioner of health or the state fire marshal, or both, as appropriate. The commissioner of health or the state fire marshal, as appropriate, must determine that the proposed waiver does not constitute a threat to the health and safety of students and staff and must notify the commissioner of education in writing of such determination.

(d) No local plan approved by the commissioner of education shall reduce the level of state funding to an LEA under this title.

(e) At any time before the end of an approved alternative plan, the school principal on behalf of the principal's school or the local board of education acting through the director of schools may elect to terminate the alternative program and to return to operation under all applicable rules and regulations. The principal or the director of schools shall provide thirty (30) days' notice to the commissioner of an intent to withdraw from the alternative program.

(f) A local school board shall comply with the open meetings law, compiled in title 8, chapter 44, when it considers any alternative plan under this section.

(g) A school operating an innovative education program in accordance with this section is not a charter school and cannot convert to a charter school after being authorized under this section to conduct an innovative education program.

History.
Acts 1990, ch. 648, § 1; 2004, ch. 832, §§ 5, 6, 7; 2011, ch. 378, § 7.

Compiler's Notes.
Acts 2011, ch. 378, § 4 provided that nothing in the act shall be construed to abridge or impair a contract or agreement governing terms and conditions of professional service entered into by a board of education and a recognized professional employees' organization under the Education Professional Negotiations Act before June 1, 2011. Any such contract or agreement shall remain in full force and effect until the expiration of the contract or agreement.

49-1-208. Standards for parental involvement in public schools.

The department of education shall develop standards for parental involvement in public schools and shall include in the Tennessee report card for schools each school district's and each school's compliance with the standards. Reporting shall begin with the report card issued for the 2010-2011 school year.

History.
Acts 2009, ch. 154, § 1.

49-1-214. Safe schools — Advisory guidelines.

(a) The commissioner of education, in consultation with the commissioner of safety, shall develop advisory guidelines for LEAs to use in developing safe and secure learning environments in schools. Such guidelines shall emphasize consultation at the local level with appropriate law enforcement authorities.

(b) The department of education may prepare and distribute to LEAs guidelines for incorporating into local staff development and in-service training the materials and speakers necessary to help educators reduce gang and individual violence, to assist in drug and alcohol abuse prevention and to provide educators

with the tools for nonintrusive identification of potentially violent individuals in and around schools. The department may, upon request, assist LEAs in developing comprehensive violence, drug and alcohol abuse prevention in-service training programs. Department guidelines shall encourage the sharing of resources, the development of joint or collaborative programs and the coordination of efforts with local health departments, county and city law enforcement agencies and other public agencies providing health, drug, alcohol, gang violence prevention and other related services.

(c) The department may assist LEAs in qualifying for the receipt of federal and state funds that may support local efforts to provide the in-service training programs in this section. The department shall encourage LEAs to provide written materials to assist teachers and parents working to develop a safe and secure learning environment in system schools. Within available resources, the department may provide technical assistance directly to LEAs seeking to expand teacher and student safety programs.

(d) The state board of education, in consultation with the commissioner of safety, shall develop advisory guidelines for the administration, faculty and staff of the Alvin C. York Institute, the School for the Blind and the School for the Deaf to use in developing a safe and secure learning environment at such schools. The guidelines shall emphasize consultation at the local level with appropriate law enforcement authorities.

History.

Acts 1996, ch. 891, § 2; 1999, ch. 240, § 1; 1999, ch. 310, § 1; 2003, ch. 355, § 27.

Compiler's Notes.

Acts 1996, ch. 891, § 1 provided that this section may be known and cited as the "Safe Schools Act."

Acts 2003, ch. 355, § 66 provided that no expenditure of public funds pursuant to the act shall be made in violation of the provisions of Title VI of the Civil Rights Act of 1964, as codified in 42 U.S.C. § 2000d.

49-1-221. Policy on use of Internet — Filing of policy — Contents.

(a)(1) Every two (2) years, each director of schools shall file with the commissioner of education an acceptable use policy, approved by the local school board, for the international network of computer systems commonly known as the Internet. At a minimum, the policy shall contain provisions that:

(A) Are designed to prohibit certain inappropriate use by school district employees and students of the school district's computers via the Internet;

(B) Seek to prevent access by students to material that the school district deems to be harmful to juveniles;

(C) Select a technology for the school district's computers having Internet access to filter or block Internet access through the computers to child pornography and obscenity;

(D) Establish appropriate measures to be taken against persons who violate the policy;

(E) Include a component on Internet safety for students that is integrated in a school district's instructional program; and

(F) Encourage communications with parents that raise awareness about Internet safety using existing avenues of communication, such as parent-teacher conferences.

(2) The policy may include such other terms, conditions and requirements as deemed appropriate, such as requiring written parental authorization for Internet use by juveniles or differentiating acceptable uses among elementary, middle and high school students.

(b) The director of schools shall take such steps as appropriate to implement and enforce the school district's policy.

(c) On or before December 1, 2008, and biennially thereafter, the commissioner of education shall submit a report to the chair of the education committee of the senate and the chair of the instruction and programs committee of the house of representatives that summarizes the acceptable use policies filed with the commissioner pursuant to this section and the status of those policies. In lieu of submitting the biennial report to the chair of the education committee of the senate and the chair of the instruction and programs committee of the house of representatives, the commissioner is authorized to post the report on the department's web site and give notice of the posting via email to the chairs.

(d) In addition to the requirements of subsections (a)-(c) regarding public school Internet use policies, the principal or other chief administrator of all category 1-3 nonpublic schools approved by the department of education shall select a technology for such school's computers having Internet access to filter or block Internet access through the computers to child pornography.

(e) The commissioner of education shall issue guidelines to school districts regarding instructional programs related to Internet safety. Within forty-five (45) days of July 1, 2008, the commissioner shall issue a memorandum advising school districts of this section and encourage cooperation with local law enforcement agencies in its implementation.

(f) The attorney general and reporter shall work with the department of education to assist local school districts in developing their own methods for teaching Internet safety to elementary and secondary students, as well as parents, that are within the guidelines established by the department of education.

(g) The attorney general and reporter shall also work with the department of education to establish best practices for teaching Internet safety and make those best practices and other resources, including sample curricula on Internet safety, available to public and private schools throughout the state.

History.

Acts 2008, ch. 989, § 1; 2013, ch. 274, § 1; 2015, ch. 182, § 10.

PART 5

DROPOUT PREVENTION

49-1-520. Tennessee model dropout prevention program.

(a) In order to encourage and support locally-based, interdisciplinary initiatives to combat the many com-

plex problems that lead Tennessee children and youth to drop out of school, there is created the Tennessee model dropout prevention program. After consultation with the executive director of the commission on children and youth, the executive secretary of the council of juvenile and family court judges, the executive director of the state board of education, the commissioners of health and environment, human services, mental health and substance abuse services, intellectual and developmental disabilities, and youth development, the commissioner of education shall, on or before November 15 each year, designate up to ten (10) publicly or privately supported, locally-based, interdisciplinary initiatives within the state as model dropout prevention programs. Any initiative so designated as a model program shall be worthy and capable of emulation with respect to one (1) or more activities designed to:

(1) Improve public awareness, within the student population and within the population at large, regarding the individual and societal consequences of the school dropout problem; or

(2) Combat one (1) or more of the many complex problems which lead Tennessee children and youth to drop out of school, including, but not limited to:

(A) Poor self-esteem;

(B) Lack of ambition or motivation;

(C) Poorly defined goals;

(D) Substance abuse;

(E) Delinquency;

(F) Emotional distress;

(G) Classroom misconduct;

(H) Teen pregnancy;

(I) Academic failure or sub-par performance;

(J) Poverty;

(K) Poor nutrition;

(L) Poor health;

(M) Insufficient parental encouragement;

(N) Lack of parental involvement in academic matters;

(O) Learning disabilities;

(P) Physical or mental handicapping conditions; and

(Q) Alternative schools remands.

(b) Prior to designating model programs each year, nominations shall be actively solicited from across the state. In selecting model programs, due consideration shall be given to the level of acceptance and support for such programs within the school system or systems and within the community-at-large and also to the techniques by which such acceptance and support have been achieved. Furthermore, due consideration shall be given to the tangible impact the programs have achieved in dropout prevention.

(c) To the extent that funding is available for such purpose within the state's general appropriations act, on each occasion that an initiative is selected as a model dropout prevention program, the model program shall receive from the department of education a state grant in the amount of six thousand dollars ($6,000). The grant shall be paid in addition to all other funds that the program may otherwise receive from or through state government and shall be used exclusively for improvement or expansion of dropout prevention services, outreach, program evaluation or payment of expenses incurred in assisting others to replicate one (1) or more components of the model program. Payment of each such state grant shall be conditional upon the model program's agreement to provide, upon request, technical assistance to others who are interested in replicating one (1) or more components of the model program. In any case in which a state grant is awarded to an LEA or other agency of local government, payment of the grant shall also be conditional upon the agency's written agreement that the state grant will not be used to supplant locally provided funding and resources for dropout prevention. Nothing contained within this section shall be construed to prohibit the commissioner from designating more than one (1) model program within a county, municipality or LEA.

(d)(1) Each year, the commissioner shall undertake appropriate actions to publicize, statewide, all activities to implement this section, as well as the activities and achievements of the model dropout prevention programs. The commissioner may undertake other appropriate actions that may be necessary to encourage and support locally-based, interdisciplinary initiatives to combat the many complex problems which lead Tennessee children and youth to drop out of school.

(2) The commissioner shall annually conduct regional conferences or workshops across the state to improve public awareness of the individual and societal consequences of the dropout problem, to showcase the activities and achievements of the model programs, to provide encouragement and support for replication of the programs, and to improve public awareness of the system of competitive grants provided under the authority of subsection (e). Children, youth, parents, educators, school administrators, taxpayers, business organizations, civic groups, community organizations, religious institutions, officials of local government and other concerned persons shall be invited to attend the conferences or workshops.

(e)(1) Acting in consultation with each of the state officials listed in subsection (a), the commissioner of education shall develop and implement each year on or before November 15, to the extent that funding is provided for such purpose within the general appropriations act, a system of competitive state grants to financially encourage and support creation or expansion of locally based programs or projects that seek to replicate components of those initiatives designated as model programs pursuant to subsection (a). The system of competitive grants shall require each recipient to match on a dollar-per-dollar basis, from locally generated public or private resources, the amount of the competitive state grant.

(2) Prior to receiving a grant to replicate components of model dropout prevention programs, each program or project shall:

(A) Demonstrate a broad base of support within the community-at-large and within the local school system;

(B) Propose a funding plan whereby continuation of the program or project, beyond the period of the grant, is probable;

(C) Submit a written agreement to the effect that, if the program or project will be administered by an LEA or other agency of local government, the state grant will not be used to supplant locally provided funding and resources for dropout prevention; and

(D) Agree to accept the grant subject to reasonable and appropriate conditions and restrictions established by the commissioner.

(3) In awarding the grants, the commissioner shall exercise due care to discourage dependence upon the grant system as a source of recurring financial support for the program or project.

History.

Acts 1990, ch. 1057, § 1; 1997, ch. 518, § 2; 2007, ch. 517, § 1; 2010, ch. 1100, § 72; 2012, ch. 575, § 2.

Compiler's Notes.

Acts 1997, ch. 518, § 2 revived and reenacted this section, which was repealed effective December 31, 1995, by Acts 1990, ch. 1057, § 3. Section 2 further provided that the commissioner of education shall re-establish the Tennessee model dropout prevention program.

Acts 2007, ch. 517, § 5 provided that the board of education is authorized to promulgate rules and regulations to effectuate the purposes of the act. The rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

CHAPTER 2

LOCAL ADMINISTRATION

Part 1. General Provisions

SECTION.
49-2-115. Family resource centers.
49-2-118. Conflict resolution intervention programs — Yearly effectiveness report.
49-2-124. Universal mental health or socioemotional screening.

Part 2. Boards of Education

49-2-211. Policy for student surveys, analyses or evaluations.

PART 1

GENERAL PROVISIONS

49-2-115. Family resource centers.

(a) Family resource centers may be established by any LEA in order to coordinate state and community services to help meet the needs of families with children. An LEA may directly operate its own family resource centers or may contract with a locally based nonprofit agency, including a community action agency, to operate one (1) or more such centers on behalf of the LEA. Each center shall be located in or near a school. The local school board shall appoint community service providers and parents to serve on an advisory council for each family resource center. Parents shall comprise a majority of each advisory council.

(b) Upon approval by the department of education, classroom support and pupil contact funds may be expended by an LEA to plan and implement a family resource center. The application for such approval shall identify a full-time director and other professional staff from the school or community, or both, which may include psychologists, school counselors, social workers, nurses, instructional assistants and teachers. In establishing family resource centers, the department shall consult with the departments of health, mental health and substance abuse services, intellectual and developmental disabilities and children's services.

(c) The commissioner of education is authorized to award grants of up to fifty thousand dollars ($50,000) to LEAs for the purpose of planning, implementing and operating family resource centers. All LEAs, upon receiving such grants for a period of three (3) school years, shall be evaluated by the commissioner to determine progress in attaining objectives set forth within this section. Those LEAs awarded satisfactory evaluations shall be eligible to continue receiving such grants for a period of three (3) additional school years. Beginning with the 1995-1996 school year, the number of family resource centers receiving such planning, implementation and operation grants shall be increased at least fifty percent (50%) above the number of centers receiving grants during the 1994-1995 school year.

(d) LEAs with state approved family resource centers may be given priority in receiving additional state funding for:

(1) Formal parent involvement programs in elementary schools;

(2) Early childhood programs for children at-risk;

(3) Programs for parents with preschool at-risk children;

(4) Learning centers in urban housing projects;

(5) Programs in high schools for pregnant teenagers; and

(6) "Jobs for Tennessee Graduates" in high schools.

(e)(1) Family resource centers shall provide interagency services/resources information on issues such as parent training, crisis intervention, respite care and counseling needs for families of children with behavioral/emotional disorders.

(2) Family resource centers shall serve the function of being the center of information sharing and resource facilitation for such families.

(3) Family resource centers shall also serve the function of helping families answer questions regarding funding for the options of service their child or family requires.

(f) The purpose of each family resource center shall be to maximize the potential learning capacity of the child by ensuring that school environments and neighborhoods are safe and socially enriching, that families are strong and able to protect children and meet their basic needs and that children are physically healthy, emotionally stable, socially well-adjusted and able to

connect with enriching opportunities and experiences in their schools and communities. In order to enable children to attain the most benefit possible from the time they spend in educational settings, the family resource centers shall focus on providing information to families about resources, support and benefits available in the community and on developing a coordinated system of care for children in the community in order to effectuate this purpose.

(g) The department of education and the department of children's services shall jointly develop guidelines for the operation of family resource centers, focusing on the requirements of this section, including the stated purpose of family resource centers in subsection (f). The guidelines shall be used by all family resource centers established pursuant to this section. The guidelines shall be reviewed and updated jointly by the departments of education and children's services no less frequently than every three (3) years.

History.

Acts 1992, ch. 535, § 85; 1994, ch. 974, § 5; 1994, ch. 985, § 2; 1995, ch. 538, § 2; 1996, ch. 1079, §§ 140, 142; 1999, ch. 367, § 5; 2005, ch. 192, § 1; 2011, ch. 158, § 24; 2012, ch. 575, § 1.

Compiler's Notes.

For transfer of certain functions from the department of human services to the department of health, see Executive Order No. 6 (January 12, 1996).

Acts 2005, ch. 192, § 2 provided that no expenditure of public funds pursuant to that act shall be made in violation of the provisions of Title VI of the Civil Rights Act of 1964, as codified in U.S.C. § 2000d.

49-2-118. Conflict resolution intervention programs — Yearly effectiveness report.

(a) Each LEA shall implement for grades one through six (1-6) an intervention program that utilizes conflict resolution and decision-making strategies aimed at preventing occurrences of disruptive acts by students within the school and on school property.

(b) Each year the commissioner of education shall require a report from each LEA, to be submitted to the commissioner on or before November 1 of each year, on the conflict resolution intervention programs implemented during the previous school year. The programs must be in accordance with subsection (a). The commissioner will annually report the summary of the findings to the governor and to the education committee of the senate and the education administration and planning committee of the house of representatives on or before February 15. The report at a minimum shall include the number of students who participated in the program, the conflict resolution and decision-making strategies employed, the number of times and the manner in which the program was presented, observations as to whether the program affected or altered occurrences of disruptive acts by students within the schools of each respective LEA and on school property, and any other information that would be useful to the governor and the general assembly in evaluating the overall effectiveness of such a program.

History.

Acts 1999, ch. 256, § 2; 2000, ch. 772, § 1; 2001, ch. 44, §§ 1, 2; 2005, ch. 335, §§ 1, 2; 2015, ch. 182, § 27.

49-2-124. Universal mental health or socioemotional screening.

(a) As used in this section:

(1) "Mental health screening" or "socioemotional screening" means, for the purposes of this chapter, the use of one (1) or more brief, structured questionnaires designed to identify the possibility that an individual has a mental health problem;

(2) "Psychotropic medication" means a drug that exercises a direct effect upon the central nervous system and that is capable of influencing and modifying behavior. Psychotropic medication includes, but is not limited to:

(A) Antipsychotics;

(B) Antidepressants;

(C) Agents for control of mania and depression;

(D) Antianxiety agents;

(E) Psychomotor stimulants; and

(F) Hypnotics; and

(3) "Universal mental health or socioemotional screening" means, for the purposes of this chapter, any mental health screening program in which a group of individuals is automatically screened without regard to whether there was a prior indication of a mental health problem.

(b) Universal mental health or socioemotional screening is only permitted under the following circumstances:

(1) A parent, guardian, legal custodian or caregiver under the Power of Attorney for Care of a Minor Child Act, compiled in title 34, chapter 6, part 3, of a child under sixteen (16) years of age has provided written, active, informed and voluntarily signed consent that may be withdrawn at any time by the parent, guardian, legal custodian or caregiver under the Power of Attorney for Care of a Minor Child Act;

(2) A court requires the mental health evaluation, examination or testing;

(3) Emergency screening, evaluation, examination or testing of an individual under the Power of Attorney for Care of a Minor Child Act or screening done in connection with a disaster or epidemic; or

(4) Screening required pursuant to the early periodic screening, diagnosis, and treatment (EPSDT) program with active, written, informed, voluntarily signed consent as outlined in subdivision (b)(1) that may be withdrawn at any time by the parent, legal guardian, custodian or caregiver under the Power of Attorney for Care of a Minor Child Act who gave the consent.

(c) Notwithstanding any law to the contrary, a local education agency (LEA) may not use the parent's refusal to consent to administration of a psychotropic medication to a student or to a mental health screening, evaluation, testing or examination of a child or student as grounds for prohibiting the child from at-

tending class or participating in a school-related activity or as the basis of reporting or charging child abuse, child neglect, educational neglect or medical neglect. An LEA shall not use nor threaten use of school sanctions to a student to coerce parental consent to a mental health screening, evaluation, testing or examination. A person employed by an LEA may not require that a student be evaluated or treated with any psychotropic medication or for a particular mental health diagnosis. Only the following LEA personnel may perform an evaluation for psychiatric diagnosis or treatment, or both, with written, informed, voluntarily signed consent as outlined in subdivision (b)(1) that may be withdrawn at any time by the parent, legal guardian, custodian or caregiver under the Power of Attorney for Care of a Minor Child Act who gave the consent:

(1) A psychiatrist;

(2) A physician with expertise in psychiatry as determined by training, education or experience;

(3) An advanced practice registered nurse with special certification in mental health or psychiatric nursing;

(4) An advanced practice registered nurse with expertise in mental health or psychiatric nursing as determined by training, education or experience;

(5) A psychologist with health service provider designation;

(6) A senior psychological examiner;

(7) A licensed professional counselor;

(8) A licensed clinical social worker; or

(9) A school psychologist.

(d) Written, informed, active, voluntary consent as outlined in subdivision (b)(1) that may be withdrawn at any time by the parent, legal guardian, custodian or caregiver under the Power of Attorney for Care of a Minor Child Act must also be obtained before proceeding with any psychiatric treatment recommendations resulting from any mental health screening, evaluation, testing or examination.

(e) Subsections (b) and (c) shall not be construed to:

(1) Prevent an appropriate referral under the child find system required under 20 U.S.C. § 1412, with appropriate parental consent procedures as required under 20 U.S.C. § 1414(a)(1)(D)(i);

(2) Prohibit an LEA employee from discussing any aspect of a child's behavior or academic progress with the child's parent or guardian or another appropriate school district employee, consistent with federal and state law, including the requirement of prior parental consent for the disclosure of any education records. Nothing in this subdivision (e)(2) shall be construed to modify or affect parental notification requirements for programs authorized under the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001, Public Law 107-110;

(3) Prohibit an LEA employee from referring a child to LEA personnel specified in subsection (c);

(4) Prohibit referrals, counseling or support in the event of an emergency or urgent situation to include, but not be limited to, the death, suicide, attempted suicide, murder, attempted murder, serious injury or serious illness of a student, teacher, staff, member of the administration, director of schools or any other school personnel or significant individual; or

(5) Prohibit testing that is a part of a course of treatment, rehabilitation or service plan for children in the legal custody of a state agency or required by federal law applicable to such children, or as otherwise authorized under title 37, including, but not limited to, child protective services assessments or evaluations.

(f) Each LEA shall inform each parent, legal guardian, custodian or caregiver of their rights pursuant to this section and shall provide a copy of the LEA policy on the rights of parents and students as required in § 49-2-211 and a copy of the Protection of Pupil Rights (20 U.S.C. § 1232h), commonly referred to as the Tiahrt Amendment, as amended by the Parents Rights Restoration Amendment to Goals 2000, March 31, 1994, Public Law 103-227, § 1017, and included in the No Child Left Behind Law (20 U.S.C. § 6301 et seq.).

(g) The local board of education of each LEA shall adopt policies that may be reasonable and necessary to ensure implementation and enforcement of this section.

History.
Acts 2009, ch. 127, § 1; 2016, ch. 980, § 2.

PART 2

BOARDS OF EDUCATION

49-2-211. Policy for student surveys, analyses or evaluations.

(a) Every LEA shall develop a policy setting forth the rights of parents and students and guidelines for teachers and principals with respect to the administration of surveys, analyses or evaluations of students.

(b)(1) The policy set forth in subsection (a) shall allow a parent or legal guardian access to review all surveys, analyses or evaluations, prior to being administered to the parent or legal guardian's child. The policy shall enable a parent or legal guardian to opt their student out of participating in a survey, analysis, or evaluation.

(2) Notwithstanding subdivision (b)(1), the policy shall require a parent, legal guardian or student, in the case of students eighteen (18) years of age or older, to provide written consent before the collection of individual student biometric data.

(c) The LEA shall also disclose to the parent or legal guardian of the student the purpose for the survey, analysis, or evaluation materials as well as who will have access to the results.

History.
Acts 1999, ch. 83, § 1; 2014, ch. 1013, § 2.

CHAPTER 5

PERSONNEL

Part 4. Employment and Assignment of Personnel

SECTION.
49-5-415. [Transferred.]

PART 4

EMPLOYMENT AND ASSIGNMENT OF PERSONNEL

49-5-415. [Transferred.]

Compiler's Notes.
Former § 49-5-415, concerning assistance in self-administration of medications; administration of glucagons and anti-seizure medications by volunteers; possession and self-administration of asthma-reliever inhalers; and diabetes care, was transferred to § 49-50-1602 by authority of the Code Commission in 2015.

CHAPTER 6

ELEMENTARY AND SECONDARY EDUCATION

Part 1. Preschools

SECTION.
49-6-101. Preschools generally — Special services.
49-6-102. Short title for §§ 49-6-103 — 49-6-110.
49-6-103. Legislative intent — Construction — Implementation.
49-6-104. Enrollment in pre-kindergarten programs for at risk children — Requirements of programs.
49-6-105. Application for funding and approval — Collaborative agreements.
49-6-106. Community pre-k advisory council — Input on application by council.
49-6-107. Programs subject to annual appropriations — Matching funds — Fees and tuition.
49-6-108. Office of early learning.
49-6-109. [Repealed.]
49-6-110. Lottery proceeds.

Part 4. Junior and Senior High Schools Generally

49-6-451. Juvenile Offender Act — Informing pupils of provisions.

Part 10. Curriculum Generally

49-6-1014. [Transferred.]
49-6-1015. [Transferred.]
49-6-1016. [Transferred.]
49-6-1017. [Transferred.]
49-6-1018. [Transferred.]
49-6-1019. [Transferred.]
49-6-1035. Domestic violence awareness education programs.

Part 14. Children at Risk for Obesity

49-6-1401. Implementation of program — Requirements — Reporting of data.
49-6-1402. Program components.
49-6-1403. Tabulation and reporting of results.
SECTION.
49-6-1404. Nutrition and physical activity programs in schools where aggregate data suggests high rates of obesity.
49-6-1405. Funding.

Part 15. Students Charged with or Convicted of Violent Felonies [Repealed]

49-6-1501 — 49-6-1510. [Repealed.]

Part 16. Child Abuse or Child Sexual Abuse on School Grounds

49-6-1601. Reporting suspected abuse — Notice to parent or guardian — Confidentiality — Publication of requirements.

Part 30. Attendance

49-6-3001. School age — Entrance — Attendance — Withdrawal.
49-6-3002. State attendance guidelines — No penalty for period of hospital or homebound instruction.
49-6-3003. Tuition or other fees.
49-6-3004. School term.
49-6-3005. Children excused from compulsory attendance.
49-6-3006. Attendance teachers.
49-6-3007. Attendance and truancy reports — Enforcement of compulsory attendance.
49-6-3008. Truancy — Inspections and investigations.
49-6-3009. Penalty for violations — Alternative to prosecution — Truancy.
49-6-3010. Jurisdiction of school attendance cases.
49-6-3011. Disposition of fines.
49-6-3012. Truancy schools.
49-6-3013. Children unable to buy books.
49-6-3014. Children lacking clothing or food.
49-6-3015. Blind children.
49-6-3016. Special days and holidays.
49-6-3017. Minors withdrawn from secondary school — Denial of motor vehicle license or permit.
49-6-3018. Children serving as pages for general assembly.
49-6-3019. Excused absence for deployment or return from deployment of parent or guardian in armed forces.
49-6-3020. Documentation of student's withdrawal and transfer.
49-6-3021. Remedial instruction outside of regular school day.
49-6-3022. Excused absence for participation in nonschool-sponsored extracurricular activity.
49-6-3023 — 49-6-3049. [Reserved.]
49-6-3050. Home schools.
49-6-3051. Parental or guardian notice to school of child's criminal offenses — List of goals — Confidentiality — Violations and penalties.

Part 33. Enforcement Powers of Education Department

49-6-3301. Supervisor of census and attendance.
49-6-3302. Withholding state funds for noncompliance.

Part 34. Suspension of Students

49-6-3401. Suspension of students — Expulsion of students — Exception for self-defense.
49-6-3402. Alternative schools for suspended or expelled students — Mandated attendance.
49-6-3403. [Obsolete.]
49-6-3404. Advisory council for alternative education.
49-6-3405. Alternative school success.

Part 40. Student and Employee Safe Environment Act of 1996

49-6-4001. Short title.
49-6-4002. Formulation and administration of behavior and discipline codes.
49-6-4003. Code contents.
49-6-4004. Uniform and fair application of codes.
49-6-4005. Different codes for different classes of schools.

SECTION.
49-6-4006. Civil liability.
49-6-4007. Code distribution and posting.
49-6-4008. Policy regarding teacher's ability to relocate student for safety reasons.
49-6-4009. Student discipline code to include provision prohibiting indecent clothing.

Part 41. School Discipline Act

49-6-4101. Short title.
49-6-4102. Students accountable for conduct.
49-6-4103. Corporal punishment.
49-6-4104. Rules and regulations.
49-6-4105. Arrest and prosecution for injury to student.
49-6-4106. Disciplinary referrals.
49-6-4107. Use of reasonable force.

Part 42. School Security Act of 1981

49-6-4201. Short title.
49-6-4202. Part definitions.
49-6-4203. Legislative intent.
49-6-4204. Search of lockers, vehicles, and other property.
49-6-4205. Search of students.
49-6-4206. [Repealed.]
49-6-4207. Use of metal detectors.
49-6-4208. Use of animals.
49-6-4209. Report of reasonable suspicion by principal to law enforcement officer.
49-6-4210. Disposal of contraband.
49-6-4211. Defense of school personnel by LEA — Indemnity.
49-6-4212. Training program for school principals — Notice of policies to parents and students.
49-6-4213. Testing of students for drugs — Referral information and assistance for students testing positive.
49-6-4214. Possession of pagers by students.
49-6-4215. Activities of criminal gangs on school property — Promulgation of rules and regulations.
49-6-4216. School policies and procedures — Contents — Notice to students and parents.
49-6-4217. Employment standards for school resource officers.
49-6-4218. Posting of speed limits on school grounds and parking lots.
49-6-4219. Policy regulating use of electronic control devices.

Part 43. Reporting Student Offenses

49-6-4301. School officials to report student offenses.
49-6-4302. Tennessee school safety center.

Part 44. School Discipline in Special School Districts

49-6-4401. Students accountable for conduct.
49-6-4402. Corporal punishment.
49-6-4403. Rules and regulations.
49-6-4404. Physical examination of student — Student's remedies.

Part 45. Harassment, Intimidation, Bullying and Cyber-Bullying.

49-6-4501. Legislative findings — Safety and civility.
49-6-4502. Part definitions.
49-6-4503. Adoption of policy prohibiting harassment, intimidation, bullying or cyber-bullying by the school district.
49-6-4504. Adoption of policy prohibiting harassment, intimidation, bullying or cyber-bullying by LEA.
49-6-4505. Reprisal or retaliation prohibited — Reporting harassment, intimidation, bullying or cyber-bullying — Immunity from damages.
49-6-4506. Task forces, programs or other initiatives.

Part 50. Immunization of School Children

49-6-5001. General provisions.
49-6-5002. Certificate of immunization.
49-6-5003. Hepatitis B immunization.
49-6-5004. Promotion of eye, hearing and dental care awareness.
49-6-5005. Information about meningococcal disease and the effectiveness of vaccination.

PART 1

PRESCHOOLS

49-6-101. Preschools generally — Special services.

(a) Any board of education operating public elementary or secondary systems of education under the laws of this state may provide for, establish and maintain schools for children under six (6) years of age under such rules and regulations as may be prescribed by the state board of education.

(b) The school boards shall be authorized to receive and accept any federal funds or state funds that hereafter may be specifically appropriated for preschool purposes, or gifts, donations or grants that may be received for such purposes, and to expend the funds in conformity with the provisions that may be set forth in the appropriations, grants, gifts or donations.

(c)(1) Schools for preschool children organized as public schools or as public school classes under parts 1 and 2 of this chapter shall be maintained and supported from local taxes or from such local tax funds supplemented by any federal funds or state funds that hereafter may be appropriated specifically for preschool purposes, or from such gifts, donations or grants as may be received for preschool purposes.

(2) No state funds appropriated for grades one through twelve (1-12) or any local funds that are required for participation in the state funds shall be used for preschool purposes.

(3) In the event that an appropriation is made by the state for preschool purposes, the average daily attendance of the preschool age pupils shall be reported to the department of education in such manner and on such forms as shall be prescribed by the commissioner.

(d) Except as otherwise provided in this part, the state board of education, through the commissioner, shall exercise general control over all schools or classes operated under parts 1 and 2 of this chapter, and the school board, having immediate control of such schools or classes, shall at all times have complete jurisdiction and control over such schools, including the employment of teachers, attendants and any other employees, and shall have complete control, subject to the supervision of the commissioner, of the expenditure of such funds in connection with the establishment and maintenance of such schools.

(e) This part and part 2 of this chapter shall not apply to any preschool age units now being operated by any incorporated city for the benefit of children of working mothers, without the approval of the city officials.

(f)(1) Through a system of competitive grants and technical assistance provided as funding is available, the department of education may establish, administer, and monitor programs of community-based early childhood education and pre-kindergarten programs to serve at least five thousand (5,000) children; provided, that the pilot pre-kindergarten programs established pursuant to this section shall be

funded at the same level as the funding for pre-kindergarten programs implemented pursuant to the Voluntary Pre-K for Tennessee Act of 2005, compiled in this part. Such programs shall be designed to address comprehensively the educational needs, including cognitive, physical, social and emotional, of children who are not otherwise eligible for similar programs or who do not have access to such programs. The programs shall serve:

(A) Dependent children, as defined by § 49-7-102(c), who are four (4) years of age whose parent was killed, died as a direct result of injuries received or has been officially reported as being either a prisoner of war or missing in action while serving honorably as a member of the United States armed forces during a qualifying period of armed conflict as defined by § 49-7-102(c), or was formerly a prisoner of war or missing in action under such circumstances, who can present the following:

(i) Official certification from the United States government that the parent veteran was killed or died as a direct result of injuries received while serving honorably as a member of the United States armed forces during a qualifying period of armed conflict; or

(ii) Official certification from the United States government that the parent veteran has been officially reported as being a prisoner of war or missing in action while serving honorably as a member of the United States armed forces during a qualifying period of armed conflict or was formerly a prisoner of war or missing in action under such circumstances as appropriate within one hundred and eighty (180) days prior to applying for services under this subdivision (f)(1);

(B) Children who are four (4) years of age on or before August 15 and from families with incomes that meet the eligibility requirements for free and reduced lunch as determined pursuant to 42 U.S.C. § 1771; and

(C) Subject to availability of space and resources:

(i) Children who are three (3) and four (4) years of age and who are screened and identified as educationally at-risk, determined pursuant to 20 U.S.C. § 1400 et seq.;

(ii) Children who are three (3) and four (4) years of age who have been in the Tennessee Early Intervention Program (TEIS) or Even Start program; and

(iii) Children three (3) years of age and from families with incomes that meet the eligibility requirements for free and reduced lunch as determined pursuant to 42 U.S.C. § 1771.

(2) Enrollment in the program shall be voluntary.

(3) LEAs may contract and enter into collaborative agreements for operation of these programs with nonschool system entities in the geographical area served by the LEA, including, but not limited to, nonprofit and for-profit childcare providers and Head Start programs. LEAs shall not contract or collaborate with any childcare provider licensed by the department of human services, unless that provider has attained the highest designation under the rated licensing system administered by the department of human services pursuant to title 71, chapter 3, part 5.

(4) The distribution of early childhood education and pre-kindergarten programs shall be developed in phases based on availability of funding and resources. Selection of early childhood education and pre-kindergarten program sites shall take into consideration the areas of greatest need, which may be determined by, but not limited to:

(A) School service areas with high percentages of children from families with incomes that meet the eligibility requirements for free and reduced lunch as determined pursuant to 42 U.S.C. § 1771;

(B) Access to early childhood education and pre-kindergarten programs within the county; or

(C) Service areas of schools that have been determined to be on notice or probation, as defined by § 49-1-602.

(5) All early childhood education and pre-kindergarten programs established under this subsection (f) shall be developed through a collaborative effort of the departments of education, health, mental health and substance abuse services, intellectual and developmental disabilities, children's services and human services, and shall build upon resources and services within the community. Efforts should be made by the interdepartmental group to inform eligible families about enrollment in the early childhood education and pre-kindergarten programs, to address the health and social needs of children and to assist working families to meet extended day child care needs.

(6) Effective with fiscal year 2005-2006, the LEA may include in its application a request for funding pursuant to the requirements of §§ 49-6-103 — 49-6-110, for any existing pilot pre-kindergarten program established under this subsection (f); provided, however, that no state funds received for pre-kindergarten programs pursuant to §§ 49-6-103 — 49-6-110 shall be used to supplant any other state or local funds for pre-kindergarten programs.

(7) All provisions of this subsection (f) are subject to appropriation of funds for that purpose. No provision of this subsection (f) shall be considered an entitlement to any service or program authorized by this subsection (f) unless funds are appropriated for such purpose.

History.

Acts 1945, ch. 101, §§ 1, 2; C. Supp. 1950, §§ 2475.4, 2475.5; Acts 1963, ch. 292, § 1; 1974, ch. 654, § 122; T.C.A. (orig. ed.), §§ 49-2301 — 49-2303; Acts 1984 (1st E.S.), ch. 6, § 18; 1994, ch. 974, § 6; 1996, ch. 954, § 1; 2003, ch. 110, § 1; 2003, ch. 298, § 4; 2005, ch. 312, §§ 2, 3; 2007, ch. 475, § 1; 2009, ch. 226, § 1; 2010, ch. 1100, § 73; 2012, ch. 575, § 1; 2014, ch. 972, § 1.

Compiler's Notes.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities,

and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

49-6-102. Short title for §§ 49-6-103 — 49-6-110.

Sections 49-6-103 — 49-6-110 shall be known and may be cited as the "Voluntary Pre-K for Tennessee Act of 2005."

History.
Acts 2005, ch. 312, § 1.

49-6-103. Legislative intent — Construction — Implementation.

(a) It is the legislative intent that, based on the success of Tennessee's existing pilot pre-kindergarten programs, these programs be expanded on a voluntary basis by LEAs and the communities they serve to provide more opportunities for quality early childhood education and pre-kindergarten experiences while meeting standards for kindergarten readiness.

(b) Nothing in this section and §§ 49-6-104 — 49-6-110 shall be construed to make enrollment in these programs mandatory, nor shall anything in this section and §§ 49-6-104 — 49-6-110 be construed to be an entitlement to any service or program authorized by §§ 49-6-104 — 49-6-110.

(c) Implementation of these programs by LEAs shall be voluntary.

History.
Acts 2005, ch. 312, § 1; 2016, ch. 703, § 1.

49-6-104. Enrollment in pre-kindergarten programs for at risk children — Requirements of programs.

(a) Each LEA is authorized to and may provide for enrollment in prekindergarten programs for any at-risk child residing in the geographic area served by the LEA who is four (4) years of age, or who will become four (4) years of age, on or before August 31 for the 2013-2014 school year and on or before August 15 for all school years thereafter. Any child may enroll in a program when an insufficient number of at-risk children are enrolled to fill a specific classroom.

(b) Programs operated pursuant to §§ 49-6-103 — 49-6-110 shall comply with the following requirements:

(1) A maximum class size of twenty (20);

(2) At least one (1) licensed teacher per classroom certified in early childhood education;

(3) At least one (1) educational assistant per classroom who holds a child development associate credential (CDA) or associate degree in early childhood education, or who is actively working toward acquiring such credentials; provided, however, that if no person with such credentials is available, then educational assistants who hold a high school diploma and have relevant experience working with children in pre-kindergarten or other early childhood programs may be employed;

(4) A daily minimum of five and one half (5 ½) hours of quality instructional time;

(5) Use of an educational, age-appropriate curriculum that is aligned with the state department of education approved early learning standards and that includes, but is not limited to, literacy, writing, math and science skills;

(6) A developmental learning program that addresses the cognitive, physical, emotional, social and communication areas of child development;

(7) Meet the criteria for a "highly qualified pre-kindergarten program" as identified by the department of education; and

(8) Rules promulgated and policies adopted by the state board of education related to early childhood education and pre-kindergarten programs.

History.
Acts 2005, ch. 312, § 1; 2013, ch. 85, § 1; 2016, ch. 703, § 2.

49-6-105. Application for funding and approval — Collaborative agreements.

(a) LEAs may apply to the department of education for funding and approval of one (1) or more pre-kindergarten programs. LEAs may contract and enter into collaborative agreements for operation of these programs with nonschool system entities in the geographical area served by the LEA, including, but not limited to, nonprofit and for-profit child care providers and Head Start programs. LEAs shall not contract or collaborate with any child care provider licensed by the department of human services, unless that provider has attained the highest designation under the rated licensing system administered by the department of human services, pursuant to title 71, chapter 3, part 5.

(b) As part of the application process, the LEA shall include a statement that it has given consideration to how to serve all children four (4) years of age within the geographical area served by the LEA, in the event programs are later authorized for all children, regardless of at risk status. The long range plan shall include the proposed sources of local matching funds required under §§ 49-6-103 — 49-6-110. Where applicable, the LEA is encouraged to include a resolution of support from the local governing body indicating intent to appropriate the required local matching funds. Applications that target establishing programs for at-risk children not served by an existing program shall be given preference in the application process. Documentation of local financial support shall also be considered as a factor in the application process. LEAs are encouraged to collaborate with nonschool system entities where such collaboration provides an efficient means for expansion of pre-kindergarten classrooms authorized under §§ 49-6-103 — 49-6-110.

(c) The commissioner of education shall establish the system for submitting applications and, subject to available funding, programs shall be approved on a competitive basis.

(d) An LEA shall include as part of its application:

(1) A plan for ensuring coordination between voluntary pre-kindergarten classrooms and elementary schools within the LEA, with the goal of ensuring that elementary grade instruction builds upon pre-

kindergarten classroom experiences;

(2) A plan for engaging parents and families of voluntary pre-kindergarten students throughout the school year; and

(3) A plan for delivering relevant and meaningful professional development to voluntary pre-kindergarten teachers, specific to ensuring a high quality pre-kindergarten experience.

(e) LEAs that receive pre-kindergarten program approval under §§ 49-6-103 — 49-6-110 shall utilize the pre-K/kindergarten growth portfolio model approved by the state board of education in the evaluation of pre-kindergarten and kindergarten teachers pursuant to § 49-1-302.

History.
Acts 2005, ch. 312, § 1; 2016, ch. 703, § 3.

49-6-106. Community pre-k advisory council — Input on application by council.

(a) Each LEA applying for programs under §§ 49-6-103 — 49-6-110 shall create and appoint a community pre-k advisory council. The director of schools, or the director's designee, shall serve as chair and coordinate the activities of the council. The council shall include, but not be limited to, members representing the local school board, parents, teachers, nonprofit providers, for-profit providers, Head Start, the business community and local government funding bodies, where applicable. The council shall provide input to the local board of education in creating the board's application for programs, taking into consideration the number and type of existing programs currently serving children four (4) years of age within the geographical area served by the LEA.

(b) While the content of the final application for programs shall be within the sole authority of the local school board, no board shall submit an application without first allowing the council to provide input, either in writing or otherwise, and without first giving due consideration to the council's input and recommendations. The board's application shall include a description of the extent to which the council was afforded an opportunity to provide input in the application process.

History.
Acts 2005, ch. 312, § 1.

49-6-107. Programs subject to annual appropriations — Matching funds — Fees and tuition.

(a) Programs established under §§ 49-6-103 — 49-6-110 shall be subject to annual appropriations.

(b) The commissioner of education shall annually recommend a funding amount per classroom for those classrooms established under §§ 49-6-103 — 49-6-110. The commissioner shall take into account the necessary components required to operate such classrooms and, to the extent such components are also reflected in the Basic Education Program (BEP) funding formula, shall include the same costs per component in recommending the amount of funding per classroom.

(c) As a condition of receiving state funds for classrooms pursuant to §§ 49-6-103 — 49-6-110, the LEA shall provide a matching amount of funds, based on the applicable state and local BEP classroom component ratio in effect for the LEA in which the program is located. In addition, other sources of funds, such as grants, federal funds and private funds may be used by the LEA to meet the matching funds requirement under this section. The LEA may also meet the matching funds requirement under this section through in-kind matches, including, but not limited to, the use of non-LEA owned physical facilities, instructional materials, equipment and supplies, food and nutrition services and transportation services. Funds used by the LEA to meet the matching requirements of this section, regardless of their source, shall not be used in calculating the maintenance of the local funding effort requirement, pursuant to § 49-3-314. Any local funding shall be subject to annual appropriations by the local governing body.

(d) No child shall be required to pay tuition or fees solely for the purpose of enrolling in or attending a pre-kindergarten program established under §§ 49-6-103 — 49-6-110. Nothing in this section prohibits charging fees for childcare that is provided outside the times of the instructional day provided in these programs.

(e) No state funds received for pre-kindergarten programs pursuant to §§ 49-6-103 — 49-6-110 shall be used to supplant any other state or local funds for pre-kindergarten programs.

History.
Acts 2005, ch. 312, § 1.

49-6-108. Office of early learning.

There is established within the department of education an office of early learning. The office shall:

(1) Administer the pre-kindergarten classroom application process;

(2) Provide oversight, monitoring, technical assistance, coordination and training for pre-kindergarten classroom providers;

(3) Serve as a clearinghouse for information and best practices related to pre-kindergarten programs;

(4) Coordinate activities and promote collaboration with other departments of state government in developing and supporting pre-kindergarten programs;

(5) Review existing regulations and standards, and recommend needed changes, to promote a consistent approval, assessment and monitoring process for providers of pre-kindergarten programs established under §§ 49-6-103 — 49-6-110;

(6) Provide an annual report to the governor and the general assembly on the status of pre-kindergarten programs, which shall include, at a minimum, the number, location and types of providers of pre-kindergarten classrooms and the number of at risk students served. The annual report shall be posted on the department of education, office of early learning web site to provide public access to the report;

and

(7) Annually make available to each LEA the applications submitted by the top performing pre-K programs across the state as determined by the ability to meet the criteria of being a highly qualified pre-K program, the results of site visits, and other indicators as determined by the department of education.

History.
Acts 2005, ch. 312, § 1; 2010, ch. 836, § 1; 2016, ch. 703, § 4.

49-6-109. [Repealed.]

History.
Acts 2005, ch. 312, § 1; 2007, ch. 357, § 1; repealed by Acts 2016, ch. 684, § 8, effective March 24, 2016.

Compiler's Notes.
Former § 49-6-109 concerned the study of the effectiveness of the pre-kindergarten programs authorized in §§ 49-6-103 — 49-6-110.

49-6-110. Lottery proceeds.

For the programs authorized by §§ 49-6-103 — 49-6-110, the appropriation from excess net education lottery proceeds available under title 4, chapter 51 and chapter 4, part 9 of this title shall not exceed twenty-five million dollars ($25,000,000) in any fiscal year.

History.
Acts 2005, ch. 312, § 1.

PART 4

JUNIOR AND SENIOR HIGH SCHOOLS GENERALLY

49-6-451. Juvenile Offender Act — Informing pupils of provisions.

(a) At or near the beginning of each school year, the board of education of each LEA shall be responsible for informing all pupils in grades seven through twelve (7-12), inclusive, of the Juvenile Offender Act, compiled in title 55, chapter 10, part 7. This shall be accomplished both orally by teachers and through the distribution of a pamphlet.

(b) Failure of an LEA to comply with this section is not a defense to the issuance of an order of denial.

History.
Acts 1989, ch. 64, § 13.

PART 10

CURRICULUM GENERALLY

49-6-1014. [Transferred.]

49-6-1015. [Transferred.]

49-6-1016. [Transferred.]

49-6-1017. [Transferred.]

49-6-1018. [Transferred.]

49-6-1019. [Transferred.]

49-6-1035. Domestic violence awareness education programs.

Each LEA, in consultation with local law enforcement, is strongly encouraged to institute domestic violence awareness education programs for middle and high school students. The domestic violence awareness programs shall provide information on and understanding of domestic violence prevention to increase awareness of resources available to victims of domestic violence. An LEA shall ensure that each program instituted is developmentally appropriate for the age and maturity levels of the students who will take part in the program. LEAs instituting domestic violence programs are strongly encouraged to provide opportunities for participation by all middle and high school students in at least one (1) domestic violence awareness program per year.

History.
Acts 2015, ch. 263, § 1.

PART 14

CHILDREN AT RISK FOR OBESITY

49-6-1401. Implementation of program — Requirements — Reporting of data.

(a) LEAs are authorized to implement a program that identifies public school children who are at risk for obesity. Those schools systems that choose to carry out such a program shall:

(1) Have sufficient number of current school staff or school volunteers trained in taking a body mass index (BMI) to meet the requirements of this part. The department of health shall develop and provide training materials to the LEAs;

(2) Complete a body mass index for age (BMI-for-age), as defined by the centers for disease control and prevention, on every child enrolled for classes in the school system whose parents or guardians have not requested exclusion from the testing; and

(3) Provide each student's parents or guardians with a confidential health report card that represents the result of the child's BMI-for-age screening, along with basic educational information on what the results mean and what the parents or guardians should do with the information.

(b) School systems that carry out the program shall transmit the results of the testing for each student to the department of health.

History.
Acts 2005, ch. 194, § 2.

49-6-1402. Program components.

(a) The department of health, with the assistance of the department of education, shall provide a framework for LEAs to use in developing a program that

shall include, but not be limited to:

(1) Providing standard practices for maintaining confidentiality;

(2) Providing necessary information to LEAs annually, explaining the method for determining a BMI-for-age and the tables that should be used to determine if a child may be at risk of being overweight, or if the child is overweight or underweight based upon the BMI-for-age.

(3) Developing and disseminating to LEAs annually a form that should be used to report the student results from individual schools and from the LEA to the department of health;

(4) Developing and disseminating a sample notification to all LEAs that can be used as the model for the health report card to notify parents or guardians of the child's BMI results, along with basic educational information on what the results mean, the applicable health risks for a child who is overweight and what the parents or guardians should do with the information; and

(5) Working with representatives from the department of education, state health professional associations and national health related organizations in the design of the form and sample notification.

History.
Acts 2005, ch. 194, § 3.

49-6-1403. Tabulation and reporting of results.

(a) The department of health is authorized to accept and tabulate the results of any BMI screenings completed by school systems and to distribute only aggregate results at a grade, school, county or statewide level.

(b) The department of health shall provide the governor's office, the speaker of the senate and the speaker of the house of representatives a report of the aggregate results of all BMI screenings performed in the previous calendar year by January 31st of each year.

History.
Acts 2005, ch. 194, § 4.

49-6-1404. Nutrition and physical activity programs in schools where aggregate data suggests high rates of obesity.

Schools where aggregate data suggests that high rates of overweight children may be a problem are encouraged to expand existing or implement new school-based nutrition and physical activity programs designed to reduce those rates. The effectiveness of these results could be determined by completing a BMI-for-age on the school's students whose parents or guardians have not requested exclusion from the testing at the end of the school year.

History.
Acts 2005, ch. 194, § 5.

49-6-1405. Funding.

The activities described in § 49-6-1403 shall occur if, and only if, advance funding sufficient to pay the total cost of such activities is received in the form of gifts, grants and donations from individuals, private organizations, foundations or governmental units other than the state of Tennessee. However, no such gift, grant or donation may be accepted for such purpose if the gift, grant or donation is subject to any condition or restriction that is inconsistent with this part or any other law of this state. The department of health, in consultation with the department of education, shall have the power to direct the disposition of any such gift, grant or donation for the purposes of this part.

History.
Acts 2005, ch. 194, § 6.

PART 15

STUDENTS CHARGED WITH OR CONVICTED OF VIOLENT FELONIES [REPEALED]

49-6-1501 — 49-6-1510. [Repealed.]

History.
Acts 2015, ch. 501, § 1, repealed by Acts 2016, ch. 627, § 1, effective March 22, 2016.

Compiler's Notes.
Former part 15, §§ 49-6-1501—49-6-1510 concerned students charged with or convicted of violent felonies.

Acts 2015, ch. 501, § 3 provided that the act, which enacted this part, shall apply to any violent felonies or violent felony delinquency acts occurring on or after July 1, 2015.

PART 16

CHILD ABUSE OR CHILD SEXUAL ABUSE ON SCHOOL GROUNDS

49-6-1601. Reporting suspected abuse — Notice to parent or guardian — Confidentiality — Publication of requirements.

(a) Notwithstanding § 37-5-107 or § 37-1-612 or any other law to the contrary, if a school teacher, school official or any other school personnel has knowledge or reasonable cause to suspect that a child who attends the school may be a victim of child abuse or child sexual abuse sufficient to require reporting pursuant to § 37-1-403 or § 37-1-605 and that the abuse occurred on school grounds or while the child was under the supervision or care of the school, then the principal or other person designated by the school shall verbally notify the parent or legal guardian of the child that a report pursuant to this section has been made and shall provide other information relevant to the future well being of the child while under the supervision or care of the school. The verbal notice shall be made in coordination with the department of children's services to the parent or legal guardian within twenty-four (24) hours from the time the school, school teacher, school official or other school personnel reports the abuse to the department, judge or law enforcement; provided, that in no event may the notice be later than twenty-four (24) hours from the time the report was made. The notice shall not be given to any parent or legal guardian

if there is reasonable cause to believe that the parent or legal guardian may be the perpetrator or in any way responsible for the child abuse or child sexual abuse.

(b) Once notice is given pursuant to this section, the principal or other designated person shall provide to the parent or legal guardian all school information and records relevant to the alleged abuse or sexual abuse, if requested by the parent or legal guardian; provided, that the information is edited to protect the confidentiality of the identity of the person who made the report, any other person whose life or safety may be endangered by the disclosure and any information made confidential pursuant to federal law or § 10-7-504(a)(4). The information and records described in this section shall not include records of other agencies or departments.

(c) For purposes of this section, "school" means any public or privately operated child care agency, as defined in § 71-3-501, preschool, nursery school, kindergarten, elementary school or secondary school.

(d) Each LEA shall publish the requirements of this section in the LEA's policies and procedures manual.

History.
Acts 2009, ch. 283, § 1.

PART 30

ATTENDANCE

49-6-3001. School age — Entrance — Attendance — Withdrawal.

(a) The public schools shall be free to all persons residing within the state who are above five (5) years of age or who will become five (5) years of age on or before August 31 for the 2013-2014 school year and on or before August 15 for all school years thereafter.

(b)(1) Any child residing within the state who is five (5) years of age or who will become five (5) years of age on or before August 31 for the 2013-2014 school year and on or before August 15 for all school years thereafter may enter at the beginning of the term the public school designated by the local board of education having appropriate jurisdiction; provided, that the child enters within thirty (30) days after the opening day of the term.

(2)(A) Any child who will not become five (5) years of age until after December 31 shall not enter school during that school year; provided, that school systems having semiannual promotions may admit at the beginning of any semester children who will become five (5) years of age within sixty (60) days following the opening of the semester.

(B) Notwithstanding subdivision (b)(2)(A), if the director of schools finds through evaluation and testing, at the request of the parent or legal guardian, that a child who is five (5) years of age on or before September 30 is sufficiently mature emotionally and academically, then the child may be permitted to enter kindergarten.

(3) Where a pupil meets the requirements of the state board of education for transfer or admission purposes, as determined by the commissioner of education, the pupil may be admitted by a local board of education, notwithstanding any other provision or act to the contrary.

(c)(1) Every parent, guardian or other legal custodian residing within this state having control or charge of any child or children between six (6) years of age and seventeen (17) years of age, both inclusive, shall cause the child or children to attend public or nonpublic school, and in event of failure to do so, shall be subject to the penalties provided in this part. If a student transfers from a school to another school in the same LEA, the LEA shall remit copies of the student's records, including the student's disciplinary records, to the school to which the student transfers. If a student transfers from an LEA to another LEA, then the LEA from which a student transfers shall remit copies of the student's records, including the student's disciplinary records, to the LEA to which the student transfers. All records shall be remitted in accordance with the Family Education Rights and Privacy Act (20 U.S.C. § 1232g).

(2) Subdivision (c)(1) does not apply to any child who:

(A) Has received a diploma or other certificate of graduation issued to the person from a secondary high school of this state or any other state;

(B) Is enrolled and making satisfactory progress in a course leading to a general educational development certificate (GED®) from a state-approved institution or organization or who has obtained a GED®. Any institution or organization that enrolls a child who is under eighteen (18) years of age shall provide a report to the local board of education at least three (3) times each year relative to the progress of all such persons under eighteen (18) years of age. If the local board of education determines any child under eighteen (18) years of age is not making satisfactory progress, then the child shall be subject to subdivision (c)(1);

(C) Is six (6) years of age or younger and whose parent or guardian has filed a notice of intent to conduct a home school with the director of the LEA or with the director of a church-related school; or

(D) A student enrolled in a home school who has reached seventeen (17) years of age.

(3) As used in this part, "public school" and "nonpublic school" are defined as follows:

(A) "Nonpublic school" means a church-related school, home school or private school;

(i) "Church-related school" means a school as defined in § 49-50-801;

(ii) "Home school" means a school as defined in § 49-6-3050; and

(iii) "Private school" means a school accredited by, or a member of, an organization or association approved by the state board of education as an organization accrediting or setting academic requirements in schools, or that has been approved by the state, or is in the future approved by the commissioner in accordance with rules promulgated by the state board of

education; and

(B) "Public school" means any school operated by an LEA or by the state with public funds.

(4) A parent or guardian with any good and substantial reason as determined by the parent or other person having legal custody of a child, and agreed to by the respective local board of education, may withdraw the parent's or other person's child from a public school; provided, that within thirty (30) days the parent or person having legal custody of the child places the child in a public school designated by the local board of education or in a nonpublic school.

(5) A parent or guardian who believes that the parent's or guardian's child is not ready to attend school at the designated age of mandatory attendance may make application to the principal of the public school that the child would attend for a one (1) semester or one (1) year deferral in required attendance. The deferral shall be reported to the director of the LEA by the principal.

(6) Notwithstanding any other law to the contrary, a person designated as a caregiver with the power of attorney for care of a minor child pursuant to title 34, chapter 6, part 3 shall have the right to enroll the minor child in the LEA serving the area where the caregiver resides. The LEA shall allow a caregiver with a properly executed power of attorney for care of a minor child, pursuant to title 34, chapter 6, part 3, to enroll the minor child, but may require documentation of the minor child's residence with a caregiver or documentation or other verification of the validity of the stated hardship prior to enrollment. If the minor child ceases to reside with the caregiver, then the caregiver shall notify any person, school or health care provider that has been provided documentation of the power of attorney for care of a minor child. Except where limited by federal law, the caregiver shall be assigned the rights, duties and responsibilities that would otherwise be assigned to the parent, legal guardian or legal custodian pursuant to this title. If at any time the parent or legal guardian disagrees with the decision of the caregiver or chooses to make any educational decisions for the minor child, then the parent must revoke the power of attorney and provide the LEA written documentation of the revocation.

(d) Notwithstanding any other law to the contrary, children who participate in an LEA-administered prekindergarten program, a prekindergarten program administered by a private school as defined by § 49-6-3001(c)(3)(A)(iii) or a Head Start program in a Head Start classroom as defined in 42 U.S.C. § 9832 during the 2012-2013 or 2013-2014 school years may enter kindergarten in the 2013-2014, 2014-2015, or 2015-2016 school years; provided, that such children shall be five (5) years of age on or before August 31, 2015.

History.

Acts 1925, ch. 115, § 19; Shan. Supp., § 1487a141; Code 1932, § 2472; Acts 1947, ch. 87, § 1; 1947, ch. 129, § 1; C. Supp. 1950, §§ 2383.1, 2442.1 (Williams, § 2472.1); Acts 1957, ch. 9, § 1; 1959, ch. 289, § 1; 1965, ch. 239, § 1; 1965, ch. 303, §§ 1, 2; 1968, ch. 417, §§ 1, 2; 1972, ch. 693, § 13; 1974, ch. 654, §§ 79-81; T.C.A. (orig. ed.), §§ 49-1701, 49-1702, 49-1708; Acts 1985, ch. 398, § 1; 1987, ch. 42, § 1; 1992, ch. 535, §§ 78, 81; 1997, ch. 329, § 1; 1997, ch. 392, §§ 1, 2, 5, 10; 1998, ch. 792, § 1; 2003, ch. 71, § 3; 2012, ch. 991, §§ 2-5; 2013, ch. 85, § 2; 2014, ch. 692, § 1; 2015, ch. 445, § 1.

Compiler's Notes.

Acts 1997, ch. 392, § 9 provided that no LEA shall receive a reduction in local funding from the implementation of the act and the distribution of local funding to multiple LEAs within one (1) county shall be adjusted, if necessary, to accomplish this requirement.

49-6-3002. State attendance guidelines — No penalty for period of hospital or homebound instruction.

(a) The state board of education shall promulgate rules, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, that prescribe guidelines for use by local boards of education in establishing standards and policies governing student attendance, subject to availability of funds. The guidelines shall include, but not be limited to, the following stipulations:

(1) Attendance policies shall be firm but fair so that each student has a reasonable opportunity to meet the minimum requirements;

(2) Effective accounting and reporting procedures shall be developed to keep parents or guardians informed of a student's absence from class;

(3) Policies shall accommodate extenuating circumstances created by emergencies over which the student has no control;

(4) Appeal procedures shall be included to assure the student's right of due process; and

(5) Alternative programs shall be established to provide educational options for any student who severely fails to meet minimum attendance requirements.

(b) Notwithstanding any law to the contrary, if a student is unable to attend regular classes because of illness, injury or pregnancy and if the student has participated in a program of hospital or homebound instruction administered or approved by the LEA, then the student shall not be penalized for grading purposes nor be denied course completion, grade level advancement or graduation solely on the basis of the student's absence from the regular classroom during the period of the hospital or homebound instruction.

(c)(1) Notwithstanding any law to the contrary, if a student is unable to attend regular classes pursuant to a summons, subpoena, court order, statute or rule, then the student's absence shall be an excused absence and the student shall be afforded the opportunity to complete all assignments missed for this

purpose.

(2) Subdivision (c)(1) shall not apply if a student's absence is:

(A) The result of a commission of a delinquent act and notice of intent to transfer the student to criminal court has been provided pursuant to § 37-1-134; or

(B) For detention purposes pursuant to § 37-1-114(c).

History.

Acts 1983, ch. 243, § 1; T.C.A., § 49-118; Acts 1990, ch. 903, § 2; 2009, ch. 490, § 1.

49-6-3003. Tuition or other fees.

(a)(1) No tuition or fee shall be charged by any city or special school district except to pupils residing outside the city or district.

(2) Tuition or fees that may be charged to pupils residing outside the city or district but within the county shall not exceed per pupil, per annum, an amount equal to the amount of funds actually raised and used for school purposes from the city or special school district sources during the preceding school year, including tuition and fees, divided by the number of pupils in average daily attendance in the public schools of the city or district during the preceding school year.

(b)(1) Tuition and fees may be charged by any county to pupils not residing in that county. Tuition and fees may also be charged by any county to all pupils for voluntary programs that occur outside the required one hundred eighty (180) instructional days, unless the state funds the entire cost of the instruction.

(2) Tuition and fees charged by a county may not exceed per pupil, per annum, an amount equal to the amount of funds actually raised and used for school purposes by the county, divided by the number of pupils in average daily attendance in the county schools during the preceding school year. Any per pupil tuition payment shall be reduced by any amount of funds transferred by the transferring pupil's county of residence under § 49-6-3104.

(c)(1)(A) Any parent, guardian or other legal custodian who enrolls an out-of-district student in a school district and fraudulently represents the address for the domicile of the student for enrollment purposes is liable for restitution to the school district for an amount equal to the local per pupil expenditure identified by the Tennessee department of education for the district in which the student is fraudulently enrolled.

(B) Any parent, guardian or other legal custodian who enrolls an out-of-state student in a school district and fraudulently represents the address for the domicile of the student for enrollment purposes is liable for restitution to the school district for an amount equal to the state and local per pupil expenditure identified by the Tennessee department of education for the district in which the student is fraudulently enrolled.

(2)(A) Restitution shall be cumulative for each year the child has been fraudulently enrolled in the system. The restitution shall be payable to the school district and, when litigation is necessary to recover restitution, the parent, guardian or other legal custodian shall be liable for costs and fees, including reasonable attorneys' fees, incurred by the school district.

(B) An action for restitution shall be brought by or on behalf of the district in the circuit or chancery court in which the district is located within one (1) year of the date the fraudulent representation occurred or was discovered, whichever is later. In no event shall the action be brought more than six (6) years after the date on which the fraudulent enrollment occurred.

History.

Acts 1925, ch. 115, § 19; Shan. Supp., § 1487a141; Code 1932, § 2472; Acts 1957, ch. 9, § 1; 1965, ch. 239, § 1; 1965, ch. 303, § 1; 1968, ch. 417, § 1; 1972, ch. 693, § 13; 1974, ch. 654, §§ 79, 80; T.C.A. (orig. ed.), § 49-1701; Acts 1990, ch. 649, §§ 1, 2; 1998, ch. 1014, § 1; 2003, ch. 221, § 1.

49-6-3004. School term.

(a) Each public school system shall maintain a term of no less than two hundred (200) days, divided as follows:

(1) One hundred eighty (180) days for classroom instruction;

(2) Ten (10) days for vacation with pay for a two hundred-day term, eleven (11) days for vacation with pay for a two hundred twenty-day term, and twelve (12) days for vacation with pay for a two hundred forty-day term;

(3) Five (5) days for in-service education;

(4) One (1) day for teacher-parent conferences;

(5) Four (4) other days as designated by the local board of education upon the recommendation of the director of schools; and

(6) In the event of a natural disaster or serious outbreaks of illness affecting or endangering students or staff during a school year, the commissioner of education may waive for that school year the requirement under subdivision (a)(1) of one hundred eighty (180) days of classroom instruction, if a request is submitted to the commissioner by the director of schools. The waiver request may be for the entire LEA or for individual schools within the LEA.

(b) Vacation days shall be in accordance with policies recommended by the local director of schools and adopted by the local board of education.

(c)(1) In-service days shall be used according to a plan recommended by the local director of schools in accordance with this section and other applicable statutes and adopted by the local board of education, a copy of which plan shall be filed with the commissioner of education on or before June 1 of the preceding school year and approved by the commissioner. The commissioner shall require that in-service training include the teaching of the components of the Juvenile Offender Act, compiled in title 55, chapter 10, part 7, to all teachers and principals in grades seven through twelve (7-12). The commissioner shall require that in-service training include at least two

(2) hours of suicide prevention education for all teachers and principals each school year. This education may be accomplished through self-review of suitable suicide prevention materials. The commissioner shall also encourage the use of two (2) of the in-service training days to provide training to teachers, principals and other school personnel, and, to the extent possible, school board members, on issues of prevention and intervention strategies for students in the area of behavioral/emotional disorders. The training shall place an emphasis on understanding the warning signs of early-onset mental illness in children and adolescents and may be conducted by school counseling personnel, such as psychologists, social workers, guidance counselors or health faculty, by mental health clinicians or by approved personnel from mental health advocacy organizations using curricula approved by the departments of education and mental health and substance abuse services. In addition to other training and resources authorized by this chapter, the department of education shall, within available resources, collaborate with institutions of higher education to formally address dyslexia and similar reading disorders by providing kindergarten through twelfth grade (K-12) educators and teachers web-based or in-person training providing effective instruction for teaching students with dyslexia using appropriate scientific research and brain-based multisensory intervention methods and strategies.

(2) The needs of apprentice teachers shall be given priority in the planning of in-service activities. Apprentice teachers shall be assisted by supervising teachers in the development of competencies required by the local board of education.

(3) The plan shall also give priority to staff development activities. Staff development activities shall include an assessment of teacher and administrator evaluations made previously by the local school system. Career level III teachers and career level III supervisors shall be assigned to aid those teachers seeking to improve teaching competencies.

(d) The state board of education shall develop a policy governing professional development activities during in-service education within the guidelines adopted by the general assembly.

(e)(1) A local board of education or private or church-related school that exceeds the full six and one half (6½) hours instructional time required by law by one half (½) hour daily for the full academic year shall be credited with the additional instructional time. The excess instructional time shall be accumulated in amounts up to, but not exceeding, thirteen (13) instructional days each year, and applied toward meeting instructional time requirements missed due to dangerous or extreme weather conditions. Upon approval by the commissioner, the excess instructional time may be used in case of natural disaster, serious outbreaks of illness affecting or endangering students or staff or dangerous structural or environmental conditions rendering a school unsafe for use. This excess accumulated instructional time may be used for early student dismissal for faculty professional development under rules promulgated by the board of education. Such time may be used in whole day (six and one half (6½) hour) increments and may be used for faculty professional development, M-team meetings, S-team meetings, parent-teacher conferences or other similar meetings. The board shall consult with the commissioner in developing the rules. All proposals for use of excess time for professional development shall be approved by the commissioner. Additionally, the commissioner is authorized to approve directly proportional variations from the one-half-hour extension of the school day and the corresponding accumulation of thirteen (13) days of adjustments to the instructional time requirements.

(2) Any unused accumulated days for excess instructional time shall not carry over to a school year other than the year in which the time was accumulated.

(f) Beginning with the 2010-2011 school year and every year thereafter, LEAs shall commence the school year no earlier than August 1 unless the LEA's board of education votes by a majority of its membership to establish a year-round or alternative calendar for all or any of the schools within its jurisdiction in accordance with department of education attendance policies.

(g) The length of term selected by a local board, and the length of the school day corresponding to that term, shall not affect either the amount or timing of payments made to the LEA under the basic education program (BEP) or otherwise, if the LEA operates for the full chosen term. Equally, the length of term and the length of day shall not affect the compensation of any teacher employed for the length of that term.

(h) Any LEA operating a virtual school or virtual education program shall make available the same length of time for learning opportunities per academic year as required under this section to any student participating in its program. The LEA shall, however, also permit a student to move at the student's own pace. The student shall demonstrate mastery, competency and completion of a course or subject area to be given credit for the course or subject area. If a student successfully completes a course or grade level more than thirty (30) days before the end of the term, the student shall begin work in the next appropriate course or grade. The academic program shall continue until the end of the academic year.

History.

Acts 1947, ch. 87, § 2; C. Supp. 1950, § 2442.2; Acts 1972, ch. 693, § 14; T.C.A. (orig. ed.), § 49-1709; Acts 1984 (1st E.S.), ch. 7, § 84; 1984, ch. 829, § 34; 1985, ch. 123, §§ 1, 4; 1986, ch. 933, § 4; 1987, ch. 308, §§ 58, 59; 1989, ch. 64, § 12; 1989, ch. 310, § 1; 1990, ch. 662, §§ 1, 2; 1992, ch. 535, § 40; 1994, ch. 938, §§ 1, 2; 1994, ch. 985, § 3; 1995, ch. 366, § 1; 1997, ch. 72, § 1; 1999, ch. 34, § 11; 2002, ch. 558, § 1; 2003, ch. 4, § 1; 2007, ch. 45, § 2; 2007, ch. 247, § 1; 2009, ch. 272, § 1; 2009, ch. 448, § 1; 2010, ch. 715, § 1; 2010, ch. 1100, § 77; 2012, ch. 575, § 1; 2012, ch. 999, § 2; 2014, ch. 833, § 1.

Compiler's Notes.

Acts 2007, ch. 45, § 1 provided that the act shall be known and may be cited as the Jason Flatt Act of 2007.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities,

and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

For the preamble to the act concerning departmental collaboration with institutions of higher education to formally address dyslexia and similar reading disorders, please refer to Acts 2014, ch. 833.

Acts 2014, ch. 833, § 2 provided that the institutions of higher education shall, within available resources, report to the general assembly by March 1, 2015, how these institutions of higher education are addressing reading disorders, such as dyslexia, in their preservice teacher programs. The report shall include, but not be limited to, specific interventions taught including research-based multisensory language-based strategies and dyslexia awareness.

49-6-3005. Children excused from compulsory attendance.

(a) The following classes of children between six (6) and seventeen (17) years of age, both inclusive, shall be temporarily excused from complying with this part, the local board of education to be sole judge in all such cases involving children who are enrolled in a public school and, as to children enrolled in a nonpublic school, as defined by § 49-6-3001(c)(3), the director of schools of the school to be the sole judge in all such cases:

(1) Children mentally or physically incapacitated to perform school duties, such disability to be attested by a duly licensed physician in all cases;

(2) Children who have completed high school and hold a high school diploma;

(3) Children temporarily excused from attendance in school under rules and regulations promulgated by the state board of education, which rules and regulations shall not be in conflict with § 50-5-103 or any other law governing child labor in this state;

(4) Children six (6) years of age or under whose parent or guardian have filed a notice of intent to conduct a home school as provided by § 49-6-3001 or who are conducting a home school as provided by § 49-6-3050; and

(5) Children who have attained their seventeenth birthday and whose continued compulsory attendance, in the opinion of the board of education in charge of the school to which the children belong and are enrolled, results in detriment to good order and discipline and to the instruction of other students and is not of substantial benefit to the children.

(b) In all cases described in subsection (a), the board shall first obtain the recommendation in writing from the director of schools of the system and the principal of the school to which the child or children belong.

(c) No child who is refused attendance in a school nearer to the child's residence having equivalent grade levels and curriculum shall be required to attend public or nonpublic school as provided in § 49-6-3001.

(d) In addition to the categories of children specified in subsection (a), the local board of education may excuse children from attendance in accordance with guidelines developed by the state board of education for this purpose. The state board of education shall have the guidelines approved by the education committee of the senate and the education administration and planning committee of the house of representatives before implementation.

History.

Acts 1947, ch. 87, § 3; C. Supp. 1950, § 2442.3; Acts 1955, ch. 97, § 1; 1959, ch. 105, § 1; 1971, ch. 207, § 1; 1972, ch. 842, § 1; 1974, ch. 654, §§ 89, 90; T.C.A. (orig. ed.), §§ 49-1710, 49-1772; Acts 1985, ch. 398, § 2; 1990, ch. 948, § 24; 1992, ch. 535, §§ 79, 80; 1996, ch. 863, § 1; 1997, ch. 392, §§ 3, 6, 7; 2012, ch. 925, § 12; 2015, ch. 182, § 48.

Compiler's Notes.

Acts 1997, ch. 392, § 9 provided that no LEA shall receive a reduction in local funding from the implementation of the act and the distribution of local funding to multiple local education agencies within one (1) county, shall be adjusted, if necessary, to accomplish this requirement.

49-6-3006. Attendance teachers.

(a) The sole responsibility and authority for the enforcement of the compulsory attendance laws, compiled in this part, are placed in the local board of education and its designated employees and officers.

(b) To facilitate the enforcement of this part, each local board of education or appointed director of schools, where appropriate, may employ at least one (1) qualified full-time attendance teacher, whose duty it shall be to assist the board, under the direction of the director of schools, to enforce the compulsory attendance laws of the state and to discharge such other duties as are usually performed by, or delegated to, attendance teachers.

(c) Any local school system that, because of its size, the paucity of its school population or other good cause, does not need the services of a full-time attendance teacher, may, with the approval of the commissioner, employ either a part-time attendance teacher or join with a neighboring school system in the joint employment of an attendance teacher, as authorized by the commissioner of education; provided, that no such authorization shall be valid for a longer period than one (1) year, but it may be renewed as often as conditions justify.

(d)(1) Each local board of education shall fix the compensation of each attendance teacher employed, payable from the school funds of the school system, and shall prescribe the duties of the attendance teacher and make rules and regulations for the performance of the duties not inconsistent with law or the rules and regulations of the state board of education that will promote the purposes of this part.

(2) Two (2) or more school systems, served by one (1) attendance teacher, shall jointly fix the compensation of the attendance teacher, payable from the school funds of the school systems concerned. The local boards of education shall prescribe the duties of the attendance teacher, jointly employed, and make rules and regulations for the performance of the duties that are not in conflict with law or with the rules and regulations of the state board of education.

(e) Training, certification and employment qualifications of attendance teachers shall be in compliance with rules and regulations prescribed by the commissioner and approved by the state board.

(f) Attendance teachers appointed under this part or other persons authorized to serve under this section

shall have all the powers and duties now vested, or that hereafter may be vested, in attendance teachers by the compulsory attendance laws of this state.

(g) In the discharge of the duties of their office, attendance teachers or other persons authorized to serve under this section shall work under the direction and supervision of the director of schools and shall comply with the rules and regulations of the local board of education and of the commissioner, as approved by the state board of education.

(h) Attendance teachers employed under this part shall have the same status with respect to tenure and teacher retirement as other public school personnel under the laws of this state.

(i) Local school systems participating in the state equalizing funds may, with the approval of the commissioner, include attendance teachers in the minimum program under the rules and regulations prescribed by the state board of education.

History.
Acts 1947, ch. 87, §§ 4-6, 9, 10; C. Supp. 1950, §§ 2442.4-2442.6, 2442.9, 2442.10; Acts 1959, ch. 289, § 1; 1974, ch. 654, §§ 91-93; T.C.A. (orig. ed.), §§ 49-1711 — 49-1715; Acts 1984 (1st E.S.), ch. 6, §§ 15, 16; 1992, ch. 535, § 52; 1992, ch. 657, § 6.

49-6-3007. Attendance and truancy reports — Enforcement of compulsory attendance.

(a) On or before the beginning of the school term each year, the director of schools of each school district shall furnish to the principal teacher in each school, or cause to be furnished, through any duly elected attendance teacher, as provided in this part, the names of children depending on their schools for instruction, together with the names of the parents or guardians of the children, the lists to be taken from the census enumeration on file in the office of the director of schools, or from any other available and reliable sources.

(b) It is the duty of every principal or teacher of a public school to report to the director of schools, immediately after the opening of school, the names of all children on the list furnished to the director of schools who have not appeared for enrollment.

(c) It is the duty of the principals and teachers of all schools, public, private, denominational or parochial, to report in writing to the director of schools of the system in which the school is located the names, ages and residences of all pupils in attendance at their schools and classes within thirty (30) days after the beginning of the school year, and to make such other reports of attendance in their schools or classes, including transfers of pupils, as may be required by rule or regulation of the local board of education and of the state board of education. Notwithstanding subsection (g), this subsection (c) shall apply to any child less than six (6) years of age who is enrolled in any school to which this subsection (c) is applicable.

(d) All public, private and parochial schools shall keep daily reports of attendance, verified by the teacher making the record, which shall be open to inspection at all reasonable times, to the director of schools of the system in which the school is located or to the director of schools' duly authorized representative. Notwithstanding subsection (g), this subsection (d) shall apply to any child less than six (6) years of age who is enrolled in any school to which this subsection (d) is applicable.

(e)(1) It is the duty of the principal or teacher of every public, private or parochial school to report promptly to the director of schools, or the director of schools' designated representative, the names of all children who have withdrawn from school, or who have been absent five (5) days without adequate excuse. This means an aggregate of five (5) days during the school year and not necessarily five (5) consecutive days. Each successive accumulation of five (5) unexcused absences by a student shall also be reported.

(2) The director of schools shall thereupon serve, or cause to be served, upon the parent, guardian or other person in this state in parental relation to such children unlawfully absent from school, written notice that attendance of the children at school is required. A new notice shall be sent after each successive accumulation of five (5) unexcused absences.

(3) If it appears that, within three (3) days after receipt of the notice, any child, parent, guardian or other person in parental relation has failed to comply with this part, the director of schools, in the name of the local school system, shall report the facts of the unlawful attendance to the sheriff, constable, city police officer, district attorney general or the foreman of the grand jury, who shall proceed against the parent, guardian or other person in parental relation in accordance with this part, unless the parent, guardian or person having charge and control of the child shall at once place the child in some day school.

(f) The director of schools of any local school system, after written notice to the parent or guardian of a child, shall report any child who is habitually and unlawfully absent from school to the appropriate judge having juvenile jurisdiction in that county, each case to be dealt with in such manner as the judge may determine to be in the best interest of the child, consistent with §§ 37-1-132, 37-1-168 and 37-1-169 and in the event the child is adjudicated to be unruly, the judge may assess a fine of up to fifty dollars ($50.00) or five (5) hours of community service, in the discretion of the judge, against the parents or legal guardians of children in kindergarten through grade twelve (K-12) if the child is absent more than five (5) days during any school year.

(g) Except as otherwise provided by § 49-6-3001 or § 49-6-3005, this section shall be applicable to children less than six (6) years of age and their parent, guardian or other person in a parental relation when the parent, guardian or other person in a parental relation has enrolled the child in any school that receives funding based on average daily membership; provided, that a child may be withdrawn within six (6) weeks of initial enrollment without penalty.

(h) For the purposes of this part, for recording and coding student absences from school because of disciplinary actions, the following definitions shall apply:

(1) "Expulsion" is defined as removal from attendance for more than ten (10) consecutive days or more than fifteen (15) days in a month of school attendance. Multiple suspensions that occur consecutively shall constitute expulsion. The school district shall not be eligible to receive funding for an expelled student;

(2) "Remand" is defined as assignment to an alternative school. The student so assigned shall be included in ADA/ADM and will continue to be counted as present for funding purposes. The department of education shall establish a set of codes to be used for reporting reasons for students on remand to an alternative school; and

(3) "Suspension" is defined as dismissed from attendance at school for any reason not exceeding ten (10) consecutive days. Multiple suspensions shall not run consecutively nor shall multiple suspensions be applied to avoid expulsion from school. The school district shall remain eligible to receive funding for a suspended student.

(i)(1)(A) An LEA may enter into an agreement with the local law enforcement agency serving the area of the LEA and the appropriate local government in that area to assist in the enforcement of compulsory attendance upon complying with the following conditions:

(i) Creation by the local school board of an advisory council to assist the board in formulating the agreement. The board shall include representatives of teachers, parents, administrators and other community representatives;

(ii) Receipt of input from neighborhood groups and other interested parties;

(iii) At least one (1) public hearing on the proposed plan prior to its adoption by the board;

(iv) Provisions for training teachers, principals, social workers and other personnel involved in the schools in truancy issues;

(v) Provisions for assuring the training of involved law enforcement personnel in the truancy law, including categories of students to which the law does not apply, such as private school students or home school students; and

(vi) Inclusion in the agreement of safeguards to protect students from discriminatory or selective enforcement and to protect the civil rights of students and parents.

(B) If such an agreement is entered into, then it shall be the duty of the principal or teacher of every public school to report promptly to the director of schools, or the director of schools' designated representative, the names of all children who have been absent two (2) days without adequate excuse and shall continue to report each subsequent absence without adequate excuse. This means an aggregate of two (2) days during the school year and not necessarily two (2) consecutive days.

(2) The director of schools shall thereupon serve, or cause to be served, upon the parent, guardian or other person in this state in parental relation to the children unlawfully absent from school, written notice that attendance of the children at school is required and of the provisions of this subsection (i).

(3) Under such an agreement, and for purposes of this section and § 37-1-102(b)(23)(A), a student who has been absent an aggregate three (3) days without adequate excuse may be deemed habitually truant.

(4) The director of schools or director of schools' representative may issue a list of such truant students to the local law enforcement agency for the purpose of allowing the law enforcement agency to take the student into temporary custody when the student is found away from the school premises during school hours, in a public place, in any public or private conveyance or in any public place of business open to the public, without adequate excuse, unless accompanied by a parent, foster parent or legal guardian. The agreement shall further specify that the law enforcement officer's sole function shall be to deliver the child to:

(A) The parent, foster parent, legal guardian or other person having control or custody of the child;

(B) The principal of the school in which the child is enrolled;

(C) A truancy center established by the LEA; or

(D) The juvenile court, if there has been a local interagency agreement entered into by the juvenile court and the local law enforcement agency.

(5) The powers conferred under such agreements may be exercised without warrant and without subsequent legal proceedings.

(6) This subsection (i) shall not apply to students enrolled in home or nonpublic schools in accordance with § 49-6-3050 or § 49-50-801.

(7) Upon issuance of a standing order by the juvenile court, LEA officials shall be allowed to release student record information to local law enforcement agencies and to juvenile justice system officials to assist the officials in effectively serving the student whose record is released. Officials and authorities receiving the information shall not disclose the information to any other party without prior written consent of the parent.

History.

Acts 1947, ch. 87, §§ 11-13, 19; C. Supp. 1950, §§ 2442.11-2442.13, 2442.19; Acts 1974, ch. 654, §§ 94-97, 102; T.C.A. (orig. ed.), §§ 49-1716 — 49-1718, 49-1726; Acts 1994, ch. 756, § 1; 1994, ch. 910, §§ 1, 2; 1995, ch. 149, § 1; 1995, ch. 333, § 1; 1996, ch. 1035, §§ 1, 2; 1996, ch. 1079, § 144; 1997, ch. 392, §§ 4, 8; 2000, ch. 704, § 1; 2000, ch. 814, § 1; 2002, ch. 823, §§ 1, 2.

49-6-3008. Truancy — Inspections and investigations.

(a) The director of schools of any local school system, or the director of schools' designated representative, has the right to visit and enter any office, factory or business house employing children belonging to schools within the director of schools' jurisdiction and to require properly attested certificates of attendance or employment permit of any child in a day school or a valid work permit for the child.

(b) When reasonable doubt exists as to the age of any child who violates this part, the director of schools or the director of schools' designated representative shall require satisfactory proof of age.

(c) Any parent, guardian or other person having charge or control of any child embraced within this part who makes a false statement concerning the age of the child or the time that the child has attended school commits a Class C misdemeanor.

History.
Acts 1947, ch. 87, §§ 14, 15; C. Supp. 1950, §§ 2442.14, 2442.15; Acts 1974, ch. 654, § 100; T.C.A. (orig. ed.), §§ 49-1721, 49-1722; Acts 1989, ch. 591, § 113.

49-6-3009. Penalty for violations — Alternative to prosecution — Truancy.

(a) Any parent, guardian or other person who has control of a child, or children, and who violates this part commits educational neglect, which shall be a Class C misdemeanor.

(b) Each day's unlawful absence constitutes a separate offense.

(c) As an alternative to prosecution for educational neglect, at the prosecutor's discretion, parents, guardians or any other person who has control of a child or children against whom a petition of truancy has been brought for being absent more than five (5) days during the school year, may participate in parent education training and parent-teacher conferences. The prosecutor may provide the parent, guardian or other person with the option to participate in such alternative program prior to filing the criminal charge. Failure of the parent, guardian or other person to timely respond to such option shall result in the revocation of the option and immediate filing of the criminal charge.

(d) Parents, guardians or other persons having control of a child who is required to attend remedial instruction under § 49-6-3021 commit educational neglect as defined in subsection (a), if the child is truant from the instruction.

History.
Acts 1947, ch. 87, § 16; C. Supp. 1950, § 2442.16; T.C.A. (orig. ed.), § 49-1723; Acts 1989, ch. 591, § 113; 2010, ch. 929, § 1; 2011, ch. 220, §§ 1, 2; 2013, ch. 304, § 2.

49-6-3010. Jurisdiction of school attendance cases.

(a) Each judge of a juvenile court or court of general sessions is vested with the power to hear all cases coming within this part; provided, that in all cities maintaining a separate system of schools, the city recorder or city judge may try such cases coming within the official's jurisdiction.

(b) Any party aggrieved may appeal to the circuit or criminal court from the action of the judge of the juvenile court or court of general sessions or city recorder.

History.
Acts 1947, ch. 87, § 17; C. Supp. 1950, § 2442.17; T.C.A. (orig. ed.), § 49-1724.

49-6-3011. Disposition of fines.

All moneys collected as fines for violations of this part shall be placed in the public school fund of the local school system in which the child resides. Fines may be recovered by rule or in any way that a court of law enforces its orders or decrees.

History.
Acts 1947, ch. 87, § 18; C. Supp. 1950, § 2442.18; Acts 1974, ch. 654, § 101; T.C.A. (orig. ed.), § 49-1725.

49-6-3012. Truancy schools.

(a) The board of education having charge of the public schools of any local school system having a population of ten thousand (10,000) or more, according to the federal census of 1950 or any subsequent federal census, may establish a truancy school, either within or without the city limits, for children who are between seven (7) and sixteen (16) years of age, both inclusive, and who are habitual truants, or while in attendance at school are incorrigible, vicious, immoral or who habitually wander or loiter about without lawful employment.

(b) Such children shall be deemed disorderly juvenile persons, and may be compelled by the board to attend the truancy school or any department of the public school as the board may direct.

(c) Any board of education having charge of schools affected by this part shall have authority to exclude any delinquent pupil whose influence is deemed by the board to be demoralizing or injurious to other pupils attending the schools.

History.
Acts 1947, ch. 87, § 20; C. Supp. 1950, § 2442.20; Acts 1974, ch. 654, § 103; T.C.A. (orig. ed.), § 49-1727.

49-6-3013. Children unable to buy books.

If satisfactory proof is presented that any child is unable to attend school as required by this part because the child is not able to procure books, the local board of education having charge of the school to which the child belongs shall purchase the books out of the public school fund of the local district and lend the books to the child under regulations prescribed by the board during the term the books are needed.

History.
Acts 1947, ch. 87, § 7; C. Supp. 1950, § 2442.7; Acts 1974, ch. 654, § 98; T.C.A. (orig. ed.), § 49-1719.

49-6-3014. Children lacking clothing or food.

(a) If it is ascertained by any local board of education that any child who is required under this part to attend a school under the control of the board is unable to do so on account of lack of clothing or food, such case shall be reported to the welfare agency in the school district.

(b) Any worthy case not receiving immediate relief shall be reported by the board to the officials having charge of such work for investigation and relief.

History.
Acts 1947, ch. 87, § 8; C. Supp. 1950, § 2442.8; Acts 1974, ch. 654, § 99; T.C.A. (orig. ed.), § 49-1720.

49-6-3015. Blind children.

(a) As used in this section, "blind children" means children who are totally blind, partially blind or whose

vision is so impaired by reason of temporary or permanent trouble with their eyes as to render their study by methods ordinarily used by sighted children likely to cause further injury to their vision.

(b) Compulsory school attendance is required of all blind children between six (6) and seventeen (17) years of age, both inclusive.

(c) Blind children coming under this section have the option of attending:

(1) The regular schools for sighted children;

(2) Any private school or instructor teaching the course of study used in the public schools, or a course of study peculiarly adapted for the blind, and that has been approved by the commissioner; or

(3) The Tennessee School for the Blind.

(d) It is the duty of the local director of schools to certify to the department blind students in their schools who are not in regular attendance or who are not capable of making satisfactory progress under the methods used for the sighted.

(e)(1) Any director of schools may certify to the judge of the court having juvenile jurisdiction in that county the fact that any blind child enrolled in one of the director's schools is incapable of learning and progressing in a satisfactory manner in a school for the sighted and under methods ordinarily used for the training of the sighted.

(2) Upon certification, the judge may try the case and order the attendance of the child at the Tennessee School for the Blind during the regular term, summer vacation excepted, until the child has completed the course of study in the school or reached eighteen (18) years of age.

(3) Any party aggrieved by such assignment may appeal to the circuit court.

(f) Blind children shall be subject to the truancy laws in the same manner as sighted children, and attendance officers shall enforce their attendance at school in the same manner as is provided for other children; provided, that the authorities of the Tennessee School for the Blind shall have power to reject any child sent to that institution who is mentally or physically defective to the extent that the child is unable to carry on the prescribed work of the school or to benefit from prescribed work, and to expel or send home any child who becomes unmanageable and incorrigible when the child becomes a detriment to the welfare and progress of other students. Such action by the school authorities shall be reported within twenty (20) days to the juvenile judge of the child's home county.

(g)(1) Any parent, guardian or any other person having charge of any child coming under this section who makes a false statement concerning the age of the child, or the time that the child has attended such school, commits a Class C misdemeanor.

(2) Any parent, guardian or other person failing to comply with this section commits a Class C misdemeanor.

(3) Any fine imposed for violation of subdivision (g)(1) may be suspended and finally remitted by the court trying the case with or without payment of costs, in the discretion of the court, if the child is immediately placed in regular attendance in some approved school, and if that fact is proven subsequently to the satisfaction of the court by an attested certificate of attendance by the local director of schools or teacher of the school.

(h) If it is shown that any parent, guardian or other person having charge of any child embraced within this section is unable to compel the child to attend school, that person may thereupon be discharged from further liability, and the child shall be proceeded against as a delinquent child under title 37, chapter 1, part 1; provided, that no delinquent or incorrigible child, after being certified incorrigible by the juvenile court, can be sent to the Tennessee School for the Blind without consent of the authorities of that school.

(i) Any judge having juvenile jurisdiction is empowered to hear all cases coming within this section.

History.

Acts 1927, ch. 19, §§ 1-7; Code 1932, §§ 2443-2452; modified; Acts 1974, ch. 654, §§ 104-106; T.C.A. (orig. ed.), §§ 49-1729 — 49-1737; Acts 1989, ch. 591, § 113; 2006, ch. 755, §§ 1, 2.

Compiler's Notes.

This section may be affected by § 9-1-116, concerning entitlement to funds, absent appropriation.

49-6-3016. Special days and holidays.

(a) Thanksgiving Day and December 25 are set apart as holidays for all the public schools, and boards of education are authorized to pay the salary of teachers of all schools that have not closed their term for the year at the same rate as if the teachers had taught school on those holidays; provided, that the failure to teach on any other day or days within the scholastic term shall not be counted as time for which salary shall be allowed.

(b) The governor shall proclaim February of each year as American history month in this state. The governor shall issue a proclamation calling upon all elementary school teachers and all teachers of American history in secondary schools to arrange special programs at some time during American history month, and calling upon the people of the entire state to observe it in some fitting manner, having as their objectives the advancement of the study of American history and the promotion of American heritage.

(c) The month of February of each and every year is officially recognized and designated as "Tennessee and American History Month," and the public schools, colleges and universities shall give due regard to such.

History.

Acts 1915, ch. 134, §§ 1-3; Shan., §§ 1456a1, 1456a2; Acts 1925, ch. 115, §§ 27, 28; Shan. Supp., §§ 1487a173, 1487a174, 1487a176; Code 1932, §§ 2500, 2501, 2503-2505; Acts 1947, ch. 94, § 1; C. Supp. 1950, § 2501; Acts 1957, ch. 259, § 1; 1971, ch. 342, § 1; 1972, ch. 775, § 1; 1974, ch. 654, § 114; T.C.A. (orig. ed.), §§ 49-1801 — 49-1807; Acts 1990, ch. 948, § 13.

49-6-3017. Minors withdrawn from secondary school — Denial of motor vehicle license or permit.

(a) For purposes of this section:

(1) Suspension or expulsion from school or confinement in a correctional institution is not a "circumstance beyond the control of the person";

(2) "Satisfactory academic progress" means making a passing grade in at least three (3) full unit subjects or their equivalency at the conclusion of any grading period; and

(3) "Withdrawal" means more than ten (10) consecutive or fifteen (15) days total unexcused absences during a single semester.

(b) In accordance with title 55, chapter 50, the department of safety shall deny a license or instruction permit for the operation of a motor vehicle to any person under eighteen (18) years of age who does not at the time of application for a driver license present a diploma or other certificate of graduation issued to the person from a secondary high school of this state or any other state, or documentation that the person is:

(1) Enrolled and making satisfactory progress in a course leading to a general educational development certificate (GED®) from a state-approved institution or organization, or has obtained a GED®;

(2) Enrolled and making satisfactory academic progress in a secondary school of this state or any other state; or

(3) Excused from such requirement due to circumstances beyond the applicant's control.

(c) The attendance teacher or director of schools shall provide documentation of enrollment status on a form approved by the department of education to any student fifteen (15) years of age or older upon request, who is properly enrolled in a school under the jurisdiction of the official for presentation to the department of safety on application for or reinstatement of an instruction permit or license to operate a motor vehicle. Whenever a student fifteen (15) years of age or older withdraws from school, except as provided in subsection (d), the attendance teacher or director of schools shall notify the department of safety of such withdrawal. Within five (5) days of receipt of the notice, the department shall send notice to the licensee that the license will be suspended under title 55, chapter 50, on the thirtieth day following the date the notice was sent, unless documentation of compliance with this section is received by the department before that time. After having withdrawn from school for the first time for the purpose of this section, a student may not be considered as being in compliance with this section until the student returns to school and makes satisfactory academic progress or attains eighteen (18) years of age. For second or subsequent withdrawals, a student shall have all driving privileges suspended until the student attains eighteen (18) years of age. When a student licensed to operate a motor vehicle is enrolled in a secondary school and fails to maintain satisfactory academic progress based on end of semester grading, the attendance teacher or director of schools shall follow the procedure set out in this subsection (c) to notify the department of safety. A student who fails to maintain satisfactory academic progress based on end of semester grading may not be considered as being in compliance with this section until such student makes a passing grade in at least three (3) full unit subjects or their equivalency at the conclusion of any subsequent grading period.

(d) Whenever the withdrawal from school of the student, the student's failure to enroll in a course leading to a GED® or high school diploma or the student's failure to maintain satisfactory academic progress based on end of semester grading is beyond the control of the student, or is for the purpose of transfer to another school as confirmed in writing by the student's parent or guardian, no notice shall be sent to the department to suspend the student's motor vehicle driver license. If the student is applying for a license, the attendance teacher or director of schools shall provide the student with documentation to present to the department of safety to excuse the student from this section. The school district director of schools, or the appropriate school official of any private secondary school, with the assistance of the attendance teacher and any other staff or school personnel, shall be the sole judge of whether withdrawal or the student's failure to maintain satisfactory academic progress based on end of semester grading is due to circumstances beyond the control of the person.

(e) A copy of the notice sent to the department of safety by the attendance teacher or the director of schools upon failure of a student to maintain satisfactory academic progress shall also be mailed to that student's parents or guardian.

(f) Notwithstanding any provision of this section to the contrary, any student under eighteen (18) years of age enrolled in a course leading to a GED® who has more than ten (10) consecutive or fifteen (15) days total unexcused absences in a semester shall not be considered as making satisfactory academic progress and the student's motor vehicle driver license shall be suspended; or if the student does not have a motor vehicle driver license, the student shall be ineligible to obtain a motor vehicle driver license until the student reaches eighteen (18) years of age. The attendance teacher, director of schools or director of a GED® program shall notify the department of safety whenever any student under eighteen (18) years of age enrolled in a course leading to a GED® has more than ten (10) consecutive or fifteen (15) days total unexcused absences in a semester.

(g) By September 1 of each year, the department of safety shall report to the education committee of the senate and the education administration and planning committee of the house of representatives the number of students whose driver licenses were suspended in accordance with this section and title 55, chapter 50 during the school year immediately preceding the report date. The department of safety shall also report the number of students whose licenses were reinstated during such school year after such students had their licenses suspended and the total number of licenses granted to students during the school year.

History.
Acts 1990, ch. 819, § 1; 1994, ch. 860, § 1; 1995, ch. 156, § 1; 1996, ch. 763, §§ 1, 2, 6-8; 2000, ch. 878, § 1; 2001, ch. 235, § 1; 2012, ch. 555, § 1; 2015, ch. 182, § 49.

49-6-3018. Children serving as pages for general assembly.

Notwithstanding any other law to the contrary, children who serve as pages for the general assembly during the school year, either at regular or special sessions, may be granted excused absences for the day or days missed from school while serving as pages. Approval or disapproval shall be at the discretion of the principal of the school in which they are enrolled. If the absences are approved, the children shall be credited as present.

History.
Acts 1995, ch. 125, § 1.

49-6-3019. Excused absence for deployment or return from deployment of parent or guardian in armed forces.

(a) Notwithstanding any other law to the contrary, if a student's parent, custodian or other person with legal custody or control of the student is a member of the United States armed forces, including a member of a state national guard or a reserve component called to federal active duty, a public school principal shall give the student:

(1) An excused absence for one (1) day when the member is deployed;

(2) An additional excused absence for one (1) day when the service member returns from deployment;

(3) Excused absences for up to ten (10) days for visitation when the member is granted rest and recuperation leave and is stationed out of the country; and

(4) Excused absences for up to ten (10) days cumulatively within the school year for visitation during the member's deployment cycle. Total excused absences under subdivisions (a)(3) and (4) shall not exceed a total of ten (10) days within the school year. The student shall provide documentation to the school as proof of the service member's deployment.

(b) Students receiving an excused absence under this section shall have the opportunity to make up school work missed and shall not have their class grades adversely affected for lack of class attendance or class participation due to the excused absence.

History.
Acts 2006, ch. 552, § 1; 2008, ch. 676, § 1; 2013, ch. 155, § 1.

49-6-3020. Documentation of student's withdrawal and transfer.

(a) An LEA shall document a student's withdrawal from a school and transfer to another school, system or state through the best information available. Such information may include documentation provided by relatives or community contacts, court documents, requests for records from a school to which the student transferred and other reasonable means of determining whether the withdrawing student enrolled in another school or program leading to a high school diploma. A permanent record containing all pertinent information with regard to a student's withdrawal from school, including the signature of the parent or guardian requesting withdrawal, and, to the extent possible, the student's future destination shall be kept.

(b) The department of education shall require an LEA to obtain formal written proof that a child who has moved out-of-state has enrolled in a school or program leading to the award of a regular high school diploma in order not to count such student as a dropout.

History.
Acts 2010, ch. 735, § 1; 2013, ch. 262, § 1.

49-6-3021. Remedial instruction outside of regular school day.

(a) This part shall apply to a student's attendance at any remedial instruction that is required by the student's school including, but not limited to, programs conducted during the summer and after the conclusion of the regular school day. The decision to require a student's attendance at such instruction shall be made by the principal of the student's school in coordination with any teachers who provide instruction to the student and any other appropriate school faculty. The principal shall make the decision as to when the student shall be released from the requirement of attending the remedial instruction. Students may be suspended or expelled from the program under § 49-6-3401.

(b) In making the determination under subsection (a) to require a student to attend a remediation program offered outside the regular school day, the principal shall consider the type of transportation available to the student and whether the student would face hardship in attending the program due to lack of transportation.

(c)(1) The principal of a school shall report promptly to the director of schools, or the director's designated representative, the name of any student required to attend a remedial program who has been absent from the remedial program five (5) times without adequate excuse. The principal shall make the report after the fifth unexcused absence whether the absences have been consecutive or not. The principal shall also report each successive accumulation of five (5) unexcused absences by the student.

(2) If a student's unexcused absences from remedial instruction are reported to the director of schools, or the director's representative, then the director, or the director's representative, shall proceed, pursuant to § 49-6-3007, in the same manner as required for unexcused absences from the regular school day. The appropriate judge having juvenile jurisdiction in the county shall deal with the case in such manner as the judge may determine to be in the best interest of the child, consistent with §§ 37-1-132, 37-1-168 and 37-1-169 and in the event the child is adjudicated to be unruly, the judge may assess a

fine of up to fifty dollars ($50.00) or five (5) hours of community service, in the discretion of the judge, against the parents or legal guardians of such student.

(3) This subsection (c) shall only apply to remedial programs that are offered at no cost to the parent; provided, that prior to the LEA requiring the student to attend the remedial program, the LEA commits to provide transportation to those students in the remedial program who qualify for transportation to and from school.

History.
Acts 2011, ch. 219, § 1; 2013, ch. 304, § 1.

49-6-3022. Excused absence for participation in nonschool-sponsored extracurricular activity.

(a) A school principal or the principal's designee may excuse a student from school attendance to participate in a nonschool-sponsored extracurricular activity, if the following conditions are met:

(1) The student provides documentation to the school as proof of the student's participation in the nonschool-sponsored extracurricular activity; and

(2) The student's parent, custodian, or other person with legal custody or control of the student, prior to the extracurricular activity, submits to the principal or the principal's designee a written request for the excused absence. The written request shall be submitted no later than seven (7) business days prior to the student's absence. The written request shall include:

(A) The student's full name and personal identification number;

(B) The student's grade;

(C) The dates of the student's absence;

(D) The reason for the student's absence; and

(E) The signature of both the student and the student's parent, custodian, or other person with legal custody or control of the student.

(b) The principal or the principal's designee shall approve, in writing, the student's participation in the nonschool-sponsored extracurricular activity.

(c) The principal may limit the number and duration of nonschool-sponsored extracurricular activities for which excused absences may be granted to a student during the school year.

(d) Notwithstanding subsection (c), the principal shall excuse no more than ten (10) absences each school year for students participating in nonschool-sponsored extracurricular activities.

History.
Acts 2015, ch. 141, § 1.

49-6-3023 — 49-6-3049. [Reserved.]

49-6-3050. Home schools.

(a)(1) A "home school" is a school conducted or directed by a parent or parents or a legal guardian or guardians for their own children. Public school facilities may be used by home school participants with the approval of the principal of the school, but this permissive authority shall not be construed to confer any right upon the participants to use public school facilities. If approved, use shall be in accordance with rules established by the local board of education.

(2)(A) Home schools that teach kindergarten through grade twelve (K-12), where the parents are associated with and where students are enrolled with a church-related school, as defined by § 49-50-801, that are supervised by the church-related school's director and that administer or offer standardized achievement tests, are exempt from this section.

(B) Parent-teachers who register with an organization, as defined by § 49-50-801, for conducting a home school for students in grades nine through twelve (9-12) shall possess at least a high school diploma or general education development certificate (GED®).

(3) A parent-teacher may enroll the parent's home school student or students in a church-related school, as defined in § 49-50-801, and participate as a teacher in that church-related school. Such parent-teacher shall be subject to the requirements established by the church-related school for home school teachers and exempt from the rest of this section.

(b) Except for home schools operated under subdivision (a)(2) or (a)(3), a parent-teacher conducting a home school shall comply with the following requirements:

(1) Provide annual notice to the local director of schools prior to each school year of the parent-teacher's intent to conduct a home school and, for purpose of reporting only, submission to the director of schools of the names, number, ages and grade levels of the children to be home schooled, the location of the school, the proposed curriculum to be offered, the proposed hours of instruction and the qualifications of the parent-teacher relative to subdivision (b)(4). Information contained in the reports may be used only for record keeping and other purposes for which similar information on public school students may be used in accordance with guidelines, rules and regulations of the state board of education. The director of schools or the director's designee shall ensure that attendance teachers are informed of parents' rights to conduct a home school pursuant to § 49-6-3001(c)(4), subsection (a) and § 49-50-801 upon employment of the attendance teachers and at the beginning of each school year;

(2) Maintenance of attendance records, subject to inspection by the local director of schools, and submission of these records to the director of schools at the end of each school year;

(3) Instruction for at least four (4) hours per day for the same number of instructional days as are required by state law for public schools;

(4) Possession of a high school diploma or GED® by the parent-teacher;

(5)(A) Administration by the commissioner of education, or the commissioner's designee, or by a professional testing service that is approved by the

LEA, to home school students of the same state board approved secure standardized tests required of public school students in grades five (5), seven (7) and nine (9); however, the test for grade nine (9) shall not be the high school proficiency test required by § 49-6-6001;

(B)(i) Tests administered by the commissioner or the commissioner's designee shall be at the same time tests are administered to public school students, and shall be administered in the public school that the home school student would otherwise be attending, or at whatever location students at such school are tested. Tests administered by the commissioner, or the commissioner's designee, shall be administered without charge. The parent-teacher may be present when the home school student is tested in grade five (5). Both parent-teacher and home school student shall be under the supervision of the test administrator;

(ii) Tests administered by a professional testing service shall be administered within thirty (30) days of the date of the statewide test. Tests administered by a professional testing service shall be administered at the expense of the parent-teacher;

(iii) All test results from either administration by the commissioner or the commissioner's designee, or by a professional testing service, shall be provided to the parent-teacher, the director of schools and the state board of education;

(6)(A) Consultation between the director of schools and the parent-teacher if the home school student falls three (3) to six (6) months behind the home school student's appropriate grade level, based on the test required in subdivision (b)(5);

(B) If a home school student falls six (6) to nine (9) months behind the home school student's appropriate grade level in the home school student's reading, language arts, mathematics or science test scores or such of these areas, regardless of the term used on the test, as are actually tested for the student's grade level, based on the tests required in subdivision (b)(5), the parent shall consult with a teacher licensed by the state board of education and having a certificate or endorsement in the grade level or course or subject matter in which consultation is sought. The parent and teacher shall design a remedial course to help the child obtain the child's appropriate grade level. The parent shall report the remedial course for the child to the local director of schools;

(C)(i) If a home school student falls more than one (1) year behind the home school student's appropriate grade level in the home school student's comprehensive test score for two (2) consecutive tests based on the tests required in subdivision (b)(5) and if the child is not learning disabled in the opinion of a teacher licensed to teach at the child's grade level, the local director of schools may require the parents to enroll the child in a public, private or church-related school, in accordance with this part, and the parents shall have all rights provided by law to respond to this requirement;

(ii) If a test indicates that a home school student is one (1) year or more behind the home school student's appropriate grade level, the same test shall be administered to the child not more than one (1) year later, notwithstanding the required testing schedule in subdivision (b)(5)(A);

(7) Proof shall be submitted to the local director of schools that the home school student has been vaccinated as required by § 49-6-5001 and has received any other health services or examinations as may be required by law generally for children in this state; and

(8) Submission by the home school student entering public schools to the evaluation test provided for in § 49-50-801, if the local system requires the test, or the tests required by the state board of education for transfer students.

(c) In the event of the illness of a parent-teacher, or at the discretion of the parent-teacher, a tutor, having the same qualifications that would be required of a parent-teacher teaching the grade level or course, may be employed by the parent-teacher.

(d) The department of education shall provide annually to home schools with which they have contact information about meningococcal disease and the effectiveness of vaccination against meningococcal disease at the beginning of every school year. This information shall include the causes, symptoms and the means by which meningococcal disease is spread and the places where parents and guardians may obtain additional information and vaccinations for their children. This information may be provided electronically or on the department's web site. Nothing in this subsection (d) shall be construed to require the department of education to provide or purchase vaccine against meningococcal disease.

(e)(1) If any of the public schools established under the jurisdiction of an LEA are members of an organization or an association that regulates interscholastic athletic competition, and if such organization or association establishes or maintains eligibility requirements for home school students desiring to participate in interscholastic athletics at a member school, then the LEA shall permit participation in interscholastic athletics at those schools by home school students who satisfy the eligibility requirements established by the organization or association.

(2) This subsection (e) does not guarantee that a home school student trying out for an interscholastic athletics team will make the team or supplant the authority of coaches or other school officials in deciding who makes the team. This subsection (e) is intended to guarantee only that the home school student shall not be prohibited from trying out for an interscholastic athletics team, if the student is eligible under the rules of the organization or association, solely by reason of the student's status as a

home school student.

(3) This subsection (e) shall not be construed to limit or supplant the authority of the organization or association to determine eligibility and to establish, modify and enforce its rules and eligibility requirements, including those applicable to home school students.

(f)(1) As used in this subsection (f):

(A) "AP" means the advanced placement program offered by the College Board; and

(B) "PSAT/NMSQT" means the Preliminary SAT/National Merit Scholarship Qualifying Test administered by the College Board and National Merit Scholarship Corporation.

(2) Each public school that administers the AP and PSAT/NMSQT examinations shall provide notice of the dates on which the school will administer the examinations on the school's web site. The notice shall include:

(A) The availability of AP and PSAT/NMSQT examinations; and

(B) The availability of outside financial assistance to low-income and needy students to take the AP and PSAT/NMSQT examinations.

(3) Home school students shall be permitted to take the AP and PSAT/NMSQT examinations at any public school offering such examinations.

History.

Acts 1985, ch. 398, § 3; 1987, ch. 42, §§ 2-5; 1987, ch. 308, § 33; 1994, ch. 725, §§ 1-3; 1995, ch. 534, § 1; 1997, ch. 434, §§ 4, 5; 2005, ch. 177, § 4; 2011, ch. 499, §§ 1-8; 2013, ch. 225, § 1; 2016, ch. 732, § 1.

Compiler's Notes.

Acts 2013, ch. 225, § 2 provided that the act, which added subsection (e), shall apply to participation in extracurricular athletics beginning with the 2013-2014 academic year.

49-6-3051. Parental or guardian notice to school of child's criminal offenses — List of goals — Confidentiality — Violations and penalties.

(a) Notwithstanding any law to the contrary, if a student has at any time been adjudicated delinquent for any offense listed in subsection (b), the parents, guardians or legal custodians, including the department of children's services acting in any capacity and a school administrator of any school having previously received the same or similar notice from the juvenile court or another source, shall provide to a school principal, or a principal's designee, the abstract provided under § 37-1-153 or § 37-1-154 or other similar written information when any such student:

(1) Initially enrolls in an LEA;

(2) Resumes school attendance after suspension, expulsion or adjudication of delinquency; or

(3) Changes schools within this state.

(b) The parents, guardians or legal custodians, including the department of children's services acting in any capacity, shall provide notification as required by subsection (a) if the student has been adjudicated delinquent for:

(1) An offense involving:

(A) First degree murder;

(B) Second degree murder;

(C) Rape;

(D) Aggravated rape;

(E) Rape of a child;

(F) Aggravated rape of a child;

(G) Aggravated robbery;

(H) Especially aggravated robbery;

(I) Kidnapping;

(J) Aggravated kidnapping;

(K) Especially aggravated kidnapping;

(L) Aggravated assault;

(M) Felony reckless endangerment; or

(N) Aggravated sexual battery;

(2) A violation of:

(A) Voluntary manslaughter, as defined in § 39-13-211;

(B) Criminally negligent homicide, as defined in § 39-13-212;

(C) Sexual battery by an authority figure, as defined in § 39-13-527;

(D) Statutory rape by an authority figure, as defined in § 39-13-532;

(E) Prohibited weapon, as defined in § 39-17-1302;

(F) Unlawful carrying or possession of a firearm, as defined in § 39-17-1307;

(G) Carrying weapons on school property, as defined in § 39-17-1309;

(H) Carrying weapons on public parks, playgrounds, civic centers, and other public recreational buildings and grounds, as defined in § 39-17-1311;

(I) Handgun possession, as defined in § 39-17-1319;

(J) Providing handguns to juveniles, as defined in § 39-17-1320; or

(K) Any violation of § 39-17-417 that constitutes a Class A or Class B felony; or

(3) An offense not listed in this subsection (b) for which a court has ordered school notification based on the circumstances surrounding the offense.

(c) When the principal or the principal's designee is notified of the student's adjudication pursuant to subsection (a), the principal or the principal's designee may convene a meeting to develop a plan to set out a list of goals to provide the child an opportunity to succeed in school and provide for school safety, a schedule for completion of the goals and the personnel who will be responsible for working with the child to complete the goals.

(d) The abstract and information shall be shared only with the employees of the school having responsibility for classroom instruction of the child and the school counselor, social worker or psychologist who is involved in developing a plan for the child while in the school, and with the school resource officer, and any other person notified pursuant to this section. The information is otherwise confidential and shall not be shared by school personnel with any other person or agency, except as may otherwise be required by law. The abstract or other similar information provided

pursuant to subsection (a) and the plan shall not become a part of the child's student record.

(e) Notwithstanding any other state law to the contrary, the department of children's services shall develop a written policy consistent with federal law detailing the information to be shared by the department with the school for children in its legal custody when notification is required.

(f) It is an offense for any school personnel to knowingly share information provided pursuant to subsection (a) with any person other than those listed in subsection (d). A violation of this subsection (f) is a Class C misdemeanor, punishable by a fine only.

(g) It is an offense for a parent or guardian to knowingly fail to provide notification as required by subsection (a). A violation of this subsection (g) is a Class C misdemeanor, punishable by a fine only. For purposes of this subsection (g), parent or legal guardian does not include the department of children's services.

(h) If it becomes apparent that any employee of the department of children's services knowingly failed to notify the school as required by subsection (a), the commissioner of children's services shall be notified and take appropriate action against the employee.

History.
Acts 1999, ch. 462, § 1; 2003, ch. 238, § 4; 2008, ch. 1053, § 1; 2009, ch. 160, § 2.

PART 33

ENFORCEMENT POWERS OF EDUCATION DEPARTMENT

49-6-3301. Supervisor of census and attendance.

(a) The commissioner of education is authorized to appoint a supervisor of census and attendance in the department of education whose primary responsibility shall be to supervise and enforce the census and compulsory school attendance laws.

(b) The supervisor of census and attendance shall have general supervision over census enumerators and attendance officers and other persons authorized to perform the duties of census enumerators and attendance officers.

(c) The commissioner is authorized to prescribe the duties of the supervisor and to make rules and regulations for the performance of the duties, not inconsistent with law, that will promote the purposes of the census and compulsory school attendance laws.

(d) The supervisor shall cooperate fully with directors of schools and boards of education in the enforcement of the census and compulsory school attendance laws, and shall furnish to boards of education ratings relative to the efficiency of local school attendance officials.

History.
Acts 1945, ch. 143, § 1; C. Supp. 1950, § 2475.1; Acts 1974, ch. 654, § 107; T.C.A. (orig. ed.), § 49-1738.

49-6-3302. Withholding state funds for noncompliance.

The commissioner, upon due hearing after two (2) weeks' written notice to the board of education affected, may withhold and declare forfeited any part or all state school funds due any school district that refuses or neglects to comply with and to enforce the census or compulsory school attendance laws.

History.
Acts 1945, ch. 143, § 2; C. Supp. 1950, § 2475.2; Acts 1974, ch. 654, § 108; T.C.A. (orig. ed.), § 49-1739.

PART 34

SUSPENSION OF STUDENTS

49-6-3401. Suspension of students — Expulsion of students — Exception for self-defense.

(a) Any principal, principal-teacher or assistant principal of any public school in this state is authorized to suspend a pupil from attendance at the school, including its sponsored activities, or from riding a school bus, for good and sufficient reasons. Good and sufficient reasons for suspension include, but are not limited to:

(1) Willful and persistent violation of the rules of the school;

(2) Immoral or disreputable conduct or vulgar or profane language;

(3) Violence or threatened violence against the person of any personnel attending or assigned to any public school;

(4) Willful or malicious damage to real or personal property of the school, or the property of any person attending or assigned to the school;

(5) Inciting, advising or counseling of others to engage in any of the acts enumerated in subdivisions (a)(1)-(4);

(6) Marking, defacing or destroying school property;

(7) Possession of a pistol, gun or firearm on school property;

(8) Possession of a knife and other weapons, as defined in § 39-17-1301 on school property;

(9) Assaulting a principal, teacher, school bus driver or other school personnel with vulgar, obscene or threatening language;

(10) Unlawful use or possession of barbital or legend drugs, as defined in § 53-10-101;

(11) One (1) or more students initiating a physical attack on an individual student on school property or at a school activity, including travel to and from

school or a school activity;

(12) Making a threat, including a false report, to use a bomb, dynamite, any other deadly explosive or destructive device, including chemical weapons, on school property or at a school sponsored event;

(13) Any other conduct prejudicial to good order or discipline in any public school; and

(14) Off campus criminal behavior that results in the student being legally charged with an offense that would be classified as a felony if the student was charged as an adult or if adjudicated delinquent for an offense that would be classified as a felony if the student was an adult, or if the student was convicted of a felony, and the student's continued presence in school poses a danger to persons or property or disrupts the educational process. Notwithstanding § 37-1-131 or any other law to the contrary, the principal of the school in which the student is enrolled and the director of schools shall determine the appropriate educational assignment for the student released for readmission.

(b)(1) Any principal, principal-teacher or assistant principal may suspend any pupil from attendance at a specific class, classes or school-sponsored activity without suspending the pupil from attendance at school pursuant to an in-school suspension policy adopted by the local board of education. Good and sufficient reasons for in-school suspension include, but are not limited to, behavior:

(A) That adversely affects the safety and well-being of other pupils;

(B) That disrupts a class or school sponsored activity; or

(C) Prejudicial to good order and discipline occurring in class, during school-sponsored activities or on the school campus.

(2) In-school suspension policies shall provide that pupils given an in-school suspension in excess of one (1) day from classes shall attend either special classes attended only by students guilty of misconduct or be placed in an isolated area appropriate for study. Students given in-school suspension shall be required to complete academic requirements.

(c)(1) Except in an emergency, no principal, principal-teacher or assistant principal shall suspend any student until that student has been advised of the nature of the student's misconduct, questioned about it and allowed to give an explanation.

(2) Upon suspension of any student other than for in-school suspension of one (1) day or less, the principal shall, within twenty-four (24) hours, notify the parent or guardian and the director of schools or the director of schools' designee of:

(A) The suspension, which shall be for a period of no more than ten (10) days;

(B) The cause for the suspension; and

(C) The conditions for readmission, which may include, at the request of either party, a meeting of the parent or guardian, student and principal.

(3) If the suspension is for more than five (5) days, the principal shall develop and implement a plan for improving the behavior, which shall be made available for review by the director of schools upon request.

(4)(A) If, at the time of the suspension, the principal, principal-teacher or assistant principal determines that an offense has been committed that would justify a suspension for more than ten (10) days, the person may suspend a student unconditionally for a specified period of time or upon such terms and conditions as are deemed reasonable.

(B) The principal, principal-teacher or assistant principal shall immediately give written or actual notice to the parent or guardian and the student of the right to appeal the decision to suspend for more than ten (10) days. All appeals must be filed, orally or in writing, within five (5) days after receipt of the notice and may be filed by the parent or guardian, the student or any person holding a teaching license who is employed by the school system if requested by the student.

(C) The appeal from this decision shall be to the board of education or to a disciplinary hearing authority appointed by the board. The disciplinary hearing authority, if appointed, shall consist of at least one (1) licensed employee of the LEA, but no more than the number of members of the local board.

(D) The hearing shall be held no later than ten (10) days after the beginning of the suspension. The local board of education or the disciplinary hearing authority shall give written notice of the time and place of the hearing to the parent or guardian, the student and the school official designated in subdivision (c)(4)(A) who ordered the suspension. Notice shall also be given to the LEA employee referred to in subdivision (c)(4)(B) who requests a hearing on behalf of a suspended student.

(5) After the hearing, the board of education or the disciplinary hearing authority may affirm the decision of the principal, order removal of the suspension unconditionally or upon such terms and conditions as it deems reasonable, assign the student to an alternative program or night school or suspend the student for a specified period of time.

(6) If the decision is determined by a disciplinary hearing authority, a written record of the proceedings, including a summary of the facts and the reasons supporting the decision, shall be made by the disciplinary hearing authority. The student, principal, principal-teacher or assistant principal may, within five (5) days of the decision, request review by the board of education; provided, that local school board policy may require an appeal to the director of schools prior to a request for review to the board. Absent a timely appeal, the decision shall be final. The board of education, based upon a review of the record, may grant or deny a request for a board hearing and may affirm or overturn the decision of the hearing authority with or without a hearing before the board; provided, that the board may not impose a more severe penalty than that imposed by the hearing authority without first providing an opportunity for a hearing before the board. If the

board conducts a hearing as a result of a request for review by a student, principal, principal-teacher or assistant principal, then, notwithstanding any provision of the open meetings laws compiled in title 8, chapter 44, or other law to the contrary, the hearing shall be closed to the public, unless the student or student's parent or guardian requests in writing within five (5) days after receipt of written notice of the hearing that the hearing be conducted as an open meeting. If the board conducts a hearing as a result of a request for review by a student, principal, principal-teacher, or assistant principal that is closed to the public, then the board shall not conduct any business, discuss any subject or take a vote on any matter other than the appeal to be heard. Nothing in this subdivision (c)(6) shall act to exclude the department of children's services from the disciplinary hearings when the department is exercising its obligations under § 37-1-140. The action of the board of education shall be final.

(d) In the event the suspension occurs during the last ten (10) days of any term or semester, the pupil may be permitted to take final examinations or submit required work that is necessary to complete the course of instruction for that semester, subject to the action of the principal, or the final action of the board of education upon any appeal from an order of a principal continuing a suspension.

(e) Students under in-school suspension shall be recorded as constituting a part of the public school attendance in the same manner as students who attend regular classes.

(f) Nothing in this title shall require an LEA to enroll a student who is under suspension or expelled in an LEA either in Tennessee or another state. The director of schools for the school system in which the suspended student requests enrollment shall make a recommendation to the local board of education to approve or deny the request. The recommendation shall occur only after investigation of the facts surrounding the suspension from the former school system. If the recommendation is to deny admission and if the local board approves the director of schools' recommendation, the director of schools shall, on behalf of the board of education, notify the commissioner of the decision. Nothing in this subsection (f) shall affect children in state custody or their enrollment in any LEA. Any LEA that accepts enrollment of a student from another LEA may dismiss the student if it is determined subsequent to enrollment that the student had been suspended or expelled by the other LEA.

(g) Notwithstanding this section or any other law to the contrary, a pupil determined to have brought to school or to be in unauthorized possession on school property of a firearm, as defined in 18 U.S.C. § 921, shall be expelled for a period of not less than one (1) calendar year, except that the director may modify this expulsion on a case-by-case basis. In addition to the other provisions of this part, a student committing aggravated assault as defined in § 39-13-102 upon any teacher, principal, administrator, any other employee of an LEA or school resource officer, or unlawfully possessing any drug including any controlled substance, as defined in §§ 39-17-403 — 39-17-415, controlled substance analogue, as defined by § 39-17-454, or legend drug, as defined by § 53-10-101, shall be expelled for a period of not less than one (1) calendar year, except that the director may modify this expulsion on a case-by-case basis. For purposes of this subsection (g), "expelled" means removed from the pupil's regular school program at the location where the violation occurred or removed from school attendance altogether, as determined by the school official. Nothing in this section shall be construed to prohibit the assignment of such students to an alternative school. Disciplinary policies and procedures for all other student offenses, including terms of suspensions and expulsions, shall be determined by local board of education policy.

(h) The commissioner of education shall report on a semi-annual basis to the education committee of the senate and the education administration and planning committee of the house of representatives regarding disciplinary actions in Tennessee schools. The reports shall include the reason for the disciplinary action, the number of such students suspended or expelled and the number of such students who have been placed in an alternative educational setting. Data shall be sorted by school as well as by various demographic factors, including grade, race and sex.

(i) Notwithstanding subsection (a) or (b) or any other law to the contrary, if a pupil is determined, via a fair and thorough investigation made by the principal or the principal's appointed representative, to have acted in self-defense under a reasonable belief that the student, or another to whom the student was coming to the defense of, may have been facing the threat of imminent danger of death or serious bodily injury, which the student honestly believed to be real at that time, then, at the principal's recommendation, the student may not face any disciplinary action.

History.

Acts 1925, ch. 115, § 8; Shan. Supp., § 1487a52; Code 1932, § 2341; Acts 1959, ch. 94, § 1; 1970, ch. 344, § 1; 1970, ch. 580, § 1; 1974, ch. 654, § 69; 1981, ch. 117, §§ 1-7; 1982, ch. 608, §§ 1, 2; T.C.A. (orig. ed.), § 49-1309; Acts 1986, ch. 671, § 1; 1988, ch. 646, § 1; 1991, ch. 382, §§ 1, 2; 1991, ch. 411, § 1; 1992, ch. 949, § 1; 1993, ch. 383, § 1; 1995, ch. 268, § 1; 1995, ch. 365, § 1; 1998, ch. 830, § 1; 2000, ch. 634, § 3; 2007, ch. 212, § 1; 2007, ch. 402, § 1; 2007, ch. 457, § 1; 2008, ch. 916, § 1; 2011, ch. 410, § 4(v); 2012, ch. 687, § 1; 2012, ch. 848, § 42; 2013, ch. 214, § 4; 2013, ch. 222, §§ 1, 2; 2013, ch. 442, § 1; 2015, ch. 182, § 50; 2015, ch. 501, § 2.

Compiler's Notes.

For the Preamble to the act concerning the prohibition against establishment of a special committee if there is a standing committee on the same subject, please refer to Acts 2011, ch. 410.

Acts 2015, ch. 501, § 3 provided that the act, which amended (a)(14), shall apply to any violent felonies or violent felony delinquency acts occurring on or after July 1, 2015.

49-6-3402. Alternative schools for suspended or expelled students — Mandated attendance.

(a) Local boards of education may establish alternative schools for students in grades one through six (1-6) who have been suspended or expelled from the regular

school program. At least one (1) alternative school shall be established and available for students in grades seven through twelve (7-12) who have been suspended or expelled as provided in this part. In providing alternative schools, any two (2) or more boards may join together and establish a school attended by students of any such school system; furthermore, any board may, by mutually acceptable agreement with another board, send its suspended or expelled students to any alternative school already in operation.

(b) Alternative schools shall be operated pursuant to rules of the state board of education pertaining to them, and instruction shall proceed as nearly as practicable in accordance with the instructional programs at the student's home school. All course work completed and credits earned in the alternative schools shall be transferred to and recorded in the student's home school, which shall grant credit earned and progress thereon as if earned in the home school.

(c) Attendance in an alternative school shall be voluntary unless the local board of education adopts a policy mandating attendance in either instance. The student shall be subject to all rules pertaining thereto. A violation of the rules by a student may result in the student's removal from this school for the duration of the original suspension or expulsion, but shall not constitute grounds for any extension of the original suspension or expulsion. The final decision on removal shall be made by the chief administrator of the alternative school.

(d) Any student attending an alternative school shall continue to earn state education funds in the student's home school system and shall be counted for all school purposes by that system as if still in attendance there.

(e) A pupil who has been properly found to be eligible for special education and related services shall be placed and served in accordance with the laws and rules relating to special education.

(f)(1) The state board of education, in its rules and regulations for the operation of alternative schools, shall require documentation of the reasons for a student attending an alternative school and provide safeguards to assure that no child with disabilities or other special student is arbitrarily placed in an alternative school. The state board of education, in its rules and regulations, shall require that all alternative school classrooms have working two-way communication systems making it possible for teachers or other employees to notify a principal, supervisor or other administrator that there is an emergency. Teachers and other employees shall be notified of emergency procedures prior to the beginning of classes for any school year.

(2) The state board of education shall provide a curriculum for alternative schools to ensure students receive specialized attention needed to maximize student success. Alternative schools shall offer alternative learning environments in which students are offered a variety of educational opportunities, such as learning at different rates of time or utilizing different, but successful, learning strategies, techniques and tools.

(g) Notwithstanding this section or other law to the contrary, local boards of education may establish evening alternative schools for students in grades six through twelve (6-12).

(h)(1) LEAs establishing alternative schools or contracting for the operation of alternative schools shall develop and implement formal transition plans for the integration of students from regular schools to alternative schools and from alternative schools to regular schools. The plans shall be targeted to improve communication between regular and alternative school staff, provide professional development opportunities shared by regular school staff and alternative school staff, align curricula between regular schools and alternative schools, develop quality in-take procedures for students returning to regular school and provide student follow-up upon return to regular school.

(2) The state board of education shall adopt policies or guidelines to assist LEAs in developing transition plans.

History.

Acts 1984 (1st E.S.), ch. 5, § 1; 1986, ch. 939, § 1; 1992, ch. 535, § 41; 1996, ch. 988, § 12; 1998, ch. 871, § 3; 2005, ch. 200, § 1; 2006, ch. 895, § 1; 2007, ch. 455, § 1; 2007, ch. 517, § 4; 2009, ch. 192, § 1.

Compiler's Notes.

Acts 2007, ch. 517, § 5 provided that the board of education is authorized to promulgate rules and regulations to effectuate the purposes of the act, which added subsection (i). The rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

49-6-3403. [Obsolete.]

49-6-3404. Advisory council for alternative education.

(a) There is established an advisory council for alternative education that shall advise, assist and consult with the governor, the commissioner of education and the state board of education.

(b)(1) The advisory council shall be composed of a maximum of ten (10) members, including parents of children attending alternative schools or who have attended alternative schools, teachers or principals serving in alternative schools, members of local boards of education, at least one (1) community representative concerned with alternative education and at least one (1) representative of an educators' association concerned with alternative education.

(2) The governor shall appoint the members of the advisory council for three-year terms, except for the appointment of the initial members. In appointing the initial members to the advisory council, each member shall be designated as filling an odd-numbered seat or an even-numbered seat. The members appointed to the odd-numbered seats shall serve three-year terms and the members appointed to the even-numbered seats shall serve two-year terms.

(3) Vacancies shall be filled for an unexpired term in the same manner as original appointments.

(c)(1) The advisory council shall elect its own chair and vice chair annually.

(2) A representative of the commissioner of education shall meet with and act as secretary to the advisory council. The commissioner, within available personnel and appropriations, shall furnish meeting facilities and staff services for the advisory council.

(d) All members of the advisory council shall serve without compensation, but shall be eligible for reimbursement for travel expenses in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

(e) The advisory council shall:

(1) Consider any issue, problem or matter related to alternative education presented to it by the governor, the commissioner or the state board of education, and give advice on any issue, problem or matter;

(2) Study proposed plans for alternative education programs or curricula to determine if the plans or curricula should be adopted;

(3) Study alternative education programs or curricula implemented in Tennessee school systems to determine the effectiveness of the programs or curricula, and alternative education programs or curricula implemented in other states to determine if the programs or curricula should be adopted in Tennessee schools;

(4) Consider rules of governance of alternative schools and make recommendations concerning rules of governance; and

(5) Make an annual report to the governor, the education committee of the senate, the education administration and planning committee of the house of representatives, the commissioner of education and the state board of education on the state of alternative education in this state. The report shall be submitted prior to February 1 each year.

History.
Acts 2006, ch. 895, § 2; 2015, ch. 182, § 51.

49-6-3405. Alternative school success.

(a) Each LEA shall track the operation and performance of alternative school programs operated by the LEA or contractually operated for the LEA. LEAs shall measure and report to the department of education alternative school success through academic indicators and behavior indicators.

(1) Academic indicators shall include, but not be limited to, grade point averages or other student academic performance measures, performance on the Tennessee comprehensive assessment program (TCAP), performance on the end-of-course assessments, attendance, dropout rates and graduation rates, for students in alternative schools or who have been in alternative schools.

(2) Behavioral indicators shall include, but not be limited to, disciplinary reports and subsequent remands to alternative schools.

(3) The department of education shall provide guidance in the reporting of the required data.

(b) The state board of education shall seek to improve performance of alternative school programs by promulgating or revising rules and regulations requiring greater accountability by the department of education and LEAs for outcomes of students served by alternative schools.

History.
Acts 2007, ch. 517, § 2; 2009, ch. 262, § 5.

Compiler's Notes.
Acts 2007, ch. 517, § 5 provided that the board of education is authorized to promulgate rules and regulations to effectuate the purposes of the act. The rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

PART 40

STUDENT AND EMPLOYEE SAFE ENVIRONMENT ACT OF 1996

49-6-4001. Short title.

This part shall be known and may be cited as the "Student and Employee Safe Environment Act of 1996."

History.
Acts 1996, ch. 988, § 2; T.C.A., § 49-6-4011.

49-6-4002. Formulation and administration of behavior and discipline codes.

(a) The governing body of each LEA shall be responsible for formulating a code of acceptable behavior and discipline to apply to the students in each school operated by the LEA.

(b) The director of schools or other administrative head of the LEA shall be responsible for overall implementation and supervision, and each school principal shall be responsible for administration and implementation within that school.

(c) In formulating the behavior and discipline codes, the governing body of each LEA shall seek recommendations from parents, employees, law enforcement personnel and youth-related agencies in the community.

History.
Acts 1996, ch. 988, § 3; T.C.A., § 49-6-4012.

Compiler's Notes.
Former §§ 49-6-4011 — 49-6-4019 were transferred to §§ 49-6-4001 — 49-6-4009 by authority of the code commission in 2013.

49-6-4003. Code contents.

(a) Each code shall contain the type of behavior expected from each student, the consequences of failure to obey the standards, and the importance of the standards to the maintenance of a safe learning environment where orderly learning is possible and encouraged. Each code shall address the topics of language used by students, respect for all school employees, fighting, threats, weapons on school property or at school functions, damage to the property or person of others, misuse or destruction of school property, drug or alcohol abuse, the sale or distribution of drugs or alcohol, student conduct on school property, conduct in

classes and on school buses and other subjects that the local governing body chooses to include.

(b) Each code shall state that a teacher, principal, school employee or school bus driver may use reasonable force in compliance with § 49-6-4107.

History.
Acts 1996, ch. 988, § 4; 2012, ch. 687, §§ 2, 6; T.C.A., § 49-6-4013.

Compiler's Note.
Former §§ 49-6-4011 — 49-6-4019 were transferred to §§ 49-6-4001 — 49-6-4009 by authority of the code commission in 2013.

49-6-4004. Uniform and fair application of codes.

The principal of each school shall apply the code uniformly and fairly to each student at the school without partiality or discrimination.

History.
Acts 1996, ch. 988, § 5; T.C.A., § 49-6-4014.

Compiler's Notes.
Former §§ 49-6-4011 — 49-6-4019 were transferred to §§ 49-6-4001 — 49-6-4009 by authority of the code commission in 2013.

49-6-4005. Different codes for different classes of schools.

The governing body of the LEA may choose to adopt different but consistent codes of behavior and discipline to apply to different classes of schools, such as elementary, middle, junior high and senior high, under its jurisdiction. The codes shall be uniform to the extent of maximum consideration for the safety and well-being of students and employees.

History.
Acts 1996, ch. 988, § 6; T.C.A., § 49-6-4015.

Compiler's Notes.
Former §§ 49-6-4011 — 49-6-4019 were transferred to §§ 49-6-4001 — 49-6-4009 by authority of the code commission in 2013.

49-6-4006. Civil liability.

(a) In addition to criminal penalties provided by law, there is created a civil cause of action for an intentional assault, personal injury or injury to the personal property of students or school employees when the assault occurs during school hours, on school property or during school functions, including travel to and from school on school buses. A person who commits such an assault or injury shall be liable to the victim for all damages resulting from the assault, including compensatory and punitive damages. Upon prevailing, the victim shall be entitled to treble damages and reasonable attorney fees and costs.

(b) It is a defense against a civil action for damages under this section that a teacher, principal, school employee or school bus driver in the exercise of the person's lawful authority used reasonable force under § 49-6-4107 that was necessary to restrain the student or to prevent bodily harm or death to another person.

History.
Acts 1996, ch. 988, § 7; 2012, ch. 687, § 5; T.C.A., § 49-6-4016.

Compiler's Notes.
Former §§ 49-6-4011 — 49-6-4019 were transferred to §§ 49-6-4001 — 49-6-4009 by authority of the code commission in 2013.

49-6-4007. Code distribution and posting.

When a code of behavior and discipline has been adopted by the governing body of an LEA, a copy of the code shall be posted at each school, and school counselors shall be supplied copies for discussion with students. The code shall be referenced in all school handbooks. All teachers, administrative staff and parents shall be provided copies of the code.

History.
Acts 1996, ch. 988, § 8; 1999, ch. 367, § 4; T.C.A., § 49-6-4017.

Compiler's Notes.
Former §§ 49-6-4011 — 49-6-4019 were transferred to §§ 49-6-4001 — 49-6-4009 by authority of the code commission in 2013.

49-6-4008. Policy regarding teacher's ability to relocate student for safety reasons.

(a) Each local board of education shall adopt a complete policy regarding a teacher's ability to relocate a student from the student's present location to another location for the student's safety or the safety of others. The use of reasonable or justifiable force, as defined in §§ 39-11-603, 39-11-609, 39-11-610, 39-11-612, 39-11-613, 39-11-614, 39-11-621, and 39-11-622, if required to accomplish this task due to the unwillingness of the student to cooperate, is allowed. If steps beyond the use of reasonable or justifiable force are required, the student shall be allowed to remain in place until such a time as local law enforcement officers or school resource officers can be summoned to relocate the student or take the student into custody until such a time as a parent or guardian can retrieve the student. This policy shall also cover teachers' authorization to intervene in a physical altercation between two (2) or more students, or between a student and LEA employees using reasonable or justifiable force upon a student, if necessary to end the altercation by relocating the student to another location.

(b) This policy shall be in effect on school property, as well as at official school functions, including, but not limited to, sporting events and approved field trips, taking place away from the local school property. Those covered by this policy shall include LEA employees who are directly responsible for the student's education or who otherwise interact with the student on a professional basis while acting within the scope of their assigned duties, including, but not limited to, administrators, teachers, school support staff, bus drivers, cafeteria workers, and school resource officers.

(c) The policy shall require a teacher to file a brief report with the principal detailing the situation that required the relocation of the student. Either the report

shall be kept in a student discipline file and shall not become a part of the student's permanent record or it shall be filed in the student's permanent record, if the student's behavior violated the LEA's zero tolerance policy. The student is then subject to additional disciplinary action that may include suspension or expulsion from the school. The principal or the principal's designee shall notify the teacher involved of the actions taken to address the behavior of the relocated student.

(d) Each principal shall fully support the authority of every teacher in the principal's school to relocate a student under this section. Each school principal shall implement the policies and procedures of the local board of education relating to the authority of every teacher to relocate a student and shall disseminate such policies and procedures to the students, faculty, staff, and parents or guardian of students. The policy shall comply with state and federal laws regarding the placements of students.

History.
Acts 2012, ch. 701, § 1; T.C.A., § 49-6-4018.

Compiler's Notes.
Former § 49-6-4018 (now § 49-6-4008) (Acts 1996, ch. 988, § 11; 1997, ch. 326, § 1), concerning student actions resulting in expulsion, was repealed by Acts 2000, ch. 634, § 2, effective July 1, 2000. For present law, see §§ 49-6-3401(g) and 49-6-4216(b).

Former §§ 49-6-4011 — 49-6-4019 were transferred to §§ 49-6-4001 — 49-6-4009 by authority of the code commission in 2013.

49-6-4009. Student discipline code to include provision prohibiting indecent clothing.

(a) An LEA shall include in its student discipline code a provision prohibiting students from wearing, while on the grounds of a public school during the regular school day, clothing that exposes underwear or body parts in an indecent manner that disrupts the learning environment.

(b) An LEA shall specify in its student discipline code the disciplinary actions that shall be taken against a student for a violation of subsection (a).

(c) Subsection (a) shall not be enforced in a manner that discriminates against a student on the basis of race, color, religion, sex, disability, or national origin.

History.
Acts 2012, ch. 781, § 1; T.C.A., § 49-6-4019.

Compiler's Notes.
For the Preamble to the act concerning the prohibition of students wearing clothes in an indecent manner, please refer to Acts 2012, ch. 781.

Former §§ 49-6-4011 — 49-6-4019 were transferred to §§ 49-6-4001 — 49-6-4009 by authority of the code commission in 2013.

PART 41

SCHOOL DISCIPLINE ACT

49-6-4101. Short title.

This part shall be known and may be cited as the "School Discipline Act."

History.
Acts 1979, ch. 131, § 1; T.C.A., §§ 49-901, 49-9-101.

49-6-4102. Students accountable for conduct.

(a) Every teacher is authorized to hold every pupil strictly accountable for any disorderly conduct in school or on the playground of the school, during intermission or recess period or on any school bus going to or returning from school.

(b) Every school bus driver is authorized to hold every pupil strictly accountable for any disorderly conduct on any school bus going to or returning from school or a school activity.

History.
Acts 1979, ch. 131, § 1; T.C.A., §§ 49-902, 49-9-102; Acts 2012, ch. 687, § 3.

49-6-4103. Corporal punishment.

Any teacher or school principal may use corporal punishment in a reasonable manner against any pupil for good cause in order to maintain discipline and order within the public schools.

History.
Acts 1979, ch. 131, § 1; T.C.A., §§ 49-903, 49-9-103.

49-6-4104. Rules and regulations.

Each local board of education shall adopt rules and regulations it deems necessary to implement and control any form of corporal punishment in the schools in its district.

History.
Acts 1979, ch. 131, § 1; T.C.A., §§ 49-904, 49-9-104.

49-6-4105. Arrest and prosecution for injury to student.

(a) No action taken by a teacher or principal pursuant to this part shall be grounds for the issuance of an arrest warrant or for the pressing of criminal charges against the teacher or principal, unless a report of an investigation by appropriate law enforcement officials along with independent medical verification of injury is presented to the judge or magistrate prior to issuing the warrant. The investigative findings shall be presented to the judge or magistrate within fifteen (15) days of receipt of notification. The law enforcement agency shall give notice to the director of schools or the director of schools' designee at the time it is notified of the allegations.

(b) When an arrest warrant has been issued against a teacher for action taken pursuant to this part, the teacher shall be summoned to an administrative office or to a location other than on school grounds, so that students shall not be present, and shall be arrested there. The teacher is not to be arrested in the classroom or before any assembly of students. This subsection (b) shall not apply if a law enforcement officer reasonably believes that the teacher will flee from arrest or attempt to leave the jurisdiction of the court that issued the warrant.

History.
Acts 1986, ch. 578, § 1; 1987, ch. 133, § 1; 1987, ch. 134, § 1.

49-6-4106. Disciplinary referrals.

When a member of a school's faculty or staff disciplines a student by issuing a written referral for the student's behavior, the referral shall be returned to the member of the faculty or staff with a notation of the action taken. The referral shall be kept in a student discipline file and shall not become a part of the student's permanent record. If a school district or a school has adopted an electronic system of making disciplinary referrals instead of using written referrals, then the member of the faculty or staff making the referral shall be notified of the action taken, but the notification may be made either electronically or in writing.

History.
Acts 2009, ch. 315, § 1.

49-6-4107. Use of reasonable force.

(a) A teacher, principal, school employee or school bus driver, in exercising the person's lawful authority, may use reasonable force when necessary under the circumstances to correct or restrain a student or prevent bodily harm or death to another person.

(b) Subsection (a) does not authorize use of corporal punishment by a person not permitted to administer corporal punishment under § 49-6-4103 or chapter 6, part 44 of this title.

(c) Subsection (a) does not authorize restraint or isolation of students for whom restraint or isolation is prohibited under chapter 10, part 13 of this title.

History.
Acts 2012, ch. 687, § 4.

PART 42

SCHOOL SECURITY ACT OF 1981

49-6-4201. Short title.

This part shall be known and may be cited as the "School Security Act of 1981."

History.
Acts 1981, ch. 368, § 2; T.C.A., § 49-9-401.

49-6-4202. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Dangerous weapon" or "weapon" means any dangerous instrument or substance that is capable of inflicting any injury on any person;

(2) "Drug" means any controlled substance, controlled substance analogue, marijuana, alcohol, legend drug or any other substance the possession or use of which is regulated in any manner by any governmental authority, including the school system;

(3) "Drug paraphernalia" means all equipment, products and materials of any kind that are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a drug, as defined in subdivision (2). An electronic pager in the possession of a student shall be included in this definition if used or intended for use as defined by this subdivision (3);

(4) "School" means all public schools that conduct classes in any grade from kindergarten through grade twelve (K-12);

(5) "School principal" or "principal" means the administrative head of a public school, by whatever title the person may be known;

(6) "School resource officer" means a law enforcement officer, as defined under § 39-11-106, who is in compliance with all laws, rules and regulations of the peace officers standards and training commission and who has been assigned to a school in accordance with a memorandum of understanding between the chief of the appropriate law enforcement agency and the LEA;

(7) "Student" means any person, regardless of age, enrolled in the public school; and

(8) "Visitor" means any person who is on school property, except for certificated personnel employed by the state or local board of education.

History.
Acts 1981, ch. 368, § 2; 1983, ch. 397, § 1; T.C.A., § 49-9-402; Acts 1988, ch. 727, § 1; 1994, ch. 636, § 13; 2007, ch. 341, § 1; 2012, ch. 848, § 43.

49-6-4203. Legislative intent.

(a) It is the intent of the general assembly in enacting this part to secure a safe environment in which the education of the students of this state may occur.

(b) The general assembly recognizes the position of the schools in loco parentis and the responsibility this places on principals and teachers within each school to secure order and to protect students from harm while in their custody.

(c) It is the intent of this part to extend further, rather than limit, the authority of principals and teachers to secure order and provide protection of students within each school.

(d) The general assembly further recognizes that a rising level of violent activity and use of drugs is occurring in some public schools, especially in urban areas, and that these activities threaten the well-being of all students in those schools.

(e) The general assembly further finds that:

(1) The removal of dangerous weapons, drug paraphernalia and drugs from school property is necessary to lessen hazards to students and that removal can only be accomplished by searches of areas of the school buildings or grounds where those materials may be stored;

(2) On occasions when the use of dangerous weapons or drugs has reached a life or health threatening

level, searches of students themselves may be necessary to protect the larger student body, and that often the searches must be conducted in emergency situations;

(3) Individual circumstances and local particularities require that individual principals must be relied on to exercise their professionally trained judgments in determining what action is appropriate within this part; and

(4) The presence on school property of students with drugs in their bodies may pose a threat to the safety and well-being of that student and other students, may be disruptive of school classes and other programs and may interfere with the educational opportunities and progress of all students.

History.
Acts 1981, ch. 368, § 2; 1983, ch. 397, § 2; T.C.A., § 49-9-403; Acts 1988, ch. 727, § 2; 1988, ch. 940, § 2.

49-6-4204. Search of lockers, vehicles, and other property.

(a) When individual circumstances in a school dictate, a principal may order that vehicles parked on school property by students or visitors, containers, packages, lockers or other enclosures used for storage by students or visitors, and other areas accessible to students or visitors be searched in the principal's presence or in the presence of other members of the principal's staff.

(b) Individual circumstances requiring a search may include incidents on school property, including school buses, involving, but not limited to, the use of dangerous weapons, drugs or drug paraphernalia by students that are known to the principal or other staff members, information received from law enforcement, juvenile or other authorities indicating a pattern of drug dealing or drug use by students of that school, any assault or attempted assault on school property with dangerous weapons or any other actions or incidents known by the principal that give rise to reasonable suspicion that dangerous weapons, drugs or drug paraphernalia are held on school property by one (1) or more students.

(c) A notice shall be posted in the school that lockers and other storage areas, containers, and packages brought into the school by students or visitors are subject to search for drugs, drug paraphernalia, dangerous weapons or any property that is not properly in the possession of the student.

(d) A notice shall be posted where it is visible from the school parking lot that vehicles parked on school property by students or visitors are subject to search for drugs, drug paraphernalia or dangerous weapons.

History.
Acts 1981, ch. 368, § 2; 1983, ch. 397, §§ 3, 4; T.C.A., § 49-9-404; Acts 1988, ch. 727, §§ 3-5; 1994, ch. 636, §§ 1-4.

49-6-4205. Search of students.

(a) A student may be subject to physical search because of the results of a locker search, or because of information received from a teacher, staff member, student or other person if such action is reasonable to the principal.

(b) All of the following standards of reasonableness shall be met:

(1) A particular student has violated school policy;

(2) The search will yield evidence of the violation of school policy or will lead to disclosure of a dangerous weapon, drug paraphernalia or drug;

(3) The search is in pursuit of legitimate interests of the school in maintaining order, discipline, safety, supervision and education of students;

(4) The search is not conducted for the sole purpose of discovering evidence to be used in a criminal prosecution; and

(5) The search shall be reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student, as well as the nature of the infraction alleged to have been committed.

History.
Acts 1981, ch. 368, § 2; 1983, ch. 397, § 6; T.C.A., § 49-9-406; Acts 1988, ch. 727, § 6; 1994, ch. 636, §§ 5, 6.

49-6-4206. [Repealed.]

Compiler's Notes.
Former § 49-6-4206 (Acts 1981, ch. 368, § 2; 1983, ch. 397, § 7; T.C.A., § 49-9-407; Acts 1988, ch. 727, § 7.), concerning search of vehicles, was repealed by Acts 1994, ch. 636, § 7.

49-6-4207. Use of metal detectors.

To facilitate a search that is found to be necessary of students, school visitors, containers or packages, metal detectors and other devices designed to indicate the presence of dangerous weapons, drug paraphernalia or drugs may be used in searches, including hand-held models that are passed over or around a student's or visitor's body, and students, visitors, containers and packages may be required to pass through a stationary detector.

History.
Acts 1981, ch. 368, § 2; T.C.A., § 49-9-408; Acts 1988, ch. 727, § 8; 1994, ch. 636, §§ 8, 9.

49-6-4208. Use of animals.

To facilitate a search that is found to be necessary, dogs or other animals trained to detect drugs or dangerous weapons by odor or otherwise may be used in conducting searches, but the animals shall be used only to pinpoint areas needed to be searched and shall not be used to search the persons of students or visitors.

History.
Acts 1981, ch. 368, § 2; T.C.A., § 49-9-409; Acts 1994, ch. 636, §§ 10, 11.

49-6-4209. Report of reasonable suspicion by principal to law enforcement officer.

(a) It is the duty of a school principal who has reasonable suspicion to believe, either as a result of a search or otherwise, that any student is committing or

has committed any violation of title 39, chapter 17, part 4, § 39-17-1307, or § 39-17-1309 upon the school grounds or within any school building or structure under the principal's supervision, to report the reasonable suspicion to the appropriate law enforcement officer.

(b) School personnel have the duty to report any reasonable suspicion that a student is committing or has committed any violation of title 39, chapter 17, part 4 or § 39-17-1307 to the principal, or, if the principal is not available, to the principal's designee. If neither the principal nor the designee is available, school personnel may report violations of title 39, chapter 17, part 4 or § 39-17-1307 committed on school property to the appropriate authorities.

History.
Acts 1981, ch. 368, § 2; T.C.A., § 49-9-410; Acts 1994, ch. 636, § 12; 1995, ch. 102, § 1; 1995, ch. 215, § 1; 2007, ch. 94, § 1.

49-6-4210. Disposal of contraband.

Any dangerous weapon or drug located by the principal or other staff member in the course of a search shall be turned over to the appropriate law enforcement officer for proper disposal.

History.
Acts 1981, ch. 368, § 2; T.C.A., § 49-9-411.

49-6-4211. Defense of school personnel by LEA — Indemnity.

(a) The LEA shall defend principals and teachers against whom suit is brought on account of any action taken in accordance with this part if:

(1) The employees cooperate in the defense of the suit; and

(2) In the opinion of the LEA, the actions taken were not the result of willful, wanton or malicious wrongdoing.

(b) Each LEA shall indemnify principals and teachers from judgment against them if:

(1) The judgments result from actions or omissions arising out of performance of the duties imposed by this part and do not result from willful, wanton or malicious wrongdoing; and

(2) The employees have cooperated with the LEA in the defense of the suit.

(c) This section shall not be construed to indicate any waiver by the state of sovereign immunity or to make the state any insurer of the public officials mentioned in this section.

History.
Acts 1981, ch. 368, § 2; T.C.A., § 49-9-412.

49-6-4212. Training program for school principals — Notice of policies to parents and students.

(a) The LEA and the local law enforcement agency shall establish and maintain an orientation and training program designed to familiarize school principals with this part and with local policies and procedures for implementing and enforcing this part.

(b) The LEA shall provide parents and students with reasonable notice of the local policies and procedures.

History.
Acts 1982, ch. 794, § 1; T.C.A., § 49-9-413.

49-6-4213. Testing of students for drugs — Referral information and assistance for students testing positive.

(a)(1) A student may be subject to testing for the presence of drugs in the student's body in accordance with this section and the policy of the LEA if there are reasonable indications to the principal that such student may have used or be under the influence of drugs. The need for testing may be brought to the attention of the principal through a search authorized by § 49-6-4204 or § 49-6-4205, observed or reported use of drugs by the student on school property, or other reasonable information received from a teacher, staff member or other student. All of the following standards of reasonableness shall be met:

(A) A particular student has violated school policy;

(B) The test will yield evidence of the violation of school policy or will establish that a student either was impaired due to drug use or did not use drugs;

(C) The test is in pursuit of legitimate interests of the school in maintaining order, discipline, safety, supervision and education of students;

(D) The test is not conducted for the sole purpose of discovering evidence to be used in a criminal prosecution; and

(E) Tests shall be conducted in the presence of a witness. Persons who shall act as witnesses shall be designated in the policy of the local board of education.

(2) A student participating in voluntary extracurricular activities may be subject to random drug testing in the absence of individualized reasonable suspicion provided the standards set forth in subdivisions (a)(1)(B)-(E) are met.

(b) As used in this section and § 49-6-4203, "drugs" means:

(1) Any scheduled drug as specified in §§ 39-17-405 — 39-17-416; and

(2) Alcohol.

(c) Before a drug testing program is implemented in any LEA, the local board of education in that LEA shall establish policies, procedures and guidelines to implement this section within that LEA. The state board of education shall prepare a model policy, procedure and guidelines that may be adopted by local boards of education.

(d) Tests shall be conducted by properly trained persons in circumstances that ensure the integrity, validity and accuracy of the test results but are minimally intrusive and provide maximum privacy to the tested student. All tests shall be performed by an accredited laboratory. Specimens confirmed as positive shall be retained for at least ten (10) days for possible retesting or reanalysis.

(e) Students shall be advised in writing at the time of their enrollment that they are subject to testing. Notice to each student shall include grounds for testing, the procedures that will be followed and possible penalties. Students shall be advised of their right to refuse to undergo drug testing and the consequences of refusal.

(f)(1) A parent of the student or a person legally responsible for the student shall be notified before any drug test is administered to the student.

(2) If an LEA adopts a policy permitting random drug testing of students in voluntary extracurricular activities, then, prior to a student participating in an extracurricular activity, the LEA shall notify the parents and guardians of any such student that the student may be subjected to random drug testing. A parent or guardian of a student participating in a volunteer extracurricular activity shall provide written consent for random drug testing prior to the student participating in the voluntary extracurricular activity.

(g) The LEA shall pay the cost of any testing required under this section.

(h) In any school where LEA or school policy allows tests provided for by this section, in-service training of principals and teachers will be conducted in signs and symptoms of student drug use and abuse and in the school policy for handling of these students. The department of mental health and substance abuse services shall cause qualified trainers to be available to the schools to conduct this training.

(i) Test reports from laboratories shall include the specimen number assigned by the submitting LEA, the drug testing laboratory accession number and results of the drug tests. Certified copies of all analytical results shall be available from the laboratory when requested by the LEA or the parents of the student. The laboratory shall not be permitted to provide testing results verbally by telephone.

(j)(1) All specimens testing negative on the initial screening test or negative on the confirmatory test shall be reported as negative.

(2) If a student is tested and the results of the test are negative, all records of the test, request for a test or indication a student has been tested shall be expunged from all records, including school records.

(k)(1) If a student is tested in a drug testing program and the results of the test are positive, all records of the test, request for a test or indication a student has been tested shall be confidential student records in accordance with § 10-7-504(a)(4)(A).

(2) No student who is tested under a random drug testing program and who tests positive shall be suspended or expelled from school solely as the result of the positive test.

(3) The principal or school counselor of the school in which a student who tests positive in a drug testing program is enrolled shall provide referral information to the student and to the student's parents or guardian. The information shall include information on inpatient, outpatient and community-based drug and alcohol treatment programs.

(*l*) Each LEA participating in the drug testing of students authorized in subsection (a) shall promulgate policies and procedures to ensure that those students testing positive receive the assistance needed. The assistance shall include an assessment to determine the severity of the student's alcohol and drug problem and a recommendation for referral to intervention or treatment resources as appropriate. Nothing in this section shall be construed to require LEAs to administer drug tests to students. Any system that elects to participate shall supply the testing materials and any subsequent counseling within existing local funds.

(m) Malicious use of authority granted by this section may be grounds for dismissal of the person so acting.

History.

Acts 1988, ch. 940, § 1; 1999, ch. 367, § 5; 2000, ch. 947, § 6; 2010, ch. 1100, § 78; 2010, ch. 1136, §§ 1-4; 2012, ch. 575, § 1.

Compiler's Notes.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

49-6-4214. Possession of pagers by students.

Possession of an electronic pager by a student on school property, without the permission of the school principal or the principal's designated representative, is prima facie evidence of its intended use in violation of this part.

History.

Acts 1989, ch. 141, § 1.

49-6-4215. Activities of criminal gangs on school property — Promulgation of rules and regulations.

(a) The LEAs of this state are authorized to promulgate and adopt rules and regulations to prohibit the activities of criminal gangs on school property. The rules and regulations may prohibit students in grades six through twelve (6-12) from:

(1) Wearing, while on school property, any type of clothing, apparel or accessory that denotes the students' membership in or affiliation with any criminal gang;

(2) Any activity that encourages participation in a criminal gang or facilitates illegal acts of a criminal gang; and

(3) Any conduct that is seriously disruptive to the educational process or endangers persons or property.

(b) The local law enforcement agency shall advise the local board, upon request, of criminal gangs and associated criminal gang activity.

(c) As used in this section, "criminal gang" means a formal or informal ongoing organization, association or group consisting of three (3) or more persons that has:

(1) As one (1) of its activities the commission of criminal acts; and

(2) Two (2) or more members who, individually or collectively, engage in or have engaged in a pattern of criminal gang activity.

History.
Acts 1994, ch. 571, § 1; 2008, ch. 1195, § 1.

49-6-4216. School policies and procedures — Contents — Notice to students and parents.

(a) Each local and county board of education shall file annually with the commissioner of education written policies and procedures developed and adopted by the board:

(1) To ensure safe and secure learning environments free of drugs, drug paraphernalia, violence and dangerous weapons; and

(2) To impose swift, certain and severe disciplinary sanctions on any student:

(A) Who brings a drug, drug paraphernalia or a dangerous weapon onto a school bus, onto school property or to any school event or activity;

(B) Who, while on a school bus, on school property or while attending any school event or activity:

(i) Is under the influence of a drug;

(ii) Possesses a drug, drug paraphernalia or dangerous weapon; or

(iii) Assaults or threatens to assault a teacher, student or other person; or

(C) Who transmits by an electronic device any communication containing a credible threat to cause bodily injury or death to another student or school employee and the transmission of such threat creates actual disruptive activity at the school that requires administrative intervention.

(b)(1) It is the legislative intent that any rule or policy designated as a zero tolerance policy means that violations of that rule or policy will not be tolerated, and that violators will receive certain, swift and reasoned punishment. Reasoned punishment may include a spectrum of disciplinary measures designed to correct student misbehavior and promote student respect and compliance with codes of conduct and board policies. A zero tolerance violation shall not necessarily result in a presumptive one (1) calendar year expulsion except for those types of student misconduct set forth in § 49-6-3401(g). It is the legislative intent that the local school boards shall retain responsibility for development of disciplinary policies and student codes of conduct including assurances that students are afforded fair due process procedures. Nothing in this section shall be construed to prohibit assignment to an alternative school for those students under suspension or expulsion including students engaging in misconduct set forth in § 49-6-3401(g).

(2) Nothing in this section shall be construed to alter, diminish or supersede the director's authority to modify expulsion on a case-by-case basis under § 49-6-3401(g).

(c) At the beginning of fall classes each school year, each local and county board of education shall provide students and their parents with written notification of the policies and procedures. Additionally, each school shall conspicuously post a summary of the policies and procedures within each school.

(d)(1) The state board of education shall develop a standard form for collection of statistical information relative to zero tolerance violations in local school systems. In developing the form, the state board of education shall consult the local school boards, the Tennessee school board association, the office of research and education accountability and the department of education.

(2) The form shall include, but shall not be limited to, grade level, age, gender, race, offense, disposition of each zero tolerance violation and any modification in penalty.

(3) The form shall be completed annually by the director of schools of each school system or the director's designee, and copies of the form shall be filed with the department of education and the state board of education by July 1 of each school year.

(4) [Deleted by 2016 amendment.]

(e) The department of education shall track all students expelled from their home school and report on their progress.

History.
Acts 1996, ch. 888, § 1; 1998, ch. 871, § 1; 2000, ch. 634, § 1; 2011, ch. 297, § 4; 2011, ch. 410, § 4(w); 2013, ch. 375, § 1; 2015, ch. 182, § 52; 2016, ch. 684, §§ 9, 10.

Compiler's Notes.
For the Preamble to the act concerning the prohibition against establishment of a special committee if there is a standing committee on the same subject, please refer to Acts 2011, ch. 410.

Acts 2013, ch. 375, § 3 provided that the act, which added subdivision (a)(2)(C), shall apply to any communication transmitted on or after July 1, 2013.

49-6-4217. Employment standards for school resource officers.

(a) Training courses for school resource officers shall be designed specifically for school policing and shall be administered by an entity or organization approved by the peace officers standards and training (POST) commission.

(b) School resource officers shall participate in forty (40) hours of basic training in school policing within twelve (12) months of assignment to a school. Every year thereafter they shall participate in a minimum of sixteen (16) hours of training specific to school policing that has been approved by the POST commission.

(c) Within thirty (30) days of the beginning of the school term, each LEA shall publish and deliver to the commissioner an annual report of the employment standards adopted by the LEA. The report shall include a description of the LEA's methods of enforcing the employment standards.

History.
Acts 2006, ch. 797, § 1; 2007, ch. 99, § 1; 2007, ch. 341, § 2.

49-6-4218. Posting of speed limits on school grounds and parking lots.

Each LEA is encouraged to cause proper signs to be posted on school grounds and school parking lots that prohibit any person from operating or driving a motor vehicle or truck at a rate of speed in excess of ten miles per hour (10 mph).

History.
Acts 2007, ch. 238, § 2.

Compiler's Notes.
For the Preamble to the act regarding school safety, please refer to Acts 2007, ch. 238.

49-6-4219. Policy regulating use of electronic control devices.

Any law enforcement agency providing a school resource officer, school security officer or other law enforcement officer providing security at a school shall have a policy regulating the use of electronic control devices, which policy shall address training in the proper use of such devices, as well as investigation, documentation and review of such use, to include final approval of any report documenting such use by the agency's chief executive officer or sheriff.

History.
Acts 2014, ch. 741, § 1.

PART 43

REPORTING STUDENT OFFENSES

49-6-4301. School officials to report student offenses.

(a) Every teacher observing or otherwise having knowledge of an assault and battery or vandalism endangering life, health or safety committed by a student on school property shall report such action immediately to the principal of the school. Every principal having direct knowledge of an assault and battery or vandalism endangering life, health or safety committed by a student on school property or receiving a report of such action shall report the action immediately to the municipal or metropolitan police department or sheriff's department having jurisdiction. Any fight not involving the use of a weapon as defined in § 39-17-1309, or any fight not resulting in serious personal injury to the parties involved, shall be reported only to the school administrator.

(b) The report made to the law enforcement agency shall include, if known, the name and address of the offender, and the name and address of the victim, if any. The report shall also contain a description of the action and whatever additional information is requested by the law enforcement agency.

(c) The commissioner of education, in conjunction with the commissioner of safety, shall establish a statewide uniform violent incident reporting system that all LEAs shall follow. The uniform violent incident reporting system shall require all LEAs to report annually to the commissioner in a form and by a date prescribed by the commissioner, the following information concerning violent and disruptive incidents, as defined by the commissioner, that occurred in the prior school year:

(1) The type of offenders;

(2) If an offender is a student, the age and grade of the student;

(3) The location at which the incident occurred;

(4) The type of incident;

(5) Whether the incident occurred during or outside of regular school hours;

(6) Where the incident involved a weapon, whether the weapon was a firearm, knife or other weapon;

(7) The actions taken by the school in response to the incident, including when the incident was reported to law enforcement officials and whether disciplinary action was taken against the offenders by law enforcement;

(8) Any student discipline or referral action taken against a student offender and the duration of the action; and

(9) The nature of the victim and the victim's age and grade where appropriate.

(d) The commissioner shall require a summary of the information from subsection (c) to be included, in a form prescribed by the commissioner, in the annual report published by the commissioner each year pursuant to § 49-1-211.

(e) Annually on or before February 1 of each year, the commissioner shall report to the governor and the general assembly concerning the prevalence of violent and disruptive incidents in the public schools and the effectiveness of school programs undertaken to reduce violence and assure the safety and security of students and school personnel. The report shall summarize the information available from the incident reporting system and identify specifically the schools and school districts with the least and greatest incidence of violent incidents and the least and most improvement since the previous year or years.

History.
Acts 1981, ch. 341, § 1; T.C.A., § 49-1320; Acts 2007, ch. 548, § 15.

Compiler's Notes.
Acts 2007, ch. 548, § 1 provided that the act shall be known and may be cited as the "Schools Against Violence in Education Act" or the "SAVE Act."

Acts 2007, ch. 548, § 16 provided that the commissioner of education is authorized to promulgate rules and regulations to effectuate the purposes of the act, which added subsections (c)-(e). The rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

49-6-4302. Tennessee school safety center.

(a) The department of education shall establish a Tennessee school safety center to develop and evaluate training materials and guidelines on school safety

issues, including behavior, discipline and violence prevention.

(b) The Tennessee school safety center shall be responsible for the collection and analysis of data related to school safety, including alleged violent or assaultive acts against school employees and students. Analysis of data shall include the number of arrests, the charges and whether civil damages were pursued by the injured party or school system. The center shall make periodic reports to the education committee of the senate and the education administration and planning committee of the house of representatives on the status of school safety efforts.

(c)(1) The Tennessee school safety center, within the limit of appropriations for the center, may establish grants to LEAs for the development of innovative violence prevention programs, conflict resolution, disruptive or assaultive behavior management, improved school security, peer mediation and training for employees on the identification of possible perpetrators of school related violence.

(2) The grants provided for in subdivision (c)(1) shall be distributed as follows:

(A) Funding would be available to each LEA in the same percentage that the LEA's share of basic education program (BEP) funding bears to statewide BEP funding.

(B) Funding would be subject to a twenty-five percent (25%) match by the LEA, adjusted for the LEA's fiscal capacity under the BEP formula. The match requirement could be satisfied by local or contributed funds or by personnel or other in-kind expenses assumed by the LEA.

(C) State funding would also be subject to submission by the LEA to the school safety center of a proposed plan of expenditures to accomplish one (1) or more of the provisions specified in subdivision (c)(1) and approval of that plan by the center. The center should not unreasonably withhold funding, but should allow LEAs adequate flexibility to experiment so long as the basic requirements of this section are satisfied.

(D) Any funds appropriated for this program in any fiscal year and not expended shall be carried forward for such purposes in future fiscal years. Any allocation for an LEA that is not applied for or is not successfully applied for in any fiscal year shall not be carried forward for the benefit of that LEA in subsequent fiscal years, but shall be carried forward for future expenditures under this program in future fiscal years.

(d) LEAs are authorized to act in partnership with local law enforcement agencies for the purpose of hiring school resource officers under the state grant program set forth in § 38-8-115.

History.
Acts 1996, ch. 814, § 1; 1998, ch. 912, §§ 2, 3; 1999, ch. 129, § 2; 2011, ch. 410, § 4(x); 2015, ch. 182, § 53.

Compiler's Notes.
Acts 1998, ch. 912, § 1 provided that this act shall be known and may be cited as the "Safe Schools Act of 1998."

For the Preamble to the act concerning the prohibition against establishment of a special committee if there is a standing committee on the same subject, please refer to Acts 2011, ch. 410.

PART 44

SCHOOL DISCIPLINE IN SPECIAL SCHOOL DISTRICTS

49-6-4401. Students accountable for conduct.

Every teacher in the special school district created by § 37-5-119 is authorized to hold every juvenile pupil strictly accountable for any disorderly conduct in school.

History.
Acts 1980, ch. 571, § 1; Acts 1989, ch. 278, § 73.

49-6-4402. Corporal punishment.

(a) The chief administrative officer, or the chief administrative officer's designee, of any institution in which the schools are located, may use corporal punishment in a reasonable manner and in accordance with this part against any pupil for good cause in order to maintain discipline and order within such schools.

(b) Corporal punishment may be administered only in a classroom situation and only in the presence of the director of schools or chief administrative officer of the school and one (1) other faculty witness.

History.
Acts 1980, ch. 571, § 1; T.C.A. §§ 49-9-202, 49-9-203.

49-6-4403. Rules and regulations.

(a) The department of children's services shall adopt rules and regulations that specifically designate the method of imposing corporal punishment and the circumstances that warrant corporal punishment in the schools within its special school district. The rules and regulations shall provide for only corporal punishment that is reasonably necessary for the proper education of the pupil.

(b) No corporal punishment shall be imposed until the rules and regulations have been promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(c) The rules and regulations shall provide for a written record to be kept of all use of corporal punishment, including the name of the person requesting the punishment and a brief description of the circumstances warranting its use.

History.
Acts 1980, ch. 571, § 1; Acts 1989, ch. 278, § 73; 1996, ch. 1079, § 140.

49-6-4404. Physical examination of student — Student's remedies.

(a) Within forty-eight (48) hours of the imposition of corporal punishment within the special school district, the pupil shall have the right to be examined by a physician to determine if the punishment was excessive.

(b) In any case in which the punishment is excessive, the pupil shall have the same civil and criminal remedies as any other pupil in the public schools.

History.
Acts 1980, ch. 571, § 1; T.C.A. § 49-9-205.

Compiler's Notes.
This section may be affected by § 9-1-116, concerning entitlement to funds, absent appropriation.

PART 45

HARASSMENT, INTIMIDATION, BULLYING AND CYBER-BULLYING.

49-6-4501. Legislative findings — Safety and civility.

The general assembly finds and declares that:

(1) A safe and civil environment is necessary for students to learn and achieve high academic standards;

(2) Harassment, intimidation, bullying or cyber-bullying, like other disruptive or violent behavior, is conduct that disrupts a student's ability to learn and a school's ability to educate its students in a safe environment;

(3) Students learn by example. School administrators, faculty, staff and volunteers who demonstrate appropriate behavior, treating others with civility and respect and refusing to tolerate harassment, intimidation, bullying or cyber-bullying, encourage others to do so as well; and

(4) The use of telephones, cellular phones or other wireless telecommunication devices, personal digital assistants (PDAs), computers, electronic mail, instant messaging, text messaging, and web sites by students in a manner that is safe and secure is essential to a safe and civil learning environment and is necessary for students to successfully use technology.

History.
Acts 2005, ch. 202, § 1; 2011, ch. 251, §§ 1, 2; T.C.A. § 49-6-1014; T.C.A. § 45-6-1014.

49-6-4502. Part definitions.

(a) As used in this part:

(1) "Cyber-bullying" means bullying undertaken through the use of electronic devices;

(2) "Electronic devices" include, but are not limited to, telephones, cellular phones or other wireless telecommunication devices, personal digital assistants (PDAs), computers, electronic mail, instant messaging, text messaging, and web sites;

(3) "Harassment, intimidation or bullying" means any act that substantially interferes with a student's educational benefits, opportunities or performance; and:

(A) If the act takes place on school grounds, at any school-sponsored activity, on school-provided equipment or transportation or at any official school bus stop, the act has the effect of:

(i) Physically harming a student or damaging a student's property;

(ii) Knowingly placing a student or students in reasonable fear of physical harm to the student or damage to the student's property;

(iii) Causing emotional distress to a student or students; or

(iv) Creating a hostile educational environment; or

(B) If the act takes place off school property or outside of a school-sponsored activity, it is directed specifically at a student or students and has the effect of creating a hostile educational environment or otherwise creating a substantial disruption to the education environment or learning process.

History.
Acts 2005, ch. 202, § 1; 2011, ch. 251, §§ 1, 3; T.C.A. § 49-6-4502; T.C.A. § 45-6-1015.

49-6-4503. Adoption of policy prohibiting harassment, intimidation, bullying or cyber-bullying by the school district.

(a) Each school district shall adopt a policy prohibiting harassment, intimidation, bullying or cyber-bullying. School districts are encouraged to develop the policy after consultation with parents and guardians, school employees, volunteers, students, administrators and community representatives.

(b) School districts shall include in the policies:

(1) A statement prohibiting harassment, intimidation, bullying or cyber-bullying;

(2) A definition of harassment, intimidation, bullying or cyber-bullying;

(3) A description of the type of behavior expected from each student;

(4) A statement of the consequences and appropriate remedial action for a person who commits an act of harassment, intimidation, bullying or cyber-bullying;

(5) A procedure for reporting an act of harassment, intimidation, bullying or cyber-bullying, including a provision that permits a person to report an act of harassment, intimidation, bullying or cyber-bullying anonymously. Nothing in this section may be construed to permit formal disciplinary action solely on the basis of an anonymous report;

(6) A procedure for the prompt and immediate investigation when an act of harassment, intimidation, bullying, or cyber-bullying is reported to the principal, the principal's designee, teacher, or school counselor. The principal or the principal's designee shall initiate the investigation within forty-eight (48) hours of receipt of the report, unless the need for more time is appropriately documented, and the principal or the principal's designee shall initiate an appropriate intervention within twenty (20) calendar days of receipt of the report, unless the need for more time is appropriately documented;

(7) A statement of the manner in which a school district shall respond after an act of harassment, intimidation, bullying or cyber-bullying is reported,

investigated and confirmed;

(8) A statement of the consequences and appropriate remedial action for a person found to have committed an act of harassment, intimidation, bullying or cyber-bullying;

(9) A statement prohibiting reprisal or retaliation against any person who reports an act of harassment, intimidation, bullying or cyber-bullying and stating the consequences and appropriate remedial action for a person who engages in such reprisal or retaliation;

(10) A statement of the consequences and appropriate remedial action for a person found to have falsely accused another of having committed an act of harassment, intimidation, bullying or cyber-bullying as a means of reprisal or retaliation or as a means of harassment, intimidation, bullying or cyber-bullying;

(11) A statement of how the policy is to be publicized within the district, including a notice that the policy applies to behavior at school-sponsored activities;

(12) The identification by job title of school officials responsible for ensuring that the policy is implemented;

(13) A procedure for discouraging and reporting conduct aimed at defining a student in a sexual manner or conduct impugning the character of a student based on allegations of sexual promiscuity; and

(14) A procedure for a referral for appropriate counseling and support services for students involved in an act of harassment, intimidation, bullying, or cyber-bullying, when deemed necessary by the principal. The counseling and support services may be conducted by school counseling personnel who are appropriately trained, such as psychologists, social workers, school counselors, or any other personnel or resources available.

(c)(1) Each LEA shall, at the beginning of each school year, provide teachers and school counselors a copy of the policy along with information on the policy's implementation, bullying prevention and strategies to address bullying and harassment when it happens. In addition, each LEA shall provide training to teachers and counselors regarding the policy and appropriate procedures relative to implementation of the policy. The department of education shall provide guidelines for such training and provide recommendations of appropriate, available and free bullying and harassment prevention resources.

(2) Each LEA shall also:

(A) At the beginning of the school year, make available to students and parents information relative to bullying prevention programs to promote awareness of the harmful effects of bullying and to permit discussion with respect to prevention policies and strategies;

(B) Beginning August 1, 2016, and annually thereafter, complete and submit a report to the department of education. The report shall be in a format provided by the department and shall include:

(i) The number of harassment, intimidation, bullying, or cyber-bullying cases brought to the attention of school officials during the preceding year;

(ii) The number of harassment, intimidation, bullying, or cyber-bullying cases where the investigation supported a finding that bullying had taken place;

(iii) The number of harassment, intimidation, bullying, or cyber-bullying case investigations not initiated within forty-eight (48) hours of the receipt of the report and the reason the investigation was not initiated within forty-eight (48) hours;

(iv) The number of harassment, intimidation, bullying, or cyber-bullying cases where an appropriate intervention was not initiated within twenty (20) calendar days of receipt of the report and the reason the intervention took longer than twenty (20) calendar days to initiate; and

(v) The type of harassment, intimidation, bullying, or cyber-bullying identified and manner in which the harassment, intimidation, bullying, or cyber-bullying cases were resolved, including any disciplinary action against the student who was harassing, intimidating, bullying, or cyber-bullying.

(3) The department shall annually submit a report to the education administration and planning committee of the house of representatives, the education instruction and programs committee of the house of representatives, and the education committee of the senate updating membership on the number of harassment, intimidation, bullying, or cyber-bullying cases reported statewide, the number of LEAs implementing this part, the status of any investigations, including disciplinary actions against students, and any other information relating to the subjects of harassment, intimidation, bullying, or cyber-bullying as will be helpful to the committees in establishing policy in this area.

(d)(1) The principal of a middle school, junior high school, or high school, or the principal's designee, shall investigate harassment, intimidation, bullying or cyber-bullying when a student reports to any principal, teacher or guidance counselor that physical harm or a threat of physical harm to such student's person or property has occurred.

(2) The principal, or the principal's designee, shall immediately inform the parent or legal guardian of a student involved in an act of harassment, intimidation, bullying, or cyber-bullying. The principal or the principal's designee shall inform the parents or legal guardians of the students of the availability of counseling and support services that may be necessary.

(3) Following any investigation required by this part, the principal or such principal's designee shall report the findings, along with any disciplinary action taken, to the director of schools and the chair of the local board of education.

History.
Acts 2005, ch. 202, § 1; 2009, ch. 153, § 1; 2011, ch. 251, § 1; 2012, ch. 992, § 2; T.C.A. § 45-6-1016; Acts 2015, ch. 182, § 54; 2016, ch. 783, §§ 1-5.

49-6-4504. Adoption of policy prohibiting harassment, intimidation, bullying or cyber-bullying by LEA.

(a) Each LEA shall adopt a policy prohibiting harassment, intimidation, bullying or cyber-bullying and transmit a copy of the policy to the commissioner of education by January 1, 2006.

(b) Each LEA is encouraged to review the policy prohibiting harassment, intimidation, bullying, or cyber-bullying at least once every three (3) years. Each LEA shall transmit a copy of any changes in the policy to the commissioner in a timely manner.

History.
Acts 2005, ch. 202, § 1; 2011, ch. 251, § 1; T.C.A. § 45-6-1017; Acts 2016, ch. 783, § 6.

49-6-4505. Reprisal or retaliation prohibited — Reporting harassment, intimidation, bullying or cyber-bullying — Immunity from damages.

(a) A school employee, student or volunteer may not engage in reprisal or retaliation against a victim of, witness to, or person with reliable information about an act of harassment, intimidation, bullying or cyber-bullying.

(b) A school employee, student or volunteer who witnesses or has reliable information that a student has been subjected to an act of harassment, intimidation, bullying or cyber-bullying is encouraged to report the act to the appropriate school official designated by the school district's policy.

(c) A school employee who promptly reports an act of harassment, intimidation, bullying or cyber-bullying to the appropriate school official in compliance with the procedures set forth in the school district's policy is immune from a cause of action for damages arising from any failure to remedy the reported act.

(d) Notwithstanding subsections (b) and (c), a school employee, student or volunteer who witnesses or possesses reliable information that a student has transmitted by an electronic device any communication containing a credible threat to cause bodily injury or death to another student or school employee, as prohibited by § 49-6-4216, shall report such information to the appropriate school official designated by the policy of the school district. Such school official shall make a determination regarding the administration of the report.

History.
Acts 2005, ch. 202, § 1; 2011, ch. 251, § 1; T.C.A. § 45-6-1018; Acts 2013, ch. 375, § 2.

Compiler's Notes.
Acts 2013, ch. 375, § 3 provided that the act, which added subsection (d), shall apply to any communication transmitted on or after July 1, 2013.

49-6-4506. Task forces, programs or other initiatives.

School districts are encouraged to form harassment, intimidation, bullying or cyber-bullying prevention task forces, programs and other initiatives involving school employees, students, administrators, volunteers, parents, guardians, law enforcement and community representatives.

History.
Acts 2005, ch. 202, § 1; 2011, ch. 251, § 1; T.C.A., § 45-6-1019.

PART 50

IMMUNIZATION OF SCHOOL CHILDREN

49-6-5001. General provisions.

(a) The commissioner of health is authorized, subject to the approval of the public health council, to designate diseases against which children must be immunized prior to attendance at any school, nursery school, kindergarten, preschool or child care facility of this state.

(b)(1) It is the responsibility of the parents or guardian of children to have their children immunized, as required by subsection (a).

(2) In the absence of an epidemic or immediate threat of an epidemic, this section shall not apply to any child whose parent or guardian files with school authorities a signed, written statement that the immunization and other preventive measures conflict with the parent's or guardian's religious tenets and practices, affirmed under the penalties of perjury.

(c)(1) No children shall be permitted to attend any public school, nursery school, kindergarten, preschool or child care facility until proof of immunization is given the admissions officer of the school, nursery school, kindergarten, preschool or child care facility except as provided in subsection (b).

(2) No child shall be denied admission to any school or school facility if the child has not been immunized due to medical reasons if the child has a written statement from the child's doctor excusing the child from the immunization.

(3) No child or youth determined to be homeless shall be denied admission to any school or school facility if the child or youth has not yet been immunized or is unable to produce immunization records due to being homeless. The enrolling school shall comply with any and all federal laws pertaining to the educational rights of homeless children and youth, including the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11431 et seq.).

(d) Each child attending any school, nursery school, kindergarten, preschool or child care facility without furnishing proof of immunization or exception under subsection (b) or (e), shall not be counted in the average daily attendance of students for the distribution of state school funds.

(e) Any immunization specified under this part shall not be required if a qualified physician certifies that administration of the immunization would be in any manner harmful to the child involved.

(f) The commissioner shall promulgate rules and regulations necessary to carry out this section.

(g) By October 1 of each year, the commissioner shall report the number of children in the state during the preceding school year who were determined to be homeless and who enrolled in public schools without being immunized or being able to produce immunization records and the average length of time required for these children to be immunized or to obtain their immunization records. The report shall be submitted to the education committee of the senate and the education administration and planning committee of the house of representatives.

History.
Acts 1967, ch. 293, §§ 1-5; 1978, ch. 922, §§ 1, 2; T.C.A., §§ 49-1765 — 49-1769; Acts 1984, ch. 839, § 2; 1996, ch. 1079, § 183; 2006, ch. 756, § 2; 2007, ch. 57, § 1; 2015, ch. 182, § 55.

49-6-5002. Certificate of immunization.

(a) Proof of immunization shall be established by a certificate of immunization listing all immunizations that a child has received. The certificates shall be signed by a physician or a health care provider administering immunizations. All certificates of immunization shall be on forms furnished by the department of health.

(b) The certificate of immunizations required of any child who has not received all immunizations required by the commissioner of health under § 49-6-5001(a) shall be forwarded to the commissioner. The commissioner shall be responsible for monitoring the health records and notifying the student's legal guardian or guardians and the local school system in the case of noncompliance with immunization requirements.

History.
Acts 1984, ch. 839, § 1.

49-6-5003. Hepatitis B immunization.

(a) The department of health shall create a plan to protect young Tennesseans against Hepatitis B by immunization and to prevent the spread of the disease.

(b) The department shall also promulgate the necessary rules to add Hepatitis B to the schedule of immunizations required for kindergarten entry.

History.
Acts 1997, ch. 306, §§ 2, 3.

Compiler's Notes.
Acts 1997, ch. 306, § 1 provided that this section shall be known as the "Hepatitis B Protection by Immunization Act."

49-6-5004. Promotion of eye, hearing and dental care awareness.

(a) Upon registration or as early as is otherwise possible and appropriate, public schools, nursery schools, kindergartens, preschools or child care facilities are encouraged to make reasonable efforts to apprise parents of the health benefits of obtaining appropriate eye, hearing and dental care for children.

(b) A health care professional is authorized to indicate the need for an eye, hearing or dental examination on any report or form used in reporting the immunization status for a child as required under this part. Health care professionals shall provide a copy of the report or form to the parents or guardians indicating the need to seek appropriate examinations for the child.

(c) If the parent or guardian of a child with a need for an eye or hearing examination is unable to afford the examination, an LEA of a county or municipality may use revenues from gifts, grants and state and local appropriations to provide the eye or hearing examinations.

(d) LEAs are encouraged to seek free or reduced-cost eye examinations from optometrists or ophthalmologists and free or reduced-cost hearing examinations from physicians or audiologists willing to donate their services for children who are unable to afford the eye or hearing examinations.

(e) The commissioner shall promulgate rules and regulations in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, that are necessary to carry out this section.

History.
Acts 2001, ch. 212, § 1; 2004, ch. 707, § 1; 2007, ch. 557, § 1; 2008, ch. 632, §§ 1-4.

49-6-5005. Information about meningococcal disease and the effectiveness of vaccination.

LEAs shall ensure that schools provide parents and guardians with information about meningococcal disease and the effectiveness of vaccination against meningococcal disease at the beginning of every school year. This information shall include the causes, symptoms and means by which meningococcal disease is spread and the places where parents and guardians may obtain additional information and vaccinations for their children. Nothing in this section shall be construed to require an LEA or school to provide or purchase vaccine against meningococcal disease.

History.
Acts 2005, ch. 177, § 1.

CHAPTER 10

SPECIAL EDUCATION

Part 6. Rights of Children and Parents

SECTION.
49-10-601. Administrative review.
49-10-602. Enforcement of provisions — Speedy implementation.
49-10-603. Enforcement of the Individuals with Disabilities Education Act and state special education laws.
49-10-604. Investigation of complaints — Administrative complaint process.
49-10-605. Special education mediations.
49-10-606. Conducting special education due process cases.
49-10-607. Attorneys excluded from IEP team.
49-10-608. [Repealed.]
49-10-609. Rules and regulations.
49-10-610. Approval of training by administrative office of the courts in consultation with department of education — Payment.

Part 14. Individualized Education Act

49-10-1401. Short title.
49-10-1402. Part definitions.

SECTION.
49-10-1403. Parental agreement for participation in individualized education account (IEA) program — Requirements.
49-10-1404. Requirements for participating schools — Penalties for noncompliance.
49-10-1405. Administration of IEA program by department.
49-10-1406. Autonomy of participating schools.

PART 6

RIGHTS OF CHILDREN AND PARENTS

49-10-601. Administrative review.

(a) A child or the child's parent or guardian may obtain review of an action or omission by state or local authorities on the ground that the child has been or is about to be:

(1) Denied entry or continuance in a program of special education appropriate to the child's condition and needs;

(2) Placed in a special education program that is inappropriate to the child's condition and needs;

(3) Denied educational services because no suitable program of education or related services are maintained;

(4) Provided with special education or other education that is insufficient in quantity to satisfy the requirements of law;

(5) Provided with special education or other education to which the child is entitled only by units of government or in situations that are not those having the primary responsibility for providing the services in question; or

(6) Assigned to a program of special education when the child does not have disabilities.

(b)(1) The parent or guardian of a child placed or denied placement in a program of special education shall be notified promptly by certified mail, return receipt requested, of the placement, denial or impending placement or denial.

(2) The notice shall contain a statement informing the parent or guardian that the parent or guardian is entitled to a review of the determination and of the procedure for obtaining review.

(3) The notice shall contain the information that a hearing may be had upon written request, no less than fifteen (15) days nor more than thirty (30) days from the date on which the notice was received.

(c)(1) No change in the program assignment or status of a child with disabilities shall be made within the period afforded the parent or guardian to request a hearing, which period shall not be less than fourteen (14) days, except that the change may be made with the written consent of the parent or guardian.

(2) If the health or safety of the child or of other persons would be endangered by delaying the change in assignment, the change may be sooner made, but without prejudice to any rights that the child and the child's parent or guardian may have pursuant to this section or otherwise pursuant to law.

(d)(1) The parent or guardian shall have access to any reports, records, clinical evaluations or other materials upon which the determination to be reviewed was wholly or partially based or that could reasonably have a bearing on the correctness of the determination.

(2) At any hearing held pursuant to this part or § 49-10-109, the child and the child's parent or guardian shall be entitled to examine and cross-examine witnesses, to introduce evidence, to appear in person and to be represented by counsel.

(3) A full record of the hearing shall be made and kept, including a transcript of the hearing if requested by the parent or guardian.

(e)(1) A parent or guardian who believes the diagnosis or evaluation of the child, as shown in the records made available to the parent or guardian pursuant to subsection (d), to be in error may request an independent examination and evaluation of the child and shall have the right to secure the independent examination and evaluation and to have the report of the independent examination and evaluation presented as evidence in the proceeding.

(2) If the parent or guardian is financially unable to afford an independent examination or evaluation, it shall be provided at state expense.

(f)(1) The state board of education shall make and, from time to time, may amend or revise rules and regulations for the conduct of hearings authorized by this section and otherwise for the implementation of its purpose.

(2) Among other things, the rules and regulations shall:

(A) Require that the hearing officer or board be a person or composed of persons other than those who participated in the action or who are responsible for the omission being complained of;

(B) Fix the qualifications of the hearing officer or officers; and

(C) Provide that the hearing officer or board shall have authority to affirm, reverse or modify the action previously taken and to order the taking of appropriate action.

(3) The rules and regulations shall govern proceedings pursuant to this section whether held by the state board of education or by a county, city or special school district board of education.

(g) The determination of a hearing officer or board shall be subject to judicial review in the manner provided for judicial review of determinations of the state or local education agency, as the case may be.

(h)(1) If a determination of a hearing officer or board is not fully complied with or implemented, the aggrieved party may enforce it by a proceeding in the chancery or circuit court.

(2) Any action pursuant to this section shall not be a bar to any administrative or judicial proceeding by or at the instance of the department to secure compliance or otherwise to secure proper administration of laws and regulations relating to the provision of regular or special education.

(i) The remedies provided by this section are in addition to any other remedies that a child or the

child's parent or guardian may otherwise have pursuant to law.

History.
Acts 1972, ch. 839, § 8; 1978, ch. 574, § 5; T.C.A., § 49-2947; Acts 1993, ch. 249, §§ 1, 2; 1994, ch. 768, § 2; 2008, ch. 678, § 1.

49-10-602. Enforcement of provisions — Speedy implementation.

Nothing in parts 1-6 of this chapter shall be construed to limit any right that any child or the child's parent or guardian may have to enforce the provision of any regular or special educational service, nor shall the time at which school districts are required to submit plans or proceed with implementation of special education programs be taken as authorizing any delay in the provision of education or related services to which a child may otherwise be entitled.

History.
Acts 1972, ch. 839, § 8; T.C.A., § 49-2948.

49-10-603. Enforcement of the Individuals with Disabilities Education Act and state special education laws.

The department of education shall enforce the federal Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.), and state special education laws.

History.
Acts 2007, ch. 598, § 2.

49-10-604. Investigation of complaints — Administrative complaint process.

The department of education shall promptly investigate complaints filed regarding services to disabled students and shall enforce the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.), and state special education laws. The department shall carry out its obligation to enforce the laws through the administrative complaint process in the following manner:

(1) The department shall make available a complaint form on the departmental web site. In addition, the department shall supply any individual with a written copy of the complaint form via the United States mail when so requested. The department shall facilitate the submission of complaint forms via the Internet. If a complaint is filed via the Internet, the complaint shall be deemed signed so long as the name of the filer is indicated in the complaint. Anonymous complaints shall not be accepted for investigative purposes;

(2) If the complaint alleges that a school system has committed a procedural violation of the applicable laws, the department shall determine whether the allegation has basis in fact. If determined to have a basis in fact, the department shall issue, within ten (10) regular school business days of the finding, a written finding to the school system and the person making the complaint confirming the violation. The response shall state whether or not the department has determined that the procedural violation has resulted in a substantive denial of a free, appropriate public education;

(3) If the complaint alleges that a school system has committed a substantive violation that amounts to a denial of a free, appropriate public education, the department shall, within ten (10) regular school business days of the finding, issue a written finding to the school district and the person making the complaint confirming the violation and shall require the school system to take corrective action, including compensatory education where appropriate;

(4) The department shall require a school system that has committed a procedural violation of applicable law to correct the violation within ten (10) regular school business days;

(5) The department shall require a school system that has committed a violation that is determined to constitute a violation of a free, appropriate public education to correct the violation within ten (10) regular school business days. If the school system is unable to correct the violation within ten (10) regular school business days of notification, despite its diligent efforts, it shall be granted an extension of time for a reasonable period, not to exceed an additional ten (10) regular school business days to correct the violation;

(6) Any school system receiving notice from the department that measures are required to correct procedural or substantive violations of applicable law shall provide written notice of the corrective measures to the department and to the person making the complaint. The department shall determine whether the measures taken by the school system have resulted in compliance with the law and the regulations. The department shall provide written notice to the school system of its determination within ten (10) regular school business days; and

(7) Within thirty (30) business days after closing the investigation, the department shall publish all confirmed violations and determinations of findings of violations of statutes or regulations on its official state web site. The publication shall include the name of the school system, a description of the violation, a citation of the law or regulation determined to have been violated, the corrective measures proposed by the school system, and the final determination of the department. The department shall publish confirmed violations and determinations in a manner that protects the identity of the student.

History.
Acts 2007, ch. 598, § 3.

49-10-605. Special education mediations.

(a) All special education mediations shall be conducted by mediators who have been trained in accordance with Tennessee Supreme Court Rule 31 requirements and who are employed by or contracted by the secretary of state.

(b) The mediators who conduct special education mediations shall receive legal training in special education law.

(c) All parties shall participate in mediation in good faith.

History.
Acts 2007, ch. 598, § 4; 2008, ch. 678, §§ 2, 3.

49-10-606. Conducting special education due process cases.

(a) Special education due process cases shall be heard by administrative law judges employed by the secretary of state. In addition, the secretary of state may contract with no more than three (3) administrative law judges who are currently serving under an appointment by the department of education to hear special education due process cases, to serve as part-time administrative law judges to hear special education due process cases. Administrative law judges shall have jurisdiction to hear complaints arising under the federal Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.), and state special education laws.

(b) The administrative law judges assigned to hear special education due process cases shall receive training in special education law to comport with the requirements of 20 U.S.C. § 1415. Before hearing any special education due process cases, an administrative law judge shall receive intensive training in special education law. After receipt of this initial training, all administrative law judges hearing special education due process appeals shall undergo annual training in special education law.

(c) The school system shall provide a photocopy of all of the education records of the student in question within its control according to orders issued by the administrative law judges, but in no case later than ten (10) regular school business days following the failure to resolve the dispute following the federal resolution process or mediation between the parties.

(d) Final orders in special education cases shall include detailed findings of fact and conclusions of law. The findings of fact shall include a determination by the administrative law judge regarding meaningful participation by the parent in the development of the individualized education plan (IEP) for the student.

(e) Final orders include a determination of prevailing party status on an issue by issue basis.

(f) Administrative law judges shall provide a written final order signed by the judge. Final orders shall also be provided on electronic data disc or via electronic mail at the request of any party.

(g) An administrative law judge shall render a decision within the timelines established by federal law, unless the parties request an extension of time to attempt mediation or in the event of extraordinary circumstances determined acceptable by the administrative law judge.

(h) All decisions regarding special education due process hearings shall be published on the official state web site of the department of education. All student identifying information shall be excised from the publication.

History.
Acts 2007, ch. 598, § 5; 2008, ch. 678, § 4.

49-10-607. Attorneys excluded from IEP team.

Neither an LEA attorney nor parent attorney shall be considered a member of an individualized education program (IEP) team.

History.
Acts 2007, ch. 598, § 6.

49-10-608. [Repealed.]

History.
Acts 2007, ch. 598, § 7; repealed by Acts 2013, ch. 381, § 1, effective May 14, 2013.

Compiler's Notes.
Former § 49-10-608 concerned prohibition against hiring persons who have committed child abuse.

49-10-609. Rules and regulations.

The state board of education is authorized to promulgate rules and regulations to effectuate the purposes of §§ 49-10-603 — 49-10-608 [repealed § 49-10-608]. The rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

History.
Acts 2007, ch. 598, § 8.

Compiler's Notes.
Section 49-10-608, referred to in this section, was repealed by Acts 2013, ch. 381, § 1, May 14, 2013.

49-10-610. Approval of training by administrative office of the courts in consultation with department of education — Payment.

All training in special education law for the administrative law judges provided for in this part shall be approved by the administrative office of the courts in consultation with the department of education. The training shall be paid for by the department of education.

History.
Acts 2008, ch. 678, § 5.

PART 14

INDIVIDUALIZED EDUCATION ACT

49-10-1401. Short title.

This part shall be known and may be cited as the "Individualized Education Act."

History.
Acts 2015, ch. 431, § 2.

Compiler's Notes.
Acts 2015, ch. 431, § 8 provided that the state board is authorized to promulgate rules, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to effectuate the purposes

of this part; provided, that the state board shall not promulgate any emergency rule, pursuant to § 4-5-208, for the implementation of this part prior to August 1, 2016.

Acts 2015, ch. 431, § 10 provided that the act, which enacted this part, shall take effect May 18, 2015, for purposes of promulgating rules and procedures, the public welfare requiring it. For all other purposes, including development by the department of education of administrative procedures to effectuate the first award of individualized education accounts during the 2016-2017 school year, the act shall take effect January 1, 2016, the public welfare requiring it.

49-10-1402. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Department" means the department of education;

(2) "Eligible postsecondary institution" means a community college or university of the University of Tennessee system or the board of regents system or an accredited private postsecondary institution;

(3) "Eligible student" means a resident of this state who:

(A) Is a child with any of the following disabilities:

(i) Autism;

(ii) Deaf-blindness;

(iii) Hearing impairments;

(iv) Intellectual disability;

(v) Orthopedic impairments;

(vi) Traumatic brain injury; or

(vii) Visual impairments;

(B) Has an individualized education program (IEP) in effect at the time the department receives the request for participation in the program; and

(C) Meets at least one (1) of the following requirements:

(i) Was previously enrolled in a Tennessee public school during the two (2) semesters immediately preceding the semester in which the student receives an individualized education account (IEA);

(ii) Is attending a Tennessee school for the first time; or

(iii) Received an individualized education account (IEA) in the previous school year;

(4) "IEA" means an individualized education account;

(5) "Parent" means the parent, legal guardian, person who has custody of the child, or person with caregiving authority for the child;

(6) "Participating school" means a nonpublic school that meets the requirements established in this part and seeks to enroll eligible students;

(7) "Participating student" means an eligible student whose parent is participating in the individualized education account (IEA) program; and

(8) "Program" means the individualized education account (IEA) program created in this part.

History.

Acts 2015, ch. 431, § 3; 2016, ch. 620, § 1.

Compiler's Notes.

Acts 2015, ch. 431, § 8 provided that the state board is authorized to promulgate rules, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to effectuate the purposes of this part; provided, that the state board shall not promulgate any emergency rule, pursuant to § 4-5-208, for the implementation of this part prior to August 1, 2016.

Acts 2015, ch. 431, § 10 provided that the act, which enacted this part, shall take effect May 18, 2015, for purposes of promulgating rules and procedures, the public welfare requiring it. For all other purposes, including development by the department of education of administrative procedures to effectuate the first award of individualized education accounts during the 2016-2017 school year, the act shall take effect January 1, 2016, the public welfare requiring it.

49-10-1403. Parental agreement for participation in individualized education account (IEA) program — Requirements.

(a) A parent of an eligible student shall qualify to participate in the program if the parent signs an agreement promising:

(1) To provide an education for the participating student in at least the subjects of reading, grammar, mathematics, social studies, and science; and

(2) Not to enroll the parent's eligible student in a public school and to release the LEA in which the student resides and is zoned to attend from all obligations to educate the student. Participation in the program shall have the same effect as a parental refusal to consent to the receipt of services under 20 U.S.C. § 1414 of the Individuals with Disabilities Education Act (IDEA).

(b) Parents shall agree to use the funds deposited in a participating student's IEA for any, or any combination, of the following expenses of the participating student:

(1) Tuition or fees at a participating school;

(2) Textbooks required by a participating school;

(3) Tutoring services provided by a tutor accredited by a state, regional, or national accrediting organization;

(4) Payment for purchase of curriculum, including any supplemental materials required by the curriculum;

(5) Fees for transportation paid to a fee-for-service transportation provider;

(6) Tuition or fees for a nonpublic online learning program or course;

(7) Fees for nationally standardized norm-referenced achievement tests, Advanced Placement examinations, or any examinations related to college or university admission;

(8) Contributions to a Coverdell education savings account established under 26 U.S.C. § 530 for the benefit of the participating student, except that funds used for elementary or secondary education expenses shall be for expenses otherwise allowed under this section;

(9) Educational therapies or services for participating students from a licensed or accredited practitioner or provider, including licensed or accredited paraprofessionals or educational aides;

(10) Services provided under a contract with a public school, including individual classes and extracurricular programs;

(11) Tuition or fees at an eligible postsecondary institution;

(12) Textbooks required for courses at an eligible postsecondary institution;

(13) Fees for the management of the IEA by private financial management firms;

(14) Computer hardware or other technological devices approved by the department or a physician, if the computer hardware or other technological device is used for the student's educational needs; or

(15) Contributions to an achieving a better life experience account in accordance with the ABLE Act, compiled in title 71, chapter 4, part 8, and the rules promulgated pursuant thereto, for the benefit of a participating student; provided, that the funds are used only for the student's education expenses subject to the rules established by the achieving a better life experience program and that the student meets the qualifications to participate in the achieving a better life experience program pursuant to the ABLE Act, and § 529A of the Internal Revenue Code of 1986 (26 U.S.C. § 529A), as amended, and all rules, regulations, notices, and interpretations released by the United States department of treasury, including the internal revenue service.

(c) Parents may make payments for the costs of educational programs and services not covered by the funds in their IEA.

(d) Parents are encouraged, when selecting appropriate educational placements for their students, to consider participating schools with inclusive educational settings that educate students with disabilities and students without disabilities together. A participating school shall notify the department whether the school provides inclusive educational settings. The department shall indicate those schools that provide inclusive educational settings in its posting of participating schools on its web site under § 49-10-1405(a)(7).

(e) For participating students in grades three through eight (3-8), a parent shall ensure that the student is annually administered either a nationally norm-referenced test identified by the department or the Tennessee comprehensive assessment program (TCAP) tests or any future replacements of the TCAP tests. The tests should, at a minimum, measure learning in mathematics and English language arts. Results of the testing shall be reported to the parent. Students with disabilities for whom standardized testing is not appropriate, as determined on the student's IEP, are exempt from this requirement.

(f) For purposes of continuity of educational attainment, a student who enrolls in the program shall remain eligible until the participating student returns to a public school, graduates from high school, or reaches twenty-two (22) years of age by August 15 for the next school year, whichever occurs first.

(g) Notwithstanding subdivision (a)(2) that requires a parent to agree not to enroll the parent's eligible student in a public school, a participating student may return to the student's LEA at any time after enrolling in the program in compliance with rules promulgated by the state board of education. The state board of education shall promulgate rules providing the least disruptive process for the return of a participating student to the student's LEA. Upon a participating student's return to the student's LEA, the student's IEA shall be closed, and any remaining funds shall be returned to the state treasurer to be placed in the basic education program (BEP) account of the education trust fund of 1992 under §§ 49-3-357 and 49-3-358.

(h) Any funds remaining in a student's IEA upon graduation from high school may be used to attend or take courses from an eligible postsecondary institution, with qualifying expenses subject to the applicable conditions of subsection (b).

(i) Upon a participating student's graduation from a postsecondary institution or after any period of four (4) consecutive years after high school graduation in which the student is not enrolled in an eligible postsecondary institution, the participating student's IEA shall be closed, and any remaining funds shall be returned to the state treasurer to be placed in the basic education program (BEP) account of the education trust fund of 1992 under §§ 49-3-357 and 49-3-358.

(j) Funds received pursuant to this part do not constitute income taxable to the parent of the participating student or to the student under title 67, chapter 2.

History.

Acts 2015, ch. 431, § 4; 2016, ch. 793, § 1.

Compiler's Notes.

Acts 2015, ch. 431, § 8 provided that the state board is authorized to promulgate rules, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to effectuate the purposes of this part; provided, that the state board shall not promulgate any emergency rule, pursuant to § 4-5-208, for the implementation of this part prior to August 1, 2016.

Acts 2015, ch. 431, § 10 provided that the act, which enacted this part, shall take effect May 18, 2015, for purposes of promulgating rules and procedures, the public welfare requiring it. For all other purposes, including development by the department of education of administrative procedures to effectuate the first award of individualized education accounts during the 2016-2017 school year, the act shall take effect January 1, 2016, the public welfare requiring it.

49-10-1404. Requirements for participating schools — Penalties for noncompliance.

(a) A school, private tutor, eligible postsecondary institution, or other educational provider that serves a participating student shall not refund, rebate, or share funds from an IEA with a parent or participating student in any manner. The funds in an IEA may be used only for educational purposes. Participating schools, postsecondary institutions, and education providers that enroll participating students shall provide parents with a receipt for all qualifying expenses at the school or institution.

(b) To ensure that students are treated fairly and kept safe, all participating schools shall:

(1) Comply with all health and safety laws or codes that apply to nonpublic schools;

(2) Certify that they shall not discriminate against students or applicants on the basis of race, color, or national origin; and

(3) Conduct criminal background checks on employees. The participating school then shall:

(A) Exclude from employment any person not permitted by state law to work in a nonpublic school; and

(B) Exclude from employment any person who might reasonably pose a threat to the safety of students.

(c) The department may suspend or terminate a school from participating in the program, if the department determines the school has failed to comply with the requirements of this section. If the department suspends or terminates a school's participation, the department shall notify affected participating students and their parents of the decision. If a participating school is suspended or if a participating school withdraws from the program, affected participating students remain eligible to participate in the program.

History.
Acts 2015, ch. 431, § 5.

Compiler's Notes.
Acts 2015, ch. 431, § 8 provided that the state board is authorized to promulgate rules, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to effectuate the purposes of this part; provided, that the state board shall not promulgate any emergency rule, pursuant to § 4-5-208, for the implementation of this part prior to August 1, 2016.

Acts 2015, ch. 431, § 10 provided that the act, which enacted this part, shall take effect May 18, 2015, for purposes of promulgating rules and procedures, the public welfare requiring it. For all other purposes, including development by the department of education of administrative procedures to effectuate the first award of individualized education accounts during the 2016-2017 school year, the act shall take effect January 1, 2016, the public welfare requiring it.

49-10-1405. Administration of IEA program by department.

(a) In administering the IEA program, the department shall:

(1) Remit funds to a participating student's IEA account on at least a quarterly basis. Any funds awarded under this part shall be the entitlement of only the eligible student under the supervision of the student's parent. The maximum annual amount to which an eligible student is entitled under this part shall be equal to the amount representing the per pupil state and local funds generated and required through the basic education program (BEP) for the LEA in which the student resides and is zoned to attend plus the special education funds from the BEP that the participating student would otherwise be entitled to under the student's particular IEP. For the purpose of funding calculations, each eligible student who participates in the program shall be counted in the enrollment figures for the LEA in which the student resides and is zoned to attend. The IEA funds shall be subtracted from the state funds otherwise payable to the LEA;

(2)(A) Create a standard form that a parent of a student may submit to establish the student's eligibility for an IEA. The department shall make the supplication application readily available to interested families through various sources, including the Internet; and

(B) In accordance with state board of education rules promulgated in consultation with the department of education and the department of health, create an application and approval process for nonpublic schools and providers to become participating schools and participating providers;

(3) Establish application and participation timelines that shall maximize student and school participation;

(4) Provide parents of participating students with a written explanation of the allowable uses of LEAs, the responsibilities of parents, and the duties of the department;

(5) Ensure that lower-income families are made aware of the program and their children's potential eligibility;

(6) Adopt policies necessary for the administration of the IEA program, including:

(A) Policies for conducting or contracting for random, quarterly, and annual reviews of accounts;

(B) Policies for establishing or contracting for the establishment of an online anonymous fraud reporting service; and

(C) Policies for establishing an anonymous telephone hotline for reporting fraud; and

(7) Post on its web site a list of participating schools for each school year, the grades taught in the school. and other information that the department determines shall assist parents in selecting participating schools for their children.

(b) The department may deduct an amount up to four percent (4%) from appropriations used to fund IEAs to cover the costs of overseeing the funds and administering the program.

(c) In compliance with all state and federal student privacy laws, an LEA shall provide a participating school that has admitted an eligible student under this part with a complete copy of the student's school records in the possession of the LEA.

History.
Acts 2015, ch. 431, § 6; 2016, ch. 620, § 2.

Compiler's Notes.
Acts 2015, ch. 431, § 8 provided that the state board is authorized to promulgate rules, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to effectuate the purposes of this part; provided, that the state board shall not promulgate any emergency rule, pursuant to § 4-5-208, for the implementation of this part prior to August 1, 2016.

Acts 2015, ch. 431, § 10 provided that the act, which enacted this part, shall take effect May 18, 2015, for purposes of promulgating rules and procedures, the public welfare requiring it. For all other purposes, including development by the department of education of administrative procedures to effectuate the first award of individualized education accounts during the 2016-2017 school year, the act shall take effect January 1, 2016, the public welfare requiring it.

49-10-1406. Autonomy of participating schools.

(a) A participating school is autonomous and not an agent of the state or federal government.

(b) Neither the department nor any other state agency may regulate in any way the educational program of a participating nonpublic school or education

provider that accepts funds from the parent of a participating student.

(c) The creation of the IEA program does not expand the regulatory authority of the state, its officers, or any LEA to impose any additional regulation of nonpublic schools or education providers beyond those necessary to enforce the requirements of the program.

(d) Participating nonpublic schools and education providers shall be given the maximum freedom to provide for the educational needs of their students without governmental control. Neither a participating nonpublic school nor an education provider shall be required to alter its creed, practices, admissions policies, or curriculum in order to accept participating students.

(e) In any legal proceeding challenging the application of this part to a participating school, the state bears the burden of establishing that the law is necessary and does not impose any undue burden on participating schools.

History.
Acts 2015, ch. 431, § 7.

Compiler's Notes.
Acts 2015, ch. 431, § 8 provided that the state board is authorized to promulgate rules, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to effectuate the purposes of this part; provided, that the state board shall not promulgate any emergency rule, pursuant to § 4-5-208, for the implementation of this part prior to August 1, 2016.

Acts 2015, ch. 431, § 10 provided that the act, which enacted this part, shall take effect May 18, 2015, for purposes of promulgating rules and procedures, the public welfare requiring it. For all other purposes, including development by the department of education of administrative procedures to effectuate the first award of individualized education accounts during the 2016-2017 school year, the act shall take effect January 1, 2016, the public welfare requiring it.

CHAPTER 50

MISCELLANEOUS

Part 16. Self-Administration of Prescribed Medications and Other Treatments

SECTION.
49-50-1602. Assistance in self-administration of medications — Administration of glucagons and anti-seizure medications by volunteers — Possession and self-administration of asthma-reliever inhalers — Diabetes care.

PART 16

SELF-ADMINISTRATION OF PRESCRIBED MEDICATIONS AND OTHER TREATMENTS

49-50-1602. Assistance in self-administration of medications — Administration of glucagons and anti-seizure medications by volunteers — Possession and self-administration of asthma-reliever inhalers — Diabetes care.

(a) Notwithstanding any law, policy or guideline to the contrary, a local board of education or a governing board for a nonpublic school may permit an employee or a person under contract to the board to assist in self-administration of medications, under the following conditions:

(1)(A) The student must be competent to self-administer nonprescription or prescription medication with assistance;

(B) The student's condition, for which the medication is authorized or prescribed, must be stable;

(C) The self-administration of the medication must be properly documented;

(D) Guidelines, not inconsistent with this section, for the assistance in self-administration of nonprescription or prescription medications by personnel in the school setting, developed by the departments of health and education and approved by the board of nursing, must be followed;

(E) The student's parent or guardian must give permission in writing for school personnel to assist with self-administration of medications. The written permission shall be kept in the student's school records; and

(F) Assistance with self-administration shall primarily include storage and timely distribution of medication.

(2) Health care procedures including administration of medications to students during the school day or at related events shall be performed by appropriately licensed health care professionals in accordance with applicable guidelines of their respective regulatory boards and in conformity with policies and rules of local boards of education or governing boards of nonpublic schools. The student's parent or guardian must give permission in writing for appropriately licensed health care professionals to perform health care procedures and administer medications. The written permission shall be kept in the student's school records.

(3) Any person assisting in self-administration of medication or performing health care procedures, including administration of medications under this section, and any local board of education or governing board for a nonpublic school authorizing the self-administration of medications or the performance of health care procedures shall not be liable in any court of law for injury resulting from the reasonable and prudent assistance in the self-administration of such medication or the reasonable performance of the health care procedures, including administration of medications, if performed pursuant to the policies and guidelines developed by the departments of health and education and approved by applicable regulatory or governing boards or agencies.

(4) The departments of education and health shall jointly compile an annual report of self-administered medications and health care procedures, including administration of medications as provided for in this part, to students served in all public and nonpublic accredited schools in this state. This report shall be provided to the governor and the general assembly by October 31 of each year and shall include recommendations for meeting the needs for comprehensive school health.

(b) In addition to assistance with self-administration of medications provided for in subsection (a), school

personnel who volunteer under no duress or pressure and who have been properly trained by a registered nurse employed or contracted by the LEA may administer glucagon in emergency situations and may administer daily insulin to a student based on that student's individual health plan (IHP). However, if a public school nurse is available and on site, the nurse shall provide this service to the student. The public school nurse may train as many school personnel as volunteer and are willing to assist with the care of students with diabetes but should seek to ensure at least two (2) volunteers are available. The nurse shall be under no duress to qualify any volunteer unless such volunteer is trained and deemed by the nurse to be competent. In addition, in order to reduce the number of syringes present in schools, the nurse may encourage the use of an insulin pen, when available and deemed medically appropriate by the student's treating physician. The public school nurse employed or contracted by the LEA shall be responsible for updating and maintaining each IHP. The department of health and the department of education shall jointly amend current Guidelines for Use of Health Care Professionals and Health Procedures in a School Setting to reflect the appropriate procedures for use by registered nurses in training volunteer school personnel to administer glucagon and insulin. The board of nursing shall be afforded the opportunity to review and comment on the guidelines before they take effect and any training begins. The guidelines developed shall be used uniformly by all LEAs that choose to allow volunteer school personnel to administer glucagon and insulin. Training pursuant to subdivision (d)(3) to administer glucagon and insulin shall be repeated annually and competencies shall be documented at least twice a year in the employee's personnel file. The provisions of subdivision (a)(3) regarding protection from liability shall apply also to the volunteers who provide services pursuant to this subsection (b) and the registered nurses who provide their training.

(c) Notwithstanding any provision of this title or any other law or rule to the contrary:

(1) An LEA must permit possession and self-administration of a prescribed, metered dosage asthma-reliever inhaler by any asthmatic student if the student's parent or guardian:

(A) Provides to the school written authorization for student possession and self-administration of the inhaler; and

(B) Provides a written statement from the prescribing health care practitioner that the student suffers from asthma and has been instructed in self-administration of the prescribed, metered dosage asthma-reliever inhaler. The statement must also contain the following information:

(i) The name and purpose of the medication;

(ii) The prescribed dosage;

(iii) The time or times the prescribed inhaler is to be regularly administered, as well as any additional special circumstances under which the inhaler is to be administered; and

(iv) The length of time for which the inhaler is prescribed;

(2) The statements required in subdivision (c)(1) shall be kept on file in the office of the school nurse or school administrator;

(3) The LEA shall inform the student's parent or guardian that the school and its employees and agents shall incur no liability as a result of any injury sustained by the student or any other person from possession or self-administration of the inhaler. The student's parent or guardian shall sign a statement acknowledging that the school shall incur no liability and the parent or guardian shall indemnify and hold harmless the school and its employees against any claims relating to the possession or self-administration of the inhaler. Nothing in this subsection (c) shall be construed to relieve liability of the school or its employees for negligence;

(4) The permission for self-administration of the prescribed, metered dosage asthma-reliever inhaler shall be effective for the school year in which it is granted and must be renewed each following school year upon fulfilling the requirements of subdivisions (c)(1) and (3). The LEA may suspend or revoke the student's possession and self-administration privileges if the student misuses the inhaler or makes the inhaler available for usage by any other person; and

(5) Upon fulfilling the requirements of subdivision (c)(1), an asthmatic student may possess and use the prescribed, metered dose asthma-reliever inhaler when at school, at a school-sponsored activity or before or after normal school activities while on school properties, including school-sponsored child care or after-school programs.

(d)(1) Notwithstanding any law, policy, or guideline to the contrary, a local board of education or a governing board for a nonpublic school may permit school personnel to volunteer to assist with the care of students with diabetes under the following conditions:

(A) The student's parent or guardian and the student's personal health care team must have developed a medical management plan that lists the health services needed by the student at school and is signed by the student's physician, nurse practitioner or physician assistant;

(B) The student's parent or guardian shall have given permission for the school's trained volunteer or school nurse to participate in the care of the student with diabetes. The written permission shall be kept in the student's school records.

(C) Assistance in the care of students with diabetes must be documented in accordance with this subsection (d); and

(D) The department of education and the department of health shall, after considering recommendations from national organizations involved with diabetes care, jointly amend current "Guidelines for Use of Health Care Professionals and Health Care Procedures in a School Setting" to reflect the appropriate procedures for use by the school registered nurse (RN) in training school personnel who volunteer to assist with the care of

students with diabetes. The guidelines may not take effect and no training under the guidelines may take place until the board of nursing has been afforded an opportunity to review and comment on the guidelines. The guidelines must be used uniformly by all LEAs that choose to allow school personnel to volunteer to assist with the care of students with diabetes.

(2) The guidelines for assistance with the care of students with diabetes must include the following:

(A) Guidelines for recognition, management and treatment of hypoglycemia and hyperglycemia;

(B) Guidelines for understanding the individual health plan (IHP) for a student with diabetes with regard to blood glucose level target ranges, schedules for meals and snacks and actions to be taken in the case of schedule disruption; and

(C) Guidelines for performing blood glucose monitoring, ketone checking and recording the results and also for performing insulin and glucagon administration.

(3) All school nurses must be educated in diabetes care and must have knowledge of the guidelines. School personnel, who volunteer under no duress to assist with the care of students with diabetes, must receive training pursuant to the guidelines from a school RN. The school RN may use certified diabetes educators and licensed nutritionists to assist with the training. All training must be renewed on an annual basis and competency must be noted in the personnel file. No school personnel shall be required to volunteer for the training. School personnel may not be reprimanded, subject to any adverse employment action or punished in any manner for refusing to volunteer.

(4) If a school nurse is on-site and available to assist, the school nurse must provide any needed diabetes assistance rather than other trained school personnel volunteering to assist the student. In addition, a school RN has primary responsibility for maintaining all student health records.

(5) The following persons shall not be liable in any court of law for injury resulting from reasonable assistance with the care of students with diabetes if performed pursuant to the guidelines developed by the departments of health and education:

(A) Any school RN who provides the training;

(B) Any person who is trained and whose competency is indicated in the person's personnel file as required in subdivision (d)(3); and

(C) Any local board of education or governing board for a nonpublic school that authorizes school personnel to volunteer to assist with the care of students with diabetes.

(6) The activities set forth in this subsection (d) shall not constitute the practice of professional nursing unless performed by an individual licensed by the board of nursing.

(7) Upon written request of the parent or guardian, and if included in the student's medical management plan and in the IHP, a student with diabetes shall be permitted to perform blood glucose checks, administer insulin, treat hypoglycemia and hyperglycemia and otherwise attend to the care and management of the student's diabetes in any area of the school or school grounds and at any school-related activity, and shall be permitted to possess on the student's person at all times all necessary diabetes monitoring and treatment supplies, including sharps. Any sharps involved in diabetes care and management for a student shall be stored in a secure but accessible location, including on the student's person, until use of the sharps is appropriate. Use and disposal of sharps shall be in compliance with the guidelines set forth by the Tennessee occupational safety and health administration (TOSHA).

(8) An LEA shall not assign a student with diabetes to a school other than the school for which the student is zoned or would otherwise regularly attend because the student has diabetes.

(9) School RNs who provide training to volunteers under this subsection (d) shall not be subject to any disciplinary or other adverse licensing action by the board of nursing for injury resulting from assistance with the care of students with diabetes if performed pursuant to the guidelines developed by the departments of health and education.

(e)(1) A student with anaphylaxis is entitled to possess and self-administer prescription anaphylaxis medication while on school property or at a school-related event or activity if:

(A) The prescription anaphylaxis medication has been prescribed for that student as indicated by the prescription label on the medication;

(B) The self-administration is done in compliance with the prescription or written instructions from the student's physician or other licensed health care provider; and

(C) A parent of the student provides to the school:

(i) Written authorization, signed by the parent, for the student to self-administer prescription anaphylaxis medication while on school property or at a school-related event or activity;

(ii) A written statement, signed by the parent, in which the parent releases the school district and its employees and agents from liability for an injury arising from the student's self-administration of prescription anaphylaxis medication while on school property or at a school-related event or activity, except in cases of wanton or willful misconduct; and

(iii) A written statement from the student's physician or other licensed health care provider, signed by the physician or provider, that:

(a) Supports a diagnosis of anaphylaxis;

(b) Identifies any food or other substances to which the student is allergic;

(c) Describes any prior history of anaphylaxis, if appropriate;

(d) Lists any medication prescribed for the child for the treatment of anaphylaxis;

(e) Details emergency treatment procedures in the event of a reaction;

(f) Lists the signs and symptoms of a reaction;

(g) Assesses the student's readiness for self-administration of prescription medication; and

(h) Provides a list of substitute meals that may be offered by school food service personnel.

(2) The physician's statement must be kept on file in the office of the school nurse of the school the student attends or, if there is not a school nurse, in the office of the principal of the school the student attends.

(3) If a student uses the medication in a manner other than prescribed, the student may be subject to disciplinary action under the school codes.

(f)(1) The department of education, in conjunction with the department of health, shall develop and make available guidelines for the management of students with life-threatening food allergies to each LEA. The guidelines shall include, but need not be limited to:

(A) Education and training for school personnel on the management of students with life-threatening food allergies, including training related to the administration of medication with a cartridge injector;

(B) Procedures for responding to life-threatening allergic reactions to food;

(C) Procedures for the maintenance of a file by the school nurse or principal for each student at risk for anaphylaxis;

(D) Development of communication strategies between individual schools and local providers of emergency medical services, including appropriate instructions for emergency medical response;

(E) Development of strategies to reduce the risk of exposure to anaphylactic causative agents in classrooms and common school areas such as the cafeteria;

(F) Procedures for the dissemination of information on life threatening food allergies to school staff, parents and students, if appropriate by law;

(G) Procedures for authorizing school personnel to administer epinephrine when the school nurse is not immediately available;

(H) Procedures for the timely accessibility of epinephrine by school personnel when the nurse is not immediately available;

(I) Development of extracurricular programs related to anaphylaxis, such as nonacademic outings and field trips, before and after school programs and school-sponsored programs held on weekends;

(J) Creation of an individual health care plan tailored to the needs of each individual child at risk for anaphylaxis, including any procedures for the self-administration of medication by the children in instances where the children are capable of self-administering medication and where such self-administration is otherwise in accordance with this title; and

(K) Collection and publication of data for each administration of epinephrine to a student at risk for anaphylaxis.

(2) Each LEA shall implement a plan based on the guidelines developed pursuant to subdivision (f)(1) for the management of students with life-threatening food allergies enrolled in the schools under its jurisdiction.

(3)(A) It is the intent of the general assembly that schools, both public and nonpublic, be prepared to treat allergic reaction in the event a student's personal epinephrine auto-injector is not available or the student is having a reaction for the first time.

(B) Each school in an LEA and each nonpublic school is authorized to maintain at the school in at least two (2) unlocked, secure locations, including, but not limited to, the school office and the school cafeteria, epinephrine auto-injectors so that epinephrine may be administered to any student believed to be having a life-threatening allergic or anaphylactic reaction.

(C) Notwithstanding any provision of title 63 to the contrary, a physician may prescribe epinephrine auto-injectors in the name of an LEA or nonpublic school to be maintained for use in schools when necessary.

(D) When a student does not have an epinephrine auto-injector or a prescription for an epinephrine auto-injector on file, the school nurse or other trained school personnel may utilize the LEA or nonpublic school supply of epinephrine auto-injectors to respond to an anaphylactic reaction, under a standing protocol from a physician licensed to practice medicine in all its branches.

(E) If a student is injured or harmed due to the administration of epinephrine that a physician has prescribed to an LEA or nonpublic school under this subdivision (f)(3), the physician shall not be held responsible for the injury unless the physician issued the prescription or standing protocol with intentional disregard for safety.

(F) Similarly, if a student is injured or harmed due to administration of epinephrine to the student by a school nurse or other trained school personnel under this subdivision (f)(3), the school nurse or school employee shall not be held responsible for the injury unless the school nurse or school employee administered the epinephrine injection with an intentional disregard for safety.

(g)(1) In addition to the assistance with self-administration of medications provided for in subsection (a), public and nonpublic school personnel who volunteer under no duress or pressure and who have been properly trained by a registered nurse employed or contracted by the LEA or governing board for a nonpublic school may administer anti-seizure medications, including diazepam gel, to a student in an emergency situation based on that student's IHP; however, if a school nurse is available, on site, and able to reach the student within the time limit for administration specified in the IHP, then the nurse shall provide this service to the student. All public schools are subject to all requirements in this sub-

section (g). Nonpublic schools whose governing boards choose to allow volunteer administration of anti-seizure medications are subject to all requirements of this subsection (g) except those in subdivisions (g)(2) and (7).

(2) A nurse employed or contracted by the LEA shall be responsible for updating and maintaining each IHP.

(3) The department of health and the department of education shall jointly amend current guidelines for use of health care professionals and health procedures in a school setting to reflect the appropriate procedures for use by registered nurses in training volunteer school personnel to administer anti-seizure medications, including diazepam gel, to a student in an emergency situation. The board of nursing and the Epilepsy Foundations of Tennessee shall be afforded the opportunity to review and comment on the guidelines before they take effect and any training begins. The guidelines developed shall be used uniformly by all LEAs and the governing boards of nonpublic schools that choose to allow volunteer school personnel to administer anti-seizure medications. In addition, the guidelines shall require at least one (1) school employee to serve as a witness on any occasion a volunteer administers anti-seizure medication during an emergency situation, unless a witness is not available within the time limit for administration specified in the IHP.

(4) Once a public or private school has determined to allow volunteer staff to administer anti-seizure medication in an emergency situation, the training referenced in subdivision (g)(3) shall be conducted as soon as possible, and shall be repeated annually thereafter. In addition, competencies to administer anti-seizure medications shall be documented in the personnel file of all volunteer school personnel. All volunteers trained to administer anti-seizure medications shall also be trained in cardiopulmonary resuscitation (CPR).

(5) Upon the decision of a trained volunteer to administer diazepam gel, school officials shall immediately summon local emergency medical services to the school to provide necessary monitoring or transport to safeguard the health and condition of the student.

(6) Trained volunteer school personnel administering anti-seizure medications under this subsection (g), any registered nurse who provides training to administer such medications and any local board of education or governing board for a nonpublic school authorizing the same shall not be liable in any court of law for injury resulting from the reasonable and prudent assistance in the administration of such medications, if performed pursuant to the policies and guidelines developed by the departments of health and education and approved by applicable regulatory or governing boards or agencies.

(7) An LEA shall not assign a student with epilepsy or other seizure disorder to a school other than the school for which the student is zoned or would otherwise regularly attend because the student has a seizure disorder.

(8) Prior to administration of an anti-seizure medication to a student by volunteer school personnel or a school nurse in an emergency situation, the student's parent or guardian shall provide:

(A) The school with a written authorization to administer the medication at school;

(B) A written statement from the student's health care practitioner, which statement shall contain the student's name, the name and purpose of the medication, the prescribed dosage, the route of administration, the frequency that the medication may be administered, and the circumstances under which the medication may be administered; and

(C) Prior to its date of expiration, the prescribed medication to the school in its unopened, sealed package with the intact label affixed by the dispensing pharmacy.

(9) The written authorization required by subdivision (g)(8)(A) shall be kept on file in the office of the school nurse or school administrator. Unless subsequently rescinded in writing, the authorization shall be effective for the entirety of the school year in which it is granted.

(10) The school nurse or school administrator shall check monthly the expiration date for each anti-seizure medication in possession of the school. At least one (1) month prior to the expiration date of each medication, the school nurse or administrator shall inform the student's parent or guardian of the expiration date.

(11) A student's parent or guardian who has given the student's school written authorization to administer anti-seizure medication shall, in accordance with the student's IHP, notify the school administrator or school nurse if anti-seizure medication or prescription or over-the-counter medicines are administered to the student at a time at which the student is not present at school. The student's IHP shall set forth with specificity the requirements of reporting administration of medication and for the dissemination of such information to volunteer school personnel trained to administer anti-seizure medication. The notification shall be given after administration of medication before or at the beginning of the next school day in which the student is in attendance.

History.

Acts 1996, ch. 979, §§ 1, 2; 2002, ch. 808, § 1; 2004, ch. 493, § 1; 2004, ch. 734, § 1; 2005, ch. 219, § 1; 2006, ch. 542, § 1; 2006, ch. 933, §§ 2, 3; 2008, ch. 1054, § 1; 2013, ch. 294, § 1; 2014, ch. 614, §§ 1-5; T.C.A. § 49-5-415.

Compiler's Notes.

This section was transferred from § 49-5-415 by authority of the Code Commission in 2015.

Acts 2006, ch. 933, § 1 provided that the act shall be known and may be cited as "Brentson's Law."

For the Preamble to the act concerning diabetes as a chronic disease, please refer to Acts 2014, ch. 614.

TITLE 50

EMPLOYER AND EMPLOYEE

CHAPTER 5

CHILD LABOR

Part 1. Child Labor Act of 1976

SECTION.
50-5-101. Short title.
50-5-102. Part definitions.
50-5-103. Employment of minor under 14 years of age — Penalty.
50-5-104. Employment of minors fourteen or fifteen years of age.
50-5-105. Employment of minors sixteen or seventeen years of age.
50-5-106. Prohibited employment for minors.
50-5-107. Exempt minors.

Part 2. Tennessee Protection of Minor Performers Act

50-5-201. Short title.
50-5-202. Power to amend or repeal.
50-5-203. Part definitions.
50-5-204. Construction.
50-5-205. Approval not exemption from other law — Disability of non-age not removed generally.
50-5-206. Applicability.
50-5-207. Disaffirmance of approved contract on ground of minority.
50-5-208. Who may apply for court order.
50-5-209. Approval for contract that is executed, in existence or being performed — Effective date — Earnings.
50-5-210. Where to file petition.
50-5-211. Notice and hearing.
50-5-212. Effect of court approval — Revocation of approval.
50-5-213. Scope.
50-5-214. Effect of modifications, amendments, or assignments of contracts.
50-5-215. Appointment of guardian ad litem — Court discretion — Criteria — Compensation.
50-5-216. Custody of minor — Contents of petition.
50-5-217. Persons to be served with petition.
50-5-218. Court's discretion for hearing in chambers or courtroom — Of record — Sealed.
50-5-219. Minor's personal appearance.
50-5-220. Options of the court.
50-5-221. Court's review of contract — Protection of earnings.
50-5-222. Requirement that portion of earnings be set aside in trust.

PART 1

CHILD LABOR ACT OF 1976

50-5-101. Short title.

This part shall be known and may be cited as the "Child Labor Act of 1976."

History.
Acts 1976, ch. 480, § 1; T.C.A., § 50-701.

50-5-102. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Agricultural work" includes farming in all its branches, and, among other things, includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural or horticultural commodities, the raising of livestock or poultry, and any practices performed by a farmer or on a farm as an incident to or in conjunction with the farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market;

(2) "Commissioner" means the commissioner of labor and workforce development or the commissioner's designated representative;

(3) "Department" means the department of labor and workforce development;

(4) "Director of schools" means the director of schools, or the director's designee, in the county, city, town or special school district in which a minor seeking employment resides or is to be employed; provided, that, with respect to a home school, as defined in § 49-6-3050, "director of schools" means the director of the local education agency (LEA) where the child who has been registered as a home schooled child would otherwise attend; and with respect to a home school that teaches kindergarten through grade twelve (K-12) where the parents are associated with an organization that conducts church-related schools, as defined in § 49-50-801, the "director of schools" means the director of the church-related school;

(5) "Employ" means to permit or suffer to work in employment or a gainful occupation;

(6) "Employer" includes, but is not limited to, any individual, partnership, association, corporation, business trust, legal representative or any organized group of persons, acting directly or indirectly in the interest of an employer in relation to an employee;

(7) "Employment or gainful occupation" means any work engaged in for compensation in money or other valuable consideration, whether paid to the minor or some other person, including, but not limited to, work as a servant, agent, subagent or independent contractor;

(8) "Minor" means a person of either sex under eighteen (18) years of age, unless otherwise provided;

(9) "School days" means any day when normal classes are in session during the regular school year in the school district;

(10) "School hours" means that period of time during a school day when school is in session and students are required to attend classes;

(11) "Self-employed" means earning income directly from one's own business, trade or profession rather than as a specified salary or wages from an employer;

(12) "Sexual conduct" means actual or simulated sexual intercourse, sodomy, sexual bestiality, masturbation, sadomasochistic abuse, excretion, or the exhibition of the male or female genitals;

(13) "Week" means a fixed and regularly recurring period of seven (7) consecutive days; and

(14) "Youth peddling" means the selling of merchandise by a minor under sixteen (16) years of age to customers at the customer's residence, at a customer's place of business, or in public places such as street corners or public transportation stations. "Youth peddling" does not include the activities of

individuals who are self-employed or who volunteer to sell goods or services on behalf of not-for-profit organizations or governmental entities or for school functions.

History.
Acts 1976, ch. 480, § 2; 1978, ch. 541, § 1; T.C.A., § 50-702; Acts 1998, ch. 781, § 2; 1999, ch. 203, § 1; 1999, ch. 520, § 41.

50-5-103. Employment of minor under 14 years of age — Penalty.

(a) A minor under fourteen (14) years of age may not be employed in any gainful occupation except as otherwise provided in § 50-5-107.

(b) Any person who violates subsection (a) commits a Class D felony.

History.
Acts 1976, ch. 480, § 3; T.C.A., § 50-703; Acts 2001, ch. 378, § 1.

50-5-104. Employment of minors fourteen or fifteen years of age.

(a) A minor who is either fourteen (14) or fifteen (15) years of age may be employed in connection with any gainful occupation that:

(1) Does not interfere with the minor's schooling, health or well-being;

(2) Is not prohibited by subsection (b); or

(3) Is not prohibited by § 50-5-106.

(b) A minor who is either fourteen (14) or fifteen (15) years of age may not be employed:

(1) During school hours;

(2) Between the hours of seven o'clock p.m. (7:00 p.m.) and seven o'clock a.m. (7:00 a.m.), if the next day is a school day;

(3) Between the hours of nine o'clock p.m. (9:00 p.m.) and six o'clock a.m. (6:00 a.m.);

(4) More than three (3) hours a day on school days;

(5) More than eighteen (18) hours a week during a school week;

(6) More than eight (8) hours a day on nonschool days; or

(7) More than forty (40) hours a week during nonschool weeks.

History.
Acts 1976, ch. 480, § 4; 1978, ch. 541, § 2; T.C.A., § 50-704.

50-5-105. Employment of minors sixteen or seventeen years of age.

(a) A minor who is sixteen (16) or seventeen (17) years of age may be employed in connection with any gainful occupation that:

(1) Does not interfere with the minor's health or well-being;

(2) Is not prohibited by subsection (b); or

(3) Is not prohibited by § 50-5-106.

(b) A minor who is sixteen (16) or seventeen (17) years of age and is enrolled in school may not be employed:

(1) During those hours when the minor is required to attend classes; or

(2) Between the hours of ten o'clock p.m. (10:00 p.m.) and six o'clock a.m. (6:00 a.m.), Sunday through Thursday evenings preceding a school day.

(A) If the parents or guardians of the minor submit to the employer a signed and notarized statement of consent, then the minor may be employed between the hours of ten o'clock p.m. (10:00 p.m.) and twelve o'clock midnight (12:00 a.m.), Sunday through Thursday evenings preceding a school day; provided, that under no circumstances shall the minor be employed between those hours on those evenings on more than three (3) occasions during any week.

(B) Each statement of consent shall be submitted to the employer on a carbonized form provided for the purpose by the department. Upon accepting the form, the employer shall promptly mail the carbon copy of the form to the commissioner.

(C) The form shall remain valid until the end of the school year during which it is submitted or until termination of the minor's employment, or until the minor reaches the age of majority, whichever occurs first; and the original copy of the form shall be maintained for the period of its effectiveness by the employer at the location of the minor's employment.

(D) At any time, consent may be rescinded by submission to the employer of a statement of rescission, signed by the parents or guardians of the minor.

(c) With respect to a student enrolled with a church-related school as defined in § 49-50-801, or who is home schooled in accordance with § 49-6-3050 and has the consent of the parent conducting the home school, subdivision (b)(1) shall not apply. However, to work during the hours identified in subdivision (b)(1), the student shall also present to the employer a letter signed by the director, as defined in § 50-5-102, confirming the student's enrollment and the authorization to work. The director of the church-related school shall send a copy of the letter to the director of the LEA of the school district in which the child resides.

(d) If the department discovers that an employer has violated this section or has violated § 50-5-111, by failing to maintain the required file record, including an accurate time record showing the hours of a minor's beginning and ending of work each day, then the department shall promptly take appropriate actions to ensure imposition of the sanctions prescribed by § 50-5-112.

History.
Acts 1976, ch. 480, § 5; 1978, ch. 541, § 3; T.C.A., § 50-705; Acts 1990, ch. 787, § 1; 1998, ch. 781, § 1; 1999, ch. 520, § 41.

50-5-106. Prohibited employment for minors.

A minor may not be employed in connection with the following:

(1) Occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components;

(2) Motor vehicle driving occupations;

(3) Coal mine occupations;

(4) Logging occupations and occupations in the operation of any sawmill, lath mill, shingle mill or cooperage-stock mill;

(5) Occupations involved in the operation of power-driven woodworking machines;

(6) Occupations involving exposure to radioactive substances and to ionizing radiations;

(7) Occupations involved in the operation of elevator and other power-driven hoisting apparatus;

(8) Occupations involved in the operation of power-driven metal-forming, punching and shearing machines;

(9) Occupations in connection with mining elements other than coal;

(10) Occupations involving slaughtering, meat-packing, processing or rendering;

(11) Occupations involved in the operation of hazardous power-driven bakery machines;

(12) Occupations involved in the operation of hazardous power-driven paper products machines;

(13) Occupations involved in the manufacture of brick, tile and kindred products;

(14) Occupations involved in the operation of circular saws, band saws and guillotine shears;

(15) Occupations involved in wrecking, demolition and ship-breaking operations;

(16) Occupations involved in roofing operations;

(17) Occupations in excavation operations;

(18) Any occupation in a place of employment where the average monthly gross receipts from the sale of intoxicating beverages exceed twenty-five percent (25%) of the total gross receipts of the place of employment, or in any place of employment where a minor will be permitted to take orders for or serve intoxicating beverages, regardless of the amount of intoxicating beverages sold in the place of employment;

(19) Occupations that the commissioner shall by regulation, pursuant to this part, declare to be hazardous or injurious to the life, health, safety and welfare of minors;

(20)(A) Occupations involving posing or modeling, alone or with others, while engaged in sexual conduct for the purpose of preparing a film, photograph, negative, slide or motion picture;

(B) As used in (20)(A), "sexual conduct" means actual or simulated conduct, sexual intercourse, sodomy, sexual bestiality, masturbation, sadomasochistic abuse, excretion, or the exhibition of the male or female genitals; and

(21) Occupations involved in youth peddling.

History.

Acts 1976, ch. 480, § 7; 1977, ch. 227, § 1; T.C.A., § 50-707; Acts 1999, ch. 203, § 2.

50-5-107. Exempt minors.

This part shall not apply to any minor who:

(1) Is employed in housework in the minor's home;

(2) Is employed by a parent or guardian in a nonhazardous occupation, as defined by § 50-5-106;

(3) Is employed in agricultural work;

(4) Is employed in the distribution or sale of newspapers;

(5) Is employed in errand and delivery work by foot, bicycle or public transportation;

(6) Is self-employed;

(7) Is a musician or entertainer, except in cases covered by § 50-5-106(20);

(8) Has graduated from high school or has the equivalent of a high school diploma, but only if a copy of the minor's high school diploma or its equivalent is retained by the employer in the employer's personnel records;

(9) Is or has been lawfully married or is a parent, but only if a copy of either the minor's marriage license or the birth certificate of the minor's child is retained by the employer in the employer's personnel records;

(10) Is sixteen (16) or seventeen (17) years of age and is an apprentice employed in a craft recognized as an apprenticable trade and is registered by the bureau of apprenticeship and training of the United States department of labor and is employed in accordance with the standards established by that bureau;

(11) Is sixteen (16) or seventeen (17) years of age and is a student learner enrolled in a course of study and training in a cooperative vocational training program under a recognized state or local educational authority or in a course of study in a substantially similar program conducted by a private school. The student learner must be employed under a written agreement, a copy of which must be retained by the employer in the employer's personnel records;

(12) Is an enrollee in a public employment program that is conducted or funded by the federal government; provided, that the employer has on file in the employer's personnel records an unrevoked written statement from a representative of the federal agency administering that program certifying the enrollment of the minor in the program;

(13) Is sixteen (16) or seventeen (17) years of age and not enrolled in school, but only if the employer has on file in the employer's personnel records a written statement signed by the director of schools stating that the particular minor is not enrolled in school; or is lawfully excused from compulsory school attendance under § 49-6-3005, but only if the employer has on file in the employer's personnel records a written statement signed by the director of schools stating that the particular minor has been excused under § 49-6-3005; or

(14) Is fourteen (14) years of age or older and who is a student enrolled in a course of study and training in a cooperative career and technical training program, including a work experience and career exploration program, that is approved and authorized by the department of education and that complies with all applicable federal laws. The student learner must be employed under a written agreement, a copy of which must be retained by the employer in the employer's personnel records.

History.
Acts 1976, ch. 480, § 8; 1977, ch 227, § 2; 1978, ch. 541, § 4; T.C.A., § 50-708; Acts 2008, ch. 888, § 1.

PART 2

TENNESSEE PROTECTION OF MINOR PERFORMERS ACT

50-5-201. Short title.

This part shall be known and may be cited as the "Tennessee Protection of Minor Performers Act."

History.
Acts 2003, ch. 168, § 1.

50-5-202. Power to amend or repeal.

The general assembly shall have power to amend or repeal all or part of this part at any time and all persons subject to this part shall be governed by the amendment or repeal.

History.
Acts 2003, ch. 168, § 1.

50-5-203. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Artistic or creative services" means, but is not limited to, services as an actor, actress, dancer, musician, comedian, vocalist, including demonstration recordings, stunt-person, voice-over artist, model, or other performer or entertainer, or as a songwriter, musical producer or arranger, writer, director, producer, production executive, choreographer, composer, conductor, or designer, or other performing artist; and

(2) "Minor" means any person who has not attained eighteen (18) years of age and has not had the disability of minority removed so as to make this part inapplicable.

History.
Acts 2003, ch. 168, § 1.

50-5-204. Construction.

This part does not repeal or affect the rights or powers under title 29, chapter 31, regarding the removal of disability of minors, and all provisions of that chapter shall remain in force and effect and applicable to the appropriate circumstances addressed in that chapter.

History.
Acts 2003, ch. 168, § 1.

50-5-205. Approval not exemption from other law — Disability of non-age not removed generally.

Approval of a contract pursuant to this part shall not:

(1) Exempt any person from any other law with respect to licenses, consents, or authorizations required for any conduct, employment, use, or exhibition of the minor in this state, nor limit in any manner the discretion of the licensing authority or other persons charged with the administration of the requirements, nor dispense with any other requirement of law relating to the minor;

(2) Unless specifically so provided in the order, remove the disability of non-age for any other contract with the same minor that is not approved by the court pursuant to this section, nor, unless specifically so provided in the order, is the disability of non-age of the minor removed generally for the minor, nor is the minor emancipated for any other purpose or contract other than the performance of contracts approved pursuant to this section; and

(3) Be granted for a contract that provides for an employment, use, or exhibition of the minor, within or without the state, that is prohibited by law and in particular by any federal or state minor labor law, and could not be licensed to take place in this state.

History.
Acts 2003, ch. 168, § 1.

50-5-206. Applicability.

The chapters of this title shall apply to every minor person who desires to perform artistic or creative services in the state, including minor persons who reside in the state and minor persons not residing in the state, as long as some or all of the services are to be provided or delivered in the state, or at least one (1) of the other parties are doing business in the state.

History.
Acts 2003, ch. 168, § 1.

50-5-207. Disaffirmance of approved contract on ground of minority.

If a contract is approved by the appropriate court pursuant to this part, then the minor may not, either during minority or after reaching majority, disaffirm the contract on the ground of minority, nor may the minor assert that the minor's parent or guardian lacked the authority to make the contract personally as an adult.

History.
Acts 2003, ch. 168, § 1.

50-5-208. Who may apply for court order.

Application for an order pursuant to this part may be made by the minor, or the minor's parent, or legal guardian, or guardian ad litem appointed pursuant to this part. For the purposes of any proceeding under this part, a parent or legal guardian, as the case may be, entitled to the physical custody, care, and control of the minor at the time of the proceeding shall be considered the minor's guardian ad litem for the proceeding, unless the court determines that appointment of a different individual as guardian ad litem is required in the best interests of the minor.

History.
Acts 2003, ch. 168, § 1.

50-5-209. Approval for contract that is executed, in existence or being performed — Effective date — Earnings.

(a) Approval under this part may be sought for a contract or agreement that is fully executed, is already in existence or under which the parties are currently performing. Approval may be effective as of the date upon which the contract has been executed, or the date when services were first performed by the minor, if specifically so ordered by the court. The parties may petition the court for approval to be effective within one (1) year of the contract's ratification by the court. The parties may also petition the court for approval of a contract effective date more than one (1) year after the ratification of the contract by the court, if good cause for the delayed effective date is shown by the petitioners.

(b) If a contract is approved pursuant to this part, all earnings, royalties, or other compensation earned or received by the minor pursuant to the approved contract shall become the sole property of the minor who will be authorized to execute any contracts relating to administration or investments of the earnings.

History.
Acts 2003, ch. 168, § 1.

50-5-210. Where to file petition.

Petition for contract approval under this part shall be filed with and, when granted, approved by the court handling probate matters for the county in which the minor resides, where the minor is employed or where the minor performs or renders the minor's services, or intends to do so; or the county in this state where performance of the contract shall be conducted, if the minor is not a resident of the state where the majority of the services are performed and the non-minor party to the contract is either a resident of this state or has been qualified or licensed to do business in the state.

History.
Acts 2003, ch. 168, § 1.

50-5-211. Notice and hearing.

After a petition is filed pursuant to § 50-5-208, and following reasonable notice to all parties to the contract as is fixed by the court, the court will provide all parties to the contract with the opportunity to appear and be heard. The court may approve the contract following the hearing.

History.
Acts 2003, ch. 168, § 1.

50-5-212. Effect of court approval — Revocation of approval.

Court approval of a valid contract shall serve to bind the minor as if the minor executed the contract personally as an adult; and the minor shall be bound to all provisions including the permanent sale of intellectual property rights; provided, however, that the revocation of approval of the contract by the court shall not include the transfer back to the minor of intellectual property rights unless there has been a showing of fraud or misrepresentation by the employer; and, further, that the court approving the contract shall retain the authority to revoke approval of the contract, or modify its terms if assented to by both parties, if the court finds that the well being of the minor requires the disapproval.

History.
Acts 2003, ch. 168, § 1.

50-5-213. Scope.

Contracts eligible for approval under this part shall include contracts pursuant to which a minor person is employed, employs, or agrees to perform or render artistic or creative services, either directly or through a third party including, without limitation, a personal services corporation, manager, booking agent, or producer. For purposes of this part, when a minor renders services as an extra, background performer, or in a similar capacity, through an agency or service that provides one (1) or more performers for a fee, the agency or service shall be considered the minor's employer.

History.
Acts 2003, ch. 168, § 1.

50-5-214. Effect of modifications, amendments, or assignments of contracts.

(a) Modifications, amendments, or assignments of contracts previously approved by the court are deemed a new contract and require separate approval under this part.

(b) Notwithstanding subsection (a), this section does not require court approval if the employing company assigns its rights in the contract to a successor or affiliate entity.

History.
Acts 2003, ch. 168, § 1.

50-5-215. Appointment of guardian ad litem — Court discretion — Criteria — Compensation.

(a) At any time after the filing of the petition, the court in its discretion may appoint a guardian ad litem to represent the interests of the minor or to oversee the minor's earnings related to the contract approved under this part. The court shall appoint a guardian ad litem as to any contract where the parent or guardian will receive remuneration or financial gain from the performance of the contract or if the court deems that the persons have any other conflict of interest with the minor. The court, in determining whether a guardian ad litem should be appointed, may consider the following criteria:

(1) The length of time the exclusive services of the minor are required;

(2) Whether the gross earnings of the minor under the contract are either contingent or unknown;

(3) The amount of gross earnings of the minor under the contract; and

(4) The age of the minor.

(b) The guardian ad litem shall be entitled to reasonable compensation. The court shall have the power to determine which party shall be responsible for the fee, whether the fee and any required bond shall be paid from the earnings of the minor pursuant to the contract sought to be approved, or may apportion the fee between the parties to the proceedings.

History.
Acts 2003, ch. 168, § 1.

50-5-216. Custody of minor — Contents of petition.

(a) A parent, guardian, or legal custodian entitled to the physical custody, care, and control of a minor who enters into a contract of a type described in this part shall provide a certified copy of the minor's birth certificate indicating the minor's minority to the other party or parties to the contract.

(b) A guardian or a person with temporary legal custody must provide a certified copy of the court document appointing the person as the minor's legal guardian.

(c) A complete copy of the contract or proposed contract shall be attached to the petition. The petition shall also include the following information:

(1) The full name, residence, and date of birth of the minor;

(2) The name and residence of any living parent of the minor, the name and residence of the person who has care and custody of the minor, and the name and residence of the person with whom the minor resides;

(3) A statement that the minor is a resident of the state. If the minor is not a Tennessee resident, a statement that the petition is for approval of a contract for performance or rendering of services by the minor in the state, specifying the place in the state where the services are to be performed or rendered;

(4) A brief description of the minor's employment and compensation under the contract, including where services of the minor are to be performed, accompanied by a plan for the protection of the minor's earnings under the contract;

(5) The full name and residence of the petitioner, and the interest of the petitioner in the contract or proposed contract or in the minor's performance under the contract; and

(6) Other facts known by the petitioner regarding the minor and the minor's family and property that will show that the contract is reasonable, prudent, and in the best interests of the minor. The information shall include whether the minor has had at any time a guardian ad litem appointed by a court of any jurisdiction and an explanation of the facts regarding the previous appointment. Information regarding whether relief similar to the current petition has been sought on behalf of the minor, including whether a guardian ad litem was appointed for the previous application for court approval.

(d) Upon application by any party or by order of the court, the petition or any portion of the petition, including attachments, may be filed under seal.

History.
Acts 2003, ch. 168, § 1.

50-5-217. Persons to be served with petition.

The following persons, other than one who is the petitioner or who joins in the petition, shall be served with the petition by formal notice, as prescribed by Rule 4 of the Tennessee Rules of Civil Procedure:

(1) The minor;

(2) The minor's legal custodian or guardian ad litem, if any, whether or not appointed or qualified in this state;

(3) Each party to the contract;

(4) The parent or parents of the minor;

(5) Any person having the care and custody of the minor;

(6) The person with whom the minor resides, if other than a parent or guardian; and

(7) If it appears that the minor is married, the minor's spouse.

History.
Acts 2003, ch. 168, § 1.

50-5-218. Court's discretion for hearing in chambers or courtroom — Of record — Sealed.

At the court's discretion, the hearing may be held in the court's chambers or courtroom. The proceeding shall be of record and may be sealed, if the court determines that sealing the record will be in the best interests of the minor.

History.
Acts 2003, ch. 168, § 1.

50-5-219. Minor's personal appearance.

The minor, unless excused by the court for good cause shown, shall attend personally before the court upon the hearing of the petition.

History.
Acts 2003, ch. 168, § 1.

50-5-220. Options of the court.

(a) The court at the hearing or on an adjournment of the hearing, may by its order do any of the following:

(1) Approve or disapprove the contract or proposed contract;

(2) Approve the contract upon such conditions, with respect to modification of the terms of the contract or otherwise, as it shall determine;

(3) Appoint a guardian ad litem as provided by § 50-5-215;

(4) Appoint a trustee to administer the trust for

earnings as provided by § 50-5-222; or

(5) Award reasonable attorney's fees and other expenses paid or to be paid by or on behalf of the minor in connection with the proceeding, approval of the contract, and its performance.

(b) The court shall consider the following factors in making its final determination:

(1) The best interest of the minor;

(2) Whether the minor is represented by a lawyer;

(3) The length of the contract;

(4) The age of the minor; and

(5) Any other matter that the court deems appropriate.

History.
Acts 2003, ch. 168, § 1.

50-5-221. Court's review of contract — Protection of earnings.

(a) The court shall ensure that any contract it approves contains all the requirements for the rendering of services of the minor and that the petition includes a plan for the protection of earnings under the contract.

(b) The court shall consider the following when determining the protection of earnings:

(1) The interest of the petitioner in the contract or proposed contract or in the minor's performance under the contract;

(2) The parties who are entitled to the minor's earnings, and, if the minor is not so entitled, facts regarding the property and financial circumstances of the parent or parents, or legal custodian or guardian ad litem, or other third party;

(3) A bank or trust account used expressly for the deposit of fees generated under the contract and the relationship of any proposed trustee of the minor's funds;

(4) The percentage of fees generated that are intended for deposit; and

(5) The minor's financial advisor or other third party who will render investment advice and administer the bank or trust account.

(c) Notwithstanding any provision to the contrary, the creditors of any person, other than the minor, shall not be entitled to the earnings of the minor.

History.
Acts 2003, ch. 168, § 1.

50-5-222. Requirement that portion of earnings be set aside in trust.

Notwithstanding any law to the contrary, in an order approving a minor's contract as described in this part, the court shall require that fifteen percent (15%) of the minor's gross earnings pursuant to the contract be set aside by the minor's employer in trust and shall be paid to the trustee appointed by the court so that it may be invested in an account or other savings plan, and preserved for the benefit of the minor until the minor reaches the age of majority. The court may also require that more than fifteen percent (15%) of the minor's gross earnings be set aside in trust, in an account or other savings plan, and preserved for the benefit of the minor, upon request of the minor's parent or legal guardian, or the minor, through the minor's guardian ad litem. Gross earnings for the purpose of this section refers to those funds earned and received by the minor pursuant to the terms of the contract and does not include those funds applied towards recoupment pursuant to the contract.

History.
Acts 2003, ch. 168, § 1.

TITLE 55

MOTOR AND OTHER VEHICLES

CHAPTER 9

EQUIPMENT — LIGHTING REGULATIONS

Part 6. Safety Belts

SECTION.
55-9-602. Child passenger restraint systems — Violations — Penalties.
55-9-603. Use of safety belts in passenger vehicles — Violations — Penalties — Arrest — Applicability.

PART 6

SAFETY BELTS

55-9-602. Child passenger restraint systems — Violations — Penalties.

(a)(1) Any person transporting any child, under one (1) year of age, or any child, weighing twenty pounds (20 lbs.) or less, in a motor vehicle upon a road, street or highway of this state is responsible for the protection of the child and properly using a child passenger restraint system in a rear facing position, meeting federal motor vehicle safety standards in the rear seat if available or according to the child safety restraint system or vehicle manufacturer's instructions.

(2) Notwithstanding § 55-9-603, any person transporting any child, one through three (1-3) years of age weighing greater than twenty pounds (20 lbs.), in a motor vehicle upon a road, street or highway of this state is responsible for the protection of the child and properly using a child passenger restraint system in a forward facing position, meeting federal motor vehicle safety standards in the rear seat if available or according to the child safety restraint system or vehicle manufacturer's instructions.

(3) Notwithstanding § 55-9-603, any person transporting any child, four through eight (4-8) years of age and measuring less than four feet, nine inches (4′ 9″) in height, in a passenger motor vehicle upon a road, street or highway of this state is responsible for the protection of the child and properly using a belt positioning booster seat system, meeting federal motor vehicle safety standards in the rear seat if available or according to the child safety restraint system or vehicle manufacturer's instructions.

(4)(A) If a child is not capable of being safely transported in a conventional child passenger restraint system as provided for in this subsection (a), a specially modified, professionally manufactured restraint system meeting the intent of this subsection (a) shall be in use; provided, however, that this subdivision (a)(4) shall not be satisfied by use of the vehicle's standard lap or shoulder safety belts independent of any other child passenger restraint system. A motor vehicle operator who is transporting a child in a specially modified, professionally manufactured child passenger restraint system shall possess a copy of the physician's signed prescription that authorizes the professional manufacture of the specially modified child passenger restraint system.

(B) A person shall not be charged with a violation of this subsection (a) if the person presents a copy of the physician's prescription in compliance with this subdivision (a)(4) to the arresting officer at the time of the alleged violation.

(C) A person charged with a violation of this subsection (a) may, on or before the court date, submit a copy of the physician's prescription and evidence of possession of a specially modified, professionally manufactured child passenger restraint system to the court. If the court is satisfied that compliance was in effect at the time of the violation, the charge for violating this subsection (a) may be dismissed.

(5) A person who is operating an autocycle shall not carry a child as a passenger if such child is required to be secured in a motor vehicle in a manner in accordance with this section unless:

(A) The autocycle has an enclosed cab;

(B) The autocycle meets the federal motor vehicle safety standards for child restraints found in 49 CFR 571.213 and 49 CFR 571.225; and

(C) The child is secured in a manner in accordance with this section.

(b) All passenger vehicle rental agencies doing business in the state shall make available at a reasonable rate to those renting the vehicles an approved restraint as described in subsection (a).

(c)(1) A violation of this section is a Class C misdemeanor.

(2) In addition to or in lieu of the penalty imposed under subdivision (c)(1), persons found guilty of a first offense of violating this section may be required to attend a court approved offenders' class designed to educate offenders on the hazards of not properly transporting children in motor vehicles. A fee may be charged for the classes sufficient to defray all costs of providing the classes.

(d) Any incorporated municipality may by ordinance adopt by reference any of the provisions of this section, it being the legislative intent to promote the protection of children wherever and whenever possible.

(e) Prior to the initial discharge of any newborn child from a health care institution offering obstetrical services, the institution shall inform the parent that use of a child passenger restraint system is required by law. Further, the health care institution shall distribute to the parent related information provided by the department of safety.

(f)(1) There is established within the general fund a revolving special account to be known as the child safety fund, hereinafter referred to as the "fund."

(2) All fines imposed by this section shall be sent by the clerk of the court to the state treasurer for deposit in the fund.

(3) Any unencumbered funds and any unexpended balance of this fund remaining at the end of any fiscal year shall not revert to the general fund, but shall be carried forward until expended in accordance with this section and § 55-9-610.

(4) Interest accruing on investments and deposits of the fund shall be returned to the fund and remain a part of the fund.

(5) Disbursements from, investments of and deposits to the fund shall be administered and invested pursuant to title 9, chapter 4, part 5.

(6) The state treasurer may deduct reasonable service charges from the fund pursuant to procedures established by the state treasurer and the commissioner of finance and administration.

(7) The department of health is authorized, pursuant to duly promulgated rules and regulations, to determine equitable distribution of the moneys in the fund to those entities that are best suited for child passenger safety system distribution. Funds distributed pursuant to this section shall only be used for the purchase of child passenger safety systems to be loaned or given to the parent or guardian.

(g)(1)(A) Notwithstanding § 55-9-603, any person transporting any child, nine through twelve (9-12) years of age, or any child through twelve (12) years of age, measuring four feet, nine inches (4′ 9″) or more in height, in a passenger motor vehicle upon a road, street or highway of this state is responsible for the protection of the child and properly using a seat belt system meeting federal motor vehicle safety standards. It is recommended that any such child be placed in the rear seat if available.

(B) Notwithstanding § 55-9-603, any person transporting any child, thirteen through fifteen (13-15) years of age, in a passenger motor vehicle upon a road, street or highway of this state is responsible for the protection of the child and properly using a passenger restraint system, including safety belts, meeting federal motor vehicle safety standards.

(2) A person charged with a violation of this subsection (g) may, in lieu of appearance in court, submit a fine of fifty dollars ($50.00) to the clerk of the court that has jurisdiction of the offense within the county in which the offense charged is alleged to have been committed.

(3) No litigation tax levied pursuant to title 67, chapter 4, part 6, shall be imposed or assessed against anyone convicted of a violation of this subsection (g), nor shall any clerk's fee or court costs, including but not limited to any statutory fees of officers, be imposed or assessed against anyone con-

victed of a violation of this subsection (g).

(4)(A) Notwithstanding any provision of subsection (f) to the contrary, the revenue generated by ten dollars ($10.00) of the fifty-dollar fine under subdivision (g)(2) for a person's first conviction under this subsection (g), shall be deposited in the state general fund without being designated for any specific purpose. The remaining forty dollars ($40.00) of the fifty-dollar fine for a person's first conviction under this subsection (g) shall be deposited to the child safety fund in accordance with subsection (f).

(B) The revenue generated from the person's second or subsequent conviction under this subsection (g) shall be deposited to the child safety fund in accordance with subsection (f).

(5) Notwithstanding any law to the contrary, no more than one (1) citation may be issued for a violation of this subsection (g) per vehicle per occasion. If the driver is neither a parent nor legal guardian of the child and the child's parent or legal guardian is present in the vehicle, the parent or legal guardian is responsible for ensuring compliance with this subsection (g). If no parent or legal guardian is present at the time of the violation, the driver is solely responsible for compliance with this subsection (g).

(h) As used in this section, unless specified otherwise, "passenger motor vehicle" means any motor vehicle with a manufacturer's gross vehicle weight rating of ten thousand pounds (10,000 lbs.) or less, that is not used as a public or livery conveyance for passengers. "Passenger motor vehicle" does not apply to motor vehicles that are not required by federal law to be equipped with safety belts.

(i) A person who has successfully met the minimum required training standards for installation of child restraint devices established by the national highway traffic safety administration of the United States department of transportation, who in good faith installs or inspects the installation of a child restraint device shall not be liable for any damages resulting from any act or omission related to the installation or inspection unless the act or omission was the result of the person's gross negligence or willful misconduct.

(j) Notwithstanding any provisions of this part to the contrary, for any child transported by child care agencies licensed by the department of human services pursuant to title 71, chapter 3, part 5 and transported pursuant to the rules and regulations of the department, such rules and regulations shall remain effective until the department amends the rules and regulations; provided, however, that the department shall either promulgate rules consistent with this part or promulgate rules exceeding, based on applicable federal regulations or standards, this part no later than January 1, 2007.

(k)(1) The failure to use a child restraint system shall not be admissible into evidence in a civil action; provided, however, that evidence of a failure to use a child restraint system, as required by this section, may be admitted in a civil action as to the causal relationship between noncompliance and the injuries alleged, if the following conditions have been satisfied:

(A) The plaintiff has filed a products liability claim;

(B) The defendant alleging noncompliance with this section shall raise this defense in its answer or timely amendment thereto in accordance with the rules of civil procedure; and

(C) Each defendant seeking to offer evidence alleging noncompliance with this section has the burden of proving noncompliance with this section, that compliance with this section would have reduced injuries and the extent of the reduction of the injuries.

(2) Upon request of any party, the trial judge shall hold a hearing out of the presence of the jury as to the admissibility of the evidence in accordance with this subsection (k) and the Tennessee Rules of Evidence.

(3) Notwithstanding any provision of this subsection (k) to the contrary, if a party to the civil action is not the parent or legal guardian, then evidence of a failure to use a child restraint system, as required by this section, may be admitted in the action as to the causal relationship between noncompliance and the injuries alleged.

History.

Acts 1963, ch. 102, §§ 1, 2; 1977, ch. 114, §§ 1, 2; T.C.A., § 59-930; Acts 1981, ch. 86, §§ 1, 2; 1985, ch. 183, § 1; T.C.A., § 55-9-214; Acts 1986, ch. 866, §§ 2, 3; 1989, ch. 564, §§ 2-6, 9; 1989, ch. 591, § 113; 1995, ch. 112, §§ 1, 2; 2000, ch. 945, § 1; 2001, ch. 463, §§ 1, 2; 2003, ch. 299, §§ 1-9; 2004, ch. 809, § 1; 2005, ch. 55, §§ 1, 2; 2016, ch. 1015, § 16.

Compiler's Notes.

Former part 5, §§ 9-4-501 — 9-4-511, referred to in this section, concerning an alternate method of securing the deposit of state funds, was repealed effective January 1, 1991, by Acts 1990, ch. 1043, § 1, which also enacted a new title 9, ch. 4, part 5 concerning a collateral pool for public deposits, effective January 1, 1991.

Acts 2005, ch. 55, § 3 provided that it is the intent of the general assembly that the provisions of that act and the provisions of Acts 2003, ch. 299 and Acts 2004, ch. 809 were never intended to be retroactive and shall only apply to civil actions that arise on or after the effective date of such acts.

55-9-603. Use of safety belts in passenger vehicles — Violations — Penalties — Arrest — Applicability.

(a)(1) No person shall operate a passenger motor vehicle on any highway, as defined in § 55-8-101, in this state unless the person and all passengers four (4) years of age or older are restrained by a safety belt at all times the vehicle is in forward motion.

(2) No person four (4) years of age or older shall be a passenger in a passenger motor vehicle on any highway, as defined in § 55-8-101, in this state, unless the person is restrained by a safety belt at all times the vehicle is in forward motion.

(b)(1) This section shall apply only to the operator and all passengers occupying the front seat of a passenger motor vehicle.

(2) If the vehicle is equipped with a rear seat that is capable of folding, this section shall only apply to front seat passengers and the operator if the back seat is in the fold down position.

(c) As used in this section, unless specified otherwise, "passenger car" or "passenger motor vehicle" does not include any motor vehicle that is used as a public or livery conveyance for passengers or any motor vehicles that are not required by federal law to be equipped with safety belts, except autocycles as defined in § 55-1-103.

(d)(1) A violation of this section is a Class C misdemeanor. All proceeds from the fines imposed by this subsection (d), except as otherwise provided by subdivisions (d)(2) and (3), shall be deposited in the state general fund and designated for the exclusive use of the division of vocational rehabilitation to assist eligible individuals with disabilities, as defined in § 49-11-602, who have been severely injured in motor vehicle accidents.

(2)(A) A person charged with a violation of this section may, in lieu of appearance in court, submit a fine of twenty-five dollars ($25.00) for a first violation, and fifty dollars ($50.00) for a second or subsequent violation to the clerk of the court that has jurisdiction of the offense within the county in which the offense charged is alleged to have been committed.

(B) The revenue generated by fifteen dollars ($15.00) of the twenty-five-dollar fine in subdivision (d)(2)(A) for a person's first conviction shall be deposited in the state general fund without being designated for any specific purpose. The remaining ten dollars ($10.00) of the twenty-five-dollar fine for the person's first conviction under subdivision (d)(2)(A) shall be deposited in the state general fund and designated for the exclusive use of the division of vocational rehabilitation to assist eligible individuals with disabilities, as defined in § 49-11-602, who have been severely injured in motor vehicle accidents.

(C) The revenue generated by thirty dollars ($30.00) of the fifty-dollar fine under subdivision (d)(2)(A) for a person's second or subsequent conviction shall be deposited in the state general fund without being designated for any specific purpose. The remaining twenty dollars ($20.00) of the fifty-dollar fine for the person's second or subsequent conviction under subdivision (d)(2)(A) shall be deposited in the state general fund and designated for the exclusive use of the division of vocational rehabilitation to assist eligible individuals with disabilities, as defined in § 49-11-602, who have been severely injured in motor vehicle accidents.

(3)(A) Notwithstanding subdivision (d)(2), a person charged with a violation of subsection (i) may, in lieu of appearance in court, submit a fine of twenty-five dollars ($25.00) to the clerk of the court that has jurisdiction of the offense within the county in which the offense charged is alleged to have been committed.

(B) Notwithstanding subdivision (d)(2), the revenue generated by fifteen dollars ($15.00) of the twenty-five-dollar fine under subdivision (d)(3)(A) for a person's first conviction under subsection (i) shall be deposited in the state general fund without being designated for any specific purpose. The remaining ten dollars ($10.00) of the twenty-five-dollar fine for the person's first conviction under subsection (i) shall be deposited in the state general fund and designated for the exclusive use of the division of vocational rehabilitation to assist eligible individuals with disabilities, as defined in § 49-11-602, who have been severely injured in motor vehicle accidents.

(C) The revenue generated by five dollars ($5.00) of the twenty-five-dollar fine under subdivision (d)(3)(A) for a person's second or subsequent conviction under subsection (i) shall be deposited in the state general fund without being designated for any specific purpose. The remaining twenty dollars ($20.00) of the twenty-five-dollar fine for the person's second or subsequent conviction under subsection (i) shall be deposited in the state general fund and designated for the exclusive use of the division of vocational rehabilitation to assist eligible individuals with disabilities, as defined in § 49-11-602, who have been severely injured in motor vehicle accidents.

(e) No clerk's fee nor court costs, including, but not limited to, any statutory fees of officers, shall be imposed or assessed against anyone convicted of a violation of this section. No litigation tax levied pursuant to title 67, chapter 4, part 6, shall be imposed or assessed against anyone convicted of a violation of this section.

(f)(1) A law enforcement officer observing a violation of this section shall issue a citation to the violator, but shall not arrest or take into custody any person solely for a violation of this section.

(2) The department of safety shall not report any convictions under this section except for law enforcement or governmental purposes.

(g) In no event shall a violation of this section be assigned a point value for suspension or revocation of a license by the department of safety, nor shall the violation be construed as any other offense under this title.

(h) This section does not apply to:

(1) A passenger or operator with a physical disability which prevents appropriate restraint in a safety seat or safety belt; provided, that the condition is duly certified in writing by a physician who shall state the nature of the disability, as well as the reason a restraint is inappropriate;

(2) A passenger motor vehicle operated by a rural letter carrier of the United States postal service while performing the duties of a rural letter carrier;

(3) Salespersons or mechanics employed by an automobile dealer who, in the course of their employment, test-drive a motor vehicle, if the dealership customarily test-drives fifty (50) or more motor vehicles a day, and if the test-drives occur within one (1) mile of the location of the dealership;

(4) Water, gas, and electric meter readers, and utility workers, while the meter reader or utility worker is:

(A) Emerging from and reentering a vehicle at frequent intervals; and

(B) Operating the vehicle at speeds not exceed-

ing forty miles per hour (40 mph);

(5) A newspaper delivery motor carrier service while performing the duties of a newspaper delivery motor carrier service; provided, that this exemption shall only apply from the time of the actual first delivery to the customer until the last actual delivery to the customer;

(6) A vehicle in use in a parade if operated at less than fifteen miles per hour (15 mph);

(7) A vehicle in use in a hayride if operated at less than fifteen miles per hour (15 mph); or

(8) A vehicle crossing a highway from one field to another if operated at less than fifteen miles per hour (15 mph).

(i)(1) Notwithstanding any provision of this section to the contrary, no person between sixteen (16) years of age and up to and through the age of seventeen (17) years of age, shall operate a passenger motor vehicle, or be a passenger therein, unless the person is restrained by a safety belt at all times the vehicle is in forward motion.

(2) Notwithstanding subdivision (b)(1), this subsection (i) shall apply to all occupants between sixteen (16) years of age and eighteen (18) years of age occupying any seat in a passenger motor vehicle.

(3) Notwithstanding subdivision (f)(1), a law enforcement officer observing a violation of this subsection (i) shall issue a citation to the violator, but shall not arrest or take into custody any person solely for a violation of this subsection (i).

(j) Notwithstanding subsection (b), no person with a learner permit or an intermediate driver license shall operate a passenger motor vehicle in this state unless the person and all passengers between the ages of four (4) and seventeen (17) years of age are restrained by a safety belt at all times the vehicle is in forward motion.

History.

Acts 1986, ch. 866, §§ 3, 4, 7, 8, 11; 1989, ch. 591, § 113; 1994, ch. 661, §§ 2, 4; 2000, ch. 700, § 3; 2000, ch. 945, §§ 2-4; 2004, ch. 893, §§ 1-5; 2011, ch. 47, §§ 59, 60; 2015, ch. 25, § 1; 2015, ch. 296, § 1; 2016, ch. 723, § 1; 2016, ch. 1015, § 17.

Compiler's Notes.

Acts 1994, ch. 661, § 1 provided that that act, which amended this section and rewrote § 55-9-604, shall be known as "the Tennessee Automobile Safety Act of 1994."

Acts 2000, ch. 700, § 13 provided that the commissioner is authorized to promulgate rules and regulations to effectuate the provisions of the act.

Acts 2000, ch. 700, § 14 provided that the act shall only take effect if sufficient funds to implement the provisions of the act are included in the general appropriations act for the fiscal year in which the act becomes effective.

Acts 2011, ch. 47, § 107 provided that nothing in the legislation shall be construed to alter or otherwise affect the eligibility for services or the rights or responsibilities of individuals covered by the provision on the day before the date of enactment of this legislation, which was July 1, 2011.

Acts 2011, ch. 47, § 108 provided that the provisions of the act are declared to be remedial in nature and all provisions of the act shall be liberally construed to effectuate its purposes.

Acts 2015, ch. 296, § 2 provided that the act, which amended (d), shall apply to offenses occurring on or after January 1, 2016.

CHAPTER 10

ACCIDENTS, ARRESTS, CRIMES AND PENALTIES

Part 4. Alcohol and Drug Related Offenses

SECTION.
55-10-415. Underage driving while impaired — Penalties.

Part 7. Juvenile Offender Act

55-10-701. Denial of driving privileges by court.
55-10-702. Denial or suspension of driving privileges by department of safety.
55-10-703. Withdrawal of denial order — Eligibility for driver license — Driver safety or alcohol education programs.
55-10-704. Confiscation of offender's driver license.
55-10-705. Restricted motor vehicle operator's license.
55-10-706. Expiration of denial period — Eligibility for license — Driver safety or alcohol education programs.
55-10-707. Construction of part — Penalties supplemental.
55-10-708. Data search to determine offender status — Applicants for restricted license or removal of denial order.
55-10-709. Inspection of records.
55-10-710. Provisions of part in pamphlets for schools and driver license examination manuals.
55-10-711. Denial of driving privileges — Expunction from records — Requirements.

PART 4

ALCOHOL AND DRUG RELATED OFFENSES

55-10-415. Underage driving while impaired — Penalties.

(a) A person sixteen (16) years of age or older but less than eighteen (18) years of age shall not drive or be in physical control of an automobile or other motor-driven vehicle while:

(1) Under the influence of any intoxicant, marijuana, controlled substance, controlled substance analogue, drug, substance affecting the central nervous system, or combination thereof that impairs the driver's ability to safely operate a motor vehicle by depriving the driver of the clearness of mind and self-control that the driver would otherwise possess; or

(2) The alcohol concentration in the person's blood is more than two-hundredths of one percent (0.02%).

(b) The fact that a person, who drives while under the influence of narcotic drugs or barbital drugs, is or has been lawfully entitled to use the drugs does not constitute a defense to a violation of this section.

(c) This section establishes the offense of underage driving while impaired for a person sixteen (16) years of age or older but less than eighteen (18) years of age. The offense of underage driving while impaired is a lesser included offense of driving while intoxicated.

(d)(1) Underage driving while impaired for a person sixteen (16) years of age or older but less than eighteen (18) years of age is punishable by:

(A) Driver license suspension of one (1) year;

(B) A fine of two hundred fifty dollars ($250);

and

(C) Public service work, in the discretion of the court.

(2) Any person found to have violated this section and whose driver license has been suspended or revoked, may apply to the judge hearing the case for a restricted driver license. A judge having jurisdiction over the violation shall have the same authority to order the issuance of a restricted license in accordance with § 55-10-409, and all other options, including requiring use of a functioning interlock device, as are available to a judge under § 55-10-409.

History.

Acts 1993, ch. 491, § 1; 1998, ch. 1046, § 3; 2013, ch. 154, § 15; T.C.A. § 55-10-415; Acts 2016, ch. 1030, § 1.

Compiler's Notes.

Acts 2013, ch. 154, § 15 purported to amend this section. No amendments were made to this section by ch. 154; therefore, the act was not given effect.

For the table of disposition for the DUI laws in title 55, ch. 10, part 4 due to the 2013 amendments, see the Compiler's Notes in § 55-10-401.

PART 7

JUVENILE OFFENDER ACT

55-10-701. Denial of driving privileges by court.

(a) When a person, younger than eighteen (18) years of age, but thirteen (13) years of age or older, commits any offense or engages in any prohibited conduct described in this subsection (a), then at the time the person is convicted of the offense, or adjudicated a delinquent child, unruly child or status offender, the court in which the conviction or adjudication occurs shall prepare and send to the department of safety, driver control division, within five (5) working days of the conviction or adjudication, an order of denial of driving privileges for the offender. This section applies to any criminal offense, status offense, violation, infraction or other prohibited conduct involving the possession, use, sale, or consumption of any alcoholic beverage, wine or beer, or any controlled substance as defined and enumerated in title 39, chapter 17, part 4, or involving the possession or carrying of a weapon on school property, as defined and enumerated in § 39-17-1309(b) or (c). The denial of driving privileges authorized by this section applies when the prohibited conduct occurs before the offender is eighteen (18) years of age, regardless of when a conviction or determination occurs. The department shall promulgate a form "order of denial" for use by the courts.

(b) If a court has issued an order of denial of driving privileges pursuant to this section, the court, upon motion of the offender, may review the order and may withdraw the order at any time the court deems appropriate, except as provided in the following:

(1) A court may not withdraw an order for a period of ninety (90) days after the issuance of the order if it is the first order issued by any court with respect to the petitioning person;

(2) A court may not withdraw an order for a period of one (1) year after the issuance of the order if it is the second or subsequent such order issued by any court with respect to the petitioning person; and

(3) A court may not withdraw an order involving a violation of part 4 of this chapter, concerning the operation of a motor vehicle while intoxicated or impaired.

(c) For a motion for withdrawal under this section to be properly before a court for consideration, the local district attorney general must have received at least ten (10) days' prior notice of the motion, together with the time and place where it will be considered. The motion must be joined in by a custodial parent or legal guardian of the offender, if the offender is an unemancipated juvenile at the time the motion is made. A custodial parent or legal guardian must appear in court with the offender if the offender is an unemancipated juvenile at the time the motion is made. The motion shall state whether any prior orders of denial have been issued by any court and shall include as exhibits any prior orders of denial so issued.

(d) The local district attorney general or assistant district attorney general has the right to appear, present evidence and be heard at proceedings under this section.

History.

Acts 1989, ch. 64, § 2; 1990, ch. 1030, § 34; 1991, ch. 473, § 6; 1993, ch. 164, § 1; 1993, ch. 491, § 2.

55-10-702. Denial or suspension of driving privileges by department of safety.

(a) In addition to any other authority to suspend driving privileges under this chapter, the department of safety shall deny or suspend all driving privileges of any person upon receipt of an order of denial of driving privileges issued pursuant to § 55-10-701. The suspension shall be imposed without a hearing. The driving privileges of the person shall be suspended in accordance with the following:

(1) Upon receipt of the first order denying driving privileges, the department shall impose a suspension of one (1) year, or until the person reaches seventeen (17) years of age, whichever is longer; and

(2) Upon receipt of a second or subsequent order denying driving privileges, the department shall impose a suspension of two (2) years or until the person reaches eighteen (18) years of age, whichever is longer.

(b) If on appeal an underlying conviction or adjudication of an alcohol, wine, beer or drug offense, or weapons offense is overturned to an extent that nullifies the application of § 55-10-701, the department, upon receipt of a certified copy of the final order, shall timely reinstate any driving privileges that were suspended or denied because of the issuance of the original order of denial.

History.
Acts 1989, ch. 64, § 3; 1993, ch. 164, § 2.

55-10-703. Withdrawal of denial order — Eligibility for driver license — Driver safety or alcohol education programs.

If a court withdraws an order issued pursuant to § 55-10-701, the offender may obtain a certified copy of the order of withdrawal and within ten (10) days after it is issued present it, along with an application fee of twenty dollars ($20.00), to the department of safety, and the offender shall become eligible to receive a Tennessee driver license upon reaching proper age, complying with all testing requirements and paying all other driver license fees. Additionally, before an offender becomes eligible to receive a driver license under this section, the court shall require the offender to complete, to the court's satisfaction, a driver's safety course certified by the department or an early intervention program or a youth alcohol safety education program certified by the department of mental health and substance abuse services or weapons safety course certified by the department of safety.

History.
Acts 1989, ch. 64, § 4; 1993, ch. 164, § 3; 2000, ch. 947, § 6; 2010, ch. 1100, § 89; 2012, ch. 575, § 1.

Compiler's Notes.
Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

55-10-704. Confiscation of offender's driver license.

At the time of a conviction or adjudication by the court, the court shall remove from the offender's possession any Tennessee driver license currently held by the offender and forward it to the driver control division. If the offender is the holder of a driver license from another jurisdiction, the court shall not collect the offender's driver license, but shall notify the division of the conviction or adjudication and the division shall notify the appropriate individuals in the licensing jurisdiction. The court shall, however, in accordance with this part, send to the division an order of denial of driving privileges in this state.

History.
Acts 1989, ch. 64, § 5.

55-10-705. Restricted motor vehicle operator's license.

(a)(1) If an order of denial has been issued pursuant to § 55-10-701 and it is the first order of denial so issued by any court for the offender, then upon motion of the offender, the court is vested with the authority and discretion to issue an order for a restricted motor vehicle operator's license subject to the conditions and requirements of subdivision (a)(3).

(2) If an order of denial has been issued pursuant to § 55-10-701 and it is the second or subsequent order of denial so issued by any court for the offender, then, after the expiration of at least one (1) year from the date of the entry of the latest order of denial or after the offender reaches seventeen (17) years of age, whichever is later, upon motion of the offender, the court is vested with the authority and discretion to issue an order for a restricted motor vehicle operator's license subject to the conditions and requirements of subdivision (a)(3).

(3) No restricted license may be issued under this section unless the court finds by clear and convincing evidence that an economic, educational or health-related hardship will result without the restricted license. A restricted license shall not be granted for travel to and from an educational institution if reasonable parental transportation is available or free transportation is provided by the educational institution, school district or local governmental agency. This restricted license shall not be granted for travel to and from social events or extracurricular school activities. This restricted license may be granted for travel to and from and working at the person's regular place of employment if reasonable public transportation is not available and the person's earnings are essential to the well-being of the family unit. An order allowing a restricted license shall state with all practicable specificity the necessary time and places of permissible operation of a motor vehicle and shall be made a part of the judgment of the court. The offender may obtain a certified copy of the order and within ten (10) days after it is issued present it, together with an application fee of twenty dollars ($20.00), to the department of safety which shall forthwith issue a restricted license embodying the limitations imposed; provided, that the person must first reach proper age and comply with all testing requirements. After proper application and until the restricted license is issued, a certified copy of the order of judgment of the court may serve as the motor vehicle operator's license.

(4) For a motion under this section to be properly before a court for consideration, the local district attorney general must have received at least ten (10) days' prior notice of the motion, together with the time and place it will be considered. The motion must be joined in by a custodial parent or legal guardian of the offender, if the offender is an unemancipated juvenile at the time the motion is made. A custodial parent or legal guardian must appear in court with the offender if the offender is an unemancipated juvenile at the time the motion is made. The motion shall state whether any prior orders of denial have been issued by any court and shall include as exhibits any prior orders of denial so issued.

(5) The local district attorney general or assistant district attorney general has the right to present evidence and be heard in proceedings under this section.

(b) Any restricted license issued under this section shall be subject to renewal in the same manner as other licenses.

(c) In the prosecution of second or subsequent offenders, the indictment, petition, or charging instrument must allege any prior orders of denial imposed for the violation of any provisions of this part, setting forth the time and place of each order.

(d) If a court orders the issuance of a restricted license to any person pursuant to this section, and the person is an unemancipated juvenile, the court shall order the custodial parent or legal guardian to certify to the court, in writing, at six (6) week intervals the person's continuing compliance with the restrictive conditions.

History.
Acts 1989, ch. 64, § 6.

Compiler's Notes.
As to licenses issued on or after July 1, 1989, the distinction between "operator's" and "chauffeur's" licenses no longer exists, and all driver licenses are issued in one of the classes specified in § 55-50-102. See also § 55-50-305.

55-10-706. Expiration of denial period — Eligibility for license — Driver safety or alcohol education programs.

(a) On the expiration of the applicable period of denial set out in § 55-10-702(a), if a person has not become eligible to receive a license under § 55-10-703, then, for a person to be eligible to receive a Tennessee driver license, the person must pay a twenty dollar ($20.00) reinstatement fee, comply with all testing requirements and pay all other driver license fees.

(b) Additionally, before an offender becomes eligible to receive a driver license under this section, the court shall require the offender to complete, to the court's satisfaction, a driver safety course certified by the department of safety or an early intervention program or a youth alcohol safety education program certified by the department of mental health and substance abuse services or weapons safety course certified by the department of safety.

History.
Acts 1989, ch. 64, § 7; 1993, ch. 164, § 4; 2000, ch. 947, § 6; 2010, ch. 1100, § 89; 2012, ch. 575, § 1.

Compiler's Notes.
Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

55-10-707. Construction of part — Penalties supplemental.

(a) This part shall not be construed to limit in any way § 55-50-303 or § 55-50-502, nor to limit the power and authority of the department of safety to revoke or suspend a driver license under chapter 50 of this title.

(b) The penalties imposed by this part shall be in addition to and supplemental to any other penalties imposed by law.

History.
Acts 1989, ch. 64, § 11.

55-10-708. Data search to determine offender status — Applicants for restricted license or removal of denial order.

(a) Notwithstanding any other provision of this part to the contrary, any district attorney general or assistant district attorney general shall be authorized to call upon the driver control division to search the data compiled for the purpose of ascertaining whether a person applying for a restricted license under this part or applying for a withdrawal of an order of denial under this part has had other orders of denial or restricted licenses issued.

(b) Upon request of any district attorney general or assistant district attorney general, the driver control division shall send the requestor a certified copy of such other orders of denial or restricted licenses.

History.
Acts 1989, ch. 64, § 8.

55-10-709. Inspection of records.

Any record developed pursuant to this part shall be subject to the same limited inspection provisions found in §§ 37-1-153 and 37-1-154.

History.
Acts 1989, ch. 64, § 10.

55-10-710. Provisions of part in pamphlets for schools and driver license examination manuals.

The department of safety shall prepare a pamphlet describing this part for distribution to students in all schools. The department shall also describe this part in the driver manual used to prepare applicants for the license examination.

History.
Acts 1989, ch. 64, § 9.

55-10-711. Denial of driving privileges — Expunction from records — Requirements.

If a person's driving privileges have been denied pursuant to this part, when the person becomes eighteen (18) years of age, all records relating to the denial maintained by the court in which the conviction or adjudication occurred and by the department of safety shall be expunged and the driving record maintained by the department on the person shall not reflect that a denial of driving privileges occurred. This section shall apply only upon the expiration of the denial or suspension previously ordered by the juvenile court judge and when all requirements for reinstatement have been met.

History.
Acts 1991, ch. 473, § 5.

CHAPTER 50

UNIFORM CLASSIFIED AND COMMERCIAL DRIVER LICENSE ACT

Part 3. Application, Examination, and Issuance

SECTION.
55-50-311. Learner permit — Intermediate license — Fees — Restrictions — Penalties — Application — Parental notification.
55-50-353. Sexual or violent offender identification.

PART 3

APPLICATION, EXAMINATION, AND ISSUANCE

55-50-311. Learner permit — Intermediate license — Fees — Restrictions — Penalties — Application — Parental notification.

(a)(1) Any person who is fifteen (15) years of age or older, who has successfully passed the standard written test and visual examination for applicants of a state automotive license, and who has the written approval of the person's parent or legal guardian may be issued a learner permit by the department of safety. A learner permit shall allow the person to operate a motor vehicle whenever the person is accompanied by a person who is at least twenty-one (21) years of age and is licensed to operate a motor vehicle. A person with a learner permit shall not operate a motor vehicle from ten o'clock p.m. (10:00 p.m.) to six o'clock a.m. (6:00 a.m.).

(2) In addition to any other fees authorized by this chapter for the issuance of a learner permit, any person issued a learner permit under this section shall pay a five-dollar learner permit fee.

(b)(1) A person may be issued an intermediate driver license if the person is sixteen (16) years of age or older and has:

(A) Passed a driver license examination pursuant to § 55-50-322;

(B) Had a learner permit pursuant to subsection (a), or its equivalent from another state, for not less than one hundred eighty (180) days;

(C) Not accumulated six (6) or more points pursuant to the driver improvement program established in § 55-50-505 during the one-hundred-eighty day period immediately preceding application;

(D) Presented certification by a parent, legal guardian or licensed instructor that the person has accumulated a minimum of fifty (50) hours of behind-the-wheel driving experience, including a minimum of ten (10) hours driving experience at night; and

(E) Successfully demonstrated the person's ability to exercise ordinary and reasonable control in the operation of an automobile.

(2) Notwithstanding subdivision (1), a person may be issued an intermediate driver license if the person is sixteen (16) years of age or older and has been licensed to drive in another state for at least ninety (90) days.

(3) In addition to any other fees authorized by this chapter for the issuance of an intermediate driver license, any person issued an intermediate driver license under this section shall pay a five-dollar intermediate driver license fee.

(c)(1) The intermediate driver license issued pursuant to this section shall be a regular Class D license; provided, that the word "INTERMEDIATE" is prominently printed thereon.

(2) Except as otherwise provided by this section, a driver may apply for an unrestricted driver license one (1) year after receiving an intermediate driver license. All restrictions on vehicle operation pursuant to subsection (e) shall remain in full effect until the time successful application is made to the department for an unrestricted driver license. Upon successful application, the department shall have in place a procedure noting that the intermediate restrictions have been removed.

(3) Upon attaining eighteen (18) years of age, any licensee may obtain a license without the word "INTERMEDIATE" as required in subdivision (c)(1) by paying the fee for a duplicate license. However, no person shall be required to obtain the duplicate license, until the license expires.

(d) The department shall promulgate certificates to be completed by a driver with a valid unrestricted driver license pursuant to subdivision (b)(1)(D). For the purposes of issuing an intermediate driver license, the department shall only accept certificates promulgated by the department for this purpose.

(e)(1) A person issued an intermediate driver license shall not operate a motor vehicle from eleven o'clock p.m. (11:00 p.m.) to six o'clock a.m. (6:00 a.m.) unless:

(A) Accompanied by a parent or legal guardian;

(B) Accompanied by a licensed driver twenty-one (21) years of age or older, designated by the parent or legal guardian;

(C) Driving to or from scheduled specifically-identified school-sponsored activities and events, if the driver has in the driver's possession written permission from the driver's parent or legal guardian authorizing the driver to go to or from the specifically-identified scheduled school-sponsored activities and events;

(D) Driving to or from full, or part-time employment, if the driver possesses written permission from the driver's parent or legal guardian identifying the location of employment and authorizing the driver to go to or from the employment; or

(E) Driving to or from hunting or fishing between the hours of four o'clock a.m. (4:00 a.m.) and six o'clock a.m. (6:00 a.m.) and in possession of a valid hunting or fishing license.

(2) In addition to subdivision (e)(1), a person issued an intermediate driver license shall not operate a motor vehicle with more than one (1) passenger in

the motor vehicle unless:

(A) One (1) or more of the passengers are twenty-one (21) years of age or older and possess a valid unrestricted driver license; or

(B) The additional passengers are brothers, sisters, stepbrothers or stepsisters of the driver, including adopted or foster children residing in the same household of the driver, and the driver has in the driver's possession a letter from the driver's parent or legal guardian authorizing the passengers to be in the motor vehicle for the sole purpose of going to or from school.

(f)(1) If the driver accumulates six (6) or more points pursuant to the driver improvement program established in § 55-50-505 after the issuance of an intermediate driver license, the driver shall be ineligible to apply for an unrestricted driver license for an additional ninety (90) days from the time the driver would otherwise be eligible to obtain the license.

(2)(A) Upon receipt of a motor vehicle accident report in which a person with an intermediate driver license is determined to have contributed to the occurrence of an accident, or a second safety belt violation pursuant to § 55-9-603, the driver shall be ineligible to apply for an unrestricted driver license for an additional period of ninety (90) days from the time the driver would otherwise be eligible to obtain the license.

(B) If the department receives notification of such conviction after successful application for an unrestricted driver license has been made, the department has the authority to suspend the license for ninety (90) days and may re-issue the driver an intermediate driver license for this period.

(3) Upon a second conviction for a moving violation, a person shall complete a certified driver education course before the person is eligible to obtain an unrestricted driver license.

(g) In addition to any other penalty, a fine of ten dollars ($10.00) shall be imposed upon conviction for a violation of this section.

(h) Any driver who has a forged or fraudulent letter or other written statement of approval shall be in violation of this chapter and shall, upon conviction, have the driver's intermediate driver license revoked and be issued a learner permit until the driver reaches eighteen (18) years of age. Upon reaching eighteen (18) years of age, the driver may apply for an unrestricted license if the driver meets all of the other requirements of this chapter.

(i)(1) This section shall not apply to any person under eighteen (18) years of age who has graduated from high school. A person under eighteen (18) years of age who has graduated from high school may, if the person otherwise meets the requirements of this chapter, obtain an unrestricted license.

(2) This section shall not apply to any person eighteen (18) years of age or older. A person eighteen (18) years of age or older may, if the person otherwise meets the requirements of this chapter, obtain an unrestricted license.

(j) The court in which a conviction is entered for a moving violation or a second safety belt violation pursuant to § 55-9-603 shall send notification of the conviction to the designated parent or legal guardian of a person with a learner permit or intermediate driver license.

(k) The intermediate driver license issued to a person shall be of the same type issued to all qualified drivers within this state and shall be valid for a similar number of years; provided, that the word "INTERMEDIATE" shall be prominently printed on the front thereof. The commissioner shall determine the appropriate placement and size of the "INTERMEDIATE" restriction.

(*l*) The commissioner shall, upon receiving an accident report of an accident occurring in this state that has resulted in death, and upon determining that an operator has either contributed to the occurrence of an accident or that there has been an adjudication against or a conviction against an operator who has an intermediate driver license, revoke the license of the operator and shall issue to the operator a learner permit. The operator shall retain a learner permit until the operator reaches eighteen (18) years of age. Upon reaching eighteen (18) years of age, a driver can apply for an unrestricted driver license.

(m) Any driver who, upon conviction of possession of five (5) or more grams of methamphetamine, as scheduled in § 39-17-408(d)(2), while operating a motor vehicle in this state shall be in violation of this chapter and shall have the driver's intermediate license revoked and shall be issued a learner permit until the driver reaches eighteen (18) years of age. Upon reaching eighteen (18) years of age, the driver may apply for an unrestricted license, if the driver meets all of the other requirements of this chapter. For the purposes of this section, a motor vehicle is in operation if its engine is operating, whether or not the motor vehicle is moving.

(n)(1) No driver possessing a learner permit or intermediate driver license pursuant to this section shall operate a motor vehicle in motion on any highway while using a hand held cellular telephone, cellular car telephone, or other mobile telephone.

(2) A violation of this subsection (n) is a Class C misdemeanor, punishable only as follows:

(A) A fine of fifty dollars ($50.00); and

(B) The driver shall be ineligible to apply for an intermediate or unrestricted driver license for an additional ninety (90) days from the time the driver would otherwise be eligible to obtain the license type.

(3) It is an affirmative defense to prosecution under this subsection (n), which must be proven by a preponderance of the evidence, that the driver's use of a hand held cellular or cellular car telephone was necessitated by a bona fide emergency. The use of a mobile phone while operating a vehicle by any driver who is eighteen (18) years of age or less to communicate with the person's custodial parents shall be deemed a bona fide emergency and shall not be a violation of this subsection (n).

History.

Acts 1937, ch. 90, § 3; C. Supp. 1950, § 2715.11 (Williams, § 2715.16); Acts 1955, ch. 114, § 2; 1957, ch. 199, §§ 1, 2; 1957, ch. 209, § 1; 1959, ch. 272, § 1; 1967, ch. 238, § 1; impl. am. Acts 1971, ch. 162, § 3; Acts 1972, ch. 467, § 1; 1974, ch. 444, §§ 1, 2; 1975, ch. 82, § 1; 1976, ch. 841, § 1; 1977, ch. 90, § 1; 1977, ch. 189, § 2; 1978, ch. 643, §§ 1, 2; 1979, ch. 247, §§ 5, 8; T.C.A. (orig. ed.), § 59-704; Acts 1986, ch. 804, § 7; 1987, ch. 446, § 11; 1988, ch. 584, § 4; T.C.A., §§ 55-7-104, 55-7-311; Acts 1996, ch. 802, § 4; 2000, ch. 700, §§ 1, 2, 4, 5; 2001, ch. 200, §§ 1-4; 2003, ch. 365, § 1; 2005, ch. 209, § 2; 2005, ch. 236, § 1.

Compiler's Notes.

Acts 2000, ch. 700, § 13 provided that the commissioner is authorized to promulgate rules and regulations to effectuate the provisions of the act.

Acts 2000, ch. 700, § 14 provided that the act shall only take effect if sufficient funds to implement the provisions of the act are included in the general appropriations act for the fiscal year in which the act becomes effective.

Acts 2003, ch. 365, § 2 provided that the commissioner is authorized to promulgate rules and regulations to effectuate the provisions of the act.

55-50-353. Sexual or violent offender identification.

When the department issues or renews a driver license or photo identification card to a sexual offender, violent sexual offender or violent juvenile sexual offender as required by § 40-39-213, the driver license or photo identification card shall bear a designation sufficient to enable a law enforcement officer to identify the bearer of the license or card as a sexual offender, violent sexual offender or violent juvenile sexual offender.

History.

Acts 2008, ch. 1143, § 2; 2011, ch. 483, § 24.

TITLE 62

PROFESSIONS, BUSINESSES AND TRADES

CHAPTER 38

TATTOOS AND BODY PIERCING

Part 2. General Provisions

SECTION.
62-38-201. Part definitions.
62-38-202. Registration, certification, and inspections for studios — Permit fee schedule — Violations and penalties.
62-38-203. Inspections — Work areas — Premises and equipment.
62-38-204. Tattoo artist and operator registration, licensing and permits — Temporary and apprentice artists.
62-38-205. Temporary locations.
62-38-206. Posting studio certificate permit and copy of statutes.
62-38-207. Records — Signed acknowledgement by parent or guardian of minor — Attestations — Instructions.
62-38-208. Violation for operating without a permit or with a revoked or suspended permit.
62-38-209. Hygiene — Equipment — Bandaging, removal of tattoos.
62-38-210. Local regulations superseded — Applicability to physicians and surgeons.
62-38-211. Tattoos for persons under 18 years of age — Reporting tattooing of minors — Tattoos to cover up existing tattoos for minors 16 years of age or older — False statements of age or exhibiting false identification by minors for purpose of obtaining tattoos.
62-38-212. Possession of tattoo paraphernalia.

Part 3. Body Piercing

62-38-301. Part definitions.
62-38-302. License required — Sanitation and sterilization compliance required.
62-38-303. Permit required.
62-38-304. Inspections.
62-38-305. Minimum age for procedure — Exception authorized with consent — Recordkeeping.
62-38-306. Age restrictions — Required records — Penalty for violations.
62-38-307. Continuing requirements of body piercing business.
62-38-308. Administrative and regulatory action authorized.
62-38-309. Application for commissioner's approval — Requirements — Inspections — Renewals — Temporary permits.
62-38-310. Penalty.

PART 2

GENERAL PROVISIONS

62-38-201. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Antibacterial solution" means any solution used to retard the growth of bacteria approved for application to human skin and includes all products so labeled;

(2) "Client" means any person desiring to receive a tattoo;

(3) "Commissioner" means the commissioner of health;

(4) "Department" means the department of health;

(5) "Disinfectant" means a solution intended to destroy or inactivate specific viruses, bacteria or fungi on inanimate surfaces;

(6) "Germicidal solution" means any solution that destroys germs and is so labeled;

(7) "License" means the issuance of a license to perform tattooing to any individual, partnership, firm or corporation;

(8) "Permit" means the issuance of a permit to a tattoo studio or establishment;

(9) "Registration" means license or permit, as applicable;

(10) "Sanitary" means clean and free of agents of infection;

(11) "Single use" means an item is used one (1) time on one (1) client and then is properly disposed of by appropriate measures;

(12) "Sterilization" means holding in an autoclave for fifteen (15) minutes, at fifteen pounds (15 lbs.) pressure and at a temperature of two hundred fifty degrees fahrenheit (250°F) or one hundred twenty-one degrees celsius (121°C);

(13) "Tattoo" means any method of placing designs, letters, figures, symbols, cosmetics or any other marks under the skin of a person with ink or color by the aid of needles or instruments;

(14) "Tattoo artist" means any person, regardless of age, who engages in the practice/service of tattooing regardless of the type of tattoo or area to be tattooed;

(15) "Tattoo artist registration" means the issuance of a state license authorizing the person named therein to engage in the practice/service of tattooing in this state after fulfilling the requirements in this part;

(16) "Tattoo operator" means any person who controls, operates, conducts or manages any tattoo studio, whether actually engaging in tattooing or not;

(17) "Tattoo studio" means any room or space where tattooing is practiced or where the service of tattooing is conducted;

(18) "Tattoo studio certificate" means the issuance of a written permit, issued by the local county health department, to a tattoo studio stating that the studio, after inspection, was found to be in compliance with this part; and

(19) "Universal precautions" means that all blood and body fluids are treated as to contain all bloodborne pathogens and taking proper precautions to prevent the spread of any bloodborne pathogens.

History.
Acts 1996, ch. 1004, § 2; 1999, ch. 229, §§ 1-3.

62-38-202. Registration, certification, and inspections for studios — Permit fee schedule — Violations and penalties.

(a) No person shall operate a tattoo studio unless the person is registered with the state as an operator or as an artist and the studio has been issued a studio certificate by the local health department. No studio certificate shall be issued or renewed unless the studio has been inspected and found to be in compliance by the local health department.

(b) A studio certificate shall expire on December 31 of each year.

(c) The local health department shall inspect each tattoo studio a minimum of four (4) times each year to ensure compliance with this part.

(d) Tattoo studio violations shall be classified into two (2) categories: critical and minor. Tattoo studios found to have critical violations shall be subject to a one hundred dollar ($100) civil penalty and, if deemed necessary, the immediate shutdown of the tattoo studio. Reinspection for a critical violation shall be within seven (7) days, at which time the tattoo studio may be reopened if the studio is found to be in compliance. If a second critical violation is committed within the period of one (1) year, calendar or otherwise, the tattoo studio shall be subject to a civil penalty of up to five hundred dollars ($500) and the tattoo studio's certificate may be revoked.

(e) Minor violations means all other violations of this part. Tattoo studios with minor violations shall be subject to a twenty-five dollar ($25.00) civil penalty and shall have fourteen (14) days to address and correct the violations. Reinspection for a minor violation shall be at the discretion of the local health department.

(f) A violation may be reviewed by the local health department upon written request of the person or studio committing the violation. A request for review by the local health department shall be made in writing within ten (10) days of receipt of notification of the violation. The local health department should respond to this review within fourteen (14) days.

(g) Critical violations shall include the following:

(1) Autoclave is not in good working order;

(2) Tubes and needles are not sterilized in an approved manner;

(3) Work room is not equipped as required or is not stocked;

(4) Prohibited reuse of single use articles;

(5) Sterile instruments are not handled properly;

(6) Reusable instruments are not handled properly;

(7) Employees with infectious lesions on hands not restricted from tattooing;

(8) Employees not practicing proper cleanliness and good hygiene practices;

(9) Water supply not approved, hot and cold running water under pressure not available;

(10) Approved sewage and liquid waste disposal not available;

(11) Cross connection allowing back-siphonage present in plumbing system;

(12) Toilet and hand washing facilities not available for employees;

(13) Insect and rodent evidence, harborage or outer opening present; or

(14) Toxic items not properly stored, labeled or used.

(h) In all instances of violations, the local health department shall give written notice to the tattoo operator specifying the violations and measures that are necessary to correct the violations. A copy of this notice/inspection sheet shall be signed by the studio and retained by the local health department. Payment of all registrations, fees or fines shall be payable to the local health department having jurisdiction for administrative costs.

(i) A tattoo studio shall pay a permit fee of $280.

(j) If the permit fee is delinquent for more than thirty (30) calendar days, a penalty of one half (½) the permit fee shall be added to the fee. If a check is returned for any reason, a penalty of one half (½) the permit fee shall be added to the fee. The permit fee plus any penalty must be paid before the permit is issued.

(k) A percentage of permit fees, fines and penalties collected within a contract county pursuant to § 62-38-202 shall be conveyed by contract to the respective county health department to assist the county health department in implementing the program in the local jurisdiction. This amount shall be calculated based upon fees collected in the contract county during the state's fiscal year multiplied by ninety-five percent (95%).

History.
Acts 1996, ch. 1004, § 3; 1999, ch. 229, §§ 4, 10-12; 2001, ch. 311, § 5.

62-38-203. Inspections — Work areas — Premises and equipment.

(a) Before a permit to operate a tattoo establishment is granted, the local health department or its duly

authorized agent shall inspect the premises in which the business is to be conducted. If the condition of the premises or its equipment does not conform to the requirements of this part, the local health department shall refuse to issue a permit. If the tattoo establishment conforms to the requirements of this part, the local health department or its duly authorized agent shall issue the permit requested.

(b) Each studio where tattoos are administered shall provide a work area separate from any observers present. No smoking or eating shall take place in the tattoo work area. Clients shall be tattooed only while in the tattoo work area.

(c) Adequate restroom facilities for clients and operators shall be provided within each studio.

(d) A sink with hot and cold running water for handwashing and sterilization, other than a bathroom sink, shall be provided. Sinks shall be equipped with an antibacterial solution and single use towels.

(e) All waste products shall be disposed of in accordance with universal precaution guidelines. All needles or other sharp instruments shall be segregated from other wastes and placed in an approved sharps container.

(f) All furniture and fixtures necessary to the practice of tattooing shall be provided and constructed to ensure adequate cleaning and sanitation. Adequate lighting and ventilation shall be provided in the tattoo studio. Equipment necessary to provide for proper aseptic techniques and sterilization shall be provided, including an autoclave in good repair. Floors, ceilings, walls and restrooms shall be maintained in a sanitary condition. The studio and equipment shall be maintained in good repair and the premises shall be kept clean, neat and free of litter and rubbish.

History.
Acts 1996, ch. 1004, § 4.

62-38-204. Tattoo artist and operator registration, licensing and permits — Temporary and apprentice artists.

(a) No person shall engage in the practice of tattooing or act as a tattoo artist unless the person has registered as a tattoo artist with the department of health. A statewide tattoo artist license shall be issued and is transferable within this state to any studio holding a current studio certificate issued by a local health department. The department of health may, at its option, direct the local health department to act in its behalf in the application, examination and collection of funds concerning tattoo artist registration.

(b) No holder of a studio permit issued under this part shall allow a tattoo artist to engage in tattooing unless the tattoo artist:

(1) Has attained eighteen (18) years of age;

(2) Currently holds a tattoo artist license; and

(3) Either has a fourteen-day temporary permit or has an apprentice artist license.

(c) Any person desiring to engage in the practice of tattooing shall submit an application to the department of health or its designee. There shall be three (3) types of tattoo artist licenses: tattoo artist, apprentice artist and temporary artist. All tattoo artist and apprentice artist registrations shall expire on December 31 of each year. A tattoo artist, apprentice artist and temporary artist shall pay an annual fee of $140.

(d) All tattooing shall be under the auspices of a tattoo studio holding a current studio certificate issued by the local health department.

(e) Each tattoo operator or tattoo artist shall, before receiving a permit to operate a tattoo establishment or to apply a tattoo, undergo a training program to include:

(1) The alliance of professional tattooist course in sterilization;

(2) A local or state health department program;

(3) A course approved by the local health department in methods and techniques for the proper sterilization of instruments and materials used in tattooing; or

(4) Present acceptable evidence of having satisfactorily completed a course of instruction in sterilization techniques and methods from a college/medical sterilization course.

(f) The tattoo operator or tattoo artist, or both, shall be required to take and pass an examination concerning this part before a tattoo artist permit shall be issued. The examination shall be a written examination prescribed by the local health department. After passing the examination and complying with the other provisions of this part, a license shall be issued.

(g) In order to receive a tattoo artist license, the tattooist shall be trained in the profession of tattooing to include sterilization methods in a certified shop for at least one (1) year, under a currently licensed tattoo artist who has been certified and operating in compliance with applicable laws in this state for no less than three (3) years. Out of state tattoo artists must be able to show proof of at least two (2) years' experience as a professional tattoo artist in another state. Business licenses, tax records, etc. may be used to show proof of prior work. Artists currently in business in Tennessee on October 1, 1996, shall be exempt from this subsection (g).

(h) An apprentice artist license shall be issued if an artist is unable to comply with any of the provisions of this part. An artist shall remain an apprentice artist until all qualifications or provisions of this part have been met.

(i) A tattoo operator shall, unless registered as a tattoo artist, register with the department of health and shall comply with all provisions of this part, except for subsection (g). A tattoo operator shall pay an annual fee of $140.

(j) All fees shall be paid to the commissioner. If any fee is delinquent for more than thirty (30) calendar days, a penalty of one half (½) the fee shall be added to the fee. If a check is returned for any reason, a penalty of one half (½) the fee shall be added to the fee. The permit fee plus any penalty must be paid before the permit is issued.

(k) An applicant whose license has expired for more than one (1) year must reapply for licensure pursuant to subsection (g).

History.
Acts 1996, ch. 1004, § 5; 1999, ch. 229, §§ 5-7; 2001, ch. 311, §§ 6-8.

62-38-205. Temporary locations.

(a) A registered tattoo business may set up at temporary locations other than a tattoo studio, e.g., tattoo conventions, with the written approval of the local health department, for a period not to exceed ten (10) days; provided, that each artist not previously registered with the department of health shall register and pay a fee of fifty dollars ($50.00) to the department.

(b) Temporary facilities, e.g., tattoo conventions, shall be held to the same sanitary standards as those required of tattoo studios. Temporary facility permits shall be issued by the local health department, to include:

(1) An area where tattooing can be performed in a limited access location;

(2) Adequate sterilization equipment supplied;

(3) Waste receptacles and sharps containers supplied;

(4) Individual containers of water for each client in single use rinse cups; and

(5) Disinfectant sprays at each tattoo artist's work area.

(c) A temporary tattoo artist registration may be issued for no more than fourteen (14) days. The holder of the studio certificate shall also sign for the temporary license from the department of health and all tattooing shall be under the auspices of the studio certificate holder and in compliance with this part. Artists may apply tattoos if a copy of the state application and a receipt for the fifty dollar ($50.00) fee is on display at the studio. The sterilization course, written examination and work experience shall be waived for the temporary permit. A temporary license is not transferable nor may it be renewed.

History.
Acts 1996, ch. 1004, § 6.

62-38-206. Posting studio certificate permit and copy of statutes.

(a) It is the duty of the owner or operator of a tattoo establishment to post the current studio certificate permit in a conspicuous place where it may be readily observed by the public.

(b) It is the duty of the owner or operator of a tattoo establishment to post a copy of the statutes contained in this part in a conspicuous place where it may be readily observed by the public.

History.
Acts 1996, ch. 1004, § 7; 2012, ch. 981, § 2.

62-38-207. Records — Signed acknowledgement by parent or guardian of minor — Attestations — Instructions.

(a)(1) A record showing the date of a client's visit, the client's name, with the client's signature, address and date of birth, design of the tattoo, its location on the client's body and the name of the tattoo artist who performed the service shall be maintained by tattoo studios for two (2) years.

(2) If tattooing services are provided to a minor pursuant to § 62-38-211, the tattoo artist performing such services shall obtain a signed acknowledgement from the minor's parent or guardian that such parent or guardian has reviewed the statutes contained in this part, and the tattoo studio where such services are performed shall send a copy of both the signed acknowledgement and the record made pursuant to subdivision (a)(1) to the department. The department shall maintain any copy of a record and accompanying signed acknowledgement that it receives pursuant to this subdivision (a)(2) until two (2) years following the eighteenth birthday of the minor who is the subject of the record.

(b) Records shall be entered in ink and shall be made available to the local health department upon request, at a reasonable time, for examination.

(c) Clients receiving a tattoo shall attest to the fact that they are not under the influence of drugs or alcohol.

(d) Printed instructions on the care of skin shall be given to each client after tattooing and a copy of the instructions shall be posted in a conspicuous place in the tattoo studio.

History.
Acts 1996, ch. 1004, § 8; 2008, ch. 803, § 1; 2012, ch. 981, § 3.

Compiler's Notes.
Acts 2008, ch 803, § 5 provided that for purposes of carrying out the provisions of sections 1 and 2 of the act, which transferred provisions regarding the tattooing of minors from § 62-38-207 to new § 62-38-211, the department of health is authorized to promulgate rules and regulations. The rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

62-38-208. Violation for operating without a permit or with a revoked or suspended permit.

(a) Any person who does not obtain a permit as required in § 62-38-202 or whose permit has been revoked or suspended and who continues to tattoo or operate a tattoo establishment commits a Class B misdemeanor punishable only by a fine of five hundred dollars ($500).

(b) Any suspension or revocation may be appealed to the local health officer who shall then conduct a hearing of the appeal in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The decision made by the local health officer concerning the appeal may be appealed to the commissioner, the appeal to the commissioner being limited to the issue of determining whether a material error of law was made at the hearing level.

(c) The department is encouraged to utilize its existing resources to collaborate with local law enforcement to identify and assess administrative penalties against persons who violate this part.

History.
Acts 1996, ch. 1004, § 9; 1999, ch. 229, § 8; 2012, ch. 981, § 4.

62-38-209. Hygiene — Equipment — Bandaging, removal of tattoos.

(a) Each tattoo artist shall use a single use lap cloth.

(b) Each tattoo artist shall thoroughly wash the tattoo artists's hands with an antibacterial solution and hot running water prior to and after administering any tattoo.

(c) Disposable, latex examination gloves shall be worn by a tattoo artist at all times while administering any tattoo. Gloves shall be changed and properly disposed of each time there is an interruption in the application of a tattoo or whenever their ability to function as a barrier is compromised.

(d) Only single use supplies or sterilized equipment may be used to apply a tattoo and shall be disposed of after each tattoo. This subsection (d) includes single use disposable razors, single use towels or wipes, lubricants from a collapsible tube and single use paper stencils or plastic stencils soaked in a germicidal solution. If the design is drawn directly onto the skin, it shall be applied only with a single use article. Dyes or pigments should be manufactured for the sole purpose of tattooing. Single use or individual portions of dye and ink pots or trays shall be used. After tattooing, single use items, dyes and containers shall be discarded and the tattoo area disinfected.

(e) All tubes and needles should be sealed for individual client use in autoclave bags with an autoclave indicator and date of sterilization clearly visible. Autoclave bags may be stored for use for up to one (1) year. Autoclave sterilization minimum standards shall mean holding in an autoclave for twenty (20) minutes, at fifteen pounds (15 lbs.) pressure, at a temperature of two hundred sixty degrees fahrenheit (260° F.) or one hundred twenty-seven degrees celsius (127° C). After tattooing, used nondisposable instruments such as tubes shall be kept in a separate, puncture resistant container until properly cleaned, disinfected and sterilized using universal precautions and recognized medical methods.

(f) Each tattoo shall be bandaged, when applicable, before leaving the tattoo studio.

(g) No tattoo artist shall remove or attempt to remove any tattoo.

History.
Acts 1996, ch. 1004, § 10.

62-38-210. Local regulations superseded — Applicability to physicians and surgeons.

(a) This part shall supersede all county and local regulations concerning tattooing to give uniformity in compliance within this state.

(b) This part does not apply to any physician, surgeon or any person under the supervision of a physician or surgeon who is licensed to practice medicine in this state.

(c) The commissioner shall promulgate rules governing implementation of this chapter.

History.
Acts 1996, ch. 1004, § 11; 1999, ch. 229, § 9; 2012, ch. 981, § 7.

62-38-211. Tattoos for persons under 18 years of age — Reporting tattooing of minors — Tattoos to cover up existing tattoos for minors 16 years of age or older — False statements of age or exhibiting false identification by minors for purpose of obtaining tattoos.

(a) Except as provided in subsection (c), it is a Class A misdemeanor to tattoo a person under eighteen (18) years of age.

(b)(1) Any parent, legal guardian, teacher or medical provider or school resource officer for a minor under eighteen (18) years of age, who discovers that a minor has been tattooed is encouraged to report such discovery to the department within three (3) weekdays of making such discovery. Any report made pursuant to this subdivision (b)(1) shall be accompanied by the following information, to the extent that such information is known to the person making the report:

(A) The name, mailing address, telephone number, and email address of the minor's parent or legal guardian; and

(B) The name, mailing address, telephone number, and email address of the person who tattooed the minor.

(2) Within fourteen (14) days of receiving a report that is made pursuant to subdivision (b)(1), which report includes the name and mailing address of the parent or legal guardian of the minor who is the subject of the report, the department shall provide to the minor's parent or legal guardian, by first class United States mail, a written acknowledgement of receipt of the report.

(3) The department shall establish by rule a process whereby the reports that are required by this subsection (b) may be made by telephone. The department is authorized to establish by rule processes whereby the reports that are required by this subsection (b) may be made in person or by mail, email or other means of communication.

(c)(1) With the written consent of the parent or legal guardian, a minor sixteen (16) years of age or older may be tattooed to cover up an existing tattoo. A parent or legal guardian must present proof of guardianship or custody of the minor, an acknowledgement of receipt of a report provided pursuant to subdivision (b)(2), and must be present during the procedure.

(2) For purposes of subdivision (c)(1), "proof of guardianship or custody" includes a copy of an order of guardianship, a decree for custody, a birth certificate or any other form of proof of guardianship or custody that is permitted by rule of the department of health.

(d) Any person under eighteen (18) years of age who knowingly makes a false statement or exhibits false identification to the effect that the person is eighteen (18) years of age or older to any person providing tattoo

services licensed or permitted under this part for the purpose of purchasing or obtaining the same commits delinquent acts taken through juvenile courts and the person shall be punished by a fine of not less than fifty dollars ($50.00) nor more than two hundred fifty dollars ($250) and not less than twenty (20) hours of community service work, which fine or penalty shall not be suspended or waived.

History.
Acts 2008, ch. 803, § 2; 2012, ch. 981, § 5.

Compiler's Notes.
Acts 2008, ch 803, § 5 provided that for purposes of carrying out the provisions of sections 1 and 2 of the act, which transferred provisions regarding the tattooing of minors from § 62-38-207 to new § 62-38-211, the department of health is authorized to promulgate rules and regulations. The rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

62-38-212. Possession of tattoo paraphernalia.

(a) For the purposes of this section, "tattoo paraphernalia" includes, but is not limited to, any equipment, design patterns or needles used or intended for use in tattooing, whether professionally made or homemade, with the intent to permanently mark or color the skin with any pigment, ink, or dye that leaves a visible scar on the skin.

(b)(1) Except when used or possessed with the intent to use by a person licensed under this part, it is unlawful for any person to use, or to possess with intent to use, tattoo paraphernalia.

(2) Any person who violates this subsection (b) commits a Class A misdemeanor.

History.
Acts 2012, ch. 981, § 6.

PART 3

BODY PIERCING

62-38-301. Part definitions.

As used in this part:

(1) "Antibacterial" means a substance that inhibits and reduces the growth of bacteria;

(2) "Approval" means written approval from the department of health indicating that the body piercing establishment has been inspected and meets all the terms of this part and the applicable rules;

(3) "Body piercing" means the piercing of any part of the body for compensation by someone, other than a physician licensed under title 63, who utilizes a needle or other instrument for the purpose of inserting an object into the body for nonmedical purposes. "Body piercing" includes ear piercing except when the ear piercing procedure is performed on the ear with an ear piercing gun;

(4) "Body piercing establishment" means any place, whether temporary or permanent, stationary or mobile, wherever situated, where body piercing is performed, including any area under the control of the operator;

(5) "Body piercing establishment permit" or "permit" means the issuance of a written permit by the department to a body piercing establishment stating that the establishment, after inspection, was found to be in compliance with this part;

(6) "Body piercing operator" or "operator" means a person who controls, operates, conducts or manages a body piercing establishment, whether or not the operator is actually engaging in body piercing;

(7) "Body piercing service" or "body piercing procedure" means the service performed or the procedure utilized for body piercing;

(8) "Body piercing technician" or "technician" means a person at least eighteen (18) years of age who engages in the practice or service of body piercing, regardless of the type of body ornament utilized or the body area to be pierced;

(9) "Body piercing technician license" means the issuance of a state license authorizing the person named in the license to engage in the practice or service of body piercing after fulfilling the requirements of this part;

(10) "Business" means any entity that provides body piercing services or procedures for compensation;

(11) "Commissioner" means the commissioner of health or the designee of the commissioner;

(12) "Department" means the department of health;

(13) "Disinfecting" means a process that kills or destroys nearly all disease-producing microorganisms, with the exception of bacterial spores;

(14) "License" means the issuance of a license to perform body piercing to an individual, partnership, firm, association or corporation;

(15) "Minor" means an individual under the age of eighteen (18);

(16) "Patron" means a person requesting and receiving body piercing services;

(17) "Premises" means the physical location of an establishment that offers and performs body piercing services;

(18) "Proof of age" means a driver license or other generally accepted means of identification that describes the individual as eighteen (18) years of age or older, contains a photograph or other likeness of the individual and appears on its face to be valid;

(19) "Sterilization" means holding in an autoclave for fifteen (15) minutes at fifteen (15) pounds of pressure and at a temperature of two hundred and fifty degrees Fahrenheit (250° F) or one hundred and twenty-one degrees Celsius (121° C);

(20) "Sterilize" means a process by which all forms of microbial life, including bacteria, viruses, spores, and fungi, are destroyed; and

(21) "Universal precautions" means that all blood and body fluids are treated so as to contain all blood

borne pathogens and taking proper precautions to prevent the spread of any blood borne pathogens.

History.
Acts 2001, ch. 336, § 2.

Compiler's Notes.
Former part 3, §§ 62-38-301 — 62-38-303 (Acts 1999, ch. 333, § 1), was repealed and replaced by Acts 2001, ch. 336 § 1, effective January 1, 2002.

62-38-302. License required — Sanitation and sterilization compliance required.

No person shall perform a body piercing procedure without a license and in a manner that does not meet the standards for appropriate disinfecting and sterilization of invasive equipment used in performing the procedures established by this part and the rules adopted pursuant to this part.

History.
Acts 2001, ch. 336, § 3.

Compiler's Notes.
Former part 3, §§ 62-38-301 — 62-38-303 (Acts 1999, ch. 333, § 1), was repealed and replaced by Acts 2001, ch. 336 § 1, effective January 1, 2002.

62-38-303. Permit required.

(a) To receive approval to offer body piercing services, a business must obtain a permit and demonstrate to the commissioner the ability to meet the requirements established by this part and the rules adopted pursuant to this part for safe performance of the body piercing procedures, training of the individuals who perform the procedures and maintenance of the required records.

(b) No person shall operate a business that offers body piercing services unless the commissioner has approved the business pursuant to this part. No person shall perform a body piercing procedure in a way that does not meet the safety and sanitation standards established pursuant to this part.

History.
Acts 2001, ch. 336, § 4.

Compiler's Notes.
Former part 3, §§ 62-38-301 — 62-38-303 (Acts 1999, ch. 333, § 1), was repealed and replaced by Acts 2001, ch. 336 § 1, effective January 1, 2002.

62-38-304. Inspections.

The commissioner shall conduct at least one (1) inspection of a business prior to issuing a permit under this part for a business to offer and perform body piercing services. The commissioner may conduct additional inspections as necessary for the approval process relative to each business. The commissioner may inspect an approved business at any time the commissioner deems necessary. In an inspection, the commissioner shall be given access to the premises of the business and to all records deemed relevant by the commissioner for the inspection.

History.
Acts 2001, ch. 336, § 5.

62-38-305. Minimum age for procedure — Exception authorized with consent — Recordkeeping.

(a) No person shall perform a body piercing procedure on an individual who is under eighteen (18) years of age unless written consent has been given by the individual's parent, legal guardian or legal custodian in accordance with subsection (b); however, this subsection (a) shall not apply to an individual who has been emancipated by marriage or by a court order directly pertaining to body piercing.

(b) A parent, legal guardian or legal custodian of an individual under age eighteen (18) who desires to give consent to a business for performance of a body piercing procedure on the individual under the age of eighteen (18) shall do all of the following:

(1) Appear in person at the business at the time the procedure is performed;

(2) Sign a document provided by the business that explains the manner in which the procedure will be performed and the methods for proper care of the affected body area following performance of the procedure;

(3) Produce proof of age;

(4) Sign a statement that the individual is the minor's parent, legal guardian or legal custodian;

(5)(A) Present proof of guardianship or custody of the minor;

(B) For purposes of subdivision (b)(5)(A), "proof of guardianship or custody" includes a copy of an order of guardianship, a decree for custody, a birth certificate or any other form of proof of guardianship or custody that is permitted by rule of the department of health; and

(6) Sign a statement as specified by rule stating in writing that the individual consents to the procedure being performed on the minor and that the individual providing consent is in fact the parent, legal guardian or legal custodian of the minor. The statement shall include the following declarations and disclosures:

(A) The undersigned is fully aware that to falsify legal standing as to parentage or being the legal guardian or legal custodian is a Class C misdemeanor; and

(B) Pursuant to § 40-35-111, a Class C misdemeanor means imprisonment for a period of no greater than thirty (30) days or a fine not to exceed fifty dollars ($50.00), or both.

(c) Records of body piercing procedures performed on minors shall be maintained by the operator for two (2) years. A copy of all paperwork on a minor shall be forwarded to the department within thirty (30) business days following the performance of the body piercing procedure, and the department shall retain such paperwork for two (2) years. The paperwork shall include, but not be limited to:

(1) The signed document that explains the manner in which the procedure will be performed and the

methods for proper care;

(2) A copy of the proof of age;

(3) The statement in writing that the individual is the minor's parent, legal guardian or legal custodian; and

(4) The signed statement that provides consent to perform a body piercing procedure on a minor that stipulates that the individual understands the consequences for falsifying the individual's legal standing as to parentage or being the legal guardian or legal custodian.

History.
Acts 2001, ch. 336, § 6; 2008, ch. 803, § 3.

62-38-306. Age restrictions — Required records — Penalty for violations.

(a)(1) Unless consent has been given in accordance with § 62-38-305, no individual who is under age eighteen (18) shall obtain or attempt to obtain a body piercing procedure.

(2) No individual shall knowingly show or give false information concerning the individual's name, age or emancipation.

(b)(1) No individual shall knowingly show or give any false information as to the name, age or other identification of an individual who is under age eighteen (18) for the purpose of obtaining for the individual under age eighteen (18) a body piercing procedure.

(2) No individual shall impersonate the parent, legal guardian or legal custodian of an individual who is under age eighteen (18) for the purpose of obtaining for the individual under age eighteen (18) a body piercing procedure.

(3) The operator shall require proof of age for any patron under the age of twenty-seven (27) and the operator shall retain a copy of the patron's proof of age documentation in the files of the business for a period of two (2) years from the time of the body piercing.

(c) It is a Class C misdemeanor for a violation of subdivision (b)(2) by an individual over the age of seventeen (17) who impersonates a parent, legal guardian or legal custodian.

History.
Acts 2001, ch. 336, § 7.

62-38-307. Continuing requirements of body piercing business.

Each operator of a business that offers body piercing services shall do all of the following:

(1) Maintain procedures for ensuring that the technicians who perform body piercing procedures are adequately trained to perform the procedures properly;

(2) Comply with the safety and sanitation requirements for preventing transmission of infectious diseases;

(3) Require the technicians who perform body piercing procedures to disinfect and sterilize all invasive equipment or parts of equipment used in performing the procedures; and

(4) Ensure that weekly tests of the business's heat sterilization devices are performed that indicate whether the devices are killing microorganisms. The operator shall maintain documentation that the weekly tests are being performed, as well as the results of each test.

History.
Acts 2001, ch. 336, § 8.

62-38-308. Administrative and regulatory action authorized.

(a) The commissioner shall promulgate emergency rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, for the implementation and enforcement of this part. The rules shall include, at a minimum, all of the following:

(1) Safety and sanitation standards and procedures to be followed to prevent the transmission of infectious diseases during the performance of body piercing procedures, including a requirement that the operator provide to each patron printed instructions on the care of the skin after body piercing and requiring a copy of the instructions to be posted in a conspicuous place in the body piercing establishment;

(2) Standards and procedures to be followed for appropriate disinfecting and sterilization of all invasive equipment or parts of equipment used in body piercing procedures; and

(3) Procedures for suspending and revoking licenses and permits pertaining to body piercing.

(b) The rules promulgated pursuant to this part shall establish universal blood and body fluid precautions to be used by any technician who performs body piercing procedures.

(c) The rules promulgated pursuant to this part may include standards and procedures to be followed by a business that offers body piercing services to ensure that the technicians who perform body piercing procedures for the business are adequately trained to perform the procedures properly.

(d) The rules promulgated pursuant to this part shall establish fees for issuing licenses and permits, as well as penalties for late payment. The fees shall be sufficient to cover one hundred percent (100%) of the department's cost of the program.

History.
Acts 2001, ch. 336, § 9; 2009, ch. 566, § 12.

Compiler's Notes.
Acts 2009, ch. 566, § 12 provided that the Tennessee code commission is directed to change all references to public necessity rules, wherever such references appear in this code, to emergency rules, as sections are amended and volumes are replaced.

62-38-309. Application for commissioner's approval — Requirements — Inspections — Renewals — Temporary permits.

(a) No person shall operate a business offering body piercing services without first obtaining approval of the commissioner.

(b) Persons seeking approval to operate a business offering body piercing services shall apply to the commissioner on forms provided by the department. An applicant shall submit all applicable fees and information required by the department for processing the application. Information required by the department shall include, but not be limited to, the following:

(1) If the operator is an individual, the operator's name, personal address, personal telephone number, business address, business telephone number and the operator's occupation;

(2) A statement attesting that the operator intends to comply with all requirements of this part and the rules promulgated pursuant to this part;

(3) Plans and specifications of the place of business to clearly show that applicable provisions of the rules promulgated pursuant to this part are met, such plans and specifications to include, but not be limited to, the following:

(A) The total area to be used for the business;

(B) All entrances and exits;

(C) Number, location and types of plumbing fixtures, including all water supply facilities;

(D) A lighting plan;

(E) A floor plan showing the general layout of fixtures, equipment and body piercing stations; and

(F) A listing of all equipment to be used for body piercing procedures;

(4) Evidence that the operator shall perform the following functions:

(A) The operator shall maintain procedures ensuring that all technicians performing body piercing on the business premises have received appropriate training in body piercing;

(B) The operator shall maintain procedures ensuring that all technicians performing body piercing services for the business shall have received training, as evidenced by records of completion of courses or seminars provided by licensed physicians, registered nurses, organizations such as the American Red Cross, accredited learning institutions, appropriate governmental entities or other authorities recognized by the commissioner as being qualified to provide training in the following categories:

(i) First aid;

(ii) Safety and sanitation requirements for preventing transmission of infectious diseases;

(iii) Universal precautions against blood borne pathogens;

(iv) Appropriate piercing aftercare; and

(v) Any other training deemed appropriate by the commissioner;

(C) The operator shall maintain written records of equipment utilized by the business, including manufacturers, model numbers and dates of acquisition or purchase;

(D) The operator shall maintain procedures ensuring that technicians performing body piercing services on the business premises shall disinfect and sterilize all nondisposable equipment or parts of equipment used in performing procedures, as well as properly dispose of disposable items used in the procedures;

(E) The operator shall maintain procedures ensuring the performance of weekly biological monitoring tests of the business's heat sterilization devices to include the following:

(i) Maintenance of a log of all tests performed, the date of each test and the name of the person or independent testing entity performing the test;

(ii) Procedures for remedial action on the part of the operator to assure compliance with all sterilization requirements in the event a test indicates a heat sterilization device is not functioning properly; and

(iii) Any other tests deemed appropriate by the commissioner;

(F) The operator shall maintain records of each test performed and the results of each test for at least two (2) years and shall make the test records available to the commissioner upon request during normal business hours; and

(G) The operator shall maintain procedures ensuring the general health and safety of all individuals employed by the business;

(5) The operator shall identify any previous, current or similar approvals held by the operator for body piercing services in this state or any other state;

(6) The operator shall provide evidence and documentation of all applicable fee payments, inspections and approvals; and

(7) The operator shall make inquiry with each patron as to whether the patron is under the influence of drugs or alcohol, and the patron must state in writing that the patron is not under the influence of drugs or alcohol before any body piercing procedure may be performed.

(c) The commissioner shall conduct at least one (1) inspection of a business prior to approving it and before a permit is issued. The commissioner may conduct additional inspections as deemed necessary for approval purposes.

(d) Licenses and permits shall be valid for up to one (1) year; however, all licenses and permits shall expire on December 31 following the date of issuance.

(e) The operator shall give the commissioner access to the business premises and to all records required by this part that are deemed relevant by the commissioner for the purpose of making an inspection. All records shall be entered in ink or other permanent form and shall be made available to the commissioner upon request at any time during normal business hours of operation.

(f) A permit is not transferable. Any permanent change in location or change in ownership to any degree shall necessitate the operator's applying for a new permit with payment of all fees established by the commissioner.

(g) The department shall approve any such business for the purposes of operating on a time-limited basis in conjunction with a specific event. Time-limited body

piercing establishments may be permitted at such events as fairs and other time-limited gatherings, if the commissioner determines that the body piercing operator meets the provisions contained in this part and the rules promulgated by the department. For the purpose of approval, the following shall occur:

(1) A permitted body piercing establishment may set up temporary locations, including, but not limited to, body piercing conventions, at a place other than a body piercing establishment only with the approval of the commissioner for a period not to exceed ten (10) days; provided, that each technician not previously licensed with the Tennessee department of health shall obtain a license prior to performing body piercing at a temporary location;

(2) Temporary facilities shall be held to the same sanitary standards as those required of body piercing establishments;

(3) Temporary facility permits shall be issued by the commissioner and shall not be transferable or renewable;

(4) A temporary body piercing technician license shall not be issued for more than fourteen (14) days. The operator of the related establishment shall also sign for the temporary license from the department, and all body piercing shall be under the auspices of the body piercing establishment operator and shall be in compliance with this part. Technicians may perform body piercing if a copy of the temporary permit and the temporary technician license are on display at the temporary site. The sterilization course, written examination and work experience requirements may be waived by the commissioner for a temporary license;

(5) The applicant or operator shall submit all applicable fees and information the department determines necessary to process the application. The department shall take into consideration the department's costs associated with carrying out this subsection (g) when determining the appropriate fee.

(h) The permit of a business may be renewed annually by the department. Renewal shall occur following an annual inspection, assurance that all conditions set forth in this part, as well as the rules, are met and the payment of all fees set by the commissioner has been received.

History.
Acts 2001, ch. 336, § 10.

62-38-310. Penalty.

A violation of this part by an operator or a technician is a Class B misdemeanor.

History.
Acts 2001, ch. 336, § 11.

TITLE 63

PROFESSIONS OF THE HEALING ARTS

CHAPTER 2

MEDICAL RECORDS

SECTION.
63-2-101. Release of medical records — Definitions.

63-2-101. Release of medical records — Definitions.

(a)(1) Notwithstanding any other provision of law to the contrary, a health care provider shall furnish to a patient or a patient's authorized representative a copy or summary of such patient's medical records, at the option of the health care provider, within ten (10) working days upon request in writing by the patient or such representative.

(2) If a provider fails to comply with the provisions of subdivision (a)(1), proper notice shall be given to the provider's licensing board or boards, and the provider may be subject to disciplinary actions that include sanctions and a monetary fine.

(b)(1)(A) Except as otherwise provided by law, such patient's medical records shall not constitute public records, and nothing contained in this part shall be deemed to impair any privilege of confidentiality conferred by law on patients, their personal representatives or heirs. Nothing in this subsection (b) shall impair or abridge the right of the patient or the patient's authorized representative to obtain copies of the patient's hospital records in the manner provided in § 68-11-304. Nothing in this subsection (b) shall be construed as prohibiting a patient's medical records from being subpoenaed by a court of competent jurisdiction.

(B) As used in subdivision (b)(1)(A), "medical records" includes any list of patients that is compiled or maintained by or for such patient's health care provider.

(2) Except for any statutorily required reporting to health or government authorities and except for access by an interested third-party payer or their designee for the purpose of utilization review, case management, peer reviews or other administrative functions, the name and address and other identifying information of a patient shall not be divulged. The name and address and other identifying information shall not be sold for any purpose. Any violation of this subdivision (b)(2) shall be an invasion of

the patient's right to privacy.

(3) Except as otherwise authorized in this section, title 38, chapter 7, part 1, title 68, chapter 11, part 3 and title 68, chapter 11, part 15, a health care provider shall have in place a policy to protect the dignity of a patient, even if the patient dies or becomes incapacitated, by limiting the use and disclosure of medical records, images, videos or pictures intended to be used for appropriate medical educational purposes, even if the patient's information is de-identified. The policy shall include when and to whom it is appropriate to use and disclose the patient's information, and when a written authorization from the patient or their authorized representative is required, whenever it is reasonably possible to obtain it, prior to use or disclosure. If the patient becomes incapacitated or dies, and there is no legal representative for the patient, the patient's next of kin will be considered to be an authorized representative for the patient. When required the written authorization will include the core elements required by 45 CFR Parts 160 and 164, "Standards for Privacy of Individually Identifiable Health Information."

(c) As used in this chapter:

(1) "De-identified" means there is no reasonable basis to believe that the information can be used to identify an individual and there is compliance with the requirements for de-identification outlined in 45 CFR Part 164, § 164.514 "Other requirements relating to uses and disclosures of protected health information;"

(2) "Health care provider" means any person required to be licensed under this title;

(3) "Incapacitated" means that a patient is in a physical or mental condition such that the patient is incapable of granting or denying informed consent; and

(4) "Medical records" means all medical histories, records, reports and summaries, diagnoses, prognoses, records of treatment and medication ordered and given, X-ray and radiology interpretations, physical therapy charts and notes and lab reports.

(d) Nothing in this chapter shall be construed to prevent a true, correct and complete copy of the medical records from being subject to a subpoena duces tecum.

(e) To further the effectiveness of the immunization program of the department of health, a physician or any third party payor or health insurance entity regulated by the department of commerce and insurance doing business in Tennessee, or any entity that has elected, organized and qualified as a self-insured entity that provides information to the department regarding a child's immunization status for any of the following purposes shall not be subject to liability or cause of action or a claim of any nature, including any licensing board disciplinary action, arising solely from the disclosure of information concerning such child's immunization status:

(1) Compliance with the laws regarding child care and school attendance;

(2) Ensuring that a child receives such immunization as is medically appropriate or assisting in efforts to ensure a child is appropriately immunized;

(3) Providing immunization information to the immunization registry maintained by the department;

(4) Insuring compliance with the provisions of the Families First Act, compiled in title 71, chapter 3, part 1; or

(5) Providing information that will allow the department to determine immunization levels in Tennessee.

(f) All information received by the department pursuant to this part from any source shall be confidential and unavailable to the public. Contact of a parent or guardian of a child by the department regarding the child's immunization status as the result of the department's contact with the physician shall not be held to be a breach of confidentiality by the reporting physician.

(g) The names of all children shall be included on the immunization registry established by title 37, chapter 10, part 4, unless such child's custodial parent or guardian objects to the inclusion of the child's name on the immunization registry to the department. The department shall notify the child's custodial parent or guardian in writing within six (6) months of the child's birth that inclusion on the immunization registry is not mandatory. Upon such written or oral request of exclusion by the child's custodial parent or guardian, the department shall either remove the child's name from the immunization registry or refrain from adding the child's name to the immunization registry and confirm in writing to the child's custodial parent or guardian that the child's name has been excluded from the immunization registry.

(h) Notwithstanding the provisions of this part or any other law to the contrary, it shall not be unlawful to disclose, nor shall there be any liability for disclosing, medical information in response to a subpoena, court order or request authorized by state or federal law.

(i) Providers, as defined in § 71-5-2503, shall make available for inspection and copying to the office of inspector general and the medicaid fraud control unit, upon request, no later than by the close of business on the next business day, a complete set of all medical records requested in connection with an investigation being pursued by the agency or shall provide a compelling reason why the requested records cannot be produced; provided, that no such records shall be removed from the grounds of the provider's office without the provider's consent, unless the office of inspector general or the medicaid fraud control unit reasonably believes that the requested documents are about to be altered or destroyed.

(j) On request of a provider, a duly authorized agent of the requesting agency shall sign a document acknowledging receipt of records produced pursuant to this section. On request of a duly authorized agent of the requesting agency, a duly authorized agent of the provider shall sign a document acknowledging the return of specific records to the provider.

(k) No person or entity shall be subject to any civil or criminal liability for releasing patient information in response to a request from the office of inspector general or the medicaid fraud control unit.

History.
Acts 1990, ch. 1067, § 1; 1996, ch. 862, §§ 1, 2; 1996, ch. 881, § 2; 1997, ch. 420, §§ 1, 2; 1999, ch. 386, § 1; 2003, ch. 40, § 1; 2005, ch. 113, § 1; 2005, ch. 474, § 12; 2010, ch. 862, §§ 2, 3.

Compiler's Notes.
Acts 2010, ch. 862, § 1 provided that the act shall be known and may be cited as the "Colby Stansberry Act."

TITLE 67

TAXES AND LICENSES

CHAPTER 4

PRIVILEGE AND EXCISE TAXES

Part 4. General Revenue Law — Privileges Taxable by State Only

SECTION.
67-4-411. Marriage licenses — Funding for family violence shelter and services.

Part 5. General Revenue Law — Privileges Taxable by State and Local Governments

67-4-505. Marriage licenses.

PART 4

GENERAL REVENUE LAW — PRIVILEGES TAXABLE BY STATE ONLY

67-4-411. Marriage licenses — Funding for family violence shelter and services.

(a) In addition to the privilege tax on marriage licenses under § 67-4-505, the county clerk shall collect and forward to the commissioner of revenue a tax of fifteen dollars ($15.00) for each marriage license issued.

(b) Funding for family violence shelters and shelter services shall be as provided by the general appropriations act in each year.

History.
Acts 1984, ch. 930, § 7; 1990, ch. 846, §§ 1, 2.

PART 5

GENERAL REVENUE LAW — PRIVILEGES TAXABLE BY STATE AND LOCAL GOVERNMENTS

67-4-505. Marriage licenses.

The privilege tax on marriage licenses shall be five dollars ($5.00) each and the tax is to be kept in the county for school purposes.

History.
Acts 1937, ch. 108, art. 2, § 1, Item 57; C. Supp. 1950, § 1248.2, Item 62 (Williams, § 1248.70); modified; Acts 1981, ch. 69, § 1; T.C.A. (orig. ed.), §§ 67-4203, Item 62, 67-4-502.

TITLE 68

HEALTH, SAFETY AND ENVIRONMENTAL PROTECTION

HEALTH

CHAPTER 1

DEPARTMENT OF HEALTH

Part 1. General Provisions

SECTION.
68-1-125. Funds for in-home visitation programs — Emphasis on evidence-based programs — Report on findings.

Part 8. Care of Newborn Infants

68-1-801. Part definitions.
68-1-802. Development of plan for perinatal care.
68-1-803. Appointment of advisory committee — Terms — Travel expenses.
68-1-804. Items to be considered for inclusion in program.

PART 1

GENERAL PROVISIONS

68-1-125. Funds for in-home visitation programs — Emphasis on evidence-based programs — Report on findings.

(a) As used in this section, unless the context otherwise requires:

(1) "Evidence-based" means a program or practice that meets the following requirements:

(A) The program or practice is governed by a program manual or protocol that specifies the nature, quality, and amount of service that constitutes the program; and

(B) Scientific research using methods that meet high scientific standards, evaluated using either randomized controlled research designs, or quasi-experimental research designs with equivalent comparison groups. The effects of such programs must have demonstrated using two (2) or more separate client samples that the program improves client outcomes central to the purpose of the program;

(2) "In-home visitation" means a service delivery strategy that is carried out in the homes of families of children from conception to school age that provides

culturally sensitive face-to-face visits by nurses, other professionals, or trained and supervised lay workers to promote positive parenting practices, enhance the socioemotional and cognitive development of children, improve the health of the family, and empower families to be self-sufficient. "In-home visitation" does not include any medicaid funded disease management or case management services or programs which may include home visits;

(3) "Pilot program" means a temporary research-based or theory-based program or project that is eligible for funding from any source to determine whether or not evidence supports its continuation beyond the fixed evaluation period. A pilot program must provide for and include:

(A) Development of a program manual or protocol that specifies the nature, quality, and amount of service that constitutes the program; and

(B) Scientific research using methods that meet high scientific standards for evaluating the effects of such programs must demonstrate on at least an annual basis whether or not the program improves client outcomes central to the purpose of the program;

(4) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based; and

(5) "Theory-based" means a program or practice that has general support among treatment providers and experts, based on experience or professional literature, may have anecdotal or case-study support, and has potential for becoming a research-based program or practice.

(b)(1) With the long-term emphasis on procuring services whose methods have been measured, tested, and demonstrated to improve client outcomes, the department of health, and any other state agency that administers funds related to in-home visitation programs shall ensure that fifty percent (50%) of state-appropriated funds expended for in-home visitation services are used for evidence-based models during fiscal year 2012-2013 and that seventy-five percent (75%) of such funds are used for evidence-based programs during fiscal year 2013-2014 and each subsequent fiscal year thereafter.

(2) With the goal of identifying and expanding the number and type of available evidence-based programs, the department shall continue the ongoing research and evaluation of sound, theory-based and research-based programs and to that end the department may engage in and fund pilot programs as defined in this section.

(c) The department shall include in any contract with a provider of services related to in-home visitation programs a provision requiring that the provider shall set forth a means to measure the outcome of the services. The measures must include, but not be limited to, the number of people served, the type of services provided, and the estimated rate of success of the population served.

(d) The department of health, in conjunction with a representative of the Tennessee commission on children and youth, and with ongoing consultation of appropriate experts and representatives of relevant providers who are appointed by the commissioner of health to provide such consultation, shall determine which of its current programs are evidence-based, research-based and theory-based, and shall provide a report of those findings, including an explanation of the support of those findings, to the governor, the health and welfare committee of the senate, the civil justice committee of the house of representatives and the judiciary committee of the senate by no later than January 1 of each year. The department of health shall also provide in its report the measurements of the individual programs, as set forth in subsection (c).

History.

Acts 2008, ch. 1029, §§ 1, 2; 2011, ch. 410, § 3(ee); 2012, ch. 873, §§ 1-3; 2013, ch. 236, § 24.

Compiler's Notes.

Acts 2008, ch. 1029, § 3 provided that the commissioner of health is authorized to promulgate rules and regulations to effectuate the purposes of this act. All rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

For the Preamble to the act concerning the prohibition against establishment of a special committee if there is a standing committee on the same subject, please refer to Acts 2011, ch. 410.

Acts 2012, ch. 873, § 4 provided that the commissioner of health is authorized to promulgate rules and regulations for the administration of the act, which amended the definitions of "evidence-based" and "in-home visitation" and amended subdivision (b)(1). All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

PART 8

CARE OF NEWBORN INFANTS

68-1-801. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Commissioner" means the commissioner of health or the commissioner's designated representative;

(2) "Committee" means the perinatal advisory committee;

(3) "Department" means the department of health; and

(4) "Perinatal" means the period from time of conception through the first year of life of the infant and sixty (60) days post partum for the mother.

History.

Acts 1974, ch. 645, § 1; 1977, ch. 327, § 1; T.C.A., § 53-127.

68-1-802. Development of plan for perinatal care.

(a) The department is directed to develop a plan to establish a program for the diagnosis and treatment of certain life-threatening conditions present in the perinatal period.

(b) The program shall assist pregnant women and their fetuses and newborn infants by developing a regionalized system of care, including highly specialized personnel, equipment and techniques, that will

decrease the existing high mortality rate and the life-long disabilities that currently prevail in surviving newborn infants.

(c) No programs shall be planned except those that are specifically funded by appropriations in the annual budget.

History.
Acts 1974, ch. 645, § 2; 1977, ch. 327, § 2; T.C.A., § 53-128.

68-1-803. Appointment of advisory committee — Terms — Travel expenses.

(a) The commissioner shall appoint a perinatal advisory committee to consult with the department in the administration of this part.

(b) The committee shall be composed of the director, or the director's designee, of each obstetrical and each newborn unit of each regional perinatal center within the state, as designated by the commissioner, in addition to at least one (1) representative from each of the following categories:

(1) Medical schools;

(2) Health and environment agencies;

(3) Hospital administrators;

(4) Medical specialists in obstetrical and newborn conditions;

(5) Family physicians;

(6) Obstetrical and neonatal intensive care nurses; and

(7) The general public.

(c) Total membership of the committee shall not exceed twenty-one (21).

(d) Each member shall hold office for a term of four (4) years and until the member's successor is appointed and qualified.

(e) Any person appointed to fill a vacancy occurring prior to the expiration of the term for which the person's predecessor was appointed shall be appointed for the remainder of the term.

(f) The committee shall meet as frequently as the commissioner deems necessary, but not less than once each year.

(g) The committee members shall receive no compensation, but shall be reimbursed for travel expenses, in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

History.
Acts 1974, ch. 645, § 3; 1976, ch. 806, § 1(86); 1977, ch. 327, § 3; 1979, ch. 172, § 1; T.C.A., § 53-129.

Compiler's Notes.
The perinatal advisory committee, created by this section, terminates June 30, 2019. See §§ 4-29-112, 4-29-240.

68-1-804. Items to be considered for inclusion in program.

The department, with the advice of the committee, shall, in developing the plan for this program, consider the feasibility of designing this program so as to:

(1) Develop standards for determining eligibility for diagnosis and treatment under this program;

(2) Assist in the regional development, expansion and maintenance of newborn centers, including purchase of equipment, for the diagnosis and treatment of high-risk pregnant women and their fetuses and newborn infants;

(3) Extend financial assistance in order to provide diagnosis of and treatment for pregnant women and their fetuses and newborn infants, by providing necessary medical, surgical, hospital, outpatient clinic and ambulatory services;

(4) Develop a regional system or systems of rapid transportation and referral to the obstetrical and newborn centers from throughout the state for pregnant women and their fetuses and newborns who require life-sustaining care;

(5) Develop or expand regional education and training activities to further facilitate meeting the intent of this part;

(6) Employ all necessary administrative personnel as may be provided in the budget to carry out this part;

(7) Promulgate all rules and regulations necessary to effectuate the purposes of this part;

(8) Develop or expand a communication/consultation system or systems; and

(9) In consultation with organizations representing state pediatric physicians, develop appropriate standards for the dissemination of information and educational material about conditions and diseases that commonly affect newborn infants, such as respiratory syncytial virus.

History.
Acts 1974, ch. 645, § 4; 1977, ch. 327, § 4; T.C.A., § 53-130; Acts 2008, ch. 874, § 1.

CHAPTER 3

VITAL RECORDS ACT OF 1977

Part 2. Records — General Requirements

SECTION.
68-3-203. Amendment of records.

Part 3. Births

68-3-302. Birth inside institution — Establishing paternity — Acknowledgment of paternity — Report.
68-3-305. Father's name on birth certificate — Surname of child.
68-3-310. New certificate of birth — Prerequisites.

PART 2

RECORDS — GENERAL REQUIREMENTS

68-3-203. Amendment of records.

(a) In order to protect the integrity and accuracy of vital records, a certificate or record registered under this chapter may be amended only in accordance with this chapter and regulations adopted by the department.

(b) Except as otherwise provided by subsection (f), a certificate or record that is amended under this section shall be marked "amended." The date of amendment

and a summary description of the evidence submitted in support of the amendment shall be endorsed on or made a part of the record. The department shall prescribe, by regulation, the conditions under which additions or minor corrections may be made to certificates or records within one (1) year after the date of the event, without the certificate or record being considered "amended." "Minor corrections" means amendment of obvious errors, transposition of letters in words of common knowledge, or omissions.

(c) Upon receipt of a certified copy of a court order changing the name of a person born in the state, and upon request of such person or such person's parents, guardian or legal representative, the state registrar shall amend the certificate of birth to show the new name.

(d) The sex of an individual shall not be changed on the original certificate of birth as a result of sex change surgery.

(e) When an applicant does not submit the minimum documentation required in the regulations for amending a vital record, or when the state registrar has reasonable cause to question the validity or adequacy of the applicant's sworn statements or the documentary evidence, and if the deficiencies are not corrected, the state registrar shall not amend the vital record and shall advise the applicant of the reason for this action.

(f) In addition to other methods of amending certificates that may be provided by statute or by duly authorized department rule, the state registrar, if presented by an applicant with evidence that a reasonable person would conclude proves beyond a reasonable doubt that an original entry on a certificate was factually inaccurate at the time of recordation, shall block out the misinformation and make the necessary correction. When such an amendment is made, no record of the amendment shall appear upon the face of the certificate; provided, that a record of all evidence submitted relative to the amendment, along with the registrar's analysis of the evidence, shall be maintained by the office of vital records.

(g) If a form approved, as provided in § 68-3-305(b), acknowledging the paternity of a child is signed by both parents of the child and is submitted to the office of vital records at any time after the original certificate is filed and prior to the child's nineteenth birthday, the legal surname of the father may be entered on the certificate as that of the child, and the father's name and other personal information may be shown on the certificate of birth in the manner prescribed by regulation; provided, that paternity is not already shown on the certificate of birth. The state registrar may mark the record as amended, but not on the portion to be disclosed pursuant to § 68-3-205. Further, a legitimation by subsequent marriage of the individuals shown on the certificate as the father and mother shall not require a new certificate of birth and §§ 68-3-310(3), 68-3-311 and 68-3-313 shall not apply.

(h) In the event a voluntary acknowledgment of paternity is rescinded and a new father is not named, the name and personal information of the originally named father shall be removed by blocking, and the child's surname shall be blocked and the legal surname of the mother at the time of the birth shall be entered as the surname of the child. In the event a voluntary acknowledgment of paternity is rescinded and a new father is named, the changes in the birth certificate shall be made in accordance with subsection (g).

History.

Acts 1977, ch. 128, § 21; 1979, ch. 123, §§ 1, 2; T.C.A., § 53-423; Acts 1985, ch. 11, § 1; 1994, ch. 988, § 13; 1997, ch. 551, § 39.

PART 3

BIRTHS

68-3-302. Birth inside institution — Establishing paternity — Acknowledgment of paternity — Report.

(a) When a birth occurs in an institution or en route to an institution, the person in charge of the institution, or that person's designated representative, shall obtain the data required by the certificate, prepare the certificate, certify that the child was born alive at the place and time and on the date stated, either by signature or by an approved electronic process, and file the certificate with the office of vital records or as otherwise directed by the state registrar within the required ten (10) days.

(b) The physician in attendance shall provide the medical information required by the certificate to the institution's designated representative within seventy-two (72) hours after the birth.

(c) Immediately before or after the birth of a child to an unmarried woman in a birthing institution, an authorized representative of the birthing institution shall provide to the mother, and, if present, the biological father:

(1) Written and oral information concerning the alternatives to, the legal consequences of, the rights, and the responsibilities arising from the completion of the voluntary acknowledgment. The information shall be provided to the birthing institution by the department of human services, which shall develop the information in conjunction with the department of health. A videotaped or audio presentation will satisfy the requirement for the oral explanation.

(2) An acknowledgment of paternity on a form approved pursuant to § 68-3-305(b), and shall provide the opportunity to complete and submit to the institution the acknowledgment form.

(d) The birthing institution or other entity receiving the voluntary acknowledgment of paternity shall forward the original, signed acknowledgment of paternity to the office of vital records, and shall send a copy of the signed and notarized acknowledgment of paternity to the Title IV-D child support agency where the mother resides, if the mother or child is receiving temporary assistance pursuant to title 71, chapter 3, part 1, medicaid, TennCare, or any successor programs. Copies of the signed and notarized voluntary acknowledgment of paternity shall also be provided to the mother and father of the child. The copies shall be deemed originals.

(e) The department of health shall annually assess the numbers of acknowledgments of paternity as compared with the numbers of out-of-wedlock births by each birthing institution, and shall prepare a report of the results, which shall be provided to the department of human services or other persons or agencies that request it.

(f) Voluntary paternity establishment services through hospitals and the department of health shall be offered in accordance with federal regulations as prescribed by the secretary of health and human services.

History.

Acts 1977, ch. 128, § 6; T.C.A., § 53-442; Acts 1994, ch. 988, § 11; 1997, ch. 551, §§ 36-38; 1998, ch. 891, § 1; 1998, ch. 1098, § 63; 2001, ch. 139, §§ 1-3; 2004, ch. 432, § 1.

68-3-305. Father's name on birth certificate — Surname of child.

(a)(1) If the mother was married at the time of either conception or birth, or anytime between conception and birth, to the natural father of the child, the name of the natural father shall be entered on the certificate and the surname of the child shall be entered on the certificate as one of the following:

(A) The surname of the natural father; or

(B) The surname of the natural father in combination with either the mother's surname or the mother's maiden surname.

(2) If the surname of the child includes the mother's surname, mother's maiden surname, or any combination of those two (2) surnames but does not include the surname of the natural father, it may be so entered, but only upon the concurrent submission of a sworn application to that effect signed by both parents who mutually agree to that surname or combination of surnames.

(3) If a surname is not chosen by the parents within the ten (10) days required for filing of the birth certificate, the father's surname shall be entered on the birth certificate as the surname of the child. Within this ten-day period, the father may file and submit a sworn statement to the hospital that states that the parents do not agree on a surname, in which case the father's surname shall be entered on the birth certificate as the surname of the child.

(4) If, within the first year after the child's date of birth, both the mother and the father sign and submit a sworn statement to the office of vital records that both parents wish to change the child's surname, then the office of vital records shall amend the child's birth certificate in accordance with the parents' request to change the child's surname, if the chosen surname is either:

(A) The surname of the natural father;

(B) The surname of the mother;

(C) The mother's maiden surname; or

(D) Any combination of the surnames listed in subdivisions (a)(4)(A)-(C).

(5) If, within the first year after the child's date of birth, the parents cannot mutually agree on a surname, either one can submit a signed, sworn statement that acknowledges the disagreement, states the father was not available within the time allowed by law for filing of the birth certificate to participate in the choice of his child's surname, and requesting that the name be changed to the father's surname, in which case the father's surname shall be entered on the amended birth certificate as the surname of the child.

(b)(1) If the mother was not married at the time of either conception or birth or between conception and birth, the name of the father shall not be entered on the certificate of birth and all information pertaining to the father shall be omitted, and the surname of the child shall be that of either:

(A) The surname of the mother;

(B) The mother's maiden surname; or

(C) Any combination of the surnames listed in subdivisions (b)(1)(A) and (B).

(2)(A) If an original, sworn acknowledgment signed by both the mother and the biological father of a child, on a form provided by the state registrar or the department of human services, is submitted to the office of vital records at any time prior to the child's nineteenth birthday, the legal surname of the father may be entered on the certificate as that of the child, and the father's name and other personal information may be entered in the spaces provided on the birth certificate, notwithstanding the absence of a marriage relationship between the parents of the child.

(B) The acknowledgment form shall be in the form of an affidavit, shall contain the social security numbers of the mother and father of the child and shall be approved by the state registrar and the department of human services. The state registrar and the department of human services shall modify the form to comply with the minimum regulations for the form, which are finalized by the secretary of health and human services. An acknowledgment executed in conformity with this section shall be valid as long as it is executed on a form approved by the state registrar and the department of human services. A voluntary acknowledgment of paternity may be completed by a minor, if a parent or legal guardian of the minor is present and consents at the time of completion of the acknowledgment.

(C) A legitimation by subsequent marriage of the individuals shown on the certificate of birth as the father and mother shall not require a new certificate of birth; and §§ 68-3-310(3), 68-3-311, and 68-3-313 shall not apply.

(3) Upon request of the department of human services or any of its contractors in the child support program established under Title IV-D of the Social Security Act, compiled in 42 U.S.C. § 651 et seq., the office of vital records shall provide to them a certified copy of the acknowledgment of paternity form executed under this part.

(c) In any case in which paternity of a child is determined by a court of competent jurisdiction, the name of the father and surname of the child shall be

entered on the certificate of birth in accordance with the finding and order of the court.

(d) In all other cases, the surname of the child shall be either:

(1) The surname of the mother;

(2) The mother's maiden surname; or

(3) Any combination of the surnames listed in subdivisions (d)(1) and (2).

(e) If the father is not named on the certificate of birth, no other information about the father shall be entered on the certificate.

History.

Acts 1977, ch. 128, § 6; T.C.A., § 53-445; Acts 1985, ch. 11, § 2; 1994, ch. 988, § 12; 1997, ch. 551, §§ 40, 42; 2003, ch. 214, §§ 1, 2.

68-3-310. New certificate of birth — Prerequisites.

The state registrar shall prepare a new certificate of birth for a person born in Tennessee, upon receipt of required legal documents, as provided in the following cases:

(1) **Adoption.** A certified copy of adoption or certified copy of final decree of adoption and request for new certificate of birth by adoption;

(2) **Legitimation by Court Order in Cases Where the Parents Have Never Married.** A certified copy of an order of legitimation that establishes the relationship of parent and child between the petitioner and child named in the petition, decrees the name the child is to bear, and a request for new certificate of birth by legitimation on a form provided by the state registrar that furnishes information for locating the certificate of birth in the original name and information concerning parents to be entered on the new certificate;

(3) **Legitimation by Subsequent Marriage of Parents.** A certified copy of the marriage certificate or certificate of marriage of parents, and affidavits of the mother and father acknowledging paternity on a form provided by the state registrar. The form shall furnish information for locating the certificate of birth in the original name and information concerning the parents to be entered on the new certificate. If the father is deceased, in lieu of the father's affidavit, the state registrar shall accept a certified copy of a bill or petition for divorce or sworn answer to a bill or petition for divorce properly filed, in which the husband, by oath, acknowledged himself as father of the child or children named in the bill or petition for divorce or the answer, or a certified copy of an order, judgment or decree in which the court determined the deceased husband to be the father of the child or children and had acknowledged paternity of the child or children, whether heard on an ex parte or contested proceeding;

(4) **Order of Paternity.** A certified copy of an order of paternity or a certificate of paternity on a form provided by the state registrar that furnishes information for locating the certificate of birth in the original name, establishes the name of the father, and decrees the name the child is to bear; and

(5) **Report of Foreign Birth.** The state registrar shall prepare a report of foreign birth for a child not born in any state, territory or possession of the United States whose adoptive parents are residents of Tennessee when required adoption papers have been received from a court of competent jurisdiction in Tennessee.

History.

Acts 1977, ch. 128, § 12; T.C.A., § 53-450.

CHAPTER 5

PREVENTION OF DISEASES

Part 2. Newborn Testing — Eyes

SECTION.
68-5-201. [Repealed.]
68-5-202. Treatment specified for infant at birth — Reports of redness, swelling, inflammation or pus — Religious exemption.

Part 4. Newborn Testing — Metabolic Defects

68-5-401. Testing required — Public policy.
68-5-402. Cooperation of departments.
68-5-403. Exemptions for religious beliefs.
68-5-404. Failure to have child tested — Misdemeanor.
68-5-405. Screening for blood glucose abnormalities.
68-5-406. Retention of newborn screening specimen — When specimen and form containing identifying information shall be destroyed — Retention of specimen beyond one year.

Part 5. Genetic Testing

68-5-501. Definitions for parts 4 and 5.
68-5-502. Establishment of genetics program.
68-5-503. Appointment of advisory committee — Terms — Travel.
68-5-504. Functions of program — Duties of department.
68-5-505. Interstate agreements.
68-5-506. Creation of birth defects registry — Advisory committee — Confidentiality — Penalty for unauthorized disclosure of confidential information.
68-5-507. Screening program for critical cyanotic congenital heart disease for newborns.
68-5-508. Informational pamphlets to be provided to family prior to testing.

Part 6. Pregnancy Serological Tests

68-5-601. Part definitions.
68-5-602. When required — Hepatitis B treatment — Exception.
68-5-603. Testing free of charge — Authorized laboratories.
68-5-604. Reports — Confidentiality.
68-5-605. Use of test information.
68-5-606. Rules and regulations.
68-5-607. Violations — Penalties — Enforcement.

Part 7. Tennessee HIV Pregnancy Screening Act of 1997

68-5-701. Short title.
68-5-702. Purpose.
68-5-703. Testing of pregnant women for HIV — Confidentiality — Counseling.
68-5-704. [Repealed.]
68-5-705. Rulemaking.

PART 2

NEWBORN TESTING — EYES

68-5-201. [Repealed.]

Compiler's Notes.

Former § 68-5-201 (Acts 1915, ch. 52, § 1; Shan., § 6756a2; Code 1932, § 11174; modified; T.C.A. (orig. ed.), § 53-621), concerning the

naming and approval of a prophylaxis or preventive to be used in treating the eyes of newly-born children, was repealed by Acts 2008, ch. 847, § 1, effective April 30, 2008.

68-5-202. Treatment specified for infant at birth — Reports of redness, swelling, inflammation or pus — Religious exemption.

(a) It is the duty of any physician, nurse or midwife who assists and is in charge at the birth of any infant, or has the care of the infant after birth, to treat the eyes of the infant with a prophylaxis to prevent ophthalmia neonatorum or infections leading to blindness. The treatment shall be given as soon as practicable after the birth of the infant and always within one (1) hour; and if any redness, swelling, inflammation, or gathering of pus appears in the eyes of the infant or upon the lid or about the eyes within two (2) weeks after birth, then any nurse, midwife or other person having care of the infant shall report the condition within six (6) hours after its discovery to a physician licensed and practicing medicine in this state.

(b) Nothing in this part shall require medical treatment under subsection (a) for the minor child of any person who files with the department of health a signed, written statement that such medical treatment conflicts with the person's religious tenets and practices, affirmed under penalties of perjury.

History.

Acts 1915, ch. 52, §§ 2, 3; Shan., §§ 6756a3, 6756a4; Code 1932, §§ 11175, 11176; modified; T.C.A. (orig. ed.), §§ 53-622, 53-623; Acts 1989, ch. 591, § 113; 2008, ch. 847, § 2; 2016, ch. 989, § 1.

PART 4

NEWBORN TESTING — METABOLIC DEFECTS

68-5-401. Testing required — Public policy.

(a)(1) The general assembly declares that, as a matter of public policy of this state and in the interest of public health, every newborn infant shall be tested for phenylketonuria, hypothyroidism, galactosemia and other metabolic/genetic defects that would result in intellectual disability or physical dysfunction as determined by the department, through rules and regulations duly promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, and that the people of this state shall be extensively informed as to the nature and effects of such defects.

(2) Every provider of prenatal care will adhere to the American College of Obstetricians and Gynecologists and the Centers for Disease Control recommendations for the prevention of Perinatal Group B Streptococcal Disease.

(3) All infants born in this state shall be tested for specific genetic, metabolic, or other heritable conditions beginning six (6) months following the occurrence of all of the following:

(A) The development of a reliable test or series of tests for screening newborns for specific genetic, metabolic, or other heritable conditions using dried blood spots or other testing and quality assurance testing methodology for such specific genetic, metabolic or the heritable conditions testing;

(B) The availability of quality assurance materials for the specific genetic, metabolic, or other heritable condition tests from the federal centers for disease control and prevention;

(C) The review and approval of the proposed test by the genetics advisory committee of the department of health; and

(D) The acquisition of necessary equipment, completion of appropriate validation tests, and hiring of any necessary staff to implement the expanded screening tests by the newborn screening laboratory and newborn screening follow-up program of the state.

(4) The department of health may charge a reasonable fee and any reasonable increase in this fee, as necessary, for the test performed pursuant to this section. The amount of the fee and the procedures for collecting the fee shall be determined by the commissioner of health.

(b) If the department levies a fee or charge for the cost of testing, it shall use the same billing and collection methods normally used by independent private laboratories. Any fee shall be waived for patients who are unable to pay.

History.

Acts 1985, ch. 333, § 1; 1991, ch. 504, § 1; 1997, ch. 312, § 1; 2011, ch. 158, § 35; 2015, ch. 436, § 2.

Compiler's Notes.

Acts 2015, ch. 436, § 1 provided that the act, which added (a)(3) and (4), shall be known and may be cited as the "Mabry Kate Webb Act".

68-5-402. Cooperation of departments.

All state departments, including the department of human services, the department of mental health and substance abuse services, the department of intellectual and developmental disabilities, and county and municipal health departments and education departments, shall cooperate with the department in carrying out this part.

History.

Acts 1985, ch. 333, § 1; 2000, ch. 947, § 6; 2010, ch. 1100, § 106; 2012, ch. 575, § 1.

Compiler's Notes.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

68-5-403. Exemptions for religious beliefs.

Nothing in this part shall be construed to require the testing of or medical treatment for the minor child of any person who files with the department a signed, written statement that such tests or medical treatment

conflict with the person's religious tenets and practices, affirmed under penalties of perjury.

History.
Acts 1985, ch. 333, § 1.

68-5-404. Failure to have child tested — Misdemeanor.

Any person violating this part or parts of this chapter or the rules promulgated pursuant thereto, relative to testing of newborn infants, commits a Class C misdemeanor.

History.
Acts 1985, ch. 333, § 1; 1989, ch. 591, § 113.

68-5-405. Screening for blood glucose abnormalities.

The department of health shall provide a link on the department's Internet web site to the web sites of the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists for accessing the Guidelines for Perinatal Care regarding the indications for screening infants for blood glucose abnormalities. The board of medical examiners and the board of osteopathic examination shall publish the guidelines in the annual newsletter of each respective board.

History.
Acts 2006, ch. 831, § 1.

68-5-406. Retention of newborn screening specimen — When specimen and form containing identifying information shall be destroyed — Retention of specimen beyond one year.

A newborn screening specimen taken for testing pursuant to this part or part 5 of this chapter shall be kept for one (1) year to permit time for the infant's physician to request additional tests. After one (1) year, both the specimen and the form containing the identifying information shall be destroyed. If a specimen is needed for quality assessment, quality control, or test calibration, that specimen may be retained for longer than one (1) year; provided, that the form containing the identifying information has been separated from the sample and destroyed, to ensure that the source of the sample cannot be identified.

History.
Acts 2015, ch. 246, § 3.

PART 5

GENETIC TESTING

68-5-501. Definitions for parts 4 and 5.

As used in parts 4 and 5 of this chapter, unless the context otherwise requires:

(1) "Birth defects" means those abnormalities of body structure or function present at birth that adversely affect the intellectual capacity, health or abilities of affected individuals;

(2) "Commissioner" means the commissioner of health or a designated representative;

(3) "Committee" means the genetics advisory committee;

(4) "Department" means the department of health;

(5) "Genetic and metabolic screening" means search through systematic testing of the population at risk for metabolic or genetic conditions, to enable early dietary or medical treatment and counseling so as to ameliorate or avoid adverse consequences of those disorders; and

(6) "Genetic disorders" means those conditions caused by an alteration or abnormality in the genetic material (DNA) which may adversely affect the health and functional abilities of affected individuals.

History.
Acts 1985, ch. 333, § 1.

68-5-502. Establishment of genetics program.

(a) The department shall establish a statewide genetics program to ensure the availability of genetic services to citizens of the state who need them for the prevention and treatment of intellectual disability or other physical dysfunctions.

(b) The program shall include comprehensive genetic services programs, including genetic and metabolic screening programs, genetic counseling services, and other related services that will aid in the prevention and treatment of particular genetic disorders and birth defects or related conditions as determined by the department through rules and regulations duly promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, with the advice of the committee established in § 68-5-503.

History.
Acts 1985, ch. 333, § 1; 2011, ch. 158, § 36.

68-5-503. Appointment of advisory committee — Terms — Travel.

(a) The commissioner shall appoint a committee to consult with the department in the administration of parts 4 and 5 of this chapter.

(b) The committee shall be composed of one (1) representative from each regional genetic and each regional sickle cell center established pursuant to parts 4 and 5 of this chapter; at least two (2) members at large; and the chief medical officer for the state.

(c) The chief medical officer shall serve as chair of this committee.

(d) Each member shall hold office for a term of four (4) years or until such member's successor is appointed, except for the terms of initial appointments which shall be set so as to have an equal number of terms expiring each successive year.

(e) Any member appointed to fill a vacancy for any unexpired term shall serve the remainder of that term.

(f) The committee shall meet as frequently as the commissioner deems necessary, but not less than once a year.

(g) Committee members shall be reimbursed for travel expenses in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

History.
Acts 1985, ch. 333, § 1.

Compiler's Notes.
The genetic advisory committee, created by this section, terminates June 30, 2019. See §§ 4-29-112, 4-29-240.

68-5-504. Functions of program — Duties of department.

(a)(1) Genetic and other testing services provided for by parts 4 and 5 of this chapter shall be provided only to:

(A) Born children;

(B) Unborn children whose testing would result in treatment;

(C) Men;

(D) Nonpregnant women; and

(E) Those pregnant women whose testing would result in treatment for themselves or their unborn children.

(2) Induced abortion shall not be regarded as treatment; therefore, procedures or services designed to search out disorders in unborn children that are not treatable shall not be provided for under parts 4 and 5 of this chapter, it being the finding of the general assembly that the use of this program to abort unborn children is against the public policy of the state of Tennessee.

(b) The department shall:

(1) Develop and administer statewide genetic and metabolic screening programs to prevent, detect and assure follow-up for birth defects and genetic disorders. The screening programs shall include testing for phenylketonuria and hypothyroidism as provided by part 4 of this chapter, testing for sickle cell disease and other hemoglobinopathies and other testing programs as the department shall deem appropriate for the preventive treatment of intellectual disability or physical dysfunction, as publicly noted through rules and regulations duly promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5;

(2) Prescribe effective tests and examinations designed to detect genetic disorders as determined by the department, prescribe the methods of obtaining samples or specimens for the required tests and examinations, and designate the person or persons required to conduct the tests and examinations;

(3) Develop standards for statewide genetic services;

(4) Assist in the development, expansion and maintenance of regional genetic centers and regional sickle cell centers, including purchase of equipment and employment of specialized personnel;

(5) Develop and implement state/regional programs of professional education and training for health care providers in the causes, prevention, detection and treatment of birth defects and genetic disorders;

(6) Support clinical diagnosis and counseling services regarding genetic disorders and birth defects;

(7) Implement public education programs to inform persons of genetic screening, genetic disorders, and birth defects and the various services available;

(8) Develop a system of consultation, communication and referral to regional genetics centers and regional sickle cell centers;

(9) Develop a reporting system to allow data to be collected and stored and to facilitate the compilation of statistical information on causes, methods of treatment and prevention of genetic disorders and birth defects. The system shall be in accordance with laws and rules of the department governing confidentiality of information;

(10) Enter into contractual agreements with other agencies to provide services under the state program; and

(11) Promulgate and enforce all rules and regulations as may be necessary to effectuate the purposes of parts 4 and 5 of this chapter.

(c) It is the specific intent of the general assembly that neither abortion nor abortion research should be funded by this program.

History.
Acts 1985, ch. 333, § 1; 2011, ch. 158, § 37.

68-5-505. Interstate agreements.

The commissioner shall have the authority to formalize agreements with agencies in other states to provide services as may be needed.

History.
Acts 1985, ch. 333, § 1.

68-5-506. Creation of birth defects registry — Advisory committee — Confidentiality — Penalty for unauthorized disclosure of confidential information.

(a) The general assembly finds and declares that birth defects represent problems of public health importance about which too little is known; that these conditions impose enormous physical, emotional, social, educational and financial burdens on individuals, families, communities and the state; and that a system to obtain more information about these conditions could result in development of preventive measures to decrease their incidence in the future. Therefore, it is the intent of the general assembly in enacting this section to accomplish all of the following:

(1) To maintain an ongoing program of birth defects monitoring statewide. "Birth defect" as used in this section means any structural or biochemical abnormality, regardless of cause, diagnosed at any time before or after birth, that requires medical or surgical intervention or that interferes with normal growth or development;

(2) To provide, on at least an annual basis, information on the incidence, prevalence and trends of birth defects;

(3) To provide information to determine whether environmental hazards are associated with birth defects;

(4) To provide information as to other possible causes of birth defects;

(5) To evaluate the current prevention initiatives undertaken by the state, and to give guidance for improvement of these initiatives or for the addition of new prevention strategies; and

(6) To provide a case referral element whereby the families of children born with birth defects are provided information on public services available to them and their children.

(b)(1) There is established a birth defects registry in the department of health.

(2) The commissioner of health shall establish an advisory committee to guide the department in establishing and maintaining the registry. The committee shall include members representing the disciplines of obstetrics and gynecology, pediatrics, genetics, epidemiology, biostatistics, hospital administration, state agency service providers, parents of children with birth defects, members of interested nonprofit organizations and members of the general public. The advisory committee shall annually evaluate the adequacy of the registry and report their findings annually to the appropriate standing committees of the general assembly.

(3) The department shall maintain a system for the collection of information necessary to accomplish the outlined purposes of this section. For purposes related to the registry, the department shall have access to any medical record that pertains to a diagnosed or suspected birth defect, including the records of the mother. Providers acting pursuant to this section shall not be liable for the release of medical records as authorized by this section. The department shall develop and disseminate information about the birth defects registry to the participating perinatal centers that will be made available to the family, that explains and describes the purpose and process of the registry and how confidentiality will be protected. The information shall be made available in pamphlet format that meets the requirements imposed by § 68-5-508. The commissioner, with guidance from the advisory committee, shall promulgate by rule a mechanism for the active verification of reports through the use of multiple sources.

(4) The registry shall collect information on birth defects, whether they occur as live births, stillbirths, or fetal deaths.

(5) The registry shall collect information on birth defects diagnosed in children up to five (5) years of age.

(6) The registry shall be implemented as a pilot project to include reporting by any of the five (5) designated perinatal centers choosing to be included in the pilot project. Perinatal centers participating in the pilot project shall report to the birth defects registry as required by the commissioner.

(c) The department, with guidance from the advisory committee, shall establish a program in the registry for referring families of children born with birth defects or the mothers of children lost to birth defects to available appropriate state resources. In order for a family of a child with a birth defect to participate in the referral program established by this subsection (c), the child's parents or legal guardian must contact the department and request to be included in the program.

(d) The staff of the registry shall use the information collected pursuant to this section and information available from other reporting systems and health providers to conduct studies to investigate the causes of birth defects, and to determine and evaluate measures designed to prevent their occurrence. The department's investigation shall not be limited to geographic, temporal, or occupational associations, but may include investigation of past exposures.

(e)(1) All information collected and analyzed pursuant to this section shall be confidential insofar as the identity of the individual patient is concerned and shall be used solely for the purposes provided in this section; provided, that the commissioner may provide access to those scientists approved by the advisory committee who are engaged in demographic, epidemiological or other similar studies related to health, and who agree, in writing as nonstate employees, to be identified and coded while maintaining confidentiality as described in this section and to the centers for disease control (CDC) for inclusion in the National Birth Defects Registry.

(2) The department shall maintain an accurate record of all persons who are given access to the information in the registry. The record shall include:

(A) The name of the persons authorizing access;

(B) The name, title, and organizational affiliation of persons given access;

(C) The dates of access;

(D) The specific purpose for which the information is to be used; and

(E) The results of the independent research.

(3) Nothing in this section shall prohibit the publishing of statistical compilations relating to birth defects or poor reproductive outcomes that do not in any way identify individual sources of information.

(4)(A) Any individual who willfully discloses information made confidential by this section, unless permitted to do so by subdivisions (e)(1) and (3), commits a Class A misdemeanor.

(B) Any individual who negligently discloses information made confidential by this section, unless permitted to do so by subdivisions (e)(1) and (3), commits a Class B misdemeanor.

History.
Acts 2000, ch. 965, § 1; 2015, ch. 246, § 1.

68-5-507. Screening program for critical cyanotic congenital heart disease for newborns.

On or before January 1, 2013, the genetic advisory committee is directed to develop a screening program for critical cyanotic congenital heart disease for the panel of screens authorized for newborns under § 68-5-504 that makes use of pulse oximetry.

History.
Acts 2012, ch. 556, § 1.

68-5-508. Informational pamphlets to be provided to family prior to testing.

The information distributed to the family pursuant to §§ 68-5-504(b)(7) and 68-5-506(b)(3) shall be provided to the family before any blood sample for testing is drawn from the newborn. The pamphlet shall disclose the exemption from testing or treatment of a child pursuant to § 68-5-403. The pamphlet shall also inform the family of the newborn screening specimen use, retention, and disposal policy.

History.
Acts 2015, ch. 246, § 2.

Compiler's Notes.
Acts 2015, ch. 246, § 4 provided that no revisions shall be made to the existing pamphlet required pursuant to § 68-5-508 until a new printing of the pamphlet occurs. Existing stock of the pamphlet may be distributed until the supply is exhausted.

PART 6

PREGNANCY SEROLOGICAL TESTS

68-5-601. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Approved laboratory" means a publicly or privately operated laboratory approved by the department according to its rules, governing the approval and licensing of laboratories for the purposes of this part;

(2) "Commissioner" means the commissioner of health or the commissioner's designee;

(3) "Department" means the department of health;

(4) "Forms" means the forms that are authorized, prepared and distributed by the department to carry out this part; and

(5) "Standard serological test" means a test for syphilis infection or rubella immunity approved by the department and performed by an approved laboratory.

History.
Acts 1985, ch. 13, § 2.

68-5-602. When required — Hepatitis B treatment — Exception.

(a) Every physician, surgeon, or other person permitted by law to attend a pregnant woman during gestation shall, in the case of each woman so attended, take or cause to be taken a sample of the blood of the woman at the time of first examination and visit or within ten (10) days after the first examination. If the first visit is at the time of delivery, or after delivery, the standard serological test required by this subsection (a) shall be performed at that time. The blood sample shall be sent to a laboratory approved by the department for testing for syphilis infection, rubella immunity, and hepatitis B surface antigen (HBsAg). In the same manner, a sample of blood shall be taken during or after the twenty-eighth week of gestation for a woman whom the attending physician determines to be at high risk of hepatitis B or syphilis according to the current standards of care. This second sample shall be sent to a laboratory approved by the department for testing for syphilis infection and HBsAg only. Additional testing for rubella immunity is not required in subsequent pregnancies once a positive result is verified or a documented history of vaccination against rubella is available. However, all pregnant women shall be tested for syphilis and hepatitis B during an early prenatal visit in each pregnancy. A positive test for syphilis and hepatitis B shall be reported to the local health department in accordance with this chapter, and regulations governing the control of communicable diseases in Tennessee.

(b) Every person attending a pregnant woman who is not permitted by law to take blood samples shall cause a sample of blood to be taken by a health provider permitted by law to take the samples at the time of first examination and visit or within ten (10) days after the first examination. These samples shall be submitted to the same approved laboratories for testing for syphilis infection and HBsAg. If no rubella immunity is documented, testing for rubella is required.

(c) Infants born to HBsAg-postive mothers shall receive, in a timely manner, the appropriate treatment as recognized by the centers for disease control.

(d) This part shall not apply to any female who files with the attending medical authority a signed, written statement that taking a sample of blood or receiving other preventive measures conflict with the female's religious tenets and practices affirmed under the penalties of perjury.

History.
Acts 1985, ch. 13, § 2; 1997, ch. 54, § 1.

68-5-603. Testing free of charge — Authorized laboratories.

(a) Upon request, the laboratory tests required by this part shall be made without charge in the laboratories of the department.

(b) This section shall not be interpreted to mean that the department's laboratories shall be the only laboratory approved to perform these tests.

History.
Acts 1985, ch. 13, § 2.

68-5-604. Reports — Confidentiality.

(a) The laboratory report of the serological test shall be made on a form provided by the department.

(b) A detailed report of the standard serological test and showing the result of the test shall be transmitted by the laboratory to the health care provider. A copy of the laboratory specimen slip shall be concurrently submitted to the local health department having jurisdiction under the following conditions, when the local health department is not the originating health care provider:

(1) A serologic test for syphilis with a result of reactive; however, a serologic test for syphilis with a result of negative need not be sent to the local health department, unless specifically requested; and

(2) A serologic test for rubella with a result of negative; however, a serologic test for rubella with a result of positive need not be sent to the local health department, unless specifically requested.

(c) The copy submitted to the local health department shall be held in absolute confidence and not open to public inspection; provided, that it shall be produced as evidence at a trial or proceeding in a court of competent jurisdiction, involving issues in which it may be material and relevant, on order of a judge of the court; and provided further, that it may be used in the compilation of aggregate figures and reports, without disclosing the identities of the persons involved.

(d) The physician of any patient who is susceptible to rubella, as indicated by a negative result on a serological test, should counsel the patient about the test results, precautions to take, and recommend immunization after delivery.

History.
Acts 1985, ch. 13, § 2.

68-5-605. Use of test information.

The department is authorized to use the information derived from pregnancy serological tests for such follow-up procedures as are required by law or deemed necessary by the department for the protection of the public health.

History.
Acts 1985, ch. 13, § 2.

68-5-606. Rules and regulations.

The department is authorized to promulgate and enforce rules and regulations to implement this part.

History.
Acts 1985, ch. 13, § 2.

68-5-607. Violations — Penalties — Enforcement.

(a)(1) Any person who misrepresents any of the facts called for by the serological examination, or who in any way alters the determination of a serological examination, commits a Class C misdemeanor.

(2) It is the duty of the district attorney general to prosecute the suit when requested by the commissioner, the county health officer or local board of health.

(b) Any physician or representative of a laboratory who willfully and knowingly misrepresents, falsifies, or issues false information under this part commits a Class C misdemeanor.

(c) It is the duty of the district attorney general in whose jurisdiction an offense is committed to institute proceedings against violators of this part.

(d) It is the duty of the commissioner to give all assistance necessary for the enforcement of this part to the district attorney general representing the county in which proceedings may be instituted.

History.
Acts 1985, ch. 13, § 2; 1989, ch. 591, § 113.

PART 7

TENNESSEE HIV PREGNANCY SCREENING ACT OF 1997

68-5-701. Short title.

This part shall be known and may be cited as the "Tennessee HIV Pregnancy Screening Act of 1997."

History.
Acts 1997, ch. 296, § 1.

68-5-702. Purpose.

The purpose of this part is to require all providers of health care services who assume responsibility for the prenatal care of pregnant women during gestation, except in cases where women refuse testing, to test these women for human immunodeficiency virus (HIV) and to provide referral into appropriate medical and social services for those women who test positive.

History.
Acts 1997, ch. 296, § 2; 2007, ch. 154, § 1.

68-5-703. Testing of pregnant women for HIV — Confidentiality — Counseling.

(a) A health care provider shall arrange for each pregnant woman under the provider's care to be tested for HIV as early as possible in the course of the pregnancy, and again during the third trimester, unless the woman has refused testing in writing and this refusal has been placed in the medical chart.

(b) A pregnant woman who presents herself for delivery and who does not have a documented negative HIV test during the last trimester of the pregnancy, unless already known to be HIV positive, shall be tested for HIV using a rapid HIV test, unless she refuses in writing. If she refuses testing, and when the time and circumstances are medically appropriate, she should be counseled regarding the consequences of exposing her unborn child to HIV.

(c) All HIV testing performed under this part shall be done in a confidential manner and the results of the testing may be disclosed only as provided by law.

(d) After receiving a positive HIV test result, the medical provider, when the time and circumstances are medically appropriate, shall:

(1) Explain the meaning and reliability of the test results and the availability of additional or confirmatory testing, if appropriate;

(2) Counsel the woman to obtain appropriate medical treatment for herself and her baby and inform her of the increased risks to her baby if she fails to obtain appropriate treatment;

(3) Make available information concerning the available medical interventions to prevent onset of illness in the mother and to prevent transmission of HIV to her children; and

(4) Arrange for additional counseling in order to assist the woman in obtaining access to a comprehensive clinical care facility that can meet her needs.

History.
Acts 1997, ch. 296, § 3; 2007, ch. 154, § 2.

68-5-704. [Repealed.]

Compiler's Notes.
Former § 68-5-704 (Acts 1997, ch. 296, § 4), concerning HIV screening reports to the department of health, was repealed by Acts 2007, ch. 154, § 3, effective May 14, 2007.

68-5-705. Rulemaking.

The department may promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to implement this part.

History.
Acts 1997, ch. 296, § 5.

CHAPTER 6

SUDDEN CARDIAC ARREST PREVENTION ACT

SECTION.
68-6-101. Short title.
68-6-102. Chapter definitions.
68-6-103. Requirements to be met by governing authorities of public and nonpublic schools for prevention of sudden cardiac arrest during school youth athletic activities.
68-6-104. Requirements to be met by organizers of community-based youth athletic activities for prevention of sudden cardiac arrest.

68-6-101. Short title.

This chapter shall be known and may be cited as the "Sudden Cardiac Arrest Prevention Act."

History.
Acts 2015, ch. 325, § 1.

Compiler's Notes.
Former chapter 6, §§ 68-6-101 — 68-6-107 (Acts 1949, ch. 26, §§ 1-7; C. Supp. 1950, §§ 4916.14-4916.20 (Williams, §§ 4916.16-4916.22); T.C.A. (orig. ed.), §§ 53-701 — 53-707), concerning cancer control, was repealed by Acts 1983, ch. 124, § 11. For new law, see title 68, ch. 1, part 10.

68-6-102. Chapter definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Community-based youth athletic activity" or "youth athletic activity" means an athletic activity organized by a city, county, business, or nonprofit organization when the majority of the participants are under eighteen (18) years of age, and are engaging in an organized athletic game or competition against another team, club, or entity or in practice or preparation for an organized game or competition against another team, club, or entity. "Community-based youth athletic activity" does not include college or university activities or an activity which is entered into for instructional purposes only, an athletic activity that is incidental to a nonathletic program, or a lesson;

(2) "Department" means the department of health;

(3) "Health care provider" means a Tennessee licensed medical doctor (M.D.) or an osteopathic physician (D.O.);

(4) "Person" means any individual or governmental entity, corporation, association, organization, nonprofit institution, or other entity or such entities' representatives; and

(5) "School youth athletic activity" means a school or a local education agency organized athletic activity when the majority of the participants are under eighteen (18) years of age, and are engaging in an organized athletic game or competition against another team, club, or entity or in practice or preparation for an organized game or competition against another team, club, or entity. "School youth athletic activity" does not include college or university activities, an activity which is entered into for instructional purposes only, or an athletic activity that is incidental to a nonathletic program, or a lesson.

History.
Acts 2015, ch. 325, § 1.

68-6-103. Requirements to be met by governing authorities of public and nonpublic schools for prevention of sudden cardiac arrest during school youth athletic activities.

(a) This section applies to school youth athletic activity.

(b)(1) The governing authority of each public and nonpublic elementary school, middle school, junior high school, and high school, working through guidance approved by the department of health and communicated through the department of education, shall at a minimum:

(A) Adopt guidelines and other pertinent information and forms as approved by the department of health to inform and educate coaches, school administrators, youth athletes, and their parents or guardians of the nature, risk, and symptoms of sudden cardiac arrest, including the risks associated with continuing to play or practice after experiencing any of the following symptoms:

(i) Fainting or seizures during exercise;
(ii) Unexplained shortness of breath;
(iii) Chest pains;
(iv) Dizziness;
(v) Racing heart rate; or
(vi) Extreme fatigue;

(B) Require annual completion by all coaches, whether the coach is employed or a volunteer, and by school athletic directors of a sudden cardiac arrest education program approved by the department. In developing the program, the department may use, at no cost to the state, materials and resources created by organizations, such as Simon's Fund, for the purpose of educating coaches about sudden cardiac arrest. The department shall make the sudden cardiac arrest education course program available on its web site for any school to

access free of charge;

(C) Require that, on a yearly basis, a sudden cardiac arrest information sheet be signed and returned by each coach and athletic director and, if appointed, a licensed health care professional, to the lead administrator of a nonpublic school or, for a public school, the local education agency's director of schools prior to initiating practice or competition for the year;

(D) Require that, on a yearly basis, a sudden cardiac arrest information sheet be reviewed by each youth athlete and the athlete's parent or guardian. The information sheet shall be signed and returned by the youth athlete, if the youth athlete is eighteen (18) years of age or older, otherwise by the athlete's parent or guardian, prior to the youth athlete's initiating practice or competition, to confirm that both the parent or guardian and the youth athlete have reviewed the information and understand its contents;

(E) Maintain all documentation of the completion of a sudden cardiac arrest education course program and signed sudden cardiac arrest information sheets for a period of three (3) years;

(F) Establish as policy the immediate removal of any youth athlete who passes out or faints while participating in an athletic activity or immediately following an athletic activity, or who exhibits any of the following symptoms:

(i) Unexplained shortness of breath;

(ii) Chest pains;

(iii) Dizziness;

(iv) Racing heart rate; or

(v) Extreme fatigue; and

(G) Establish as policy that a youth athlete who has been removed from play shall not return to the practice or competition during which the youth athlete experienced symptoms consistent with sudden cardiac arrest and not return to play or participate in any supervised team activities involving physical exertion, including games, competitions, or practices, until the youth athlete is evaluated by a health care provider and receives written clearance from the health care provider for a full or graduated return to play.

(2) After a youth athlete who has experienced symptoms consistent with sudden cardiac arrest has been evaluated and received clearance for a graduated return to play from a health care provider, then a school may allow a licensed health care professional, if available, with specific knowledge of the youth athlete's condition to manage the youth athlete's graduated return to play based upon the health care provider's recommendations. The licensed health care professional, if not the youth athlete's health care provider, shall provide updates to the health care provider on the progress of the youth athlete, if requested.

(3) No licensed health care professional or other person acting in good faith within the authority prescribed under this chapter shall be liable on account of any act or omission in good faith while so engaged; provided, that "good faith," as used in this chapter, shall not include willful misconduct, gross negligence, or reckless disregard.

(c) The local education agency, in consultation with the head of the school youth athletic activity, may establish the following minimum penalties for a coach found in violation of ignoring a youth athlete's sudden cardiac arrest symptoms or allowing the youth to return to the practice or competition during which the youth athlete experienced the symptoms without written clearance from the health care provider for a full or graduated return to play:

(1) For a first violation, suspension from coaching any school youth athletic activity for the remainder of the season;

(2) For a second violation, suspension from coaching any school youth athletic activity for the remainder of the season and the next season; and

(3) For a third violation, permanent suspension from coaching any school youth athletic activity.

History.

Acts 2015, ch. 325, § 1.

68-6-104. Requirements to be met by organizers of community-based youth athletic activities for prevention of sudden cardiac arrest.

(a) This section applies to community-based youth athletic activity.

(b)(1) Any city, county, business, or nonprofit organization that organizes a community-based youth athletic activity for which an activity fee is charged, working through guidance from the department of health, shall at a minimum:

(A) Adopt guidelines and other pertinent information and forms as developed by the department of health to inform and educate the director of the youth athletic activity, coaches, youth athletes, and their parents or guardians of the nature, risk, and symptoms of sudden cardiac arrest, including the risks associated with continuing to play or practice after experiencing any of the following symptoms:

(i) Fainting or seizures during exercise;

(ii) Unexplained shortness of breath;

(iii) Chest pains;

(iv) Dizziness;

(v) Racing heart rate; or

(vi) Extreme fatigue;

(B) Require annual completion by all coaches, whether the coach is employed or a volunteer, and, if appointed, the licensed health care professional of a sudden cardiac arrest education program approved by the department. In developing the program, the department may use, at no cost to the state, materials and resources created by organizations, such as Simon's Fund, for the purpose of educating coaches about sudden cardiac arrest. The department shall make the sudden cardiac arrest education course program available on its web site for any youth athletic activity operated by a city, county, business, or nonprofit organization

to access free of charge;

(C) Require that, on a yearly basis, a sudden cardiac arrest information sheet be signed and returned by each coach to the head of the youth athletic activity prior to initiating practice or competition for the year;

(D) Require that, on a yearly basis, a sudden cardiac arrest information sheet be reviewed by each youth athlete and the athlete's parent or guardian. The information sheet shall be signed and returned by the youth athlete, if the youth athlete is eighteen (18) years of age or older, otherwise by the athlete's parent or guardian, prior to the youth athlete's initiating practice or competition, to confirm that both the parent or guardian and the youth athlete have reviewed the information and understand its contents;

(E) Maintain all documentation of the completion of a sudden cardiac arrest education course program and signed sudden cardiac arrest information sheets for a period of three (3) years;

(F) Establish as policy the immediate removal of any youth athlete who passes out or faints while participating in an athletic activity or immediately following an athletic activity, or who exhibits any of the following symptoms:

(i) Unexplained shortness of breath;

(ii) Chest pains;

(iii) Dizziness;

(iv) Racing heart rate; or

(v) Extreme fatigue; and

(G) Establish as policy that a youth athlete who has been removed from play shall not return to the practice or competition during which the youth athlete experienced symptoms consistent with sudden cardiac arrest and not return to play or participate in any supervised team activities involving physical exertion, including games, competitions, or practices, until the youth athlete is evaluated by a health care provider and receives written clearance from the health care provider for a full or graduated return to play.

(2) After a youth athlete who has experienced symptoms consistent with sudden cardiac arrest has been evaluated and received clearance for a graduated return to play from a health care provider, then the organizer of the community-based youth athletic activity may allow a licensed health care professional, if available, with specific knowledge of the youth athlete's condition to manage the youth athlete's graduated return to play based upon the health care provider's recommendations. The licensed health care professional, if not the youth athlete's health care provider, shall provide updates to the health care provider on the progress of the youth athlete, if requested.

(3) No coach, head of any athletic activity, licensed health care professional, or other person acting in good faith within the authority prescribed under this chapter shall be liable on account of any act or omission in good faith while so engaged; provided, that "good faith," as used in this chapter, shall not include willful misconduct, gross negligence, or reckless disregard.

(c) The head of the community-based youth athletic activity may establish the following minimum penalties for a coach found in violation of ignoring a youth athlete's sudden cardiac arrest symptoms or allowing the youth to return to the practice or competition during which the youth athlete experienced the symptoms without written clearance from the health care provider for a full or graduated return to play:

(1) For a first violation, suspension from coaching any community-based youth athletic activity for the remainder of the season;

(2) For a second violation, suspension from coaching any community-based youth athletic activity for the remainder of the season and the next season; and

(3) For a third violation, permanent suspension from coaching any community-based youth athletic activity.

History.

Acts 2015, ch. 325, § 1.

CHAPTER 10

SEXUALLY TRANSMITTED DISEASES

SECTION.

68-10-101. Chapter definitions.
68-10-102. Notice to health officer of name and address of diseased person exposing others to infection.
68-10-103. Printed instructions given patients.
68-10-104. Officers to examine suspected persons and require treatment — Sources of infection to be investigated.
68-10-105. Infected persons isolated or quarantined to specified area.
68-10-106. Quarantine of infected persons.
68-10-107. Exposure of others by infected person.
68-10-108. Places for detention of infected persons.
68-10-109. Rules and bylaws for control of sexually transmitted diseases.
68-10-110. Arrest and temporary commitment for treatment authorized — Hearing — Examination — Appeal.
68-10-111. Violation of chapter — Penalty.
68-10-112. Reports of physicians and health officers.
68-10-113. Confidentiality of records and information.
68-10-114. Knowledge of governmental persons regarding records.
68-10-115. Immunity from liability for informing person of potential HIV infection.
68-10-116. Exposure of officers, emergency personnel or employees of Tennessee bureau of investigation's crime laboratories to hepatitis B or HIV virus — Testing of blood or body fluids.
68-10-117. Possible exposure of emergency workers to airborne or bloodborne diseases — Testing.
68-10-118. AIDS Centers of Excellence established — Committee membership — Terms — Compensation and reimbursement.

68-10-101. Chapter definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Commissioner" means the commissioner of health or the commissioner's designee; or in the absence of the commissioner, the deputy commissioner;

(2) "Department" means the department of health;

(3) "Forms" means the certificates that are authorized, prepared and distributed by the department to carry out this chapter;

(4) "Sexually transmitted disease (STD)" means any disease that is transmitted primarily through sexual practices and is identified in rules and regulations of the department; and

(5) "Test" means a test approved by the department to determine possible infection with STDs.

History.
Acts 1988, ch. 695, §§ 1, 2; T.C.A. § 68-10-112.

68-10-102. Notice to health officer of name and address of diseased person exposing others to infection.

If any attending physician or other person knows or has good reason to suspect that a person having a STD is behaving so as to expose other persons to infection, or is about to so behave, the attending physician or other person shall notify the municipal or county health officer of the name and address of the diseased person and the essential facts in the case.

History.
Acts 1921, ch. 106, § 2; Shan. Supp., § 3116a9; Code 1932, § 5814; Acts 1943, ch. 73, § 2; C. Supp. 1950, § 5814; T.C.A. (orig. ed.), § 53-1102.

68-10-103. Printed instructions given patients.

It is the duty of every physician or other person treating persons infected with a STD to give such persons printed instructions containing information deemed advisable by the department, such printed instructions to be furnished by the department.

History.
Acts 1921, ch. 106, § 3; impl. am. Acts 1923, ch. 7, § 46; Shan. Supp., § 3116a10; Code 1932, § 5815; T.C.A. (orig. ed.), § 53-1103.

68-10-104. Officers to examine suspected persons and require treatment — Sources of infection to be investigated.

(a)(1) State, district, county and municipal health officers or their authorized deputies, within their respective jurisdictions, are directed and empowered, when, in their judgment, it is necessary to protect the public health, to make an examination of a person reasonably suspected because of known clinical or epidemiological evidence of being infected with a STD of a communicable nature, and to require such person when found infected to report for treatment to a reputable physician or clinic, and continue treatment until discharged by the physician or clinic as noninfectious, or in a stage of the disease in which an infectious relapse will not occur, or to submit to treatment provided at public expense until discharged as noninfectious, or in a stage of the disease in which an infectious relapse will not occur; and also, when in the judgment of the state, municipal or county health officer, it is necessary to protect the public health, to isolate and quarantine the person infected with a STD; provided, that any person so suspected may have present at the time of examination a physician of the person's own choosing to participate in the examination.

(2) Loitering about or residing in a house of assignation or prostitution or any other place where lewdness is practiced shall be construed as sufficient to suspect a person of being infected with a STD.

(b) It is the duty of all health officers to investigate sources of infection of STDs and to cooperate with the proper officers whose duty it is to enforce laws directed against prostitution, lewdness and assignation and the spread of STDs.

(c) Any state, district, county or municipal health officer or any physician may examine, diagnose and treat minors infected with STDs without the knowledge or consent of the parents of the minors, and shall incur no civil or criminal liability in connection with the examination, diagnosis or treatment, except for negligence.

History.
Acts 1921, ch. 106, § 4; Shan. Supp., § 3116a11; Code 1932, § 5816; Acts 1943, ch. 73, § 3; C. Supp. 1950, § 5816; Acts 1969, ch. 39, § 1; T.C.A. (orig. ed.), § 53-1104.

68-10-105. Infected persons isolated or quarantined to specified area.

In establishing isolation or quarantine, the municipal or county health officer having jurisdiction shall designate and define the limits of the area within which the infected person is to be isolated or quarantined, and no person other than the attending physician or nurse shall enter or leave the area of isolation or quarantine without the permission of the health officer.

History.
Acts 1921, ch. 106, § 5; Shan. Supp., § 3116a12; Code 1932, § 5817; T.C.A. (orig. ed.), § 53-1105.

68-10-106. Quarantine of infected persons.

(a)(1) No one but a state, municipal, district or county health officer or such officer's duly authorized representative shall establish and terminate quarantine of persons infected with STDs.

(2) A decision to establish or terminate quarantine shall be based upon the judgment of the state, municipal, district or county health officer or such officer's duly authorized representative, considering available medical and epidemiological information concerning the STD diagnosis, modes of transmission, available treatment, and the necessity of the protection of the public health.

(b) It is the duty of the commissioner to set up the clinical and laboratory criteria necessary for the guidance of health officers in the performance of their duties as outlined in this section.

History.
Acts 1921, ch. 106, § 6; Shan. Supp., § 3116a13; Code 1932, § 5818; Acts 1943, ch. 73, § 4; C. Supp. 1950, § 5818; T.C.A. (orig. ed.), § 53-1106; Acts 1988, ch. 695, §§ 1, 4.

68-10-107. Exposure of others by infected person.

It is a violation of this chapter for any person infected with a STD to expose another person to such infection.

History.
Acts 1921, ch. 106, § 8; Shan. Supp., § 3116a15; Code 1932, § 5820; T.C.A. (orig. ed.), § 53-1107.

68-10-108. Places for detention of infected persons.

The county legislative bodies and the city officials, or other boards of the incorporated towns or cities, are empowered to provide suitable places for the detention of persons who may be subjected to isolation or quarantine and who should be segregated under this chapter. County legislative bodies and governing boards of incorporated cities and towns are authorized to incur, on behalf of their counties, cities and towns, the expenses necessary to the enforcement of this chapter.

History.
Acts 1921, ch. 106, § 9; Shan. Supp., § 3116a16; Code 1932, § 5821; impl. am. Acts 1978, ch. 934, §§ 7, 36; T.C.A. (orig. ed.), § 53-1108.

68-10-109. Rules and bylaws for control of sexually transmitted diseases.

(a) The department of health is empowered and directed to make such rules and bylaws for the control of STDs, not in conflict with this chapter, including the reporting of STDs and isolating and quarantining of infected persons, as it may from time to time deem advisable.

(b) All rules and bylaws made pursuant to subsection (a) shall be of force and binding upon the state, municipal and county health officers, and all other persons affected by the rules and regulations, and shall have the force and effect of law.

History.
Acts 1921, ch. 106, § 10; impl. am. Acts 1923, ch. 7, § 46; Shan. Supp., § 3116a17; Code 1932, § 5822; T.C.A. (orig. ed.), § 53-1109.

68-10-110. Arrest and temporary commitment for treatment authorized — Hearing — Examination — Appeal.

(a) Whenever in the judgment of the municipal, county or district health officer, there is reasonable clinical or epidemiological evidence to suspect that any person or persons are infected with a STD as defined in this chapter, and the person or persons refuse to be examined as provided in § 68-10-104, the health officer or the health officer's authorized deputy may go before a magistrate or judge of a court of general sessions and swear out a warrant of arrest for the person or persons.

(b) The magistrate or judge is not bound to issue the warrant pursuant to subsection (a), unless and until there is a showing of reasonable cause on the basis of sound clinical and epidemiological evidence.

(c) If reasonable cause is shown for the arrest and examination of the person or persons, the magistrate or judge shall direct that an examination be made of the person or persons to determine whether or not they are infected.

(d) The examination shall be made by the health officer or by a duly licensed and practicing physician of this state, to be selected by the health officer. The accused person or persons may also have a physician of their own choosing present to participate in the examination.

(e) If the physicians are not in accordance as to their diagnosis, then the court shall reach its decision after a hearing.

(f) If, after a full hearing, the court is of the opinion that the person examined is infected with a STD as defined in this chapter, the court may commit the person to an isolation hospital maintained by the state or local government for the purpose of detaining and treating such persons, who shall remain under treatment until the disease, in the opinion of the health officer, is no longer communicable or no longer in a stage in which infectious relapse may occur.

(g) No appeal or certiorari from the decision of the court committing the person to the isolation hospital shall stay the commitment, nor shall any court have power to supersede such order, but the person or persons shall immediately be placed in the isolation hospital, there to remain until released by the health officer as no longer communicable or in a stage of the disease in which infectious relapse may occur, or released by order of the court.

(h) Any person committed under this chapter may appeal from the judgment of the magistrate or court of general sessions as now provided by law for civil cases.

History.
Acts 1921, ch. 106, § 11; impl. am. Acts 1923, ch. 7, § 46; Shan. Supp., § 3116a18; mod. Code 1932, § 5823; Acts 1943, ch. 73, § 6; C. Supp. 1950, § 5823; T.C.A. (orig. ed.), § 53-1110.

68-10-111. Violation of chapter — Penalty.

Any health officer or any other persons who fail to perform the duties required of them in this chapter, or violate any of the provisions of this chapter, or of any rule or bylaw promulgated under its authority, commit a Class C misdemeanor. Each violation is a separate offense.

History.
Acts 1921, ch. 106, § 12; Shan. Supp., § 3116a19; mod. Code 1932, § 5824; T.C.A. (orig. ed.), § 53-1111; Acts 1989, ch. 591, § 113.

68-10-112. Reports of physicians and health officers.

(a) Every physician or other person who makes a diagnosis of, treats, or prescribes for a case of STD and every superintendent or manager of a clinic, hospital, laboratory or penal institution, in which there is a case of STD, shall report the case immediately to those persons or agencies designated as recipients of such reports by the commissioner.

(b) Reports shall be made on forms supplied by the department, stating the name, address, age, sex, race, stage of the disease and other information on the form as may be required for the location, treatment and control of infectious cases.

(c) Reporting of STDs, other than those designated as reportable in the regulations promulgated by the department, is not required.

History.
Acts 1921, ch. 106, § 1; impl. am. Acts 1923, ch. 7, § 46; Shan. Supp., § 3116a8; Code 1932, § 5813; Acts 1943, ch. 73, § 1; C. Supp. 1950, § 5813; T.C.A. (orig. ed.), § 53-1101; Acts 1988, ch. 695, §§ 1, 3; T.C.A. § 68-10-101.

68-10-113. Confidentiality of records and information.

All records and information held by the department or a local health department relating to known or suspected cases of STDs shall be strictly confidential. This information shall not be released or made public upon subpoena, court order, discovery, search warrant or otherwise, except that release may be made under the following circumstances:

(1) Release is made of medical or epidemiological information for statistical purposes, in such form that no individual person can be identified;

(2) Release is made of medical or epidemiological information with the consent of all persons identified in the information released;

(3) Release is made of medical or epidemiological information to medical personnel, appropriate state agencies, or county and district courts to enforce this chapter and related regulations governing the control and treatment of STDs;

(4) Release is made of medical or epidemiological information to medical personnel in a medical emergency to the extent necessary to protect the health or life of the patient;

(5) In a case involving a minor not more than thirteen (13) years of age, only the name, age, address and STD treated shall be reported to appropriate agents as required by § 37-1-403. No other information shall be released. If the information to be disclosed is required in a court proceeding involving child abuse, the information shall be disclosed in camera; or

(6)(A) Release is made during a legal proceeding when ordered by a trial court judge, designated by § 16-2-502, or a juvenile court judge through an order explicitly finding each of the following:

(i) The information sought is material, relevant, and reasonably calculated to be admissible evidence during the legal proceeding;

(ii) The probative value of the evidence outweighs the individual's and the public's interest in maintaining its confidentiality;

(iii) The merits of the litigation cannot be fairly resolved without the disclosure; and

(iv) The evidence is necessary to avoid substantial injustice to the party seeking it and, either the disclosure will result in no significant harm to the person examined or treated, or it would be substantially unfair as between the requesting party and the person examined or treated not to require the disclosure.

(B) A juvenile court judge shall make the findings set forth in subdivision (6)(A) by examining the information, in camera, and shall order the information placed under seal. The judge shall only examine the records of a juvenile who is under the jurisdiction of the court.

History.
Acts 1988, ch. 695, §§ 1, 2; 1992, ch. 887, §§ 1, 2.

68-10-114. Knowledge of governmental persons regarding records.

Except as provided in § 68-10-113, no state or local department officer or employee shall be examined in a civil, criminal, special or other proceeding as to the existence or contents of pertinent records of a person examined or treated for a STD by a state or local health department, or of the existence or contents of such reports received from a private physician or private health facility.

History.
Acts 1988, ch. 695, §§ 1, 2.

68-10-115. Immunity from liability for informing person of potential HIV infection.

A person who has a reasonable belief that a person has knowingly exposed another to HIV may inform the potential victim without incurring any liability. A person making such disclosure is immune from liability for making disclosure of the condition to the potential victim.

History.
Acts 1993, ch. 322, § 3.

68-10-116. Exposure of officers, emergency personnel or employees of Tennessee bureau of investigation's crime laboratories to hepatitis B or HIV virus — Testing of blood or body fluids.

(a)(1) If, during the course of arresting, transporting, or processing a person charged with the commission of a criminal offense, a law enforcement officer is exposed to the blood or other body fluid of the arrested person in any manner that presents a significant risk of transmission of the hepatitis B virus or the HIV/AIDS virus, then the exposed officer has the right to request that the arrested person's blood be tested for the presence of the hepatitis B virus and the HIV/AIDS virus.

(2) If, during the course of receiving, analyzing, or transporting the blood or other body fluid of any person who has been arrested and charged with a criminal offense, an employee of any of the Tennessee bureau of investigation's crime laboratories is exposed to the blood or body fluid in any manner that presents a significant risk of transmission of the hepatitis B virus or the HIV/AIDS virus, then the exposed employee has the right to request that the arrested person's blood be tested for the presence of the hepatitis B virus and the HIV/AIDS virus.

(3) If, while acting in the scope of duty, a fire fighter, emergency medical technician-paramedic, or emergency medical technician is exposed to the blood or other body fluid of an arrested person in any manner that presents a significant risk of transmission of the hepatitis B virus or the HIV/AIDS virus,

then the exposed individual has the right to request that the arrested person's blood be tested for the presence of the hepatitis B virus and the HIV/AIDS virus.

(b) Testing shall occur at a licensed health care facility, with the cost to be paid by the state, county, or municipal subdivision that employs the law enforcement officer, fire fighter, emergency medical technician-paramedic, emergency medical technician, or employee of the crime laboratory of the Tennessee bureau of investigation. Any person who, acting at the written request of a law enforcement officer, fire fighter, emergency medical technician-paramedic, emergency medical technician, or employee of the crime laboratory of the Tennessee bureau of investigation, withdraws blood from a person for the purpose of making the test, shall not incur any civil or criminal liability as a result of the withdrawing of the blood, except for any damages that may result from the negligence of the person withdrawing the blood. Neither shall the hospital or licensed health care facility incur, except for negligence, any civil or criminal liability as a result of the act of withdrawing blood from any person. The results of the testing shall be confidential; provided, that the law enforcement officer, fire fighter, emergency medical technician-paramedic, emergency medical technician, or employee of the crime laboratory of the Tennessee bureau of investigation, exposed to the blood or other body fluid shall have the right to request the results of the testing and the person providing the test results shall be immune from liability in the same manner as is provided in § 68-10-115.

History.
Acts 1994, ch. 914, § 1; 2005, ch. 17, §§ 1, 2; 2011, ch. 270, § 1.

68-10-117. Possible exposure of emergency workers to airborne or bloodborne diseases — Testing.

(a) If, in the course of performing normal, authorized professional job duties, or rendering emergency care as a good samaritan under the Good Samaritan Law, codified in § 63-6-218, a member of one of the categories of individuals listed in subsection (d) reasonably believes that the member may have been exposed to potentially life-threatening airborne or bloodborne diseases, including, but not limited to, tuberculosis, HIV or hepatitis B, the person has the right to request, in writing, that the individual who may have exposed the person be evaluated to determine the presence of such disease or diseases. The request shall be made to the designated exposure control officer of the responding agency or county medical examiner, who shall conduct the evaluation pursuant to the rules provided for in subsection (c).

(b) Any evaluation pursuant to subsection (a) shall include all medical records held by the department of health, any health care provider, or health care facility pertaining to the individual who is the subject of the evaluation. Any information provided shall be made available in accordance with the rules provided for in subsection (c) and shall be used only for the purpose of performing the evaluation and shall be otherwise confidential. Any cost related to the evaluation shall be paid by the responding agency.

(c) Any evaluation provided for in subsection (a) shall be conducted pursuant to emergency rules promulgated by the commissioner of health consistent with federal regulations for such determination of exposure experienced by emergency response workers. Any agency, individual, or facility providing any assistance or information necessary for completing the evaluation shall not incur any civil or criminal liability as a result of providing assistance or information consistent with the rules promulgated pursuant to this subsection (c).

(d) The categories of individuals who may request evaluations are paramedics, emergency response employees, fire fighters, first response workers, emergency medical technicians, and volunteers making an authorized emergency response. The evaluations may also be requested by any person rendering services as a good samaritan under the Good Samaritan Law.

History.
Acts 1997, ch. 539, § 1; 2002, ch. 589, §§ 1-3; 2009, ch. 566, § 12.

Compiler's Notes.
Acts 2009, ch. 566, § 12 provided that the Tennessee code commission is directed to change all references to public necessity rules, wherever such references appear in this code, to emergency rules, as sections are amended and volumes are replaced.

68-10-118. AIDS Centers of Excellence established — Committee membership — Terms — Compensation and reimbursement.

(a) Subject to annual appropriations made available to the state by the United States public health service through Part B (Title II) of the Ryan White CARE Act, compiled in 42 U.S.C. § 300ff-21 et seq., the commissioner of health shall establish an AIDS Center of Excellence advisory committee to advise the department of health in the designation of AIDS Centers of Excellence, provide quality assurance monitoring for the centers, and the establishment and review of policies for continuation of the AIDS Centers of Excellence. If, in any fiscal year, federal funding for the committee is eliminated or reduced, then the committee shall cease to exist in accordance with title 4, chapter 29.

(b) The committee shall be appointed by the commissioner of health, and shall be composed of the commissioner of health or the commissioner's designee, who shall serve as chair; the director of communicable and environmental disease services within the Tennessee department of health; three (3) physicians licensed in the state of Tennessee, each representing a grand division of the state and actively involved in the delivery of HIV/AIDS care; an attorney licensed in the state of Tennessee; a nurse licensed in the state of Tennessee and actively involved in the delivery of HIV/AIDS care; a social worker licensed in the state of Tennessee and actively involved in the delivery of HIV/AIDS care; and two (2) at-large members currently living with HIV/AIDS.

(c) The members' appointments shall be staggered as follows: four (4) members to be appointed for a term of three (3) years; two (2) members for a term of four (4) years; and the remaining members for a term of two (2) years. Any member appointed to fill a vacancy for an unexpired term shall serve the remainder of that term.

(d) The committee shall meet as frequently as the commissioner deems necessary, but not less than once each year. The committee members shall receive no compensation but will be reimbursed for travel expenses incurred in carrying out their duties as members of this committee. All reimbursements for travel expenses shall be in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

History.
Acts 2001, ch. 294, § 1.

CHAPTER 12

TREATMENT OF DISABLED CHILDREN

SECTION.

68-12-101. Clinics for children with physical disabilities authorized — State after-care program.
68-12-102. "Child with a physical disability" — Defined.
68-12-103. Treatment and care of indigent children — Eligibility — Procedure.
68-12-104. Expenses of care and treatment — Payment.
68-12-105. Placement for administering care and treatment.
68-12-106. Enforcement of chapter — Advisory committee for children's special service created — Members.
68-12-107. Powers of department — Special fund — Collection and disbursement of moneys.
68-12-108. Enumeration of physically disabled children by department of education.
68-12-109. Special schools and classes to be provided.
68-12-110. Funds for care or education.
68-12-111. Appropriations available for use.
68-12-112. Coverage extended to cystic fibrosis victims twenty-one years or older.

68-12-101. Clinics for children with physical disabilities authorized — State after-care program.

(a) In order to provide proper care, advice and approved medical and surgical treatment for children with physical disabilities, the department of health is empowered to organize and conduct local public diagnostic and operative clinics for such children, in cooperation with local lawful authorities, medical societies, social welfare, public health, or private agencies, designed to give such children expert diagnosis and advice near their homes.

(b) Such diagnosis and advice shall be rendered by orthopedic surgeons and other experts in the different parts of the state who have been approved and designated by the department.

(c) The department is further empowered to include and carry on a state program of convalescent care and follow-up work, providing after-care for the health of such children as part of its general program of health work.

History.
Acts 1929, ch. 60, § 1; Code 1932, § 4747; T.C.A. (orig. ed.), § 53-1901; Acts 2011, ch. 47, § 78.

Compiler's Notes.
Acts 2011, ch. 47, § 107 provided that nothing in the legislation shall be construed to alter or otherwise affect the eligibility for services or the rights or responsibilities of individuals covered by the provision on the day before the date of enactment of this legislation, which was July 1, 2011.

Acts 2011, ch. 47, § 108 provided that the provisions of the act are declared to be remedial in nature and all provisions of the act shall be liberally construed to effectuate its purposes.

68-12-102. "Child with a physical disability" — Defined.

(a) For the purposes of this chapter, a "child with a physical disability" is one under twenty-one (21) years of age who is deemed to have a physical disability by any reason, whether congenital or acquired, as a result of accident, or disease, that requires medical, surgical, or dental treatment and rehabilitation, and who is or may be totally or partially incapacitated for the receipt of a normal education or for self-support.

(b) This definition does not include those children whose sole diagnosis is blindness or deafness; nor does this definition include children who are diagnosed as psychotic.

(c) This definition does not prohibit children's special services from accepting for treatment children with acute conditions such as, but not necessarily limited to, fractures, burns and osteomyelitis.

History.
Acts 1929, ch. 60, § 2; Code 1932, § 4748; Acts 1951, ch. 44, § 1; 1961, ch. 41, § 1; T.C.A. (orig. ed.), § 53-1902; Acts 2011, ch. 47, § 79.

Compiler's Notes.
Acts 2011, ch. 47, § 107 provided that nothing in the legislation shall be construed to alter or otherwise affect the eligibility for services or the rights or responsibilities of individuals covered by the provision on the day before July 1, 2011.

Acts 2011, ch. 47, § 108 provided that the provisions of the act are declared to be remedial in nature and all provisions of the act shall be liberally construed to effectuate its purposes.

68-12-103. Treatment and care of indigent children — Eligibility — Procedure.

(a) In order to provide care and suitable and approved medical and surgical treatment, as provided in this chapter for children with a physical disability whose parents or guardians or other persons in whose care they may be, fail, or are financially unable in whole or in part to provide the necessary treatment, the department of health is empowered to accept the responsibility for the treatment of these children for the purpose of providing such medical, surgical, dental, hospital, outpatient clinic service, rehabilitation or domiciliary care, or any service needed to assist such children to minimize the effects of the disability for which they are being treated.

(b)(1) A determination of financial eligibility for service for each of these children shall be made by the director of children's special services of the department.

(2) In making a determination, the director of children's special services shall take into consideration the family income, the number of dependents in the family, the probable total cost of treatment and the other financial responsibilities of the family.

(3) Such determination shall be based on regulations promulgated by the commissioner and approved by the Tennessee public health council [repealed].

History.
Acts 1967, ch. 173, § 1; T.C.A., § 53-1903; Acts 2011, ch. 47, § 80.

Compiler's Notes.
The public health council, referred to in this section, was terminated by Acts 2008, ch. 951, § 2, effective July 1, 2008.

Acts 2011, ch. 47, § 107 provided that nothing in the legislation shall be construed to alter or otherwise affect the eligibility for services or the rights or responsibilities of individuals covered by the provision on the day before the date of enactment of this legislation, which was July 1, 2011.

Acts 2011, ch. 47, § 108 provided that the provisions of the act are declared to be remedial in nature and all provisions of the act shall be liberally construed to effectuate its purposes.

68-12-104. Expenses of care and treatment — Payment.

The necessary expenses of such care and treatment, including maintenance, personal necessities, artificial limbs, appliances and accessories and their upkeep, and of conveyance to and from the places designated for such services, shall be borne in whole or in part by the parent or guardian if financially able, or as funds are available by the department of health; provided, that the department may charge to the county in which such children with a physical disability reside a portion of the cost, the portion to be determined by the formula as authorized in § 68-12-107(4).

History.
Acts 1929, ch. 60, § 4; Code 1932, § 4750; Acts 1935, ch. 135, § 2; C. Supp. 1950, § 4750; Acts 1959, ch. 57, § 2; T.C.A. (orig. ed.), § 53-1904; Acts 2011, ch. 47, § 81.

Compiler's Notes.
Acts 2011, ch. 47, § 107 provided that nothing in the legislation shall be construed to alter or otherwise affect the eligibility for services or the rights or responsibilities of individuals covered by the provision on the day before the date of enactment of this legislation, which was July 1, 2011.

Acts 2011, ch. 47, § 108 provided that the provisions of the act are declared to be remedial in nature and all provisions of the act shall be liberally construed to effectuate its purposes.

68-12-105. Placement for administering care and treatment.

The department of health shall arrange for the care and treatment provided for in this chapter, at such children's homes, orthopedic or other hospitals or institutions or schools or homes, public or private, as may be approved by the department.

History.
Acts 1929, ch. 60, § 5; Code 1932, § 4751; Acts 1935, ch. 135, § 2; C. Supp. 1950, § 4751; Acts 1959, ch. 57, § 3; T.C.A. (orig. ed.), § 53-1905; Acts 2011, ch. 47, § 82.

Compiler's Notes.
Acts 2011, ch. 47, § 107 provided that nothing in the legislation shall be construed to alter or otherwise affect the eligibility for services or the rights or responsibilities of individuals covered by the provision on the day before the date of enactment of this legislation, which was July 1, 2011.

Acts 2011, ch. 47, § 108 provided that the provisions of the act are declared to be remedial in nature and all provisions of the act shall be liberally construed to effectuate its purposes.

68-12-106. Enforcement of chapter — Advisory committee for children's special service created — Members.

(a) The department of health is charged with the duty of carrying out this chapter.

(b) The commissioner of health, with the approval of the governor, may appoint an advisory committee to be known as the advisory committee for children's special services, and such committee, if appointed, shall advise the department relative to the children's special services, as requested by the commissioner.

(c)(1) The advisory committee shall consist of seven (7) members, and due consideration shall be given to the geographic distribution of the members so as to have general representation throughout the state.

(2)(A) At the expiration of the initial terms of appointment, each succeeding appointment shall be for a period of four (4) years. The commissioner may remove any member for cause.

(B) Any member may be reappointed, and each member shall serve until such member's successor is appointed.

(C) A vacancy in the committee occurring for any cause shall be filled by the commissioner, and the person so appointed shall serve until the expiration of the term for which such person's predecessor had been appointed.

(3)(A) The members of the committee shall serve without compensation, but shall be entitled to be reimbursed for actual and necessary travel expenses while in attendance at official meetings of the committee.

(B) All reimbursement for travel expenses shall be in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

History.
Acts 1929, ch. 60, § 6; Code 1932, § 4752; Acts 1935, ch. 135, § 1; 1937, ch. 33, § 65; 1939, ch. 144, § 1; mod. C. Supp. 1950, § 4752; Acts 1959, ch. 57, § 4; 1972, ch. 443, § 1; 1976, ch. 806, § 1(37); T.C.A. (orig. ed.), § 53-1906.

Compiler's Notes.
The advisory committee for children's special services, created by this section, terminates June 30, 2019. See §§ 4-29-112, 4-29-240.

68-12-107. Powers of department — Special fund — Collection and disbursement of moneys.

The department of health is authorized and empowered to:

(1) Accept gifts, donations or bequests from either public or private sources made or placed in trust to assist in carrying out the purposes of this chapter; provided, that such funds shall be placed in the care of the state treasurer and shall be designated as the "special private fund for children with a physical disability"; and provided further, that any donation or gift, if expressly specified by the donor, may be used to supplement the salary of any person engaged in work for children with a physical disability, whether such person is an employee of the state or not;

(2) Collect payments, in cooperation with local courts and specially appointed local representatives, from parents or guardians who are able to pay, in whole or in part, for the care of their children and wards;

(3) Pay the costs of children's special services, including the costs of care and treatment for the children, the payment to be made out of the funds available for that purpose through state legislative appropriations, federal grant-in-aid, or gifts or donations, or funds paid in by parents or guardians, or by counties, as reimbursements; provided, that no part of the funds coming by way of gift, donation, bequests or reimbursements made to the department for the care of children shall be used for administration, unless given expressly for that purpose; and

(4) Charge to the proper fiscal officers of counties in which such certified or committed children have their legal residences, such part of the costs, exclusive of the cost of administration, incurred by the department in treating and caring for such children as may be determined by a formula to be devised by the public health council [repealed] of the department. The formula shall take into consideration, among other items, counties' appropriation made specifically for children's special services in relation to total population of the county, availability of state and other funds available for matching county funds, ability of the county to appropriate funds for all county services, and special needs in public health and related fields.

History.

Acts 1929, ch. 60, § 7; Code 1932, § 4753; Acts 1935, ch. 135, § 2; C. Supp. 1950, § 4753; Acts 1959, ch. 57, § 5; T.C.A. (orig. ed.), § 53-1907; Acts 2011, ch. 47, § 83.

Compiler's Notes.

The public health council, referred to in this section, was terminated by Acts 2008, ch. 951, § 2, effective July 1, 2008.

Acts 2011, ch. 47, § 107 provided that nothing in the legislation shall be construed to alter or otherwise affect the eligibility for services or the rights or responsibilities of individuals covered by the provision on the day before the date of enactment of this legislation, which was July 1, 2011.

Acts 2011, ch. 47, § 108 provided that the provisions of the act are declared to be remedial in nature and all provisions of the act shall be liberally construed to effectuate its purposes.

68-12-108. Enumeration of physically disabled children by department of education.

(a)(1) The department of education shall furnish to the department of health a list of all persons enumerated in the school census who have a physical disability.

(2) Such children of school age or younger shall be listed, together with the nature of their disabilities, on a separate enumeration blank provided for that purpose.

(b)(1) For listing each such child below school age the sum of ten cents (10¢) shall be allowed the enumerator.

(2) It is the duty of the county board of education and of the city board of education in cities maintaining separate school systems to have enumerated all children with a physical disability of school age or younger residing within their respective jurisdictions, and to furnish to the department of education a list of such persons.

History.

Acts 1929, ch. 60, § 8; Code 1932, § 4754; T.C.A. (orig. ed.), § 53-1908; Acts 2011, ch. 47, §§ 84, 85.

Compiler's Notes.

Acts 2011, ch. 47, § 107 provided that nothing in the legislation shall be construed to alter or otherwise affect the eligibility for services or the rights or responsibilities of individuals covered by the provision on the day before the date of enactment of this legislation, which was July 1, 2011.

Acts 2011, ch. 47, § 108 provided that the provisions of the act are declared to be remedial in nature and all provisions of the act shall be liberally construed to effectuate its purposes.

68-12-109. Special schools and classes to be provided.

The department of education is empowered to provide, and to cooperate with other school authorities in providing, special schools and special classes in the public elementary and high schools, in private schools, in hospitals, in convalescent institutions, and also home and bedside instruction, and transportation to and from school for children with physical or visual disabilities.

History.

Acts 1929, ch. 60, § 9; Code 1932, § 4755; Acts 1943, ch. 77, § 1; C. Supp. 1950, § 4755; T.C.A., § 53-1909; Acts 2011, ch. 47, § 86.

Compiler's Notes.

Acts 2011, ch. 47, § 107 provided that nothing in the legislation shall be construed to alter or otherwise affect the eligibility for services or the rights or responsibilities of individuals covered by the provision on the day before the date of enactment of this legislation, which was July 1, 2011.

Acts 2011, ch. 47, § 108 provided that the provisions of the act are declared to be remedial in nature and all provisions of the act shall be liberally construed to effectuate its purposes.

68-12-110. Funds for care or education.

All funds made available by appropriation or otherwise, and unexpended, for the care, treatment or education of children with physical disabilities, are for the carrying out of this chapter.

History.
Acts 1929, ch. 60, § 10; mod. Code 1932, § 4756; T.C.A. (orig. ed.), § 53-1910; Acts 2011, ch. 47, § 87.

Compiler's Notes.
Acts 2011, ch. 47, § 107 provided that nothing in the legislation shall be construed to alter or otherwise affect the eligibility for services or the rights or responsibilities of individuals covered by the provision on the day before the date of enactment of this legislation, which was July 1, 2011.

Acts 2011, ch. 47, § 108 provided that the provisions of the act are declared to be remedial in nature and all provisions of the act shall be liberally construed to effectuate its purposes.

68-12-111. Appropriations available for use.

Such part of the sums appropriated for the administration and maintenance of the general work of the department of health and of the department of education as may be necessary for the carrying out of the duties imposed on these departments by this chapter are made available for the carrying out of the purposes of this chapter.

History.
Acts 1929, ch. 60, § 11; Code 1932, § 4757; T.C.A. (orig. ed.), § 53-1911.

Compiler's Notes.
This section may be affected by § 9-1-116, concerning entitlement to funds, absent appropriation.

68-12-112. Coverage extended to cystic fibrosis victims twenty-one years or older.

(a) The department of health is authorized to extend coverage to persons with cystic fibrosis who are twenty-one (21) years of age or older.

(b) Coverage shall be extended to such persons under the conditions, terms, requirements and criteria which the department shall deem to be appropriate through the promulgation of rules and regulations.

History.
Acts 1981, ch. 189, §§ 1, 2; T.C.A., § 53-1912.

CHAPTER 34

FAMILY PLANNING ACT OF 1971

SECTION.

68-34-101. Short title.
68-34-102. Chapter definitions.
68-34-103. Declaration of policy.
68-34-104. Contraceptives — Availability — Information — Religious belief.
68-34-105. Disposition of funds — Development of program.
68-34-106. Rules and regulations.
68-34-107. Contraceptives for minors.
68-34-108. Sterilization for minors.
68-34-109. Physician liability for sterilization.
68-34-110. Legislative determination.
68-34-111. Criminal penalties.

68-34-101. Short title.

This chapter shall be known and may be cited as the "Family Planning Act of 1971."

History.
Acts 1971, ch. 400, § 1; T.C.A., § 53-4601.

68-34-102. Chapter definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Commissioner" means the commissioner of health;

(2) "Contraceptive procedures" means any medically accepted procedure designed to prevent conception;

(3) "Contraceptive supplies" means those medically approved items designed to prevent conception through chemical, mechanical or other means;

(4) "Department" means the department of health; and

(5) "Physician" means any doctor of medicine or doctor of osteopathy duly licensed to practice such physician's profession in Tennessee or the state in which such physician resides and lawfully practices such physician's profession.

History.
Acts 1971, ch. 400, § 1; T.C.A., § 53-4602.

68-34-103. Declaration of policy.

It is the legislative declaration of the general assembly that:

(1) Continuing population growth either causes or aggravates many social, economic and environmental problems, both in this state and in the nation;

(2) Contraceptive procedures, supplies, and information, and information as to and procedures for voluntary sterilization, are not sufficiently available as a practical matter to many persons in this state;

(3) It is desirable that inhibitions and restrictions be eliminated so that all persons desiring and needing contraceptive procedures, supplies, and information shall have ready and practicable access thereto; and

(4) Section 68-34-104 sets forth the policy and authority of this state, its political subdivisions, and all agencies and institutions thereof, including prohibitions against restrictions, with respect to contraceptive procedures, supplies and information.

History.
Acts 1971, ch. 400, § 1; T.C.A., § 53-4603.

68-34-104. Contraceptives — Availability — Information — Religious belief.

It is the policy and authority of this state that:

(1) All medically acceptable contraceptive procedures, supplies, and information shall be readily and practicably available to each and every person desirous of the same regardless of sex, race, age, income, number of children, marital status, citizenship or motive;

(2) Contraceptive procedures, including medical procedures for permanent sterilization, when performed by a physician on a requesting and consent-

ing patient, are consistent with public policy;

(3) Nothing in this chapter shall inhibit a physician from refusing to furnish any contraceptive procedures, supplies or information where such refusal is for medical reasons;

(4) Dissemination of medically acceptable contraceptive information by duly authorized persons in state and county health and welfare departments, in medical facilities at institutions of higher learning, and at other agencies and instrumentalities of this state is consistent with public policy;

(5) No private institution or physician, nor any agent or employee of such institution or physician, shall be prohibited from refusing to provide contraceptive procedures, supplies, and information when such refusal is based upon religious or conscientious objection, and no such institution, employee, agent, or physician shall be held liable for such refusal; and

(6) To the extent that family planning funds are available, each public health agency of this state and each of its political subdivisions shall provide contraceptive procedures, supplies, and information, including voluntary sterilization procedures for male or female persons eligible for free medical service as determined by rules and regulations promulgated by the commissioner. The same service shall be available to all others who are unable to obtain the service privately, at a cost to be determined by rules and regulations promulgated by the commissioner.

History.
Acts 1971, ch. 400, § 1; T.C.A., § 53-4604.

68-34-105. Disposition of funds — Development of program.

(a) The department is authorized to receive and disburse such funds as may become available to it for family planning programs to any organization, public or private, engaged in providing contraceptive procedures, supplies and information.

(b) Any family planning program administered by the department may be developed in consultation and coordination with other family planning agencies in this state.

(c) For purposes of any county having a population in excess of five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal census, the commissioner shall, in distributing the funds provided for under this section, issue a single request for grant proposals for each affected county for funding for family planning programs. The commissioner shall send a notification of this request to the affected county health departments and shall place a notification on the department's web site. The commissioner shall allow at least thirty (30) days after issuing the notification before closing the application period. The commissioner and the department shall encourage the county health departments to take every step possible to be able to accept all family planning funds provided by the state for that particular county. Upon receipt of all applications, the commissioner shall first consider and give preference to funding requests from the county health departments. The commissioner shall not exclude a county health department that seeks full funding of family planning services if, at the time of the application, the county health department does not have the capacity to serve the number of patients as estimated in the request for grant proposal. The county health department must provide documentation, however, demonstrating its ability at the inception of the grant period to serve the number of patients estimated in the request for grant proposal. Acceptance of such funding shall create an obligation under this section to provide family planning services to all eligible clients seeking services throughout the term of the grant.

(d) If funds remain after the awarding of funds to county health departments as provided in subsection (c), the commissioner may make funding available to any other applicants pursuant to the request for grant proposal.

History.
Acts 1971, ch. 400, § 1; T.C.A., § 53-4605; Acts 2009, ch. 575, §§ 1, 2.

Compiler's Notes.
For tables of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

68-34-106. Rules and regulations.

The commissioner is authorized to adopt and promulgate rules and regulations to enable the department to implement this chapter.

History.
Acts 1971, ch. 400, § 1; T.C.A., § 53-4606.

68-34-107. Contraceptives for minors.

Contraceptive supplies and information may be furnished by physicians to any minor who is pregnant, a parent, or married, or who has the consent of the minor's parent or legal guardian, or who has been referred for such service by another physician, a clergy member, a family planning clinic, a school or institution of higher learning, or any agency or instrumentality of this state or any subdivision of the state, or who requests and is in need of birth control procedures, supplies or information.

History.
Acts 1971, ch. 400, § 1; T.C.A., § 53-4607.

68-34-108. Sterilization for minors.

It is lawful for any physician or surgeon licensed in this state, when so requested by any person eighteen (18) years of age or over, or less than eighteen (18) years of age if legally married, to perform upon such person a surgical interruption of the vas deferens or fallopian tubes, as the case may be; provided, that a request in writing is made by such person prior to the performance of such surgical operation; and provided further, that prior to, or at the time of such request, a full and reasonable medical explanation is given by the physician or surgeon to such person as to the meaning and consequence of the operation.

History.
Acts 1971, ch. 400, § 1; T.C.A., § 53-4608.

68-34-109. Physician liability for sterilization.

Subject to the rules of law applicable generally to negligence, no physician or surgeon licensed by this state shall be liable civilly or criminally by reason of having performed surgical interruption of vas deferens or fallopian tubes, as the case may be, authorized by this chapter upon any person in this state.

History.
Acts 1971, ch. 400, § 1; T.C.A., § 53-4609.

68-34-110. Legislative determination.

The general assembly finds, determines and declares that this chapter is necessary for the immediate preservation of the public peace, health, and safety.

History.
Acts 1971, ch. 400, § 1; T.C.A., § 53-4610.

68-34-111. Criminal penalties.

It is a Class C misdemeanor to threaten, coerce, intimidate or require any person to submit to any surgical procedure authorized by this chapter.

History.
Acts 1971, ch. 400, § 4; T.C.A., § 53-4611; Acts 1989, ch. 591, § 113.

CHAPTER 55

HEAD AND SPINAL CORD INJURY INFORMATION SYSTEM

Part 4. Traumatic Brain Injury Fund

SECTION.
68-55-401. Fund established.
68-55-402. Grant programs.

PART 4

TRAUMATIC BRAIN INJURY FUND

68-55-401. Fund established.

There is established a general fund reserve to be allocated by the general appropriations act, which shall be known as the "traumatic brain injury fund," hereafter referred to as the "fund." Moneys from the fund may be expended to fund the registry, the TBI coordinator position and additional staff requirements and other expenditures and grants under this chapter. Any revenues deposited in this reserve shall remain in the reserve until expended for purposes consistent with this chapter, and shall not revert to the general fund on any June 30. Any excess revenues shall not revert on any June 30, but shall remain available for appropriation in subsequent fiscal years. Any appropriation from such reserve shall not revert to the general fund on any June 30, but shall remain available for expenditure in subsequent fiscal years.

History.
Acts 1993, ch. 443, § 15.

68-55-402. Grant programs.

From the revenues deposited in the traumatic brain injury fund, the department is authorized to provide grants to county and municipal governments and/or not-for-profit organizations for home and community based programs to serve the needs of TBI persons and their families. The department is authorized to establish such grant programs and to develop criteria for eligible applicants. The department may include a requirement for community matching funds which may take the form of financial contributions, forms other than direct financial contributions, or both.

History.
Acts 1993, ch. 443, § 16.

SAFETY

CHAPTER 117

TANNING FACILITY CONTROL ACT OF 1990

SECTION.
68-117-101. Short title.
68-117-102. Chapter definitions.
68-117-103. Applicability to health care professionals.
68-117-104. Requirements.
68-117-105. Penalty.
68-117-106. Warning statement.
68-117-107. Required display of warning sign.

68-117-101. Short title.

This chapter shall be known and may be cited as the "Tanning Facility Control Act of 1990."

History.
Acts 1990, ch. 845, § 1; T.C.A., § 68-54-101.

Compiler's Notes.
Former title 68, ch. 54, §§ 68-54-101 — 68-54-105, was transferred to title 68, ch. 117, §§ 68-117-101 — 68-117-105, respectively, in 1992.

68-117-102. Chapter definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Tanning device" means any equipment that emits radiation used for tanning of the skin, such as a sun lamp, tanning booth, or tanning bed, and includes any accompanying equipment, such as protective eyewear, timers and handrails; and

(2) "Tanning facility" means any place where a tanning device is used for a fee, membership dues, or any other compensation.

History.
Acts 1990, ch. 845, § 1; T.C.A., § 68-54-102.

Compiler's Notes.
Former title 68, ch. 54, §§ 68-54-101 — 68-54-105, was transferred to title 68, ch. 117, §§ 68-117-101 — 68-117-105, respectively, in 1992.

68-117-103. Applicability to health care professionals.

This chapter does not apply to a licensed health care professional who uses a tanning device for the treatment of patients, if the use is within the lawful scope of practice of the health care professional.

History.
Acts 1990, ch. 845, § 1; T.C.A., § 68-54-103.

Compiler's Notes.
Former title 68, ch. 54, §§ 68-54-101 — 68-54-105, was transferred to title 68, ch. 117, §§ 68-117-101 — 68-117-105, respectively, in 1992.

68-117-104. Requirements.

(a) A tanning facility shall:

(1) Have a trained attendant on duty whenever the facility is open for business;

(2) Provide each customer with protective eyewear that meets the requirements of 21 CFR 1040.20(c)(4);

(3) Not allow a person to use a tanning device if that person does not use the protective eyewear;

(4) Show each customer how to use suitable physical aids, such as handrails and markings on the floor, to maintain proper exposure distance as recommended by the manufacturer;

(5) Limit each customer to the maximum exposure time as recommended by the manufacturer; and

(6) Control the interior temperature of a tanning facility so that it does not exceed thirty-four degrees centigrade (34° C).

(b)(1) Each time a person uses a tanning facility or each time a person executes or renews a contract to use a tanning facility, the person shall sign a written statement, as set forth in this chapter, that the person:

(A) Has read and understood the warnings before using the device; and

(B) Agrees to use the protective eyewear that the tanning facility provides.

(2) When using a tanning device, a person shall use the protective eyewear that the tanning facility provides.

(3) A person between fourteen (14) and eighteen (18) years of age shall either be accompanied by the person's parent or legal guardian who shall present photo identification and sign the warnings statement provided for in this chapter, or shall provide the tanning facility with a notarized statement signed by the person's parent or legal guardian giving consent for use of a tanning device and stating the relationship with the person who is under eighteen (18) years of age, as well as a warning statement as provided for in this chapter signed by the parent or legal guardian.

(4) A person under fourteen (14) years of age shall be accompanied by a parent or legal guardian when using a tanning device. The accompanying parent or legal guardian shall provide photo identification and shall sign the warnings statement provided for in this chapter, as well as sign a statement stating the relationship with the child who is under fourteen (14) years of age.

(5) The operator of the tanning facility shall maintain the signed statements and the notarized statements provided for in subdivision (b)(3) for a period of not less than two (2) years and shall make them available for inspection upon request.

History.
Acts 1990, ch. 845, § 1; T.C.A., § 68-54-104; Acts 2002, ch. 528, §§ 1-5.

Compiler's Notes.
Former title 68, ch. 54, §§ 68-54-101 — 68-54-105, was transferred to title 68, ch. 117, §§ 68-117-101 — 68-117-105, respectively, in 1992.

68-117-105. Penalty.

A violation of any of the provisions of this chapter constitutes a Class B misdemeanor punishable by a fine of not more than five hundred dollars ($500). Each day on which a violation occurs constitutes a separate offense. Violations of this chapter may subject an owner and/or operator of a tanning facility to civil claims, prosecution, or both.

History.
Acts 1990, ch. 845, § 1; 1989, ch. 591, §§ 1, 6; T.C.A., § 68-54-105; Acts 2002, ch. 528, § 7.

Compiler's Notes.
Former title 68, ch. 54, §§ 68-54-101 — 68-54-105, was transferred to title 68, ch. 117, §§ 68-117-101 — 68-117-105, respectively, in 1992.

68-117-106. Warning statement.

The statement that must be given to each tanning facility customer and must be signed by the customer shall contain at a minimum the following:

(1) Failure to use the required eye protection provided to the customer may result in damage to the eyes;

(2) Overexposure to ultraviolet light may cause severe sunburn reactions;

(3) Repeated exposure to ultraviolet light may result in skin cancer and premature aging of the skin;

(4) Abnormal skin sensitivity or severe burning may be caused by reactions when tanning devices are used in conjunction with certain foods, cosmetics, and medications such as tranquilizers, diuretics (fluid pills), antibiotics, high blood pressure medicines, and birth control pills;

(5) An individual taking prescription medication or over-the-counter drugs should consult a physician before using a tanning device;

(6) An individual with skin that tends to burn easily, freckles, or never tans should avoid use of a tanning device before consulting a physician;

(7) An individual with a family or personal past medical history of skin cancer should avoid use of a tanning device;

(8) An individual should allow a minimum of twenty-four (24) hours between uses of a tanning device; and

(9) Pregnant women or women using oral contraceptives may develop discolored skin due to the use of tanning devices.

History.
Acts 2002, ch. 528, § 6.

68-117-107. Required display of warning sign.

(a) Each tanning facility shall prominently post, in a location always plainly visible to the public, a sign no smaller than twenty-four inches by thirty-six inches (24″ x 36″) that shall be readily legible to the average person to ensure that it is likely to be read by a customer wishing to use a tanning bed.

(b) Each sign shall contain the following language:

WARNING: ULTRAVIOLET RADIATION

Improper or repeated exposure to ultraviolet radiation may cause damage to skin including premature aging and skin cancer.

Failure to use protective eyewear may result in severe burns or permanent injury to the eyes.

Medications or cosmetics may increase sensitivity to ultraviolet radiation.

Consult a physician if you are using medications.

Pregnancy or use of estrogen containing medications such as premarin or oral contraceptives may result in skin discoloration when exposed to ultraviolet radiation.

An individual with a personal or family history of melanoma should avoid exposure to ultraviolet radiation.

An individual with skin that tends to burn easily, freckles, or never tans should avoid exposure to tanning devices.

An individual with a personal history of skin cancer or abnormal moles should avoid exposure to tanning devices.

Improper use of a tanning device contrary to the recommendations of the manufacturer may be harmful to the user and shall not be allowed.

IF YOU DO NOT TAN IN THE SUN, YOU ARE UNLIKELY TO TAN FROM USE OF THIS DEVICE.

History.

Acts 2002, ch. 528, § 8.

CHAPTER 141

POISON CONTROL

SECTION.

68-141-101. Establishment of poison control centers.
68-141-102. Designation of regional control centers — Criteria.
68-141-103. Prohibited activities — Exceptions.
68-141-104. Designation as regional control center — Standards.
68-141-105. Services — Confidentiality.
68-141-106. Tennessee poison control network advisory committee.
68-141-107. Limitation of liability — Exceptions.
68-141-108. Commissioner — Reports.

68-141-101. Establishment of poison control centers.

The department of health is authorized to establish and maintain a system of poison control centers in Tennessee that:

(1) Serves public and health care professionals in urban and rural areas;

(2) Designates regions within the network; and

(3) Designates regional poison control centers within the network.

History.
Acts 1991, ch. 393, § 2; T.C.A., § 68-43-101.

Compiler's Notes.
Former chapter 43, §§ 68-43-101, 68-43-102, 68-43-104, 68-43-105 (Acts 1974, ch. 784, §§ 1, 2, 4, 5; T.C.A., §§ 53-5801, 53-5802, 53-5804, 53-5805), concerning poison control centers, was repealed by Acts 1991, ch. 393, § 1, effective May 22, 1991.

Former title 68, ch. 43, §§ 68-43-101 — 68-43-108, was transferred to title 68, ch. 141, §§ 68-141-101 — 68-141-108, respectively, in 1992.

68-141-102. Designation of regional control centers — Criteria.

The commissioner of health may consider the following criteria in designating regional control centers:

(1) Compliance or expected compliance with the state poison control standards;

(2) Location in relation to the geographical distribution of persons served;

(3) Whether the facility is presently providing poison control services; and

(4) The capacity of such providers to deliver and coordinate poison prevention awareness programs to the general public.

History.
Acts 1991, ch. 393, § 3; T.C.A., § 68-43-102.

Compiler's Notes.
Former chapter 43, §§ 68-43-101, 68-43-102, 68-43-104, 68-43-105 (Acts 1974, ch. 784, §§ 1, 2, 4, 5; T.C.A., §§ 53-5801, 53-5802, 53-5804, 53-5805), concerning poison control centers, was repealed by Acts 1991, ch. 393, § 1, effective May 22, 1991.

Former title 68, ch. 43, §§ 68-43-101 — 68-43-108, was transferred to title 68, ch. 141, §§ 68-141-101 — 68-141-108, respectively, in 1992.

68-141-103. Prohibited activities — Exceptions.

(a) No person or persons, business, agency, organization or other entity, whether public or private, may hold itself out as providing a poison advice service or use the term "poison control center," "poison center," or any other term that implies that it is qualified to provide advice on the treatment of poison exposures in its advertising, name, or in printed material information it furnishes to the general public unless that entity meets one of the following conditions:

(1) Has been designated by the commissioner of health a regional poison control center; or

(2) Is a company or organization which provides a poison information service for products or chemicals which it manufactures or distributes.

(b) Nothing in this section prohibits a qualified health care professional, within such professional's level of professional expertise, from providing advice regarding poisoning or poisons to such professional's patient or patients upon request or whenever such professional deems it warranted in the exercise of such professional's professional judgment, as otherwise permitted by law.

History.
Acts 1991, ch. 393, § 4; T.C.A., § 68-43-103.

Compiler's Notes.
Former title 68, ch. 43, §§ 68-43-101 — 68-43-108, was transferred to title 68, ch. 141, §§ 68-141-101 — 68-141-108, respectively, in 1992.

68-141-104. Designation as regional control center — Standards.

The commissioner of health may establish minimum standards for designation as a regional control center. Such standards may require regional poison control centers to do all of the following:

(1) Answer requests by telephone for poison information and make recommendations for appropriate emergency management and treatment referrals of poisoning exposures. These services, provided twenty-four (24) hours a day, may involve the following:

(A) Determining whether a true poisoning emergency exists;

(B) Determining whether treatment can be accomplished at the scene of the incident, or whether transport to an emergency treatment facility is required;

(C) Recommending treatment measures to appropriate personnel; and

(D) Carrying out follow-up to assure that adequate care is provided;

(2) Utilize physicians, pharmacists, nurses and supportive personnel trained in various aspects of toxicology, poison control, poison prevention and poison information retrieval;

(3) Provide public awareness programs on poison prevention and utilization of regional poison control centers; and

(4) Maintain a data collection program of poison exposures and prepare an annual report.

History.
Acts 1991, ch. 393, § 5; T.C.A., § 68-43-104.

Compiler's Notes.
Former chapter 43, §§ 68-43-101, 68-43-102, 68-43-104, 68-43-105 (Acts 1974, ch. 784, §§ 1, 2, 4, 5; T.C.A., §§ 53-5801, 53-5802, 53-5804, 53-5805), concerning poison control centers, was repealed by Acts 1991, ch. 393, § 1, effective May 22, 1991.
Former title 68, ch. 43, §§ 68-43-101 — 68-43-108, was transferred to title 68, ch. 141, §§ 68-141-101 — 68-141-108, respectively, in 1992.

68-141-105. Services — Confidentiality.

A regional poison control center may provide the services described in § 68-141-104, either directly or through contract with other facilities or agencies. Appropriate measures shall be taken to ensure the confidentiality of information about individuals to whom treatment for poison exposures is provided in accordance with guidelines established by the commissioner of health.

History.
Acts 1991, ch. 393, § 6; T.C.A., § 68-43-105.

Compiler's Notes.
Former chapter 43, §§ 68-43-101, 68-43-102, 68-43-104, 68-43-105 (Acts 1974, ch. 784, §§ 1, 2, 4, 5; T.C.A., §§ 53-5801, 53-5802, 53-5804, 53-5805), concerning poison control centers, was repealed by Acts 1991, ch. 393, § 1, effective May 22, 1991.
Former title 68, ch. 43, §§ 68-43-101 — 68-43-108, was transferred to title 68, ch. 141, §§ 68-141-101 — 68-141-108, respectively, in 1992.

68-141-106. Tennessee poison control network advisory committee.

The commissioner of health may appoint the members of the Tennessee poison control network advisory committee, which is created to advise the department on matters pertaining to the designation, standards and coordination of regional poison control centers participating in the Tennessee poison control network. The committee shall consist of no more than nine (9) members, which shall include the commissioner or the commissioner's designee, at least one (1) representative from each regional poison control center, knowledgeable members of the general public, and representatives of governmental agencies involved in poison safety or public health. Members of the committee shall receive no compensation, but shall be reimbursed for their actual and necessary expenses incurred in the performance of their official duties.

History.
Acts 1991, ch. 393, § 7; T.C.A., § 68-43-106.

Compiler's Notes.
Former title 68, ch. 43, §§ 68-43-101 — 68-43-108, was transferred to title 68, ch. 141, §§ 68-141-101 — 68-141-108, respectively, in 1992.

68-141-107. Limitation of liability — Exceptions.

No act done or omitted in good faith while performing duties as a medical director, consultant, or specialist in poison information of a regional poison control center shall impose any liability on the poison control center, its officers, volunteers, medical directors, consultants, specialists in poison information, other employees or a person, organization or institution that advises a regional poison control center, unless the advice or assistance is given in a manner that constitutes willful or wanton misconduct.

History.
Acts 1991, ch. 393, § 8; T.C.A., § 68-43-107.

Compiler's Notes.
Former title 68, ch. 43, §§ 68-43-101 — 68-43-108, was transferred to title 68, ch. 141, §§ 68-141-101 — 68-141-108, respectively, in 1992.

68-141-108. Commissioner — Reports.

The commissioner of health may annually report to the general assembly findings and recommendations

concerning the experience and benefits of the Tennessee poison control network.

History.
Acts 1991, ch. 393, § 9; T.C.A., § 68-43-108.

Compiler's Notes.
Former title 68, ch. 43, §§ 68-43-101 — 68-43-108, was transferred to title 68, ch. 141, §§ 68-141-101 — 68-141-108, respectively, in 1992.

CHAPTER 142

CHILD FATALITY REVIEW AND PREVENTION

Part 1. Child Fatality Review and Prevention Act of 1995

SECTION.
68-142-101. Short title.
68-142-102. Child fatality prevention team.
68-142-103. Composition.
68-142-104. Voting members — Vacancies.
68-142-105. Duties of state team.
68-142-106. Local teams — Composition — Vacancy — Chair — Meetings.
68-142-107. Duties of local teams.
68-142-108. Powers of local team — Limitations — Confidentiality of state and local team records.
68-142-109. Staff and consultants.
68-142-110. Immunity from civil and criminal liability.
68-142-111. Child death investigations and reviews.

Part 2. Tennessee Fetal and Infant Mortality Review (FIMR) Act of 2007

68-142-201. Short title.
68-142-202. Tennessee fetal and infant mortality review program.
68-142-203. Part definitions.
68-142-204. Promulgation of rules.
68-142-205. Confidentiality.
68-142-206. Employment of persons to effectuate part.
68-142-207. Immunity from civil and criminal liability.
68-142-208. Death investigations and reviews.
68-142-209. Funding.

PART 1

CHILD FATALITY REVIEW AND PREVENTION ACT OF 1995

68-142-101. Short title.

This part shall be known as and may be cited as the "Child Fatality Review and Prevention Act of 1995."

History.
Acts 1995, ch. 511, § 1; 2007, ch. 588, § 2.

68-142-102. Child fatality prevention team.

There is created the Tennessee child fatality prevention team, otherwise known as the state team. For administrative purposes only, the state team shall be attached to the department of health.

History.
Acts 1995, ch. 511, § 1.

68-142-103. Composition.

The state team shall be composed as provided in this section. Any ex officio member, other than the commissioner of health, may designate an agency representative to serve in such person's place. Members of the state team shall be as follows:

(1) The commissioner of health, who shall chair the state team;

(2) The attorney general and reporter;

(3) The commissioner of children's services;

(4) The director of the Tennessee bureau of investigation;

(5) A physician nominated by the state chapter of the American Medical Association;

(6) A physician to be appointed by the commissioner of health who is credentialed in forensic pathology, preferably with experience in pediatric forensic pathology;

(7) The commissioner of mental health and substance abuse services;

(8) A member of the judiciary selected from a list submitted by the chief justice of the Tennessee supreme court;

(9) The executive director of the commission on children and youth;

(10) A representative from a professional organization working to prevent abuse of children;

(11) A team coordinator, to be appointed by the commissioner of health;

(12) Two (2) members of the house of representatives to be appointed by the speaker of the house of representatives, at least one (1) of whom shall be a member of the health committee;

(13) Two (2) senators to be appointed by the speaker of the senate, at least one (1) of whom shall be a member of the health and welfare committee;

(14) The commissioner of education or the commissioner's designee; and

(15) The commissioner of intellectual and developmental disabilities.

History.
Acts 1995, ch. 511, § 1; 1996, ch. 1079, § 152; 2007, ch. 588, § 3; 2010, ch. 1100, §§ 129, 130; 2011, ch. 410, § 3(hh); 2012, ch. 575, § 2; 2013, ch. 89, § 3; 2013, ch. 236, § 57.

Compiler's Notes.
Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

For the Preamble to the act concerning the prohibition against establishment of a special committee if there is a standing committee on the same subject, please refer to Acts 2011, ch. 410.

68-142-104. Voting members — Vacancies.

All members of the state team shall be voting members. All vacancies shall be filled by the appointing or designating authority in accordance with the requirements of § 68-142-103.

History.
Acts 1995, ch. 511, § 1.

68-142-105. Duties of state team.

The state team shall:

(1) Review reports from the local child fatality

review teams;

(2) Report to the governor and the general assembly concerning the state team's activities and its recommendations for changes to any law, rule, and policy that would promote the safety and well-being of children;

(3) Undertake annual statistical studies of the incidence and causes of child fatalities in this state. The studies shall include an analysis of community and public and private agency involvement with the decedents and their families prior to and subsequent to the deaths;

(4) Provide training and written materials to the local teams established by this part to assist them in carrying out their duties. Such written materials may include model protocols for the operation of local teams;

(5) Develop a protocol for the collection of data regarding child deaths;

(6) Upon request of a local team, provide technical assistance to such team, including the authorization of another medical or legal opinion on a particular death; and

(7) Periodically assess the operations of child fatality prevention efforts and make recommendations for changes as needed.

History.
Acts 1995, ch. 511, § 2; 2007, ch. 588, § 4.

68-142-106. Local teams — Composition — Vacancy — Chair — Meetings.

(a) There shall be a minimum of one (1) local team in each judicial district.

(b) Each local team shall include the following statutory members or their designees:

(1) A supervisor of social services in the department of children's services within the area served by the team;

(2) The regional health officer in the department of health in the area served by the team, who shall serve as interim chair pending the election by the local team;

(3) A medical examiner who provides services in the area served by the team;

(4) A prosecuting attorney appointed by the district attorney general;

(5) An employee of the local education agency, to be appointed by the director of schools; and

(6) The interim chair of the local team shall appoint the following members to the local team:

(A) A local law enforcement officer;

(B) A mental health professional;

(C) A pediatrician or family practice physician;

(D) An emergency medical service provider or firefighter; and

(E) A representative from a juvenile court.

(c) Each local child fatality team may include representatives of public and nonpublic agencies in the community that provide services to children and their families.

(d) The local team may include non-statutory members to assist them in carrying out their duties. Vacancies on a local team shall be filled by the original appointing authority.

(e) A local team shall elect a member to serve as chair.

(f) The chair of each local team shall schedule the time and place of the first meeting, and shall prepare the agenda. Thereafter, the team shall meet no less often than once per quarter and often enough to allow adequate review of the cases meeting the criteria for review.

History.
Acts 1995, ch. 511, § 3; 1996, ch. 1079, § 152; 2007, ch. 588, § 5.

68-142-107. Duties of local teams.

(a) The local child fatality review teams shall:

(1) Be established to cover each judicial district in the state;

(2) Review, in accordance with the procedures established by the state team, all deaths of children seventeen (17) years of age or younger;

(3) Collect data according to the protocol developed by the state team;

(4) Submit data on child deaths quarterly to the state team;

(5) Submit annually to the state team recommendations, if any, and advocate for system improvements and resources where gaps and deficiencies may exist; and

(6) Participate in training provided by the state team.

(b) Nothing in this part shall preclude a local team from providing consultation to any team member conducting an investigation.

(c) Local child fatality review teams may request a second medical or legal opinion to be authorized by the state team in the event that a majority of the local team's statutory membership is in agreement that a second opinion is needed.

History.
Acts 1995, ch. 511, § 4; 2007, ch. 588, § 6.

68-142-108. Powers of local team — Limitations — Confidentiality of state and local team records.

(a) The department of health, state team and local teams are public health authorities conducting public health activities pursuant to the federal Health Insurance Portability and Accountability Act (HIPAA), compiled in 42 U.S.C. § 1320d et seq. Notwithstanding §§ 63-2-101(b) and 68-11-1502, and regardless of any express or implied contracts, agreements or covenants of confidentiality based upon those sections, the records of all health care facilities and providers shall be made available to the local team for inspection and copying as necessary to complete the review of a specific fatality and effectuate the intent of this part. The local team is authorized to inspect and copy any other records from any source as necessary to complete the review of a specific fatality and effectuate the intent of this part, including, but not limited to, police investigations data,

medical examiner investigative data, vital records cause of death information, and social services records, including records of the department of children's services.

(b) The local team shall not, as part of the review authorized under this part, contact, question or interview the parent of the deceased child or any other family member of the child whose death is being reviewed.

(c) The local team may request that persons with direct knowledge of circumstances surrounding a particular fatality provide the local team with information necessary to complete the review of the particular fatality; such persons may include the person or persons who first responded to a report concerning the child.

(d) Meetings of the state team and each local team shall not be subject to title 8, chapter 44, part 1. Any minutes or other information generated during official meetings of state or local teams shall be sealed from public inspection. However, the state and local teams may periodically make available, in a general manner not revealing confidential information about children and families, the aggregate findings of their reviews and their recommendations for preventive actions.

(e)(1) All otherwise confidential information and records acquired by the state team or any local child fatality review team in the exercise of the duties are confidential, are not subject to discovery or introduction into evidence in any proceedings, and may only be disclosed as necessary to carry out the purposes of the state team or local teams and for the purposes of the Sudden, Unexplained Child Death Act, compiled in chapter 1, part 11 of this title.

(2) In addition, all otherwise confidential information and records created by a local team in the exercise of its duties are confidential, are not subject to discovery or introduction into evidence in any proceedings, and may only be disclosed as necessary to carry out the purposes of the state or local teams and for the purposes of the Sudden, Unexplained Child Death Act. Release to the public or the news media of information discussed at official meetings is strictly prohibited. No member of the state team, a local team nor any person who attends an official meeting of the state team or a local team, may testify in any proceeding about what transpired at the meeting, about information presented at the meeting, or about opinions formed by the person as a result of the meeting.

(3) This subsection (e) shall not, however, prohibit a person from testifying in a civil or criminal action about matters within that person's independent knowledge.

(f) Each statutory member of a local child fatality review team and each non-statutory member of a local team and each person otherwise attending a meeting of a local child fatality review team shall sign a statement indicating an understanding of and adherence to confidentiality requirements, including the possible civil or criminal consequences of any breach of confidentiality.

History.
Acts 1995, ch. 511, § 5; 2001, ch. 321, §§ 5, 6; 2007, ch. 588, §§ 7, 8.

68-142-109. Staff and consultants.

To the extent of funds available, the state team may hire staff or consultants to assist the state team and local teams in completing their duties.

History.
Acts 1995, ch. 511, § 6.

68-142-110. Immunity from civil and criminal liability.

Any person or facility acting in good faith in compliance with this part shall be immune from civil and criminal liability arising from such action.

History.
Acts 2007, ch. 588, § 9.

68-142-111. Child death investigations and reviews.

Nothing in this part shall preclude any child death investigations or reviews to the extent authorized by other laws.

History.
Acts 2007, ch. 588, § 10.

PART 2

TENNESSEE FETAL AND INFANT MORTALITY REVIEW (FIMR) ACT OF 2007

68-142-201. Short title.

This part shall be known as and may be cited as the "Tennessee Fetal and Infant Mortality Review (FIMR) Act of 2007."

History.
Acts 2007, ch. 588, § 12.

68-142-202. Tennessee fetal and infant mortality review program.

The commissioner of health is authorized to create the Tennessee fetal and infant mortality review (FIMR) program. The intent of the Tennessee FIMR program, following the goals of the national fetal and infant mortality review program, is to enhance the health and well-being of women, infants, and families by improving community resources and service programs through the review of fetal and infant deaths and the identification of related social, economic, cultural, safety, and health issues.

History.
Acts 2007, ch. 588, § 13.

68-142-203. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Fetal death" means a death as described in

§ 68-3-504;

(2) "FIMR" means the Tennessee fetal and infant mortality review program; and

(3) "Infant death" means a person born alive who dies prior to reaching one (1) year of age.

History.
Acts 2007, ch. 588, § 14.

68-142-204. Promulgation of rules.

The commissioner of health is authorized to promulgate such rules, pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, as are necessary to carry out the intent of this part. In doing so, the commissioner may rely upon, but not be bound by, the national fetal and infant mortality review program's methodology and protocol. The rules authorized pursuant to this section may address, but not be limited to, the following:

(1) The creation, composition and functions of review teams, community action teams and program staffing;

(2) The protocols, procedures, methods, manner and extent of all investigations and reviews; and

(3) The manner in and extent to which information shall be disseminated in accordance with the intent of this part.

History.
Acts 2007, ch. 588, § 15.

68-142-205. Confidentiality.

(a) The department of health, FIMR, and its review teams are public health authorities conducting public health activities pursuant to the Health Insurance Portability and Accountability Act (HIPAA), compiled in 42 U.S.C. § 1320d et seq. Notwithstanding §§ 63-2-101(b) and 68-11-1502, and regardless of any express or implied contracts, agreements or covenants of confidentiality based upon those sections, the records of all health care facilities and medical services providers, case management providers, emergency medical personnel and transport services and home visitors shall be made available to FIMR for inspection and copying as necessary to complete the review of a specific fatality and to carry out the intent of this part. The program is authorized to inspect and copy any other records from any source as necessary to complete the review of a specific fatality and to carry out the intent of this part, including, but not limited to, medical examiner investigative records and data, social services records, including records of the department of children's services, vital records information, and educational records.

(b) Any meetings conducted pursuant to this part or to rules and regulations promulgated under this part shall not be subject to the public meetings law, compiled in title 8, chapter 44, part 1. Except as required to be disseminated by rules and regulations promulgated pursuant to this part, any meeting minutes, documents, records, or other information acquired, generated, or reviewed during the meetings or while otherwise carrying out FIMR duties and responsibilities shall be confidential and not be subject to disclosure as public records.

(c) Except as required to be disseminated by rules and regulations promulgated pursuant to this part, none of the information acquired, generated, or reviewed in subsection (b) is subject to discovery or introduction into evidence in any proceeding, nor may any person testify in any proceeding about the information or the opinions formed as a result of the review of the information. This subsection (c) shall not, however, prohibit a person from testifying in a civil or criminal action about matters within that person's independent knowledge.

(d) All persons involved in the review process pursuant to this part, or to rules promulgated under this part, shall sign a statement indicating an understanding of and adherence to confidentiality requirements, including the possible civil or criminal consequences of any breach of confidentiality.

History.
Acts 2007, ch. 588, § 16.

68-142-206. Employment of persons to effectuate part.

To the extent that funds are available, the department may employ or contract with such persons as deemed necessary to effectuate the intent of this part.

History.
Acts 2007, ch. 588, § 17.

68-142-207. Immunity from civil and criminal liability.

Any person or facility acting in good faith in compliance with this part shall be immune from civil and criminal liability arising from such action.

History.
Acts 2007, ch. 588, § 18.

68-142-208. Death investigations and reviews.

Nothing in this part shall preclude any fetal, infant or child death investigations or reviews to the extent authorized by other laws.

History.
Acts 2007, ch. 588, § 19.

68-142-209. Funding.

Nothing in this part shall be construed as requiring its implementation unless and until sufficient funding is either appropriated or specifically allocated for it.

History.
Acts 2007, ch. 588, § 20.

CHAPTER 143

SHAKEN BABY SYNDROME

SECTION.

68-143-101. Legislative findings and declarations.

68-143-101. Legislative findings and declarations.

The general assembly finds and declares all of the following:

(1) Shaken baby syndrome is a medically serious, sometimes fatal, matter affecting newborns and very young children. Shaking an infant or child in anger is particularly dangerous;

(2) Vigorous shaking of an infant or child can result in bleeding inside the head, causing irreversible brain damage, blindness, cerebral palsy, hearing loss, spinal cord injury, seizures, learning disabilities, and even death;

(3) While doctors have long recognized that shaking an infant or child can cause injuries, many adults remain unaware of how dangerous this practice can be;

(4) Studies have shown that exposure to materials about the dangers of shaking a baby improved understanding of the effects of shaking an infant or child;

(5) Shaken baby syndrome is preventable. Knowledge about shaken baby syndrome can be significantly raised through education and public awareness campaigns; and

(6) It is the intent of the general assembly to encourage public and private collaboration in developing instructional materials regarding shaken baby syndrome, and to encourage that these materials be supplied to health facilities, nurse midwives, and providers of child care free of charge.

History.
Acts 1996, ch. 747, § 1.

TITLE 69

WATERS, WATERWAYS, DRAINS AND LEVEES

CHAPTER 9

BOATING REGULATION

Part 2. Boating Safety

SECTION.
69-9-225. Personal flotation devices required for persons twelve (12) years of age and under — Penalty.

PART 2

BOATING SAFETY

69-9-225. Personal flotation devices required for persons twelve (12) years of age and under — Penalty.

(a) All persons twelve (12) years of age and under in an open boat or on an open deck of a vessel being used for recreational purposes on the waters of this state shall wear a United States coast guard approved wearable personal flotation device while such vessel is underway. Any personal flotation devices required by this section shall be in good and serviceable condition, appropriately sized and properly worn by the person. It is unlawful for any person to operate a vessel in violation of this section.

(b) This section does not apply to a commercial vessel owned and operated by a commercial entity that charges a per passenger fee.

(c) A violation of this section is a Class C misdemeanor punishable by a fine of not more than fifty dollars ($50.00).

(d) Any person cited under this section shall be given thirty (30) days to provide to the officer proof of legal age and for good cause shown, in the judgment of the officer, such period shall be extended for an additional period of thirty (30) days. In the event the proof shows that the person was of legal age at the time of arrest, the individual shall not be required to appear in court and the court, upon request of the officer, shall dismiss the citation and there shall be no costs assessed to the person.

History.
Acts 1997, ch. 57, §§ 1, 2; T.C.A. § 69-10-225.

TITLE 71

WELFARE

CHAPTER 1

ADMINISTRATION

Part 1. Department of Human Services

SECTION.
71-1-130. Day care services — Rate of reimbursement — Market rate study.
71-1-133. Child care services fraud — Restitution — Civil recovery of overpayments.

PART 1

DEPARTMENT OF HUMAN SERVICES

71-1-130. Day care services — Rate of reimbursement — Market rate study.

(a) The department shall perform a market rate study of day care rates annually.

(b) In compliance with federal law and regulations and from the market rate study, the department shall annually determine an amount to be paid as reimbursement on behalf of low-income families, for the provision of child or infant care by a day care center, family day care home, or group day care home.

(c) The commissioner shall report to the governor and the general assembly, no later than October 1 of each year, the results of the market rate study and the annual rate that has been requested by the department in its budget.

(d) The average rate to be paid by the department for day care services in fiscal year 1990-1991 shall be forty-six dollars ($46.00) per week. An additional two dollars ($2.00) per day may be paid for transportation in "as-needed" day care, if it is furnished by the day care provider.

(e) The amounts to be paid by the department for day care services and transportation under this section shall be subject to the availability of funding each year in the general appropriations act.

(f) In any case where the department terminates a certificate for an eligible child for child care services with a child care provider, the department shall promptly, but in any event within forty-eight (48) hours, inform the provider that the child's certificate is or will no longer be in effect.

(g)(1) A parent or other caretaker of an eligible child who receives a subsidy certificate from the department shall be solely responsible for payment to the provider of child care services any required copayments or other payments required pursuant to any contractual agreement with the provider of child care services.

(2) Unless extenuating circumstances or other good cause applies as determined by the department, upon removal of a child from a provider of child care services, no subsidy certificate shall be issued or any payments made by the department on behalf of the child to any subsequent provider of child care services, unless the parent or other caretaker of the eligible child has made all required copayments to, or has reached an agreement regarding outstanding copayments with, the previous provider of child care services.

(3) For purposes of this subsection (g), "copayment" means the department- imposed fee required to be paid by the parent or caretaker on behalf of the eligible child to the provider of child care services as a condition for the receipt of a subsidy certificate.

(4) Nothing in this subsection (g) shall be construed to require the department to resolve or mediate any dispute between the parent or caretaker of any eligible child and the provider of child care services relative to outstanding copayments.

History.
Acts 1990, ch. 1072, § 1; T.C.A. (orig. ed.), § 71-3-129; Acts 1996, ch. 950, § 21; 2006, ch. 747, § 1.

71-1-133. Child care services fraud — Restitution — Civil recovery of overpayments.

(a)(1) Whoever knowingly obtains, or attempts to obtain, or aids or abets any person or entity to obtain or attempt to obtain, by means of a willfully false statement or representation or by impersonation, or by any fraudulent scheme, any child care services, or payments for child care services, that are provided under any program by the department of human services or by or through any of the department's grantees or contractors, to which such person or entity is not entitled, or of a value greater than that to which such person or entity is entitled, the value of which is, or would be, one hundred ($100) or more, commits a Class E felony. Upon conviction, such person shall be sentenced for such offense as provided by law, or shall be fined not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000), or both.

(2) If the value of child care services or the payment for such services obtained in the manner described in subdivision (a)(1) is, or would be, less than one hundred dollars ($100), such person commits a Class A misdemeanor and shall be sentenced for such offense, or shall be fined, or both, as provided by law.

(b) In addition to any of the penalties pursuant to subsection (a), any person convicted of any offense specified in subsection (a) shall be ordered to make restitution in the total amount found to be the value of the child care services that form the basis for the conviction. In the event any person ordered to make restitution pursuant to this section is found to be indigent and, therefore, unable to make restitution in full at the time of conviction, the court shall order a periodic payment plan consistent with the person's financial ability.

(c) Notwithstanding any other law to the contrary, prosecutions for any of the offenses specified in subsection (a) shall be commenced within four (4) years next after the commission of the offense. For purposes of this subsection (c), any such offense that is based upon a willful failure to report information as required by law or by any program requirements relating to eligibility for child care services is considered a continuing offense until such information is reported.

(d) The department may recover by civil action in any appropriate court the value of child care services that have been incorrectly paid to or received by any person or any entity and the costs of the proceeding and reasonable attorneys fees necessary for collection.

(e)(1) For purposes of this section, "child care" means the supervision, protection, and provision for the basic physical, developmental or emotional needs of a child, or evidence of any effort to provide for, or any apparent or stated intent to provide for, the supervision, protection, and basic physical, developmental or emotional needs of a child by any person or entity outside the child's own home or by a person who comes to the child's home, whether or not the person or entity is licensed to provide such care or is unregulated.

(2) For purposes of this section "services" means the payment for, or provision by, the department, its grantees or its contractors of:

(A) Any costs of, or any fees for, child care provided by any person or entity;

(B) Any transportation costs or any transportation fees for the child to obtain child care or any related child care services; or

(C) Any food supplement or meal assistance programs, excluding the food stamp or food assistance program under chapter 5, part 3 of this title, for a child who is receiving child care.

History.
Acts 2000, ch. 923, § 1.

CHAPTER 3

PROGRAMS AND SERVICES FOR CHILDREN

Part 1. Temporary Assistance

SECTION.
71-3-101. Short title.

SECTION.
71-3-102. Program subject to availability of federal funds.
71-3-103. Part definitions.
71-3-104. Eligibility for temporary assistance.
71-3-105. Rules and regulations — Deductions — Reports to governor and general assembly — Miscellaneous provisions.
71-3-106. [Repealed.]
71-3-107. Administration and organization — Rulemaking — Notice — Cooperation and review of rules by state entities.
71-3-108. Modifications to program — Federal waivers.
71-3-109. Diversion grants.
71-3-110. Distribution system.
71-3-111. Training and supervision.
71-3-112. [Obsolete.]
71-3-113, 71-3-114. [Reserved.]
71-3-115. Investment of funds in individual development or other accounts.
71-3-116. Veterans education benefits.
71-3-117. Amendment of provisions.
71-3-118. Charging for assistance to applicants unlawful.
71-3-119. Use of lists of recipients.
71-3-120. Fraudulent receipt of temporary assistance — Penalties — Statute of limitations.
71-3-121. Transfer of benefits — Exemption.
71-3-122. Prosecution of deserting spouse or parent.
71-3-123. Civil action against deserting spouse or parent.
71-3-124. Assignment of support rights to state — Enforcement and collection of rights — Collection service fee — Attorneys — Caretaker relative eligibility — Standing to petition.
71-3-125. Child support enforcement by district attorneys general.
71-3-126. Restrictions on use of electronic benefits transfer cards by TANF recipients — Reimbursement — Violations and penalties — System for review — Right to hearing — Rules and regulations — Revenues and fines deposited in general fund.

Part 4. [Reserved]

Part 5. Child Care Agencies

71-3-501. Part definitions.
71-3-502. Violations of licensing regulations — Probation, suspension, denial and revocation of licenses — Appeal procedures — Personal safety curriculum.
71-3-503. Program and facilities exempt from licensing.
71-3-504. Injunctions against unlicensed operations.
71-3-505. Criminal violations.
71-3-506. Public agencies — Inspection and report.
71-3-507. Criminal history violation information required of persons having access to children — Review of records and registries — Verification — Exclusion from access to adults.
71-3-508. Inspection of entities providing child care.
71-3-509. Violations of licensing regulations — Probation — Civil penalties — Suspension, denial and revocation of licenses — Appeal procedures.
71-3-510. Board of review — Composition.
71-3-511. Licensing standards committees.
71-3-512. Five-year-olds attending day care institutions lacking kindergarten status.
71-3-513. Public records — Exceptions.
71-3-514. Establishment of drug testing policy.
71-3-515. Development of procedure for submitting names and other identifying information to determine if persons have perpetrated abuse or neglect of a child or adult — Due process rights.
71-3-516. Restrictions on license for drop-in center regarding care of school-age children on snow days.
71-3-517. Development of a written multi-hazard plan to protect children in emergencies.
71-3-518. Priority on wait list of children with parent or guardian serving on active duty in armed forces.

Part 6. Orphan Asylums

71-3-601. Governing board.
71-3-602. Powers over property.
71-3-603. Admission of children.
71-3-604. Control of indigent children.
71-3-605. [Reserved.]
71-3-606. Welfare of child controlling.
71-3-607. Control of orphans and foundlings.
71-3-608. Penalty for interference with children.
71-3-609. Petition to take child from home.
71-3-610. Education of children.
71-3-611. Expenses paid by parent or guardian.
71-3-612. County contributions to expenses.

Part 7. Project RAP

71-3-701. Project RAP — Creation — Services.
71-3-702. Current operation — Expansion.

PART 1

TEMPORARY ASSISTANCE

71-3-101. Short title.

This may be cited as the "Families First Act of 1996."

History.
Acts 1996, ch. 950, § 2; T.C.A., § 71-3-151.

Compiler's Notes.
Title 71, part 3 was rearranged in 2012. The following table of disposition lists both the former sections and their new locations or status.

Former Sections	New Sections
71-3-101 — 71-3-116 [Repealed]	Deleted
71-3-126, 71-3-127 [Repealed]	71-3-126, 71-3-127 [Reserved]
71-3-128, 71-3-129 [Transferred]	71-3-128, 71-3-129 [Reserved]
71-3-130 — 71-3-138 [Repealed]	71-3-130 — 71-3-138 [Reserved]
71-3-151 — 71-3-158	71-3-101 — 71-3-108
71-3-159 [Repealed]	71-3-109 [Reserved]
71-3-160, 71-3-161	71-3-110, 71-3-111
71-3-162	71-3-112 [Obsolete]
71-3-163, 71-3-164 [Repealed]	71-3-113, 71-3-114 [Reserved]
71-3-165, 71-3-166	71-3-115, 71-3-116
Part 2 [Repealed]	Part 2 [Reserved]
71-3-301 — 71-3-304	71-3-301 — 71-3-304
Part 4 [Transferred]	Part 4 [Reserved]
71-3-516 — 71-3-533 [Repealed]	Deleted
71-3-534	71-3-516
71-3-605 [Repealed]	71-3-605 [Reserved]
71-3-701, 71-3-702	71-3-701, 71-3-702
Part 8 [Repealed]	Part 8 [Reserved]
71-3-901 — 71-3-907	71-3-901 — 71-3-907
71-3-1001 — 71-3-1005	71-3-1001 — 71-3-1005
71-3-1101 — 71-3-1113	71-3-1101 — 71-3-1113

71-3-102. Program subject to availability of federal funds.

Continuation of the families first program is subject to, and limited by, the availability of federal funds that may be made available to the state of Tennessee by congress and the United States department of health and human services, or its successor agency.

History.
Acts 1996, ch. 950, § 3; T.C.A., § 71-3-152.

71-3-103. Part definitions.

(a) As used in this part, unless the context otherwise requires:

(1) "Assistance" means, unless otherwise required

by the context, temporary assistance;

(2) "Caretaker relative" means the father, mother, grandfather or grandmother of any degree, brother or sister of the whole or half-blood, stepfather, stepmother, stepbrother, stepsister, aunt or uncle of any degree, first cousin, nephew or niece, the relatives by adoption within the previously named classes of persons, and the biological relatives within the previous degrees of relationship, and the legal spouses of persons within the previously named classes of persons, even if the marriage has been terminated by death or divorce, with whom a child is living;

(3) "Child" or "children" means:

(A) A person or persons under eighteen (18) years of age; or

(B) A person who has not attained nineteen (19) years of age and who is a full-time student in a secondary school or the equivalent and who is expected to graduate by the nineteenth birthday;

(4) "Department" means the department of human services;

(5) "Dependent child" means, except as otherwise stated in this part, a child living with a caretaker relative if the child is deprived of parental support due to death of a parent, continued absence of a parent from the home, physical or mental incapacity of a parent, or unemployment or underemployment of either or both parents and if the child's legally responsible relatives are not able to provide adequate care and support of such child without temporary assistance;

(6) "Family" means the eligible unit of children and parent or parents or caretaker relative or relatives residing in a common residence; and

(7) "Temporary assistance" means the program to provide economic support and other support services to families that is provided by the state utilizing funds made available by congress and the secretary of health and human services to the state pursuant to the Social Security Act, compiled in 42 U.S.C. § 301 et seq., and any state funds that may be appropriated by the general assembly designated to support the temporary assistance program. If at any time, federal funds are not available to provide the continuation of the temporary assistance program, the state shall not be obligated to continue the program by using only state funds.

(b) It is the intent of the general assembly that any welfare program administered by the state shall be in compliance with Title VI of the Civil Rights Act of 1964, compiled in 42 U.S.C. § 2000d et seq., and regulations promulgated pursuant to that act, and all other applicable federal civil rights legislation.

History.

Acts 1996, ch. 950, § 4; T.C.A., § 71-3-153.

71-3-104. Eligibility for temporary assistance.

(a) A family shall be eligible for temporary assistance pursuant to this part if:

(1) A dependent child resides in this state with a caretaker relative in that family, or an individual who applies for temporary assistance is pregnant, or as otherwise defined by the department;

(2) The family meets income standards based upon the standard of need for a family based upon its size and income and based upon resource limits as determined by the department in its rules;

(3) The family members are engaged in work activities as set forth in subsection (g), except as exempted by this part or by rule of the department;

(4) The caretaker relative has agreed to and complies with a personal responsibility plan as developed by the department in accordance with subsection (h); and

(5) The family or individual of the family is otherwise eligible pursuant to federal or state laws or regulations.

(b)(1) A caretaker relative who becomes ineligible for any reason other than a failure to comply with work requirements or to cooperate with child support obligations shall be eligible for transitional childcare assistance for a period specified by the department while the caretaker relative is employed, in school, or in employment training. Childcare assistance terminated due to failure to comply with work requirements shall be reinstated upon verification by the department that the work requirements were, in fact, being met immediately preceding such ineligibility. Childcare assistance shall be paid, on a sliding fee scale based upon the family's income for so long as federal funding or any related waiver is in effect.

(2) Food stamp assistance shall continue to be available to these families as prescribed by federal or state law or regulations.

(c) Persons who are recipients of temporary assistance and who marry while receiving such assistance may disregard the new spouse in determining eligibility for three (3) months after the date of marriage.

(d)(1) Except as provided in this part or as otherwise required by federal law, no family shall receive assistance if that family includes an adult who has received temporary assistance from this program or the program of any other state or territory for a total of sixty (60) months, whether or not consecutive, unless an exemption is granted pursuant to this part.

(2) As to a child who was not the head of a household or who was not married to the head of a household, the sixty (60) month time limit stated in subdivision (d)(1) shall not begin to run during the time that the child was a member of a family receiving assistance under this part.

(3) A family shall be eligible for temporary assistance beyond the sixty-month time limit stated in subdivision (d)(1) if:

(A) The family does not contain an adult;

(B) The caretaker relative is sixty-five (65) years of age or older;

(C) The caretaker relative is caring for a disabled or incapacitated child relative or disabled adult relative, based upon criteria set forth in the department's rules;

(D) The caretaker relative is disabled, based upon criteria set forth in the department's rules; or

(E) As otherwise required by federal and state

laws or regulations.

(4) The exemptions in subdivision (d)(3) are subject to the limitations for the percentages of individuals allowed to receive temporary assistance beyond sixty (60) months.

(e)(1) No payment of assistance shall be made for an individual who is not the head of a household, who has not reached eighteen (18) years of age, who has a child who is at least sixteen (16) weeks of age in the person's care, and who has not successfully completed a high school education or its equivalent, unless the individual participates in educational activities directed toward the attainment of a high school diploma or its equivalent.

(2) No payment of assistance shall be made to an individual who is head of a household, who has not reached twenty (20) years of age, who has a child who is at least sixteen (16) weeks of age in the person's care, and who has not successfully completed a high school education or its equivalent unless the individual participates in:

(A) Educational activities directed toward the attainment of a high school diploma or its equivalent; or

(B) Thirty (30) hours of countable work activities as delineated in subsection (g).

(f)(1) Except as provided in subdivision (f)(2), if a person applying for assistance under this chapter is under eighteen (18) years of age, has never married, and is either pregnant or has the applicant's child in the applicant's care, the applicant is not eligible for assistance if:

(A) The applicant and the applicant's child or children do not live in a place maintained by the applicant's parent, legal guardian, or other adult relative as such person's own home or other suitable living arrangement as otherwise defined by rule of the department; and

(B) The department determines after investigation that the physical or emotional health or safety of the person applying for assistance or the dependent child or children would not be jeopardized if the applicant and the dependent child or children were required to live in one of the situations described in subdivision (f)(1)(A).

(2) Subdivision (f)(1) does not apply if:

(A) The person applying for assistance has no parent, legal guardian or other adult relative whose whereabouts are known;

(B) No parent, legal guardian or other adult relative of the person applying for assistance allows the person to live in the home of that parent, legal guardian or other adult relative as determined by the department's verification; or

(C) The department otherwise determines that there is good cause not to apply subdivision (f)(1).

(g) All family members who are not otherwise exempt pursuant to rules of the department and who receive temporary assistance pursuant to this part shall engage in work, training or educational activities. The department shall define the types of activities by rule. These activities may include, but shall not be limited to, the following:

(1) Employment;

(2) Work experience activities;

(3) On-the-job training;

(4) Job search and job readiness assistance;

(5) Community service programs;

(6) Vocational educational training;

(7) Job skills and educational training related directly to employment;

(8) Education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency; and

(9) Satisfactory attendance at a secondary school, in the case of a recipient who:

(A) Has not completed secondary school; and

(B) Is a dependent child or a head of a household who is nineteen (19) years of age or younger.

(h)(1) As a condition of eligibility, an applicant for or a recipient of temporary assistance must agree to a personal responsibility plan developed by the department in direct consultation with the applicant or recipient. For all applicants or recipients who are not exempt from the work requirements established by this part, an individualized career plan shall be developed establishing goal-oriented work activities designed to provide the applicant or recipient with an opportunity to move toward self-sufficiency. Supportive services determined essential to successful engagement in the work activities shall be provided. At least once each twelve (12) months throughout the period of continuous temporary assistance provided pursuant to this part, the department shall monitor and evaluate the personal responsibility plan to promote the recipient's success in gaining self-sufficiency.

(2)(A) The personal responsibility plan shall require participation in personal responsibility activities as set forth in subsection (g). The department may provide either a parent education training class for parents or caretakers of children in pre-kindergarten through third grade (pre-K-3) or a program of volunteer service in school in which a parent or caretaker relative who is a recipient of temporary assistance under this part may agree to participate.

(B) The personal responsibility plan shall also require the parent or other caretaker relative, regardless of age or disabling status, to enter a plan that requires, but is not limited to, the following:

(i) The children in the family attend school;

(ii) The children in the family receive immunizations and health checks; and

(iii) The parent or caretaker relative cooperate in the establishment and enforcement of child support, including, but not limited to, the naming of the father of a child for purposes of paternity establishment, unless good cause not to cooperate exists, as defined by the department.

(iv) The personal responsibility plan shall include requirements, if the need is identified

relative to the child, that:

(a) The parent or a suitable adult or guardian shall attend two (2) or more conferences within a year with the child's teacher to review the child's status in school;

(b) Attend at least eight (8) hours of parenting classes; or

(c) The parent shall participate in such support services that the child may need as determined by the department to overcome any school, family, or other barriers that may interfere with the child's and the family's ability to be successful.

(C)(i) Unless exempt, refusal or failure to engage in full-time employment, part-time employment or other training or other work preparation activities as set forth in subsection (g), without good cause, or the failure to cooperate in the establishment or enforcement of child support without good cause, shall result in denial of eligibility for, or termination of, temporary assistance for the entire family unit.

(ii) Failure to comply with the personal responsibility plan as required under subdivisions (h)(2)(B)(i) and (ii), without good cause, shall result in a percentage reduction with regard to the temporary assistance payment in the amount of twenty percent (20%) until such time as compliance occurs.

(D) The personal responsibility plan may provide transportation assistance, if needed to participate in required activities; provided, that the department shall first utilize available community transportation resources before providing such assistance from department funds. The department shall provide childcare services for those individuals who are receiving benefits, participating in work activities delineated in subsection (g), and not exempt from work activities pursuant to this part.

(3) The work requirements shall be excused for:

(A) A parent or caretaker relative who proves to the satisfaction of the department the existence of the person's temporary incapacity or permanent disability;

(B) A parent or caretaker relative who proves to the satisfaction of the department that the person must provide personal care for a disabled relative child or adult relative living in the home;

(C) A single parent with a child under sixteen (16) weeks of age;

(D) A person who is sixty-five (65) years of age or older;

(E) A nonparental caretaker relative who chooses not to be included in the assistance group; and

(F) Other exemptions that may be required by federal law or regulation, as well as other exemptions that may be established by rule of the department in order to promote the purposes of this part.

(4) If, without good cause, a recipient of temporary assistance fails to comply with a child support or work plan requirement imposed by this part or prescribed within the personal responsibility plan, then the family shall be subject to appropriate sanction by the department, which may include termination of assistance for a period to be determined by the department.

(i) The maximum payment standard for a family shall not be increased for a child who is born to a caretaker relative of a temporary assistance unit who, as determined by the statement of a physician, becomes pregnant while receiving temporary assistance, or as otherwise defined by regulation of the department; provided, that if the family loses eligibility for any reason other than a failure to cooperate with the department or a failure to comply with the personal responsibility plan and if the family subsequently becomes eligible again for temporary assistance, then the department shall base the maximum payment standard on the actual size of the family unit including such child.

(j) No payment of temporary assistance shall be made to an individual for ten (10) years from the date of conviction, guilty plea or plea of nolo contendere of that individual in a federal or state court for having made a fraudulent statement or representation with respect to the place of residence of the individual in order to receive assistance simultaneously from two (2) or more states under the temporary assistance program under this part, TennCare or any program of medical services under Title XIX of the Social Security Act, compiled in 42 U.S.C. § 1396 et seq., the Food Stamp Act of 1977, compiled in 7 U.S.C. § 2011 et seq., or under the supplemental security income program under Title XVI of the Social Security Act, compiled in 42 U.S.C. § 1381 et seq.

(k)(1) No payment of assistance shall be made to an individual who is fleeing to avoid prosecution or custody or confinement after conviction under the laws of the place from which the individual flees, for a crime, or an attempt to commit a crime, that is a felony under the laws of the place from which an individual flees, or that, in the case of the state of New Jersey, is a high misdemeanor under the laws of such state, or who is violating a condition of probation or parole imposed by federal or state law.

(2)(A) Pursuant to the option granted the state by 21 U.S.C. § 862a(d), an individual convicted on or before June 30, 2011, under federal or state law of a felony involving possession, use or distribution of a controlled substance shall be exempt from the prohibition contained in 21 U.S.C. § 862a(a) against eligibility for families first program benefits for such convictions, if such person, as determined by the department:

(i)*(a)* Is currently participating in a substance abuse treatment program approved by the department of human services;

(b) Is currently enrolled in a substance abuse treatment program approved by the department of human services, but is subject to a waiting list to receive available treatment, and the individual remains enrolled in the treatment program and enters the treatment

program at the first available opportunity;

(c) Has satisfactorily completed a substance abuse treatment program approved by the department of human services; or

(d) Is determined by a treatment provider licensed by the department of mental health and substance abuse services not to need substance abuse treatment according to TennCare guidelines; and

(ii) Is complying with, or has already complied with, all obligations imposed by the criminal court, including any substance abuse treatment obligations.

(B) Eligibility based upon the factors in subdivision (k)(2)(A) must be based upon documentary or other evidence satisfactory to the department, and the applicant must meet all other factors of program eligibility, including, specifically, being accountable for the requirements of the personal responsibility plan required by this part.

(C) Notwithstanding subdivision (k)(2)(A) or (k)(2)(B) to the contrary, no person convicted of a Class A felony for violating a provision of title 39, chapter 17, part 4 shall be eligible for the exemptions provided by subdivision (k)(2)(A) or (k)(2)(B).

(D) Pursuant to the option granted the state by 21 U.S.C. § 862a(d), an individual convicted on or after July 1, 2011, under federal or state law of a felony involving possession, use or distribution of a controlled substance shall be exempt from the prohibition contained in 21 U.S.C. § 862a(a) against eligibility for families first program benefits for such convictions, if such person meets the following requirements:

(i) Requirements contained in subdivision (k)(2)(A) or (k)(2)(B) and (C);

(ii) If treatment was prescribed according to the requirements in subdivision (k)(2)(A) or (k)(2)(B), successful completion of a substance abuse program must occur within three (3) attempts. If such person does not complete the originally prescribed treatment program within three (3) attempts, the individual shall be ineligible for a period of three (3) years.

(E) Pursuant to the option granted the state by 21 U.S.C. § 862a(d), an individual convicted of a second drug felony under federal or state law of a felony involving possession, use or distribution of a controlled substance on or after July 1, 2011, shall not be eligible for families first program benefits for a period of three (3) years from the date of conviction.

(*l*) No payment of assistance pursuant to this part shall be made for an illegal alien in a family.

History.

Acts 1996, ch. 950, § 5; 1999, ch. 520, § 47; 2000, ch. 981, § 76; 2002, ch. 715, § 1; 2007, ch. 31, §§ 1-8; 2009, ch. 186, § 38; 2010, ch. 1056, § 1; 2010, ch. 1100, § 135; 2011, ch. 221, § 1; T.C.A., § 71-3-154; Acts 2012, ch. 575, § 1; 2012, ch. 912, §§ 1-3; 2014, ch. 960, § 1.

Compiler's Notes.

Acts 2007, ch. 31, § 11 provided that the department shall have the authority to implement the provisions of the act by public necessity rules (now emergency rules) to become effective July 1, 2007; provided, that permanent rules shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled at Tennessee Code Annotated, title 4, chapter 5.

Acts 2007, ch. 31, § 12 provided that the act shall not affect right and duties that matured, penalties that were incurred, or proceedings that were begun before July 1, 2007.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Acts 2014, ch. 960, § 2 provided that the commissioner of human services is authorized to promulgate rules to effectuate the purposes of the act. All rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

71-3-105. Rules and regulations — Deductions — Reports to governor and general assembly — Miscellaneous provisions.

(a) In determining eligibility under § 71-3-104 for, and amounts of, grants under the temporary assistance program, the department of human services shall adopt rules and regulations establishing a standard of need that reflects the true cost of the following, less any discounts for other sources of assistance provided for in subsection (b):

(1) Safe, healthful housing;

(2) Minimum clothing for health and decency;

(3) A low cost adequate food budget as recommended by the United States department of agriculture's thrifty food plan, codified at 7 U.S.C. § 2012(u);

(4) An allowance for essential medical care; and

(5) Other necessary items including, but not limited to, transportation, personal care and educational expenses.

(b) The department shall deduct from the costs determined in subsection (a) the value of the following:

(1) Housing assistance programs;

(2) Food coupons or food stamps or food assistance under chapter 5, part 3 of this title; and

(3) TennCare or medicaid.

(c) The commissioner shall report to the governor and the general assembly no later than October 1 of each year regarding projected annual adjustments to the standard of need necessitated by changes in the costs and benefits described in subsections (a) and (b). The report of the commissioner shall also contain:

(1) An estimate of the percentage of the adjusted standard of need that could be paid if the appropriation for the next fiscal year were to remain constant;

(2) An estimate of the cost of paying the same percentage of the standard of need considering necessary adjustments in such standard of need;

(3) The recommendation of the commissioner as to the percentage of the adjusted standard of need that should be paid in the next fiscal year and the cost of that adjusted standard of need; and

(4) Any other relevant information that would be helpful to the governor and the general assembly in making decisions concerning the temporary assistance program.

(d) Any amount of earned income in an aid-to-the-blind case, as provided in § 71-4-105, and any other income required by federal statutes to be exempt in determining need, shall be exempt and shall not be considered as a resource in determining the amount of assistance to be paid to any person under this part.

(e) The standard of need for each fiscal year shall be established by rule on July 1 of each year in accordance with subsections (a) and (b).

(f)(1) The department of human services shall conduct a temporary assistance client characteristics study at least once every three (3) years. The study shall be conducted either by contract or within the department and shall be completed prior to any review, required by federal regulation, of the temporary assistance standard of need and temporary assistance grant payments.

(2) The maximum grants for the temporary assistance program, expressed as a percentage of the standard of need, shall be established either in the annual appropriations act or by rule. Notwithstanding any provision of this section or other law to the contrary, the standard of need for each assistance group size, which was established and funded at five hundred eighty-three dollars ($583) for an assistance group size of three (3) persons for fiscal year 1995-1996 and was set accordingly for other assistance group sizes, shall be increased to six hundred seventy-seven dollars ($677) for an assistance group size of three (3) persons, and shall be set accordingly for other assistance group sizes for fiscal year 1996-1997; provided, that, during the fiscal year beginning July 1, 1996, the commissioner of human services may, with the concurrence of the commissioner of finance and administration, reduce the standard of need to the level established in this section for the year ending June 30, 1996, based upon a showing that the increased standard of need is having a substantial unforeseen adverse impact on the temporary assistance budget. Upon seeking the required concurrence of the commissioner of finance and administration with regard to any such proposed reduction in the standard of need, the commissioner of human services shall simultaneously submit written notification of such proposed reduction to the chairs of the finance, ways and means committees of the senate and the house of representatives and to the office of the legislative budget analysis.

(g) In determining eligibility under § 71-3-104, the department shall adopt rules that use the standard of need less any exemption provided by subsection (d) to determine eligibility for amounts of grants. Such rules shall be adopted in a manner in which the maximum amount of child support and other income may be provided to the family and children without loss of grant and medicaid benefits.

History.

Acts 1996, ch. 950, § 6; 2010, ch. 1030, § 19; T.C.A., § 71-3-155.

71-3-106. [Repealed.]

History.

Acts 1996, ch. 950, § 7; T.C.A., § 71-3-156; repealed by Acts 2013, ch. 454, § 6, effective May 16, 2013.

Compiler's Notes.

Former § 71-3-106 concerned the reserve fund for temporary assistance.

71-3-107. Administration and organization — Rulemaking — Notice — Cooperation and review of rules by state entities.

(a) The department shall administer the families first program established by this part.

(b) The commissioner has the authority to organize the department in any manner necessary as permitted by law, to establish any necessary county or district or regional offices and to appoint area and district managers and directors in those offices or in the department's state office, and to establish any necessary internal policies and procedures for the proper administration of the families first program and for the provision of temporary assistance, child support, jobs programs and other related support services.

(c) From time to time, the commissioner may appoint committees composed of representatives from the public or private sectors, or both, for such purpose and duration as may be deemed appropriate or required. Members of such committees shall be reimbursed for their actual expenses for attending meetings of their respective committees. All reimbursement for travel expenses shall be in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

(d) The department shall administer the program of economic assistance to families under Titles IV-A, compiled in 42 U.S.C. § 601 et seq., IV-D, compiled in 42 U.S.C. § 651 et seq., and IV-F (repealed) of the Social Security Act or related federal laws or regulations as they may continue to exist pursuant to federal statutes and regulations on or after September 1, 1996, and as such program statutes and regulations may be amended, or pursuant to any waivers that are granted by the federal government from those regulations as a result of the enactment of this legislation.

(e) Acting in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, the department shall have rulemaking authority to establish any necessary rules for the administration of this part and shall have rulemaking authority to establish any rules to carry out the requirements of any title or part of any title that the department administers and that are necessary to immediately implement this part to effect any federal legislative changes.

(f) The department shall establish by rule the procedures for provision of notice of the eligibility determination to the applicant or recipient as well as the grievance and appeal procedures that are applicable to

meet due process. It is the intent of this section that grievance and appeals procedures available pursuant to this part, and of chapter 5, part 12 of this title shall not be more narrow than such procedures available to recipients of assistance upon August 31, 1996. The department shall also establish by rule, administrative procedures through which a recipient shall be granted an extension of temporary assistance, beyond the maximum eighteen-month period and the maximum sixty-month period set forth in § 71-3-104(d), for "good cause" or based upon the failure of the state to timely provide essential child care, transportation, education or job training services prescribed within the recipient's personal responsibility plan.

(g) All other agencies of the state shall cooperate with the department in any manner necessary for the administration of this part.

(h) Each governmental entity of the state, directly affected by any permanent rule promulgated by the department of human services to implement this part and of chapter 5, part 12 of this title, shall review such permanent rule not later than fourteen (14) calendar days after the rule is filed with the secretary of state. Prior to such deadline, the affected governmental entity shall submit written comments to the secretary of state for filing with the applicable rule and for distribution to the chair of the government operations committee of the senate and to the chair of the government operations committee of the house of representatives. Such written comments shall include, but not be limited to, a description of the impact of such permanent rule upon the existing rules, policies or procedures of the affected governmental entity.

(i) The commissioner of human services shall develop a written plan or statement providing for interagency coordination of services provided under this part and chapter 5, part 12 of this title, which shall include services provided by the departments of human services, education, labor and workforce development, and transportation.

History.

Acts 1996, ch. 950, § 8; 1999, ch. 520, § 47; 2000, ch. 981, § 68; 2009, ch. 103, § 2; T.C.A., § 71-3-157.

Compiler's Notes.

Former title IV-F of the Social Security Act, referred to in this section, formerly compiled in 42 U.S.C. § 681 et seq, was repealed effective July 1, 1997.

71-3-108. Modifications to program — Federal waivers.

(a) The commissioner of human services is authorized, pursuant to the requirements of subsections (b) and (c), to immediately implement changes necessary as a result of federal legislation designed to reform welfare programs that are, or may be in the future, administered by the department of human services or other appropriate state agencies.

(b) It is the intent of the general assembly that any modifications to the state's welfare programs be implemented that are required by federal law or that are necessary to ensure or enhance federal funding of the state's welfare programs or that are necessary for the implementation of such changes. Acting in accordance with § 4-5-108, the department shall have authority to immediately implement any federal legislative changes by emergency rules; provided, that permanent rules shall be promulgated pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(c) For purposes of this section, "welfare program" is defined as any federal or state means-tested program administered by the department of human services, or any child support enforcement program administered by the department of human services pursuant to Title IV-D of the Social Security Act, compiled in 42 U.S.C. § 651 et seq., the Carl D. Perkins Vocational and Applied Technology Act authorized by P.L. 101-392 [repealed], and the Adult Education Act, authorized by P.L. 100-297 [repealed], as amended by the National Literacy Act of 1991, P.L. 102-73 [repealed].

(d)(1) The commissioner of human services is authorized to seek and to implement waivers to carry out this part and chapter 5, part 12 of this title to the extent permitted by federal authorities.

(2)(A) If waivers that are necessary to implement any or all of the provisions of this part, chapter 3, parts 9 and 10 and chapter 5, part 12 of this title cannot be obtained, or in those counties for which the continued operation of the existing welfare program may be required by the federal authorities for the evaluation of any waivers granted by the federal government, the department shall continue to administer, pursuant to the requirements of federal statutes and regulations, the federally funded programs of economic or welfare assistance to families and children under Titles IV-A and IV-D of the Social Security Act, compiled in 42 U.S.C. § 601 et seq. and 42 U.S.C. § 651 et seq., respectively, as they may continue to exist on or after September 1, 1996, until such time as such programs may be terminated or modified by the congress of the United States, the United States department of health and human services or its successor, or the general assembly.

(B)(i) If at any time:

(a) The congress of the United States terminates or modifies the Title IV-A block grant program for federally funded economic or welfare assistance to families and children to the states under the temporary assistance to needy families program (TANF) as provided in Public Law 104-193 (1996), compiled in 42 U.S.C. § 601 et seq., as amended;

(b) The congress of the United States, or the United States department of health and human services or its successor terminates, or modifies, Tennessee's Section 1115 waiver obtained pursuant to subdivision (d)(1) on July 26, 1996, that resulted in the creation of the families first program; or

(c) In the future, action by congress, or by the United States department of health and human services or its successor, terminates or modifies any subsequent federally funded eco-

nomic or welfare assistance program or any waiver that may be obtained for the operation of such a program for families and children, or a waiver that may be obtained for a welfare program demonstration project;

(ii) Then, in that circumstance, the department shall continue to administer, pursuant to the requirements of federal statutes and regulations existing at that time or subsequently enacted, the programs of economic or welfare assistance to families and children under Titles IV-A and IV-D of the Social Security Act, compiled in 42 U.S.C. § 601 et seq. and 42 U.S.C. § 651 et seq., respectively, as they may continue to exist on or after the date of such termination or modification or until the granting of a new waiver, and this part, chapter 3, parts 9 and 10 and chapter 5, part 12 of this title shall be superseded to the extent:

(a) Those provisions are inconsistent with any federal requirements for which no waiver exists; or

(b) No further federal funding is available, unless the general assembly specifically authorizes and funds the continuation of such provisions that do not otherwise conflict with federal law, regulation or waiver requirements.

(C) The termination or modification of any federally funded programs for the economic assistance to families and children shall not result in any entitlement to funding by the state of Tennessee for such programs pursuant to this part, chapter 3, parts, 9 and 10 and chapter 5, part 12 of this title, or otherwise, unless appropriations are made in the appropriations act specifically for such purpose.

(D) Notwithstanding any law to the contrary, the department shall have authority to implement any rules, by emergency rule, that are necessary to:

(i) Maintain compliance with such terminations or modifications;

(ii) Maintain federal funding;

(iii) Comply with any federal regulation that has not been waived; or

(iv) Comply with any waiver requirements;

provided, however, that the department shall promulgate permanent rules pursuant to a rulemaking hearing as required by the Uniform Administrative Procedures Act.

(e) Child support received by the department with respect to recipients of temporary assistance shall be passed on to the recipient in the same manner as was the practice of the department prior to July 1, 1996, with respect to recipients of aid to families with dependent children (AFDC). However, the department shall not be required to pass through any portion of child support that by federal law must be paid to the federal government. The department shall seek any available waiver from a requirement that any portion of child support must be paid to the federal government, and, if a waiver is granted, pass the support through to the recipient of temporary assistance as required in this subsection (e).

History.

Acts 1996, ch. 950, § 9; 2003, ch. 119, § 1; 2009, ch. 566, § 12; T.C.A., § 71-3-158.

Compiler's Notes.

Acts 2009, ch. 566, § 12 provided that the Tennessee code commission is directed to change all references to public necessity rules, wherever such references appear in this code, to emergency rules, as sections are amended and volumes are replaced.

The Adult Education Act, referred to in this section, formerly compiled in 20 U.S.C. § 1201 et seq., was repealed effective August 7, 1998. The National Literacy Act of 1991, referred to in this section, was repealed August 7, 1998.

The Section 1115 waiver, referred to in this section, refers to Section 1115 of the Social Security Act, codified in 42 U.S.C. § 1315.

The Carl D. Perkins Vocational and Applied Technology Act, referred to in this section, formerly compiled in 20 U.S.C. § 2301 et seq., was replaced by general amendment.

71-3-109. Diversion grants.

(a) Except for a child-only grant for temporary assistance, the department shall evaluate appropriate cases to determine if a diversion grant would be effective in meeting a family's immediate and compelling need and prevent the family from going on temporary assistance or to assist the family in leaving temporary assistance. The diversion grant shall be awarded pursuant to the requirements in subsections (b) and (c) and the rules of the department.

(b) The diversion grant:

(1) Shall meet immediate needs so that an applicant or recipient can avoid temporary cash assistance;

(2) May be granted as the department considers appropriate;

(3) May not cover the same type of immediate need met by a previous diversion grant unless the department determines that the current immediate need is a new and verified emergency;

(4) May range from one (1) to twelve (12) months of temporary cash assistance, dependent upon the department's determination that there is a compelling need for a diversion grant;

(5) Shall be calculated based upon the amount of temporary cash assistance an applicant is eligible to receive under the Temporary Assistance for Needy Families/Families First program; and

(6) May not duplicate periods of temporary cash assistance.

(c) The applicant's temporary assistance eligibility period will be reduced by the number of months the applicant receives a diversion grant.

History.

Acts 2014, ch. 787, § 1.

Compiler's Notes.

Acts 2014, ch. 787, § 2 provided that the commissioner of human services is authorized to promulgate rules to implement the diversion grant program in accord with title 4, chapter 5.

71-3-110. Distribution system.

The commissioner of human services has the authority to establish a system for distribution of any benefits provided by this part, or under the continued provisions of federal law and regulations as provided under § 71-3-108, by means of electronic benefits transfer system and to contract with public or private entities to provide any services necessary to carry out such provision as the commissioner shall determine is appropriate.

History.
Acts 1996, ch. 950, § 11; T.C.A., § 71-3-160; Acts 2013, ch. 402, § 3.

71-3-111. Training and supervision.

(a) The department shall appropriately train and supervise all employees and other persons who are responsible for developing, evaluating and managing personal responsibility plans for recipients of temporary assistance. Such training and supervision shall include, but not be limited to, a competency based case management program to measure the effectiveness of each plan and to provide appropriate oversight and implementation.

(b) Any necessary part-time or temporary job counseling and job placement personnel shall be employed as provided by law.

(c) Any additional full-time positions required by the various departments involved in the implementation of this part and of chapter 5, part 12 of this title shall be employed as provided by law.

History.
Acts 1996, ch. 950, § 29; T.C.A., § 71-3-161.

71-3-112. [Obsolete.]

71-3-113, 71-3-114. [Reserved.]

71-3-115. Investment of funds in individual development or other accounts.

Any individual development accounts or other such accounts established for the benefit of recipients under this part or related programs shall be administered as approved by the state treasurer, who shall prescribe investment procedures for the corpus of such funds in a manner that the state treasurer determines in consultation with the commissioners of human services and finance and administration; provided, that the interest accruing from such accounts shall remain in those accounts and shall be distributed to the recipients, on an equitable basis, in the manner determined by the state treasurer in consultation with the commissioners.

History.
Acts 1996, ch. 950, § 34; T.C.A., § 71-3-165.

71-3-116. Veterans education benefits.

Notwithstanding any other provision of this chapter, to the extent permitted by federal law, the value of federal veterans education benefits received by an applicant shall not be included as any form of income when making eligibility determinations for assistance under this part.

History.
Acts 2003, ch. 239, § 1; T.C.A., § 71-3-166.

Compiler's Notes.
Provisions concerning federal veteran's educational benefits are codified in 38 U.S.C. § 3101.

71-3-117. Amendment of provisions.

All assistance granted under this part shall be deemed to be granted and to be held subject to any amending or repealing statute that may hereafter be passed, and no recipient shall have any claim for compensation, or otherwise, by reason of such recipient's assistance being affected in any way by any amending or repealing statute.

History.
Acts 1937, ch. 50, § 16; C. Supp. 1950, § 4765.54 (Williams, § 4765.53); T.C.A. (orig. ed.), §§ 14-317, 14-8-117.

71-3-118. Charging for assistance to applicants unlawful.

(a) It is unlawful for any person, firm, or corporation either to charge or to receive, directly or indirectly, anything of value for assisting any person in making application to the proper authorities of this state, or any of them, for relief or assistance under any statutes of this state providing for financial assistance to dependent children.

(b) A violation of this section is a Class C misdemeanor.

History.
Acts 1937, ch. 118, § 1; 1941, ch. 41, § 1; mod. C. Supp. 1950, § 4765.56 (Williams, § 4765.37); T.C.A. (orig. ed.), §§ 14-318, 14-8-118; Acts 1989, ch. 591, § 113.

71-3-119. Use of lists of recipients.

(a) Except as permitted by §§ 71-1-117 and 71-1-118, it is unlawful for any person, except for purposes directly connected with the administration of this part, to solicit, disclose, receive, make use of, authorize or knowingly permit, participate in, or acquiesce in the use of any list or names of, or any information concerning, persons applying for or receiving aid and services to needy families with children, directly or indirectly derived from the records, papers, files, or communications of the department or divisions of the department, or acquired in the course of the performance of official duties.

(b) A violation of this section is a Class C misdemeanor.

History.
Acts 1941, ch. 148, § 1; C. Supp. 1950, § 4765.56 (Williams, § 11412.7); impl. am. Acts 1953, ch. 29, §§ 1, 2; Acts 1963, ch. 129, § 1;

impl. am. Acts 1975, ch. 219, § 1 (a, b); T.C.A. (orig. ed.), §§ 14-319, 14-8-119; Acts 1989, ch. 591, § 113.

71-3-120. Fraudulent receipt of temporary assistance — Penalties — Statute of limitations.

(a) A person commits an offense who, knowingly, obtains, or attempts to obtain, or aids, or abets any person to obtain, by means of a willfully false statement, representation, or impersonation, or by any other fraudulent means or in any manner not authorized by this part, or by the regulations or procedures issued or implemented by the department of human services pursuant to this part, temporary assistance for a dependent child as provided pursuant to this part, either by check or by an electronic benefits transfer process, or any assistance provided pursuant to this part by any other means as determined by the department, to which such child is not entitled or in an amount greater than that to which such child is entitled.

(b) A person commits an offense who, knowingly, in any manner not authorized by this part or the regulations or procedures implemented by the department of human services pursuant to this part, presents for payment, or causes to be presented for payment, transfers, exchanges, sells, or otherwise uses, or aids or abets any person to present for payment, transfer, exchange, sell, or otherwise use any temporary assistance check, or any electronic benefits card, authorization or personal identification number, device or other thing or means issued or utilized for the purpose of providing temporary assistance benefits pursuant to this part electronically or otherwise.

(c) A person who receives a temporary assistance check or any electronic benefits card, authorization or personal identification number, device or other thing or means issued or utilized for the purpose of providing temporary assistance benefits electronically or otherwise, knowing them to have been presented for payment, transferred, exchanged, sold or otherwise used in any manner not authorized by this part or the regulations or procedures implemented by the department of human services pursuant to this part, commits an offense.

(d) An offense under this section is a Class E felony if the value of such temporary assistance sought to be obtained, or that is obtained, is one hundred dollars ($100) or more, and upon conviction of the offense, such person shall be sentenced for such offense as provided by law, or shall be fined not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000), or both; and, if such temporary assistance sought to be obtained, or that is obtained, is of a value less than one hundred dollars ($100), such person commits a Class A misdemeanor and shall be sentenced or fined, or both, as provided by law.

(e) In addition to or in lieu of any of the penalties in subsection (d), the court may order that such person be disqualified from participation in the temporary assistance program for twelve (12) months for the first offense, twenty-four (24) months for the second offense, and permanently for the third offense. Disqualification pursuant to this section of any person from eligibility for assistance under this part shall not operate to disqualify or suspend the eligibility of an innocent adult or child of the disqualified person's family.

(f) The department shall enclose a copy of the penalties provided in this section one (1) time, in notice form, to each recipient of assistance pursuant to this part and post a notice to such effect in noticeable places in each of its assistance offices.

(g) In addition to any of the penalties in subsection (d), any person convicted of any offense specified in subsection (a), (b) or (c) shall be ordered to make restitution in the total amount found to be the value of the temporary assistance that forms the basis for the conviction. In the event any person ordered to make restitution pursuant to this section is found to be indigent and, therefore, unable to make restitution in full at the time of conviction, the court shall order a periodic payment plan consistent with the person's financial ability.

(h) Notwithstanding any other law to the contrary, prosecutions for any of the offenses specified in subsection (a), (b) or (c) shall be commenced within four (4) years next after the commission of the offense. For purposes of this subsection (h), any such offense that is based upon a willful failure to report information as required by law is considered a continuing offense until such information is reported.

History.

Acts 1937, ch. 50, § 15; C. Supp. 1950, § 4765.53 (Williams, § 4765.52); Acts 1955, ch. 28, § 1; T.C.A. (orig. ed.), §§ 14-320, 14-8-120; Acts 1989, ch. 591, § 104; 1999, ch. 248, § 1.

71-3-121. Transfer of benefits — Exemption.

Assistance granted under this part shall not be transferable or assignable at law or in equity, and none of the money paid or payable under this part shall be subject to execution, levy, attachment, garnishment or other legal process, or to the operation of any bankruptcy or insolvency law.

History.

Acts 1937, ch. 50, § 16-a, as added by Acts 1941, ch. 37, § 1; C. Supp. 1950, § 4765.55 (Williams, § 4765.53a); T.C.A. (orig. ed.), §§ 14-321, 14-8-121.

71-3-122. Prosecution of deserting spouse or parent.

Whenever any dependent spouse or dependent child shall make an application to the county office of the department for an aid and services to needy families with children grant, and an investigation of the circumstances of the applicant reveals that the applicant was put in such needy circumstances by reason of the fact that the dependent spouse was deserted or abandoned by that spouse's or the child's parent, then it shall be the duty of the county office to notify the chief counsel of the department, whose duty it shall be to certify such fact to the prosecuting attorney of the county, who shall institute the necessary criminal proceedings against the spouse or parent who has deserted the dependent spouse or family.

History.
Acts 1951, ch. 257, § 1 (Williams, § 4765.53b); 1963, ch. 129, § 1; 1976, ch. 754, § 1; T.C.A. (orig. ed.), §§ 14-322, 14-8-122.

71-3-123. Civil action against deserting spouse or parent.

(a) All payments made by the department to such spouse or dependent child shall be recoverable against the deserting spouse or parents by the state as a debt due to the state, and such recovered payments shall be deposited by the state treasurer to the credit of the aid and services to needy families with children fund.

(b) In the event the deserting spouse or parent has left the state, then the secretary of state shall be the lawful attorney or agent for such spouse or parent and service of process shall be made by serving a copy of the process on the secretary of state, and such service shall be sufficient service upon the spouse or parent; provided, that notice of such service and a copy of the process are forthwith sent by registered mail by the prosecuting attorney to the last known out-of-state address of the spouse or parent.

(c) The property of the spouse or parent within the state shall be subject to execution for payment of any judgment taken against such spouse or parent.

History.
Acts 1951, ch. 257, § 2 (Williams, § 4765.53c); 1963, ch. 129, § 1; 1976, ch. 754, § 2; T.C.A. (orig. ed.), §§ 14-323, 14-8-123.

71-3-124. Assignment of support rights to state — Enforcement and collection of rights — Collection service fee — Attorneys — Caretaker relative eligibility — Standing to petition.

(a)(1) Each applicant or recipient who receives or authorizes payment of public or temporary assistance pursuant to Title IV-A or IV-E of the Social Security Act, compiled in 42 U.S.C. § 601 et seq. and 42 U.S.C. § 670 et seq., respectively, or any successor program providing temporary assistance or foster care or adoption assistance shall be deemed to have assigned to the state any rights to support from any other person such applicant or recipient may have:

(A) In the applicant's own behalf or in behalf of any other family member for whom the applicant is applying for or receiving aid; and

(B) That have accrued at the time such assignment is executed.

(2) Each payment shall constitute "receipt" for purposes of determining when the assignment is executed.

(3) During the terms of such assignment, the department shall be subrogated to the rights of the child or children or the person having custody to collect and receive all child support payments.

(4) The department has the right to initiate any support action in its own name or in the name of the recipient under existing laws of this state and to recover any payments ordered by the courts of this or any other state.

(5) In the exercise of its subrogation rights, the department shall give the person having custody prior notice of any action taken to enforce or modify support and shall inform the custodian of the right to intervene to protect any future interest; provided, that failure to provide such notice shall not be a defense to the obligor in any proceeding.

(6)(A) Notwithstanding any law to the contrary, neither the department of human services, nor any Title IV-D child support contractor of the department, nor any recipient of public assistance in this or any other state or territory, shall be required to demonstrate to a court or administrative tribunal in this state that the caretaker of the child for whom child support is sought is vested with any more than physical custody of the child or children in order to have standing to petition for child support from the legal parent of the child or children for whom support is sought, or to seek enforcement or modification of any existing orders involving such child or children.

(B) Legal custody of a child to whom a child support obligation is owed shall not be a prerequisite to the initiation of any support action or to the enforcement or modification of any support obligation, whether or not the obligation has been assigned to this state or any other state or territory by operation of law.

(b) The department shall certify to the clerks of the appropriate state courts that an assignment of any and all rights, title and interest in support rights has been made to this state by a public assistance or temporary assistance recipient of this state. The department may also, in its discretion, certify to the clerk of the appropriate court in this state that a recipient of public assistance or temporary assistance in another state has assigned support rights to that state pursuant to federal law. Upon receipt of this certification, the clerks of the appropriate state courts shall transmit support payments that they receive on behalf of such public assistance or temporary assistance recipient. The clerk shall transmit the amount directly to the agency specified by the department in accordance with § 36-5-101. The clerks are to identify these payments by the names of the parties involved in the cause of action and by the docket number of the cause of action. These support payments shall be transmitted to the department or the specified agency continuously until the department notifies the clerks of the appropriate state courts that it is no longer necessary to do so. The department shall send to each recipient notice of payments received in such recipient's behalf quarterly.

(c)(1) Upon the filing of an application by an individual not otherwise eligible for support services under this section, the department may initiate support actions for an individual, in accordance with Title IV-D of the Social Security Act, compiled in 42 U.S.C. § 651 et seq., as amended.

(2) The department or any entity, public or private, that contracts with the department to establish paternity or to establish, modify or enforce child or spousal support pursuant to Title IV-D of the Social Security Act shall have authority and standing to file any legal actions to establish paternity or to estab-

lish, modify or enforce child or spousal support in any judicial or administrative proceeding on behalf of the department and the state for persons who have assigned rights of support to the department pursuant to this section, or who have otherwise applied for child or spousal support services pursuant to subdivision (c)(1) or Title IV-D of the Social Security Act. The department or its contractors may file such legal actions without the necessity of intervening in an existing action or naming the state as a party to the action. The department or its contractors shall not be required to provide proof that the obligor, the obligee or the child has applied for or is receiving Title IV-D child support services in order to meet the requirements for conducting Title IV-D child support judicial or administrative actions.

(d) The provision of services under a child support enforcement program that includes services by an attorney or an attorney's representative employed by, under contract to, or representing the department shall not create an attorney-client relationship with any party other than the state. Attorneys employed by or under contract to the department shall have an affirmative duty to notify individuals applying for child support services or temporary assistance for needy families (TANF) recipients or recipients of any successor program providing temporary assistance whose rights to support have been assigned, who contact or are contacted by the attorney or other child support enforcement program staff that any legal services provided by the child support enforcement program are solely on behalf of the state, and that no incidents of the lawyer-client relationship, including the confidentiality of lawyer-client communications, exist between the attorney and the applicant or recipient. No such duty shall exist when the applicant for services is another governmental agency acting on behalf of an individual and there is no direct contact between the child support enforcement program and the individual seeking support.

(e)(1) As a condition of eligibility for consideration of the caretaker relative in the request for assistance under the TANF program or any successor program providing temporary assistance, each applicant for or recipient of benefits under this program shall cooperate, unless good cause not to cooperate is shown to exist in accordance with 45 Code of Federal Regulations, Sections 232.40 through 232.49 as they may be amended, with the department and its Title IV-D contractors in:

(A) Identifying and locating the parent of a child for whom aid is claimed;

(B) Establishing the paternity of a child born out of wedlock for whom aid is claimed;

(C) Obtaining support payments for the applicant or recipient and for a child for whom aid is claimed; and

(D) Obtaining any other payments or property due the applicant or recipient of the child.

(2) Cooperation with the department and its Title IV-D contractors shall be defined by the department in rules that are consistent with federal regulations.

(3) If a caretaker relative fails to cooperate with the department or its Title IV-D contractors under subdivision (e)(1), the department shall, consistent with federal regulations, deny assistance to that caretaker relative of a child or children who are otherwise eligible for TANF or any successor program providing temporary assistance and it shall, consistent with federal regulations, provide assistance to the eligible child in the form of a protective payment, but such assistance will be determined without regard to the needs of the caretaker relative.

(4) The commissioner shall promulgate rules to carry out this section.

History.

Acts 1977, ch. 110, § 1; T.C.A., § 14-324; Acts 1982, ch. 764, § 1; 1985, ch. 477, §§ 9, 10; 1986, ch. 890, § 15; T.C.A., § 14-8-124; Acts 1988, ch. 938, § 3; 1994, ch. 987, § 16; 1996, ch. 950, § 28; 1998, ch. 1098, § 68; 2000, ch. 922, § 38.

71-3-125. Child support enforcement by district attorneys general.

(a) The district attorneys general have the authority, within budgetary limitations, to establish child support enforcement programs within their judicial districts.

(b) Such authority includes:

(1) The hiring of clerical and professional staffs;

(2) The entering into contracts with other agencies; and

(3) Such other authority as may be necessary to carry out the requirements of the child support enforcement programs under Title IV-D of the Social Security Act, compiled in 42 U.S.C. § 651 et seq.

(c) Any legal services furnished under the authority of this section shall be solely on behalf of the state, and shall not create an attorney-client relationship with any party other than the state.

History.

Acts 1977, ch. 235, § 1; T.C.A., §§ 14-325, 14-8-125; Acts 1988, ch. 938, § 4.

71-3-126. Restrictions on use of electronic benefits transfer cards by TANF recipients — Reimbursement — Violations and penalties — System for review — Right to hearing — Rules and regulations — Revenues and fines deposited in general fund.

(a) For the purposes of this section, the term "public assistance benefits" means money or property provided directly or indirectly to eligible persons through the temporary assistance to needy families program.

(b)(1) A recipient of public assistance benefits shall not knowingly use an electronic benefits transfer card in:

(A) A liquor store as defined in 42 U.S.C. § 608(a)(12)(B)(i);

(B) A casino, gambling casino, or gaming establishment as defined in 42 U.S.C. § 608(a)(12)(B)(ii);

(C) An adult cabaret as defined in § 7-51-1102; or

(D) A retail store licensed to do business in this state that derives its largest category of sales from the sale of loose tobacco, cigars, cigarettes, pipes, and other smoking accessories.

(2) To the extent permitted by federal law, any person who violates this subsection (b) shall reimburse the department for the purchase;

(3) The department shall notify all recipients of electronic benefit cards of the prohibitions set forth in subdivision (b)(1) and the penalties under current law for knowingly using an EBT card in any prohibited business location.

(c)(1) A person or business entity, or any agent or employee of the person or business entity shall not knowingly accept public assistance benefits from an electronic benefits transfer card for the purchase of any goods or services in:

(A) A liquor store as defined in 42 U.S.C. § 608(a)(12)(B)(i);

(B) A casino, gambling casino, or gaming establishment as defined in 42 U.S.C. § 608(a)(12)(B)(ii);

(C) An adult cabaret as defined in § 7-51-1102; or

(D) A retail store licensed to do business in this state that derives its largest category of sales from the sale of loose tobacco, cigars, cigarettes, pipes, and other smoking accessories.

(2) Any person or business entity who knowingly violates this subsection (c) shall be subject to the following civil penalties:

(A) One thousand dollars ($1,000) for the first violation;

(B) Two thousand five hundred dollars ($2,500) for the second violation within five (5) years;

(C) Five thousand dollars ($5,000) for a third or a subsequent violation within five (5) years. The district attorney general may bring an action to suspend the business licenses and permits of the person or business entity for one (1) year for any violation under this subsection (c). The department is authorized to bring an action to enforce any civil penalty under this subsection (c) in a complaint filed in the chancery court of the county where the merchant is located.

(d)(1) A recipient of public assistance benefits shall not knowingly use an electronic benefit transfer card in an automated teller machine or point-of-sale device located in:

(A) A liquor store as defined in 42 U.S.C. § 608(a)(12)(B)(i);

(B) A casino, gambling casino, or gaming establishment as defined in 42 U.S.C. § 608(a)(12)(B)(ii); or

(C) An adult cabaret as defined in § 7-51-1102.

(2) Any person who knowingly violates this subsection (d) shall reimburse the department for the amount withdrawn and used subject to any prohibition in federal law. Upon a third or subsequent violation, if permitted by federal law, the person shall be permanently disqualified from receiving public assistance benefits by means of direct cash payment or an electronic benefits transfer access card.

(e) The department of human services shall establish a system for reviewing electronic benefit transactions of recipients pursuant to this section on such basis as the commissioner may determine, but not less than on a quarterly basis.

(f) A person or entity subject to a penalty or sanction under this section shall have the right to a hearing pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(g)(1) The commissioner of human services is authorized to promulgate rules and regulations, including emergency rules, to effectuate the purposes of this section. All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(2) The department shall add by rule to the prohibited use of an electronic benefits transfer card other purchases to the fullest extent later permitted by federal law.

(h) Any revenues deposited or civil fines collected pursuant to subsection (c) shall be deposited into the general fund.

History.
Acts 2013, ch. 312, § 1; 2015, ch. 392, §§ 1-3.

PART 4

[RESERVED]

PART 5

CHILD CARE AGENCIES

71-3-501. Part definitions.

As used in this part, unless otherwise exempted pursuant to § 71-3-503, and unless the context otherwise requires:

(1) "Care giver," "care givers," "care provider" or "care providers," means the person or persons or entity or entities directly responsible for providing for the supervision, protection, and basic needs of the child;

(2) "Child" or "children" means a person or persons under eighteen (18) years of age;

(3) "Child care" means the provision of supervision and protection, and, at a minimum, meeting the basic needs, of a child or children for less than twenty-four (24) hours a day;

(4) "Child care agency" or "agency" means and only where the context requires in any other provision of law, a place or facility, regardless of whether it is currently licensed, that is operated as a family child care home, a group child care home, a child care center, or a drop-in center, as those terms are defined in this part, or that provides child care for five (5) or more children who are not related to the primary caregiver for three (3) or more hours per day;

(5) "Child care center" means any place or facility operated by any person or entity that provides child care for three (3) or more hours per day for at least thirteen (13) children who are not related to the

primary caregiver; provided, that a child care agency shall not be classified as a "child care center" that operates as a "group child care home" and keeps three (3) additional school-age children as permitted in subdivision (10); provided, further, that all children, related or unrelated shall be counted in the adult-to-child supervision ratios and group sizes applicable to child care centers; with the exception, that if the child care center is operated in the occupied residence of the primary caregiver, children nine (9) years of age or older who are related to the primary caregiver will not be counted in determining the adult-to-child supervision ratios or group sizes applicable to child care centers if such children are provided a separate space from that occupied by the child care center. The department may permit children in the separate space to interact with the children in the licensed child care center in such manner as it may determine is appropriate;

(6) "Commissioner" means the chief administrative officer in charge of the department of human services;

(7) "Department" means the department of human services;

(8) "Drop-in center" means a place or facility operated by any person or entity providing child care, at the same time, for fifteen (15) or more children, who are not related to the primary caregiver, for short periods of time, not to exceed fourteen (14) hours per week and for not more than seven (7) hours per day for any individual child during regular working hours, Monday through Friday six o'clock a.m. (6:00 a.m.) to six o'clock p.m. (6:00 p.m.); provided, however, that a drop-in center may provide such child care during evenings after six o'clock p.m. (6:00 p.m.) and weekends, Friday, six o'clock p.m (6:00 p.m.) through Sunday, ten o'clock p.m. (10:00 p.m.), so long as the drop-in center provides no more than a total of twenty (20) hours per week, exclusive of snow days, defined as days when the school of the affected child is closed; provided, further, that drop-in centers may provide such care during snow days; provided, however, that, notwithstanding any other requirements of this part, training requirements for the staff of this class of child care agency shall be limited to basic health and safety precautions and the detection and reporting of child abuse and neglect for children in care; provided, further, that, notwithstanding any other provision of this chapter to the contrary, drop-in centers that provide child care for no more than two (2) hours per day with a maximum of ten (10) hours per week without compensation, while the parent or other custodian is engaged in short-term activities on the premises of the organization, shall register as providing casual care and shall not be deemed to be a drop-in center or regulated as a drop-in center;

(9) "Family child care home" means any place or facility that is operated by any person or entity that provides child care for three (3) or more hours per day for at least five (5) children but not more than seven (7) children who are not related to the primary caregiver; provided, that the maximum number of children present in the family child care home, including related children of the primary caregiver shall not exceed twelve (12), with the exception that, if the family child care home is operated in the occupied residence of the primary caregiver, children related to the primary caregiver nine (9) years of age or older will not be counted in determining the maximum number of children permitted to be present in a "family child care home" if those children are provided a separate space from that occupied by the family child care home. The department may permit children in the separate space to interact with the children in the licensed family child care home in such manner as it may determine is appropriate;

(10) "Group child care home" means any place or facility operated by any person or entity that provides child care for three (3) or more hours per day for at least eight (8) children who are not related to the primary caregiver; provided, however, that the maximum number of children present in a group child care home, including those related to the primary caregiver, shall not exceed twelve (12) children, with the exception that, if the group child care home is operated in the occupied residence of the primary caregiver, children related to the primary caregiver nine (9) years of age or older will not be counted in determining the maximum number of children permitted to be present in a group child care home, if those children are provided a separate space from that occupied by the group child care home; and, provided, further, that up to three (3) additional school age children, related or unrelated to the primary caregiver, may be received for child care before and after school, on school holidays, on school snow days and during summer vacation. The department may permit children in the separate space to interact with the children in the licensed group child care home in such manner as it may determine is appropriate; and

(11) "Related" means the children, step-children, grandchildren, step-grandchildren, siblings of the whole or half-blood, step-siblings, nieces, nephews or foster children of the primary caregiver.

History.

Acts 2000, ch. 981, § 2; 2001, ch. 453, §§ 1, 2; 2005, ch. 93, § 1; 2005, ch. 151, § 1; 2015, ch. 271, § 1.

Compiler's Notes.

Acts 1992, ch. 1030, § 2 provided: "The general assembly hereby takes official notice of the fact that alternatives currently available to families with medically and/or technology-dependent children are difficult, if not intolerable. Too often, limited alternatives dictate that medically and/or technology-dependent children remain hospitalized for extended periods at great financial and emotional cost to parents and children. Too often, limited alternatives dictate that such children be maintained at home using extensive, private duty nursing services at great financial as well as emotional cost to parents and children who endure the long-term effects of isolation. Too often, limited alternatives dictate that single working parents, and families who must rely on two (2) incomes for economic survival, permanently leave their medically and/or technology-dependent children in institutional settings and suffer grave financial and emotional consequences. Prescribed child care centers offer the potential of providing a much needed alternative for these families. While assisting in the containment of health care costs, prescribed child care centers also offer medically and/or technol-

ogy-dependent children and their families a comprehensive, developmentally appropriate nonresidential environment of coordinated medical, developmental, and parental training services. Through this enactment, it is the intent of the general assembly to encourage and support the increased availability and affordability of prescribed child care centers of quality."

Former § 71-3-501 (Acts 1953, ch. 228, § 1 (Williams, § 4765.138); Acts 1959, ch. 167, §§ 1-3; 1965, ch. 333, § 1; 1971, ch. 214, § 1; 1971, ch. 303, § 1; impl. am. Acts 1975, ch. 219, § 1 (a, b); Acts 1978, ch. 729, §§ 1, 2; T.C.A. (orig. ed.), § 14-1401; Acts 1983, ch. 322, §§ 1, 2; T.C.A., § 14-10-101; Acts 1987, ch. 283, §§ 1, 2; 1987, ch. 297, §§ 1, 2; 1992, ch. 1030, §§ 3, 4; 1995, ch. 532, § 18; 1996, ch. 1079, §§ 158-162), concerning definitions, was repealed by Acts 2000, ch. 981, § 1. For current provisions, see this section.

71-3-502. Violations of licensing regulations — Probation, suspension, denial and revocation of licenses — Appeal procedures — Personal safety curriculum.

(a)(1) All persons or entities operating a child care agency as defined in this part, unless exempt as provided in § 71-3-503, must be licensed by the department as a child care agency.

(2)(A) The department has the authority to issue regulations pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 2, for the licensing of any persons or entities subject to any provisions of this part and for enforcement of appropriate standards for the health, safety and welfare of children in their care.

(B) To the extent they are not inconsistent with the statutory provisions of this part, the regulations of the department that are in effect July 1, 2000, shall remain in force and effect until modified by regulatory action of the department.

(3) The department's regulations of child care agencies shall be developed based upon consideration of the criteria in subdivisions (a)(3)(A)-(F). In determining whether to initially grant a license or whether to take any licensing action involving a licensed child care agency, the statutory criteria in subdivisions (a)(3)(A)-(F) may be cited and considered by the department and by the child care agency board of review as the basis for such action in addition to the regulations:

(A) The safety, welfare and best interests of the children in the care of the agency;

(B) The capability, training and character of the persons providing or supervising the care of the children;

(C) Evidence that the expected performance of the caregivers, supervisors or management of the child care agency seeking initial licensure or renewal of licensure will be such as to protect children in care from injury, harm or the threat of injury or harm; or, during licensure, that the actual performance of any of the duties of caregivers, supervisors or management of a licensed child care agency demonstrates or has demonstrated a level of judgment that a reasonable person would exercise or would have exercised, under existing or under reasonably foreseeable circumstances, that would prevent or would have prevented injury, harm, or the threat of injury or harm, to any child in care;

(D) The quality of the methods of care and instruction provided for the children;

(E) The suitability of the facilities provided for the care of the children; and

(F) The adequacy of the methods of administration and the management of the child care agency, the agency's personnel policies, and the financing of the agency.

(4) The department shall promulgate regulations that address the following areas:

(A) Training for directors and care givers as follows:

(i) Pre-employment training for directors, including, but not limited to, training in interviewing and evaluating care givers for service in an agency;

(ii) Training for caregivers that includes, but is not limited to, pre-service orientation as well as additional training within the first six (6) months of employment as provided by rule; and

(iii) The department of human services shall promulgate rules that consider the prior education and experience of a registered nurse who is seeking approval under the department's rules as a director of a child care agency that operates as part of a facility licensed under title 68 as a nursing home;

(B) Liability and accident insurance coverage, including minimum amounts of coverage based upon insurance industry standards, for both facilities and vehicles owned, leased or contracted for by the child care agency; provided, that this requirement shall not apply to a child care agency that is under the direct management of a self-insured administrative department of the state, a county, a municipality or any combination of those three (3); and

(C)(i) Education of the parents of children in day care regarding the benefits of immunizing their children against influenza.

(ii) The department of human services shall work to increase immunization awareness and participation among parents of children in child care agencies by working with the department of health in publishing on the department's web site information about the benefits of annual immunization against influenza for children six (6) months of age to five (5) years of age.

(iii) The department shall work with child care agencies and providers to ensure that the information is annually distributed to parents in August or September.

(5) The department shall enact these regulations by emergency rule to be effective July 1, 2000; provided, however, permanent rules shall be promulgated pursuant to the Uniform Administrative Procedures Act.

(6)(A) The department of human services licensure rules for child care centers serving preschool children contained in Tenn. Comp. R. & Regs. 1240-4-3-.07(4)(e), and licensure rules for child

care centers serving school-age children contained in Tenn. Comp. R. & Regs. 1240-4-6-.07(4)(f), and in any other portions of those rules, that were part of the amendments filed as permanent rules for each rule on September 29, 2000, enacted on December 13, 2000, and effective on July 1, 2001, and that define or reference the age groups for "infants" as being comprised of children who are six (6) weeks to twelve (12) months of age, and the age groups for "toddlers" as being comprised of children who are thirteen (13) months to twenty-three (23) months of age, shall expire on July 19, 2001.

(B) "Infant" and "toddler" categories of children in the care of a child care agency licensed pursuant to this part shall be defined as follows, until otherwise modified by rule of the department:

(i) "Infants" shall be comprised of children six (6) weeks to fifteen (15) months of age; and

(ii) "Toddlers" shall be comprised of children twelve (12) months to thirty (30) months of age.

(C) All other department rules not specifically designated to expire by the provisions of subdivision (a)(6)(A), or affected by the definitions in subdivision (a)(6)(B), including, but not limited to, the definitions or references to the age range for the "2 year old" category in the care of a child care agency, descriptions or definitions of any other age groups of children, adult to child ratios, and, except as modified by ch. 436 of the Public Acts of 2001, and the effective dates of the rules, shall remain in full force and effect or shall become effective in accordance with the department's regulations.

(D) The department of human services shall have authority to immediately implement emergency rules effective on July 19, 2001, or as soon thereafter as possible, to define the age groups for "infants" and "toddlers" as defined by subdivision (a)(6)(B) and to make any conforming rule changes in the text or in the adult to child supervision charts contained in Tenn. Comp. R. & Regs. 1240-4-3 or 1240-4-6 or in any other rule of the department that may be necessary to implement the changes made by this section relative to the age range definition for the "infant" and "toddler" groups. Permanent rules shall be implemented as otherwise provided by the Uniform Administrative Procedures Act.

(b)(1) The department shall assist applicants or licensees in meeting the child care standards of the department unless the circumstances demonstrate that further assistance is not compatible with the continued safety, health or welfare of the children in the agency's care and that regulatory action affecting the agency's license is warranted. All costs and expenses arising from or related to meeting the child care standards of the department shall be borne entirely by the applicant or licensee; provided, the department may, in its discretion, provide from available funds for technical assistance to child care agencies, and the training of child care givers.

(2) If a licensee is denied the renewal of a license, if a license is revoked, or if any applicant for a license cannot meet the standards, then the department shall offer reasonable assistance to the parent, guardian or custodian of the child in planning for the placement of such children in licensed child care agencies or other suitable care.

(c) Application for a license to operate a child care agency shall be made in writing to the department in such manner as the department determines and shall be accompanied by the appropriate fee set forth in the fee schedule in subsection (g).

(d)(1) A person or entity that does not have an existing license may apply for either a restricted or unrestricted temporary license. The purpose of the temporary license is to permit the license applicant to begin the operation of a child care agency after meeting certain minimum requirements and to demonstrate during the temporary licensing period that it has the ability to attain and maintain compliance with all licensing laws and regulations.

(2) An applicant shall receive a temporary license upon the presentation of satisfactory evidence that:

(A) The facility that is proposed for the care of children has received fire safety and environmental safety approval, and that, after appropriate inspection, the department has determined that the site does not endanger the safety or welfare of children;

(B) The applicant and the personnel who will care for the children are capable in all substantial respects of caring for the children;

(C) The applicant has the ability to attain and maintain compliance with the licensing laws and regulations, both during the temporary and the annual license period;

(D) The applicant, owner, director or an employee of the agency has not previously been associated in an ownership or management capacity with any child care agency that has been cited by the department for violations of this part or the department's regulations, including the agency for which the application is pending, unless the department determines that a reasonable basis exists to conclude that such individual is otherwise qualified to provide child care; and

(E) The criteria in subdivision (a)(3) support the issuance of a restricted or unrestricted license.

(3) If the department determines that any of the criteria in subdivision (d)(2) has not been, or cannot be met, then it may deny the application for a temporary license; or, if the department determines that the conditions of the applicant's facility, its methods of care or other circumstances warrant, it may issue a restricted temporary license that permits operation of a child care agency, but limits the agency's authority in one (1) or more areas of operation.

(4)(A) Within one hundred twenty (120) days of the issuance of the temporary license, the department shall determine whether an annual or restricted annual license shall be issued to the applicant. If the department determines that the applicant has fully complied with all provisions of

subdivision (d)(2) and with all other laws and regulations governing the specific classification of child care agency for which the application was made, and that the child care agency has demonstrated the ability to maintain compliance with all licensing regulations during the annual license period, and that it has a reasonable likelihood of maintaining annual licensure, the department shall issue an annual license; or, if the department determines that the conditions of the applicant's facility, its methods of care or other circumstances warrant, it may issue a restricted annual license that permits operation of a child care agency, but limits the agency's authority in one (1) or more areas of operation.

(B) If the applicant has not satisfactorily demonstrated compliance with the requirements for licensing as determined by the department, the annual license may be denied by the department.

(5) The licensee shall post the license in a clearly visible location as determined by the department so that parents or other persons visiting the agency can readily view the license and all the information on the license.

(6)(A)(i) The license shall describe the ownership of the child care agency, the person who is charged with the day-to-day management of the child care agency, and, if the agency is owned by a person other than the director, or if the agency is under the ownership or direction or control of any person or entity who is not also the on-site director or manager of the agency, the license shall also state the corporate or other name of the controlling person or entity, its address and telephone number where the parents, guardians or custodians may have contact regarding the agency's operations.

(ii) If the child care agency is operated by a public or private nonprofit entity and is subject to the control or direction of a board of directors or other oversight authority, the license shall list the name, address and telephone number of the chair of the board or other executive head of such controlling body.

(B) In order for a child care agency to offer before or after-school services under this part, the department must issue a license bearing a notation that the agency is authorized to provide before or after-school care services. An agency may not offer such services unless its license bears such notation.

(7)(A) In granting any license, the department may limit the total number of children who may be enrolled in the agency regardless of the agency's physical capacity or the size of its staff.

(B) Adult/child ratios and group sizes in group child care homes and child care centers may exceed requirements set by rule of the department of human services by up to ten percent (10%), rounded to the nearest whole number, for no more frequently than three (3) days per week; provided, however, infant and toddler groups may never exceed the required ratios and group sizes. The department may terminate the variance from the rule in individual cases under the provisions for issuance of a restricted license pursuant to § 71-3-502.

(C)(i) The department may promulgate rules, under the Uniform Administrative Procedure Act, to provide for the amounts of liability coverage for any personal vehicles that are not owned, operated by, or contracted by the child care agency for the transportation of children enrolled in the agency, but which are utilized by parents, staff or volunteers only for occasional field trips for children enrolled at the agency.

(ii) Such rules must provide that any vehicles not owned, operated by, or contracted for by the agency for any transportation of children enrolled at the agency, and which are utilized only as described in subdivision (d)(7)(C)(i) for field trips must provide evidence of currently effective liability coverage for such non-agency vehicles in amounts sufficient to provide adequate coverage for children being transported by such vehicles.

(iii) The department shall also promulgate rules providing that, on and after May 1, 2005, all vehicles used by or on behalf of a child care center to provide transportation of children, that are designed to transport six (6) or more passengers, shall be equipped with a child safety monitoring device that shall prompt staff to inspect the vehicle for children before an alarm sounds. In order to facilitate the affordability of such devices for centers, the department is authorized to establish a grant program to subsidize a portion or all of the cost of such devices for centers; provided, however, that the department may only use private donations that it receives for such purpose to fund the grants. Only devices approved by the department are authorized for use on such a vehicle. This subdivision (d)(7)(C)(iii) shall not apply:

(a) When all children in a vehicle are five (5) years of age and in kindergarten, or older than five (5) years of age, except that if any one (1) of such children is developmentally or physically disabled or nonambulatory then this subdivision (d)(7)(C)(iii) shall apply; or

(b) To vehicles used exclusively for the provision of occasional field trips.

(iv) Vehicles used by a licensed child care agency for the transportation of children shall be subject only to color and marking requirements promulgated by the department and shall be exempt from any other such requirements that may be set forth in state law or local ordinance. Color and marking requirements shall be issued by the department, in consultation with the department of safety, as deemed appropriate for the safe operation, proper identification, or registration of the vehicle.

(v) Such rules shall prohibit a newly hired employee or existing employee who is full-time

or part-time, or, as defined by the department, a substitute employee of a child care agency, or a contractor or other persons or entities providing any form of transportation services for compensation to a child care agency, from engaging in any form of driving services involving children in a child care agency until the employee or substitute employee has undergone a drug test and the results are negative for illegal drug use. The rules shall provide exceptions for emergency transportation requirements in limited circumstances, as deemed appropriate by the department.

(8) If the department fails to issue or deny an annual license within one hundred twenty (120) days of the granting of the temporary license, the temporary license shall continue in effect, unless suspended, as provided in § 71-3-509, until such determination is made. If an annual license is denied following the issuance of a temporary license, and if a timely appeal is made of the denial of the annual license, the temporary license shall remain in effect, unless suspended, until the board of review renders a decision regarding the denial of the annual license.

(9) If a temporary or annual license is denied, or an annual license is restricted, the applicant may appeal the denial or restriction as provided in § 71-3-509.

(e)(1) Except as provided in this subsection (e), no license for a child care agency shall be transferable, and the transfer by sale or lease, or in any other manner, of the operation of the agency to any other person or entity shall void the existing license immediately and any pending appeal involving the status of the license, and the agency shall be required to close immediately. If the transferee has made application for, and is granted, a temporary license, the agency may continue operation under the direction of the new licensee. The new licensee in such circumstances may not be the transferor or any person or entity acting on behalf of the transferor.

(2) If the department determines that any person or entity has transferred nominal control of an agency to any persons or entities who are determined by the department to be acting on behalf of the purported transferor in order to circumvent a history of violations of the licensing law or regulations or to otherwise attempt to circumvent the licensing law or regulations or any prior licensing actions instituted by the department, the department may deny the issuance of any license to the applicant. The denial of the license may be appealed as provided in § 71-3-509.

(3)(A) The license of any agency shall not be voided nor shall any pending appeal be voided pursuant to this subsection (e) solely for the reason that the agency is subject to judicial orders directing the transfer of control or management of a child care agency or its license to any receiver, trustee, administrator or executor of an estate, or any similarly situated person or entity.

(B) If the current licensee dies, and provided that no licensing violations require the suspension, denial or revocation of the agency's license, the department may grant family members of the licensee, or administrators or executors of the licensee, a new temporary license to continue operation for a period of one hundred and twenty (120) days. At the end of such period, the department shall determine whether an annual or extended license should be granted to a new licensee as otherwise provided in this section.

(C) Nothing in this subsection (e) shall be construed to prevent the department from taking any regulatory or judicial action as may be required pursuant to the licensing laws and regulations that may be necessary to protect the children in the care of such agency.

(f)(1) Following the expiration of a least one (1) annual license, the department may issue an extended license to a licensee who seeks renewal of an existing license if the department determines that the licensee has demonstrated that its methods of child care and its adherence to licensing laws and regulations are clearly appropriate to justify an extended licensing period. An extended license may not be granted as the first license immediately following any temporary license.

(2) The department may by rule establish any criteria for the issuance of an extended license; provided, no extended license shall exceed three (3) years in duration.

(3) At the time renewal of the license is sought, or at any other time during the licensing period, the department may reduce the period of the extended license to a shorter period if it determines that the licensee has failed to demonstrate continued adherence to the requirements for the issuance of the extended license. The licensee may appeal such action as provided in § 71-3-509.

(4) The issuance of an extended license shall not be construed in any manner to prevent the department from suspending or revoking the license, placing an agency on probation, or imposing a civil penalty, if it determines that such action is appropriate.

(g)(1) Prior to January 1, 2001, the licensing fees as they existed for child care agencies on June 30, 2000, shall apply. On and after January 1, 2001, the following licensing fees shall apply to applications for licenses for child care agencies licensed pursuant to this part:

(A) Family child care homes	Annual fee	$100
	Biennial fee	$150
	Triennial fee	$175
(B) Group child care homes	Annual fee	$125
	Biennial fee	$175
	Triennial fee	$200
(C) Child care centers (Less than 100 children)	Annual fee	$200
	Biennial fee	$250
	Triennial fee	$300

(D) Child care centers (100-250 children)	Annual fee	$400
	Biennial fee	$450
	Triennial fee	$500
(E) Child care centers (More than 250 children)	Annual fee	$500
	Biennial fee	$550
	Triennial fee	$600
(F) Drop-in centers	Annual fee	$200
	Biennial fee	$250
	Triennial fee	$300

(2) Notwithstanding any other law to the contrary, in order to address the need for and encourage the development of extended child care for parents working at nights or on weekends, or for any other nontraditional child care needs for which the department determines that available child care is inadequate or unavailable in all or any part of the state, the department may promulgate rules pursuant to the Uniform Administrative Procedures Act, providing for alternative fee schedules in order to recognize and encourage the development of care to meet such needs.

(h) All licensure application and renewal fees collected by the department from family child care homes, group child care homes, child care centers and drop-in centers shall be paid into the general fund, but shall be earmarked for, and dedicated to, the department. Such earmarked fees shall be used by the department exclusively to improve child care quality in this state by funding activities that include child care provider training activities, but excluding any costs associated with conducting criminal background checks. Increased fees shall be used solely for a variety of training options, which can be accessed by agencies, organizations and individuals for grants for workshops, conferences and scholarships that improve the quality of child care in this state.

(i) Notwithstanding any provisions of title 13, chapter 7, to the contrary, upon adoption of a resolution by a two-thirds (⅔) vote of the county legislative body, any zoning authority, in determining the suitability of a request for any use of property for the establishment or alteration of any child care agency, may consider the criminal background of the person or persons making a request to such board, or may consider the criminal background of any person or persons who will manage or operate such child care agency. The board may require the person to submit a fingerprint sample and a criminal history disclosure form and may submit the fingerprint sample for comparison by the Tennessee bureau of investigation pursuant to § 38-6-109, or it may conduct the background check by other means as it deems appropriate. The zoning authority shall be responsible for all costs associated with obtaining such criminal background information.

(j)(1)(A) No later than August 1, 2001, the department of human services, in consultation with the Tennessee commission on children and youth, shall establish and implement a mandatory child care agency report card system in conformity with subdivision (j)(2), and a separate and voluntary child care agency rated licensing system in conformity with subdivision (j)(3).

(B) The report card system and the rated licensing system shall be used for the purpose of evaluating, individually and collectively, all child care agencies licensed or approved by the department pursuant to this part so that parents or other caretakers of children enrolled, or being considered for enrollment, at a child care agency, may make more informed decisions regarding the care of their children by comparing the quality of services offered by child care agencies, and to encourage the improvement of out-of-home child care for Tennessee's children. It is the legislative intent that the report card and rated licensing process established pursuant to subdivisions (j)(2) and (3) shall be developed in a manner to be easily usable by parents or guardians of children to make informed choices related to childcare.

(C) For purposes of subdivisions (j)(1)-(4), the term "child care agencies" shall include child care centers, group child care homes and family child care homes as defined by this part.

(2)(A) The mandatory report card system shall become effective August 1, 2001. Each child care agency shall receive a report card evaluation during the first licensing cycle of the child care agency that begins after October 1, 2001, and annually thereafter. The mandatory report card shall include an annual evaluation of the child care agency by the department that shall be required for each child care agency. The report card shall reflect key indicators of performance comparison among all Tennessee child care agencies. Key indicators shall include, but not be limited to, the following:

(i) Health and safety;

(ii) Training, education, certification, and credentials of all supervisory staff, including the director or licensee;

(iii) Staffing ratios;

(iv) Child development and enrichment;

(v) Accreditation status; and

(vi) Adequacy of physical facilities.

(B) The department shall not fail to recognize the credentials of any accrediting agency based solely upon the religious affiliation or ethnicity of the organization granting accreditation to a child care agency.

(C) The report card shall not include an overall numeric or alpha score, grade or rating of the child care agency.

(D)(i) The annual mandatory report card shall reflect the child care agency's performance under the key indicators in subdivision (j)(2)(A).

(ii) Upon completion, the report card shall be clearly marked and conspicuously posted at each child care agency for review by the parents of children enrolled, or being considered for enrollment, at the child care agency.

(E)(i) During the first licensing cycle of each child care agency that begins October 1, 2001,

the mandatory report card evaluation shall also include, as determined by the department, an evaluation of the child care agency, based upon the use of a valid and reliable program assessment instrument for evaluating the quality of child care programs through direct observation of the agency's child care program.

(ii) During the first licensing cycle of each child care agency that begins October 1, 2001, the program assessment instrument scores shall not be included either on the report card or as an overall separate numeric or alpha score, grade or rating on the license or as an attachment to the license, and the department shall only provide to the child care agency a separate document with the results of the child care agency's program assessment instrument evaluation.

(iii) Beginning October 1, 2002, the mandatory annual report card shall include, in addition to the agency's performance under the key indicators established pursuant to subdivision (j)(2)(A), and, notwithstanding any other provisions of subdivisions (j)(1)-(3) to the contrary, the agency's overall program assessment instrument score and any accompanying explanatory text related to the instrument.

(F) The department, and the advisory council created by subdivision (j)(5), are urged to review the key indicators for the report card and the rated licensing system created by this subsection (j) to determine if questions regarding those key indicators should be revised.

(3)(A) The rated licensing system shall become effective on August 1, 2001. The rated licensing system shall include an evaluation of the key indicators described in subdivision (j)(2)(A), including the results of a program assessment instrument as described in subdivision (j)(2)(E)(i). A child care agency may qualify for the rated licensing system by demonstrating, through evaluation of the key indicators and the program assessment instrument, that the child care agency exceeds basic licensing standards as outlined in the rated licensing criteria determined by the department.

(B) Participation in the rated licensing system shall be voluntary for each qualified child care agency. Qualified child care agencies that volunteer to participate in the rated licensing system must apply in writing to the department following receipt of the report card issued pursuant to subdivision (j)(2) in such manner as the department may prescribe.

(C) Qualified child care agencies that volunteer to participate in the rated licensing system shall receive a child care quality rating. The participating agency may voluntarily post the rating prior to October 1, 2002. On and after October 1, 2002, the child care agency shall be required to post the rating. The rating shall be posted by the agency with its license in a conspicuous place for review by the parents or other caretakers of a child enrolled, or being considered for enrollment, at the child care agency.

(D) Beginning August 1, 2001, any qualified child care agency that agrees to voluntarily participate in the rated licensing system established by this subdivision (j)(3) and that accepts the department's child care assistance subsidy payments, may receive higher subsidy payments, as determined by the department, based upon the child care quality rating and subject to available funding in the department's budget.

(E) A child care agency may at any time voluntarily withdraw from the rated licensing system by submitting a notice in writing to the department in such manner as the department prescribes. The department may also determine at any time, in such manner as the department may prescribe, that the child care agency no longer meets the rated license criteria for the agency's rating. In either event, the child care agency shall no longer be eligible to display that rating or to use it in any informational materials related to the agency, nor shall it continue to receive increased child care subsidy payments, if any, based upon that rating. The rating shall be immediately removed from display at the agency. The department shall have standing to seek appropriate regulatory action under its rules, or to seek injunctive relief, to enforce this subdivision (j)(3)(E).

(4)(A) Effective August 1, 2001, there is created a twelve-member advisory council to be appointed by the governor. The sole purpose of the advisory council shall be to provide recommendations to the department regarding the report card and the rated licensing system established pursuant to subdivisions (j)(1)-(3).

(B) The council shall be composed of six (6) representatives of child care centers, three (3) representatives of group child care homes, and three (3) representatives of family child care homes. There shall be two (2) representatives of child care centers from each grand division. There shall be one (1) representative from each grand division for group child care homes and one (1) representative from each grand division for family child care homes. Members shall serve two-year terms, and may be reappointed. Any vacancy shall be filled by the governor from the same grand division and class of child care agency. The members shall serve without compensation. Members shall be subject to removal by the governor for good cause. Members shall, to the extent possible, be appointed so as to represent a cross section of private-pay and subsidized child care providers and the ethnic populations represented in the child care industry.

(C) The advisory council shall elect from among its membership a chair, vice-chair and such other officers as the council deems necessary.

(D) The advisory council shall meet at least once each year, and shall meet more frequently as the business of the council may require. The council may be called to meet by the commissioner of

human services at any time it becomes necessary between regular meetings to provide timely reviews of the department's proposed changes to the report card process or the rated licensing system.

(E) Consultation by the department with the council shall be mandatory; provided, however, that failure of the council to meet and deliver to the department its responses or recommendations regarding the department's proposed changes within a reasonable period of time following written notice to the council chair by the department of the need for a review of the department's proposed changes shall negate any further mandatory consultation requirement established by this paragraph.

(F) The advisory council recommendations shall be applicable only for any proposed changes to the annual report card or rated licensing system established by this subsection (j) that are proposed by the department after August 1, 2001. Consultation with the advisory council shall not be required for any plans developed by the department for the design or implementation of the annual report card or rated licensing system prior to August 1, 2001.

(5) The commissioner and the comptroller of the treasury may, in their discretion, conduct audits of the records of any child care providers as they may determine are necessary to verify that the expenditures by a child care provider of state or federal child care subsidy funds are being made according to state or federal requirements.

(6) Any child care agency that knowingly provides false information or that fails to provide any information to the department, the comptroller, or their agents or designees:

(A) That is required or necessary to perform any of the provisions of this title or to enforce state or federal law or regulations, or child care subsidy or licensing requirements;

(B) That fails to allow entrance by any person designated by the department to perform the report card or rated licensing evaluation required by subdivisions (j)(1)-(3); or

(C) That continues to display expired or revoked licensing ratings in violation of subdivision (j)(3)(E) after written notice by the department;

shall be subject to denial or revocation of its license by the department, and may also be subject to a civil penalty of five hundred dollars ($500) imposed by the department.

(k) The department is authorized to review possible dangers to children and workers in child care facilities from carbon monoxide gas and to issue such rules and regulations as it may deem necessary.

(*l*)(1) The department of human services shall make available to child care providers licensed by the department a curriculum guideline in any suitable format addressing personal safety containing a component related to the prevention of child sexual abuse and shall allow child care providers licensed by the department to choose terminology and instructional methods that accomplish the goal of providing clear, effective and appropriate instruction in personal safety. The department is encouraged to distribute a sample curriculum that is developmentally-appropriate and age-appropriate, child-friendly and family-friendly, and designed to be acceptable to a broad range of providers, parents and legal guardians.

(2) The personal safety curriculum that will be implemented by the child care provider must be made available so parents and legal guardians have the opportunity to review it and so parents and legal guardians will be aware of this component of the child care provider's curriculum. The department shall develop a standard notification form to be provided to the parents or legal guardians by the child care agency. The notification form shall contain the following information:

(A) The method of instruction and sample terminology used in the personal safety/child sexual abuse curriculum;

(B) The availability of the instructional materials for review by the parents or legal guardians; and

(C) A place for the parents or legal guardians to sign acknowledging they have been provided an opportunity to review the personal safety curriculum, have been notified of the child sexual abuse/personal safety curriculum for their child and the individual record for each child shall include a copy of the signed notification form.

(3) If a parent has questions regarding the personal safety component of the quality early childhood education curriculum, then the provider or a representative of the provider shall meet with the parent and discuss the personal safety component of the curriculum.

(4) The department of human services is expressly authorized and directed to implement by emergency rules, effective October 1, 2008, a rule regarding implementation of this requirement for the personal safety curriculum; provided, that any permanent rules shall be promulgated pursuant to the Uniform Administrative Procedures Act.

History.

Acts 2000, ch. 981, § 3; 2001, ch. 453, §§ 3-6, 24, 25; 2003, ch. 170, § 2; 2004, ch. 696, § 1; 2005, ch. 151, §§ 2-7; 2005, ch. 453, §§ 1, 2; 2006, ch. 906, § 1; 2008, ch. 687, § 1; 2008, ch. 1032, § 1; 2009, ch. 566, § 12; 2010, ch. 789, §§ 1-3; 2010, ch. 1132, § 1; 2011, ch. 410, § 3(ii); 2016, ch. 839, § 13.

Compiler's Notes.

Former § 71-3-502 (Acts 1953, ch. 228, § 2 (Williams, § 4765.139); T.C.A. (orig. ed.), §§ 14-1402, 14-10-102), concerning the approval of a charter or amendment, was repealed by Acts 2000, ch. 981, § 1. For current provisions, see this section.

Acts 2001, ch. 453, § 26 provided that § 6 of that act, which amended subdivisions (j)(1) and (2) and added subdivisions (j)(3) through (5) (now (j)(3) though (4)), shall become void and cease to be of effect on the last day of the fiscal year following the fiscal year during which federal funding is terminated and not available to fund the positions and operations that were initially funded with federal funds and that are required by the provisions of § 6 for the operation of the annual report card and the rated licensing system. Section 26 further provided: "Nothing herein shall prevent the general assembly from the continuation of the report card and rated licensing system by use of state funds for all or a portion of those programs, and, if this is done by any appropriations act passed prior to the date upon which the

provisions of § 71-3-502(j)(1)-(5) would otherwise become void pursuant to this section, such provisions shall remain in effect."

Acts 2004, ch. 713, § 1 purported to amend this section; however, the clerk of the house of representatives found that the act did not pass the house and the senate in the same form and was not given effect. Acts 2005, ch. 453, § 2 repealed Acts 2004, ch. 713, effective July 1, 2005.

Acts 2009, ch. 566, § 12 provided that the Tennessee code commission is directed to change all references to public necessity rules, wherever such references appear in this code, to emergency rules, as sections are amended and volumes are replaced.

For the Preamble to the act concerning the prohibition against establishment of a special committee if there is a standing committee on the same subject, please refer to Acts 2011, ch. 410.

71-3-503. Program and facilities exempt from licensing.

(a) A program or activity that falls within the definition of a child care agency shall be exempt from the licensing requirements of this part upon demonstration of clear and convincing evidence that it meets one (1) of the following exemptions in subdivisions (a)(1)-(11), or, if no specific exemption exists in subdivisions (a)(1)-(11), there is clear and convincing evidence demonstrating that the program or activity meets the criteria of subsection (c):

(1) Entities or persons licensed or otherwise regulated by other agencies of the state or federal government providing health, psychiatric or psychological care or treatment or mental health care or counseling for children while the entity or person is engaged in such licensed or regulated activity;

(2) Preschool or school age child care programs, a Title I program, a school-administered head start or an even start program, and all state-approved Montessori school programs, that are subject to regulation by the department of education or other departments of state government;

(3) Private or parochial kindergartens for five-year-old children if such kindergartens operate on the public school kindergarten schedule;

(4) Child care centers operated by church-related schools, as defined by § 49-50-801, which shall be subject to regulation by the department of education pursuant to title 49, chapter 1, part 11;

(5) Educational programs. To qualify for an educational program exemption, a child care agency must meet the following criteria:

(A) That the sole or primary purpose of the program is:

(i) To prepare children for advancement to the next educational level through a prescribed course of study or curriculum that is not typically available in a department-regulated child care setting;

(ii) To provide specialized tutoring services to assist children with the passage of mandatory educational proficiency examinations; or

(iii) To provide education-only services to special needs children; and

(B) That the program time scheduled to be dedicated to the educational activity is reasonably age appropriate for the type of activity and the ages served;

(6)(A) "Parents' Day Out" or similar programs operated by a religious institution or religious organization that provide custodial care and services for children of less than school age, with no child attending more than two (2) days in each calendar week for not more than six (6) hours each day;

(B) Existing and all future programs shall register with the department their intent to operate a Parents' Day Out program prior to offering the service, and, as evidence of their exempt status, these programs shall maintain records that include, at a minimum, dates and times of each child's attendance;

(C) The records and forms shall be made available during regular business hours to the commissioner or commissioner's designee;

(D) Each separate location or campus of a religious institution or religious organization shall be considered a separate religious institution or religious organization for the purpose of Parents' Day Out or any similar program;

(7) Recreational programs. To qualify for a recreational program exemption, a child care agency must meet the following criteria:

(A) That the sole or primary purpose of the program or activity is to provide recreational services, e.g., organized sports or crafts activities;

(B) That the sole or primary purpose of the program or activity is dedicated to recreational activities for a substantial portion of the hours of operation;

(C) That the majority of program staff responsible for the direct delivery of services possesses specialized qualifications that are directly related to the recreational services being offered;

(D) That at least seventy-five percent (75%) of any individual child's program time is spent engaging in the recreational activities that are reasonably age appropriate for the type of activity and the ages served;

(E) That the supervision or care of children, or other types of child care-related services, is incidental to its overall purpose; and

(F) That no individual child could participate in the program or activity:

(i) For more than seven (7) hours per day; or

(ii) If a child participates for more than seven (7) hours per day, that such child could not continue to participate for more than seven (7) consecutive weeks and for no more than one hundred twenty (120) days per calendar year;

(8) Camp programs. To qualify for a camp program exemption, a child care agency must meet the following criteria:

(A) That the primary purpose of the program or activity is to provide intensive recreational, religious, outdoor or other activities that are not routinely available in full-time child care;

(B) That the program or activity operates exclusively during the summer months and less than ninety (90) days in any calendar year; and

(C) That the enrollment periods for participation in the program or activity clearly define the duration of the program or activity and exclude

drop-in child care;

(9)(A) "Casual care" operations consisting of places or facilities operated by any person or entity that provides child care, at the same time, for a minimum of five (5) children, but less than fifteen (15) children, who are not related to the primary caregiver, during short periods of time that do not exceed ten (10) hours per week or six (6) hours per day for any individual child while the parents or other custodians of the children are engaged in short-term activities, not including employment of the parent or other custodian of the child;

(B) These operations shall register with the department their intent to conduct casual care of children, and, as evidence of their exempt status, these operations shall maintain records that include, at a minimum, the children's names, ages, addresses, dates and times of attendance, the parents' or custodians' names, addresses, and intended whereabouts while the children are in care, and the telephone numbers of persons to contact in the event of an emergency. All records shall be made available at any time to any authorized representative of the department;

(C) Failure to comply with the requirements of this subdivision shall subject the violator to a civil penalty by the department not to exceed five hundred dollars ($500) for the first violation and not to exceed one thousand dollars ($1,000) for subsequent violations, and the department may seek injunctive relief in the chancery or circuit court of the county where the place or facility is located to prevent further operation of the place or facility or to obtain entry to conduct any inspection of the operation;

(10)(A) Any program or facility operated by, or in affiliation with, any Boys and Girls Club that provides care for school-aged children and that holds membership in good standing with Boys and Girls Clubs of America and that is certified as being in compliance with the purposes, procedures, voluntary standards and mandatory requirements of Boys and Girls Clubs of America;

(B) Any such Boys and Girls Club that applies to participate in state or federally funded programs that require child care licensing by the state as a term of eligibility may elect to apply to the department for child care licensing and regulation. Upon meeting departmental standards, the Boys and Girls Club may be licensed as a child care center/provider;

(C) The department is hereby authorized to grant a waiver from any rule concerning grouping of children and adult/child ratios for child care centers to any Boys and Girls Club that falls within both subdivisions (a)(11)(A) and (a)(10)(A) and (B), and that is providing after-school child care to mixed groups of school-aged children; and

(11) Nurseries, babysitting services and other children's activities that are not ordinarily operated on a daily basis, but are associated with religious services or related activities of churches or other houses of worship. Such services or activities may include limited special events that shall not exceed fourteen (14) days in any calendar year.

(b)(1) Exempt programs under subdivisions (a)(3), (6) and (9) shall post a sign stating, "This facility is not required to be licensed by the state as a child care agency."

(2) When a parent, custodian or guardian initially registers a child with an exempt program under subdivisions (a)(3), (6) and (9), which is required to post a sign pursuant to this subsection (b), the parent, custodian or guardian shall sign a form indicating that the parent, custodian or guardian has been advised and understands that the program is not licensed and is not required to be licensed by the state as a child care agency. The same language that is required to be placed on the sign shall be printed on such form at least in 16-point type with a signature line for the parent, custodian or guardian immediately following such language. The signed form shall be maintained with the records of the exempt entity.

(c) In analyzing whether the program or activity is exempt pursuant to this section, unless the department determines upon clear and convincing evidence that the program or activity qualifies for an exemption based upon the criteria set forth in subdivisions (a)(1)-(11), the department shall consider the following non-exclusive criteria to determine if the program or activity is clearly distinguishable from child care services typically regulated by the department and otherwise qualifies for exemption from licensing:

(1) The sole or primary purpose of the program or activity is to provide specialized opportunities for the child's educational, social, cultural, religious or athletic development, or to provide the child with mental or physical health services;

(2) The time period in which the program or activity provides these opportunities is consistent with a reasonable time period for the completion of the program or activity, considering the age of each child served and the nature of the program;

(3) The primary purpose of the program or activity is not routinely available or could not be made routinely available in the typical child care settings regulated by the department;

(4) Parents could reasonably be expected to choose the program or activity because of the unique nature of what it offers, rather than as a substitute for full-time, before or after school, holiday or weather-related child care; and

(5) If the program or activity is regulated by any other federal, state or local agency, it is required by such other agency to comply with standards that substantially meet or exceed department licensing regulations.

(d)(1) The department shall not be required to grant exemptions to programs or activities that offer otherwise exempt opportunities or services as a mere component of a program or activity that the department determines primarily constitutes substitute child care.

(2) No program or activity shall be exempt from licensing solely for the reason that the care and supervision of children that constitutes child care is offered only on a part-time or periodic basis.

(3) Exemption from licensure does not exempt the program or activity from compliance with any other local, state or federal requirements.

(e) A child care agency claiming an exemption pursuant to this section may submit to the department's licensing director, or designee, a sworn, written request for exemption in such manner and form as the department may require. The request shall provide a detailed description of the operation of the program or activity, the program's or activity's purpose and the applicant's basis for claiming an exemption. The department shall provide a written response to the exemption request stating the reasons the exemption was granted or denied.

History.
Acts 2000, ch. 981, § 4; 2001, ch. 453, § 7; 2005, ch. 151, §§ 8-12; 2013, ch. 72, §§ 1, 2.

Compiler's Notes.
Former § 71-3-503 (Acts 1953, ch. 228, § 3 (Williams, § 4765.140); T.C.A. (orig. ed.), §§ 14-1403, 14-10-103), concerning preexisting agencies, was repealed by Acts 2000, ch. 981, § 1. For current provisions, see this section.

Title I, referred to in this section, is compiled in 20 U.S.C. § 6301 et seq.

71-3-504. Injunctions against unlicensed operations.

(a) The department may, in accordance with the laws of this state governing injunctions, maintain an action in the name of the state of Tennessee to enjoin any person, partnership, association, corporation or other entity from establishing, conducting, managing or operating any place or facility providing services to children without having a license as required by law, or from continuing to operate any such place or facility following suspension of a license or following the effective date of the denial or revocation of a license.

(b) In charging any defendant in a complaint for such injunction, it shall be sufficient to charge that such defendant did, upon a certain day and in a certain county, establish, conduct, manage or operate a place, home or facility of any kind that is a child care agency, as defined in this part or to charge that the defendant is about to do so without having in effect a license as required by law, or that the defendant continues to operate any such place or facility following suspension of a license, or following the effective date of the denial or revocation of a license, without averring any further or more particular facts concerning the case.

History.
Acts 2000, ch. 981, § 5; 2001, ch. 453, § 8.

Compiler's Notes.
For transfer of the licensing required by this section for before- and after-school day care centers authorized by Acts 1988, ch. 659 and operated by local boards of education from the department of human services to the department of education, see Executive Order No. 24 (November 11, 1988).

Former § 71-3-504 (Acts 1953, ch. 228, § 4 (Williams, § 4765.141); 1965, ch. 333, § 2; 1971, ch. 214, § 2; impl. am. Acts 1975, ch. 219, § 1 (a, b); T.C.A. (orig. ed.), §§ 14-1404, 14-10-104; Acts 1988, ch. 1013, § 74; 1992, ch. 1030, §§ 5, 6; 1996, ch. 1053, § 1; 1996, ch. 1079, §§ 158, 163-165; 2000, ch. 843, § 2), concerning standards for the annual license, was repealed by Acts 2000, ch. 981, § 1. For current provisions, see § 71-3-502.

71-3-505. Criminal violations.

(a) Any person or entity operating a child care agency, as defined in § 71-3-501, without being licensed by the department or who continues to operate such agency while a suspension of the license is in effect, or who operates a child care agency following the effective date of a denial or revocation of a license, commits a Class A misdemeanor.

(b) Each day of operation without an effective license constitutes a separate offense.

(c)(1) It is unlawful for any person who is an operator, licensee or employee of a child care agency to make any statement, whether written or verbal, knowing such statement is false, including, but not limited to, statements regarding:

(A) The number of children in the child care agency;

(B) The area of the child care agency used for child care; or

(C) The credentials, licensure or qualification of any care giver, employee, substitute or volunteer of the child care agency, when such statement is made to a parent or guardian of a child in the care of such agency, to any state or local official having jurisdiction over such agencies, or to any law enforcement officer.

(2) In order for subdivision (c)(1) to apply, the falsity of the statement must place at risk the health or safety of a child in the care of the child care agency.

(3) A violation of subdivision (c)(1) is a Class A misdemeanor.

(4) This subsection (c) includes statements made in any child care agency license application that misrepresents or conceals a material fact that would have resulted in the license being denied.

(5) In addition to any punishment authorized under this subsection (c), the department may also take any licensure action authorized under this part.

History.
Acts 2000, ch. 981, § 6.

Compiler's Notes.
Former § 71-3-505 (Acts 1953, ch. 228, § 5 (Williams, § 4765.142); T.C.A. (orig. ed.), §§ 14-1405, 14-10-105), concerning assistance in meeting standards or placing children, was repealed by Acts 2000, ch. 981, § 1.

71-3-506. Public agencies — Inspection and report.

Any child care agency, as defined in this part, that is under the direct management or control of an administrative department of the state, a county, municipality, or development district, or any combination of these, shall be subject to licensure pursuant to this part; provided, however, that the requirements for

audits set forth in former § 71-3-502(j)(6)(C) and (D) [repealed] shall be satisfied by audits that are conducted by the comptroller of the treasury or other public agency auditors.

History.
Acts 2000, ch. 981, § 7; 2005, ch. 151, § 13.

Compiler's Notes.
Former § 71-3-506 (Acts 1953, ch. 228, § 4 (Williams, § 4765.141); T.C.A. (orig. ed.), § 14-1406; Acts 1986, ch. 536, § 1; T.C.A., § 14-10-106; Acts 1987, ch. 297, § 3; 1992, ch. 1030, § 7; 1996, ch. 1079, § 167; 1998, ch. 638, § 1), concerning licenses, was repealed by Acts 2000, ch. 981, § 1. For current provisions, see § 71-3-502.
Former § 71-3-502(j)(6)(C) and (D), referred to in this section, was repealed by Acts 2010, ch. 789, § 1, effective April 19, 2010.

71-3-507. Criminal history violation information required of persons having access to children — Review of records and registries — Verification — Exclusion from access to adults.

(a)(1) The following shall complete a disclosure form in a manner approved by the department disclosing criminal records, juvenile records histories and the status of such person on the department of health's vulnerable persons registry pursuant to title 68, chapter 11, part 10, the state's sex offender registry and status as an indicated perpetrator of abuse or neglect in the records of the department of children's services and the department of human services, or in any jurisdiction, and shall agree to release all such records to the childcare agency and to the department to verify the accuracy of the information contained on the disclosure form:

(A) A person applying to work with children as a paid employee, director or manager with a childcare agency as defined in § 71-3-501, with any detention center or temporary holding resource as described in § 37-5-109, or with the department in any position in which any significant contact with children is likely in the course of the person's employment; or who applies for any license, that is not the renewal of an existing license or otherwise seeks to be an operator, as defined by the rules of the department, of a childcare agency as defined in § 71-3-501 and who has significant contact with children in the course of such role and is not otherwise exempted from the application of this section by rules of the department;

(B) A person who is a new substitute staff person, paid or unpaid, and who is to be used by the childcare agency to meet childcare standards and who serves as a substitute for more than thirty-six (36) hours in any one (1) calendar year; or

(C) A person fifteen (15) years of age or older who resides in a childcare agency that is being licensed initially or who moves into a childcare agency following initial licensure.

(2)(A) Persons subject to the requirements of subdivision (a)(1) shall also supply a fingerprint sample in a manner prescribed by the department and by the Tennessee bureau of investigation (TBI), and shall submit to a fingerprint-based background review of criminal history records, and juvenile records that are available to the TBI, to be conducted by the TBI, and shall submit to a review of the person's status on the department of health's vulnerable persons registry under title 68, chapter 11, part 10, and on the state sex offender registry, and, pursuant to § 71-3-515, a review of the person's status in the department of children's services and the department of human services records of indicated perpetrators of abuse or neglect of children or adults, as well as equivalent administrative registries in any jurisdiction in which the person has resided in the past five (5) years and a review of any available juvenile records in juvenile court.

(B) All persons subject to the requirements of subdivision (a)(1), and all persons applying to work with the department in any position in which any significant contact with children is likely in the course of the person's employment with the department, shall have the fingerprint-based background review, including juvenile records available to the TBI, and the registry and perpetrator records and juvenile records reviews required by subdivision (a)(2)(A) completed as required by this section prior to assuming any role described in subdivision (a)(1) or prior to employment with the department; and if the person is fifteen (15) years of age or older and:

(i) The person is a resident of a childcare agency, the person must have the fingerprint-based background review, including juvenile records available to the TBI, and the registry and perpetrator records reviews, and if determined necessary by the department juvenile court records reviews, required by subdivision (a)(2)(A) completed prior to the granting of any license that is not the renewal of an existing license to the childcare agency in which the person resides at the time of initial application; or

(ii) If the person is to become a resident of the childcare agency, the person must have the reviews required by subdivision (a)(2)(B)(i) completed prior to the person's becoming a resident of the childcare agency.

(C) The person or entity with which a person subject to subdivision (a)(1) will be or is associated shall be responsible for obtaining and submitting the fingerprint sample, as directed by the department, and any information necessary to process the fingerprint-based background reviews and reviews required by this section prior to the person's assumption of any role described in subdivision (a)(1). If the person is not employed directly by a licensed child care agency but is employed by a substitute pool or staffing agency and assigned to work as a substitute employee at a licensed child care agency, then the substitute pool or staffing agency is responsible for obtaining and submitting the fingerprint sample, as directed by the department, and any information necessary to process the fingerprint-based background reviews and re-

views required by this section prior to the person's assumption of any role described in subdivision (a)(1) at a licensed child care agency.

(3) The disclosure forms shall include at a minimum the following information:

(A) The social security number of the applicant, substitute or resident;

(B) The complete name of the applicant, substitute or resident;

(C) Disclosure of information relative to any violations of the law, including pending criminal or juvenile charges of any kind, and any conviction or juvenile adjudication involving a sentence or suspended or reduced sentence, and a release by the person of all records involving the person's criminal and juvenile background history and records relative to the person's status on the department of health's vulnerable persons registry maintained pursuant to title 68, chapter 11, part 10, on the state's sex offender registry and the status of the person as an indicated perpetrator of abuse or neglect of a child or adult as determined by any agency of this state or any other jurisdiction;

(D) A space for the person to state any circumstances that should be considered in determining whether to allow the person who has a criminal, juvenile, registry or abuse or neglect records history to be employed or to provide substitute services or to remain as a resident in the agency; and

(E) A listing of the residences of the applicant, substitute, or resident for the past five (5) years.

(4) The form shall notify the person that falsification of required information may subject the person to criminal prosecution, and that the person's employment, licensing, or other status or circumstances in the child care agency or the department is dependent upon the person's criminal and available juvenile records history status, the person's status on the department of health's vulnerable persons registry pursuant to title 68, chapter 11, part 10, and on the state's sex offender registry, and, pursuant to § 71-3-515, the person's status as an indicated perpetrator of abuse or neglect of children or adults as contained in the records of the department of children's services and the department of human services, or in the equivalent administrative registries in any jurisdiction in which the person has resided in the past five (5) years.

(5) A copy of the disclosure form shall be maintained in the childcare agency's records for review by the department, and the department shall maintain a copy of the disclosure form in the records of the applicant for a license or as operator or for employment with the department.

(6) The child care agency, substitute pool, or staffing agency shall notify the department within thirty (30) days of an employee leaving employment.

(b)(1) The disclosure form and information contained on the form obtained pursuant to this section, together with the fingerprints of the person, shall be submitted by the child care agency for its applicants, licensees, operators, substitutes, or residents, and by the department for its applicants, to the appropriate department staff or state contractors providing fingerprinting services, in the format required by the department and the TBI. The child care agency shall attest on the disclosure form that the person is required to undergo a criminal background check or state registry review, and is either a resident or has been selected by the child care agency to fill a position as an employee or substitute who will work directly with children. A substitute pool or staffing agency assigning persons to work as substitute employees at a licensed child care agency shall submit the disclosure form for such persons and shall also attest on the disclosure form that the person is required to undergo the criminal background check or state registry review, and has been selected by the substitute pool or staffing agency to fill a position as an employee or substitute who will work directly with children. The department or contractor shall transmit the necessary information to the TBI for completion of the fingerprint-based background review of criminal records and juvenile records that are available to the TBI.

(2) The TBI shall compare the information and the fingerprint sample received with the computer criminal history files maintained by the bureau and, to the extent permitted by federal law, with federal criminal databases and shall conduct the fingerprint and criminal history background check for the person pursuant to § 38-6-109. It shall report the existence of any criminal or juvenile history involving the person to the department, which shall inform the childcare agency and the person regarding the person's ability to assume a position for which a background review is required by this section.

(3) The results of the inquiry to the TBI shall be documented in the records of the childcare agency for the person for whom the background check is sought, and the department shall also maintain a record of the results of all persons for whom a criminal background history is received.

(4) The department shall notify in writing the appropriate district attorney general of any falsification of the information on the disclosure form.

(5)(A) The department shall pay to the TBI or state contractors providing fingerprinting services the cost of obtaining, handling, and processing the criminal history background fingerprint check requested by the agency or by the department as set forth in § 38-6-109. Payment of the costs is to be made in accordance with §§ 38-6-103 and 38-6-109.

(B) The department shall only be responsible for payment of one (1) processing fee that is required by the TBI. If the fingerprint sample is rejected and if any further costs are required to process the fingerprint, the child care agency is responsible for any further costs, regardless of the number of efforts required to obtain a valid fingerprint sample. The child care agency, substitute pool, or staffing agency will be responsible for repayment to the department for any processing fees if it

submits a person's discussion form more than one (1) time for the criminal history background check within a thirty (30) day period, or if it submits a person for a criminal history background check who is not a resident or a person who has been selected by the child care agency, substitute pool, or staffing agency to fill a position as an employee, or substitute who will work directly with children.

(c)(1) All persons subject to subsection (a), and employees of the department's licensing division, shall also be subject to a review by the department of their status on the department of health's vulnerable persons registry pursuant to title 68, chapter 11, part 10, and on the state's sex offender registry and a review conducted pursuant to § 71-3-515, of their status in the department of children's services and the department of human services records of indicated perpetrators of abuse or neglect of children or adults or in the equivalent administrative registries in any jurisdiction in which the person has resided in the past five (5) years and a review of any available juvenile records in juvenile court.

(2) The department shall conduct the review for license applicants and operators.

(3) The results of the inquiry to the registries and the departments' records shall be maintained in the person's records at the agency and with the department.

(d)(1) The child care agency or the department shall not permit a person to assume any role described in subdivision (a)(1) prior to the completion of a review of the criminal history and juvenile records available to the TBI and the juvenile court, including the fingerprint-based background review, review of the department of health's vulnerable persons registry and the state's sex offender registry, and, pursuant to § 71-3-515, a review of the department of children's services and the department of human services records of indicated perpetrators of abuse or neglect of children or adults, or in the equivalent administrative registries in any jurisdiction in which the person has resided in the past five (5) years, and juvenile court records reviews. The reviews must demonstrate that the person is not subject to a criminal history, a juvenile history, or a history on the registries or in the records of the department of children's services or the department of human services or the equivalent administrative registries in any jurisdiction in which the person has resided in the past five (5) years that would, as described in this part, disqualify or otherwise exclude the person from any role described in subdivision (a)(1).

(2) The criminal history, juvenile records, and administrative registry review provided for in subdivision (d)(1) shall additionally be completed at least once every five (5) years.

(e)(1)(A)(i) Whether obtained by use of the procedures established in this section or whether information is obtained by any other means, no person shall be employed with, be a licensee or operator of, provide substitute services to, or have any access whatsoever to children in a childcare agency as defined by this part, nor shall the person be employed with the department in a position having significant contact with children, whose criminal or available juvenile background records, registry or perpetrator records demonstrate that the person has been convicted of, pled guilty or no contest to an offense or lesser included offense, is the subject of a juvenile petition or finding that would constitute an offense or lesser included offense, or whose criminal or juvenile background history report or other information demonstrates the existence of a pending warrant, indictment, presentment or petition, involving:

(a) The physical, sexual or emotional abuse or neglect of a child;

(b) A crime of violence against a child or any person;

(c) Any offense determined by the department, pursuant to properly promulgated rules, to present a threat to the health, safety or welfare of children;

(d) The identification of the person on the department of health's vulnerable persons registry pursuant to title 68, chapter 11, part 10, or on the state's sex offender registry, or, whose status, pursuant to a review under § 71-3-515, of the department of children's services and the department of human services records of indicated perpetrators of abuse or neglect of children or adults, reviews of equivalent administrative registries in any jurisdiction in which the person has resided in the past five (5) years, or reviews of available juvenile court records, demonstrate a history that would require the person's exclusion under this part.

(ii) No person who is currently charged with or who has been convicted of or pled guilty to a violation of § 39-13-213, § 55-10-101, § 55-10-102 or § 55-10-401, or any felony involving use of a motor vehicle while under the influence of any intoxicant, may, for a period of five (5) years after the date of the conviction or felony plea, be employed as or serve as a driver transporting children for a childcare agency.

(B)(i) Upon receipt from the department of the criminal and juvenile fingerprint-based background report or other information regarding the criminal, juvenile, vulnerable persons, sex offender or perpetrator records histories of a person about whom this information was obtained, the department shall notify the childcare agency and the person of the person's clearance to assume a position with the childcare agency or that the person must be excluded from positions or circumstances with the agency described in subdivision (a)(1) or from any access to children.

(ii) The childcare agency, and the department for its employees, shall immediately exclude any person from employment, from substitute services or from any access whatsoever to children

in the childcare agency or, if a resident of a childcare agency, the agency shall exclude the resident from access to children in the childcare agency, if the criminal, juvenile, registry, perpetrator records history or other information regarding the person place the person within the prohibited categories established in subdivision (e)(1)(A). The department shall deny the license or operator status of any such person. If an exemption from the exclusion is provided for by rule of the department pursuant to subsection (f), the person shall remain excluded or that person's license or operator status shall be denied until it is determined by the department that there is a basis for an exception from the exclusion.

(iii) The failure of a childcare agency to exclude a person with a prohibited criminal, juvenile, vulnerable persons or sex offender registry or perpetrator records history at a childcare agency from employment with the agency, or from the provision of substitute services to children in the agency, or the failure, as determined by the department, to adequately restrict the access of a resident or any other person in a childcare agency to children being cared for by the agency, shall subject the childcare agency to immediate suspension of the agency's license by the department.

(C) The child care agency, substitute pool, or staffing agency shall immediately notify the department on the same business day of an arrest, pending indictment, or other information regarding a person who is an employee, substitute, volunteer, or resident which places the person within the prohibited categories established in subdivision (e)(1)(A) if the child care agency, substitute pool, or staffing agency knows or reasonably should know of such arrest, pending indictment, or other information. The child care agency, substitute pool, or staffing agency shall immediately exclude the person if the person must be excluded from positions or circumstances described in subdivision (a)(1) or from any access to children.

(2) Any person who is excluded pursuant to this section or whose license or operator status is denied or revoked based upon the results of a disclosure form statement, fingerprint-based background, criminal or juvenile records history, registry or perpetrator history review pursuant to this part, or other records review, may appeal the exclusion to the department within ten (10) days of the mailing date of the notice of such exclusion to the subject person.

(3) If timely appealed, the department shall provide an administrative hearing pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3, in which the appellant may challenge the accuracy of the determination.

(4) The appellant may not collaterally attack the factual basis of an underlying exclusionary record except to show that the appellant is not the person identified on the record. Further, except to show that the appellant is not the person identified on the record, the appellant may not collaterally attack or litigate the facts that are the basis of a reported pending criminal or juvenile charge except to show that the charge was, or since the report was generated, has been dismissed, nolled, has resulted in an acquittal or has been expunged.

(f)(1) The department may by rule provide for a review process that utilizes an advisory group of law enforcement personnel, persons experienced in child protective services, persons experienced in child development issues and childcare providers, or other persons it determines are appropriate, to consider and, if appropriate, recommend to the department exemptions from the exclusions established by this section, or for any other exclusions of persons established pursuant to the department's rules, that are based on the person's criminal background or juvenile background history or from the records of the person maintained in the vulnerable persons or sex offender registries or contained in the indicated perpetrator records of the departments of children's services or human services.

(2) Any exemption granted must be based upon extenuating circumstances that would clearly warrant the exemption, and this determination shall be made in writing in the record of the department and of the childcare agency and shall be open to public inspection.

(3) If an exemption rule is promulgated by the department under this part or by any state agencies utilizing the methods authorized by subsection (g) or (h), the person who is not granted an exemption from the exclusion upon review of the person's criminal, juvenile, registry or other records history pursuant to this part may have this issue considered in an administrative appeal as provided by subsection (e).

(g)(1)(A) A child care agency as defined in § 37-5-501 or § 71-3-501, a child care program as defined in § 49-1-1102, the department of children's services, the department of education, the department of human services, the department of mental health and substance abuse services, the department of intellectual and developmental disabilities and any other state agency or any person or entity that contracts with the state may require the persons set forth in subdivisions (g)(1)(A)(i)-(iii) to undergo a background or records review of any kind, to complete a disclosure form stating the person's criminal and juvenile records history and agree to release all records involving the person relating to the criminal, juvenile and perpetrator records history of the person to the entities described in this subdivision (g)(1)(A), and, if further required by the requesting entity, to supply a fingerprint sample and submit to a fingerprint-based review of criminal and juvenile records available to the TBI to be conducted by the TBI. The person may also be required to submit to a review of the person's status on the department of health's vulnerable persons registry under title 68, chapter 11, part 10, and on the state's sex offender registry, and pursu-

ant to § 71-3-515, a review of the department of children's services and the department of human services records of indicated perpetrators of abuse or neglect of children or adults, and, if determined necessary by the agency, department or contractor, a review of any available juvenile records in juvenile court. The results of these inquiries shall be maintained in the person's records. Failure or refusal of a person to submit to or complete the disclosures, background and records reviews required by the entities in this subdivision (g)(1)(A) shall result in the immediate exclusion of the person from any position or status for which these reviews are required by this section:

(i) A person applying to work or substitute, or currently working, in any capacity as a paid employee, licensee or operator, substitute or volunteering, with children with the entities in subdivision (g)(1)(A) or who otherwise has access to children in those entities;

(ii) An applicant for a foster parent position or an applicant to be an adoptive parent, or a current foster parent or a current prospective adoptive parent with the department of children's services; or

(iii) A person fifteen (15) years of age or older who resides in a childcare agency licensed pursuant to this part or title 37, chapter 5, part 5, and who is not otherwise required by subdivision (a)(1), or who is not otherwise required by any other law.

(B) Nothing in this subsection (g) shall be construed to mean that any other law that mandates that fingerprint-based background, registry or any records review be conducted on applicants for employment, licensee, operator, substitute, volunteer or agency resident status is made voluntary, repealed or superseded in any manner by this subsection (g), and this section is supplementary to, and is not in lieu of, any mandatory provisions for such other statutorily required background, registry or records checks.

(2) The disclosure form shall contain the information described in subdivisions (a)(3) and (a)(4).

(3) A copy of the disclosure form shall be maintained in the requesting entity's records of the persons for whom the background check is sought.

(4)(A) The fingerprints of the person shall be submitted by the entity authorized by this subsection (g) to do so, to the TBI in the format required by the bureau.

(B) The TBI shall compare the information received and the fingerprints of the person with the computer criminal history files, and juvenile history files available to and maintained by the bureau and, to the extent permitted by federal law, with federal criminal databases to verify the accuracy of the criminal or juvenile violation information pursuant to § 38-6-109, and shall report the existence of any criminal or juvenile history involving the person to the requesting entity; and if the report was made to an entity that is licensed by any state agency, the bureau shall also send a copy of the report showing the criminal or juvenile history to the state agency.

(C)(i) For a person who was not subject to a fingerprint-based or other records screening prior to assuming a role described in subdivision (g)(1)(A), that person's existing status in the role shall be conditional upon the satisfactory outcome of any requested fingerprint-based background review, criminal, and available juvenile records review, and upon vulnerable persons and sex offender registries and department of children's services and department of human services perpetrator records, reviews, and, if determined necessary by the entity, a review of any available juvenile records in juvenile court, that may be conducted pursuant to this section; provided, however, that if a person is initially applying to assume any type of role described in subdivision (g)(1)(A), and an entity described in subdivision (g)(1)(A) utilizes this subsection (g) as a pre-employment screening procedure, the person shall not assume the role until satisfactory completion of the reviews.

(ii) In either circumstance in subdivision (g)(4)(C)(i), the criminal and available juvenile history and fingerprint-based background review, the vulnerable persons and sex offender registry review and any review of the perpetrator records of the departments of children's services and human services must demonstrate that the person is not subject to a criminal or juvenile history or a history on these registries or in such records that would, as described in this part, disqualify or otherwise exclude that person from any role described in subdivision (g)(1)(A). If the fingerprint-based background or records review, or any other information from any other source confirms that subsection (e) is applicable, that person shall not be permitted to have further contact with children in such role, except as otherwise permitted by this section.

(iii) A person's employment or contract status shall not remain in a conditional status for a position with any state agency for which federal law or regulations do not permit the state agency to license or approve the position until all necessary licensing requirements are met, unless specifically authorized by state or federal law or regulation to the contrary.

(iv) The employment status of persons for whom a post-employment fingerprint-based background, registry or record review was conducted, or the status of existing licensees or operators, substitutes, volunteers or residents of a childcare agency for whom these reviews were conducted after license approval, and who were not otherwise subject to pre-status applicant or access reviews and to the exclusionary provisions provided in this section, shall be governed by any regulations that may govern their status in a regulated entity or by applicable employ-

ment law.

(D) The results of the inquiry to the TBI or other registry or records review shall be documented in the records of the entity requesting the reviews. If the entity is regulated by, or is a contractor to, this state, the entity shall immediately report exclusionary results of the criminal and juvenile history background, registry or perpetrator records reviews to its regulatory or contracting state agency.

(E) If the information submitted on the disclosure form appears to have been falsified, the entity requesting the background check, or if the entity is regulated by or has a contract with this state, the regulatory or contracting agency shall notify the district attorney general of the falsification in writing.

(F) Any costs incurred by the TBI in conducting the investigations of the applicants shall be paid by the entity that requests the investigation and information. Payment of the costs is to be made in accordance with §§ 38-6-103 and 38-6-109.

(h)(1)(A) As a supplemental method of criminal and juvenile background history review for any applicants for employment, for license or operator status, or for substitute or volunteer status with childcare agencies or childcare programs, or with the state agencies or their contractors, as listed in subdivision (g)(1) or with the entities that the state agencies may regulate, or for residents of new childcare agencies, or for current employees, licensees, operators, substitutes or volunteers of childcare agencies or for current residents of childcare agencies, those entities listed in subdivision (g)(1) that have an agreement for access to the TBI's criminal and available juvenile history database may require such persons to submit a disclosure form as set forth in subdivisions (a)(3) and (a)(4), a copy of which shall be maintained with the requesting entity's records, and agree to release all records involving the person relating to the criminal and available juvenile history of the person.

(B) Those entities with the agreement in subdivision (h)(1)(A) may then access directly the TBI's Tennessee crime information computer (TCIC) system and conduct a name search of Tennessee criminal and available juvenile history records by using only the information contained on the disclosure form completed pursuant to subdivision (h)(1)(A), or by using any other information available to the searching entity.

(2) If information obtained by this method indicates that there exists, or may exist, a criminal or juvenile record on the person, the entity conducting the search may further review the criminal and juvenile record history with the person and, as appropriate, with the entity with whom the person who is the subject of the review is associated, to obtain further verification. The requesting entity, at its own cost, may also request fingerprint samples as otherwise authorized by this section and submit the fingerprints for a complete Tennessee and federal criminal and available juvenile history background review pursuant to this section and § 38-6-109.

(3) The results of the search shall be maintained in the records of the person about whom the search was made and shall be subject to review by the regulating entities.

(4) Nothing in this subsection (h) shall be construed to mean that any other law that mandates that criminal and juvenile background reviews be conducted on applicants for employment, for license or operator status, for substitute or volunteer service positions or for resident status is made voluntary, repealed or superseded in any manner by this subsection (h), and this subsection (h) is supplementary to, and is not in lieu of, any mandatory provisions for such other statutorily required criminal and juvenile background reviews.

(i) Subsections (e) and (f), including, but not limited to, the exclusion of persons from providing care or being licensed for the care of children or having access to children upon determination of the criminal, available juvenile, registry or perpetrator records background of such persons, the suspension of operations of or the denial or regulation of any license, certification or approval of any entities that fail to exclude persons with an exclusionary history, and the exemptions from the exclusionary provisions shall be applicable to those persons having exclusionary backgrounds or histories determined by the processes established by subsections (g) and (h) or by any other means.

(j) Any person disqualified by a state agency from care for or access to children based upon the results of any fingerprint-based, criminal, juvenile, registry, perpetrator records or other records review conducted under subsections (g) and (h), or by any other means may, as provided in subdivisions (e)(2)-(4), appeal that determination to a state agency that has made the request.

(k) Nothing in this section shall be construed to prevent the exclusion of any person from providing care for, from being licensed or certified or approved for the care of children pursuant to this part or from having access to a child in a child caring situation if a criminal or juvenile proceeding background history or other record that would require the person's exclusion under this part is discovered and verified in any other manner other than through a procedure established pursuant to this section. All procedures, rules and appeal processes established pursuant to this section for the protection of children and the due process rights of excluded persons shall also be applicable to those persons.

(*l*) It is unlawful for any person to falsify any information required on the disclosure form required by this section. A person who knowingly fails to disclose on the disclosure form required information or who knowingly discloses false information or who knowingly assists another to do so commits a Class A misdemeanor.

History.

Acts 2000, ch. 981, § 8; 2001, ch. 453, §§ 9-14; 2006, ch. 808, § 1; 2008, ch. 922, §§ 1-3; 2009, ch. 410, § 2; 2010, ch. 1100, § 136; 2012, ch. 575, § 1; 2013, ch. 101, § 2; 2015, ch. 22, §§ 1, 2; 2016, ch. 839, §§ 1-12.

Compiler's Notes.

This section, formerly § 14-10-107 (Acts 1953, ch. 228, § 4 (Williams, § 4765.141); T.C.A. (orig. ed.), § 14-1407), concerning temporary licenses issued to child welfare agencies, was repealed by Acts 1987, ch. 297, § 4. As to temporary licenses, see § 71-3-502.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

71-3-508. Inspection of entities providing child care.

(a) It is the duty of the department, through its duly authorized agents, to inspect at regular intervals, without previous notice, all child care agencies or suspected child care agencies, as defined in § 71-3-501.

(b)(1) The department is given the right of entrance, privilege of inspection, access to accounts, records, and information regarding the whereabouts of children under care for the purpose of determining the kind and quality of the care provided to the children and to obtain a proper basis for its decisions and recommendations.

(2) If refused entrance for inspection of a licensed, approved or suspected child care agency, the chancery or circuit court of the county where the licensed, approved or suspected child care agency may be located may issue an immediate ex parte order permitting the department's inspection upon a showing of probable cause, and the court may direct any law enforcement officer to aid the department in executing such order and inspection. Refusal to obey the inspection order may be punished as contempt.

(3) Except where court orders prohibit or otherwise limit access, parents or other care takers of children in the care of a child care agency licensed pursuant to this part shall be permitted to visit and inspect the facilities and observe the methods for the care of their children at any time during which the children are in the care of the agency and, except those records of other children in the care of the agency and their parents or caretakers, shall further be permitted to inspect any records of the agency that are not privileged, or are not otherwise confidential, as provided by law or regulation, and the parents' or caretakers' access for these purposes shall not be purposely denied by the agency.

(c)(1) In the conduct of any investigations of any child care agency, the department, if it determines such to be necessary, may require the child care agency to enter into a plan for the safety of children in the agency's care pending the outcome of any investigation by the departments of human services or children's services, or by any law enforcement or regulatory agency.

(2)(A) Such plan may require, but is not limited to:

(i) The exclusion or restriction of any individuals from access to the children in care;

(ii) The closure or restricted use of any part or parts of the agency's facilities;

(iii) The reinspection of any of the agency's facilities by any other health, fire or safety agency;

(iv) The modification or elimination of any service provided, or of any procedures utilized or any program conducted by the agency; or

(v) The receipt of further training by the agency's management, staff or volunteers.

(B) The plan may be based upon any preliminary or upon any final findings by the department. The plan may be established in coordination with:

(i) The conduct of any child abuse or neglect investigation by the department of children's services;

(ii) Any criminal investigation by a law enforcement agency;

(iii) Any investigation of the child care agency by any other regulatory agency; or

(iv) In any combination of these investigations,

and may be based upon any preliminary or final findings of such departments or agencies. The plan may also incorporate any recommendations of such departments or agencies based upon their preliminary or final findings.

(3) The department may enforce the provisions of the safety plan by civil penalty not to exceed five hundred dollars ($500), by suspension of the agency's license if appropriate, by issuance of a restricted license to the child care agency, by denial or revocation of the child care agency's license, or by any combination of these penalties.

(4) Any plan that exceeds ninety (90) days when proposed or that continues for more than ninety (90) days may be appealed to the child care agency board of review.

(d) Any violation of the inspection rights established in this section is a Class A misdemeanor.

History.

Acts 2000, ch. 981, § 9; 2001, ch. 453, § 15.

Compiler's Notes.

Former § 71-3-508 (Acts 1953, ch. 228, § 5 (Williams, § 4765.142); T.C.A. (orig. ed.), § 14-1408; Acts 1986, ch. 536, § 2; T.C.A., § 14-10-108), concerning a hearing on denial of application, was repealed by Acts 2000, ch. 981, § 1. For current provisions, see § 71-3-510.

71-3-509. Violations of licensing regulations — Probation — Civil penalties — Suspension, denial and revocation of licenses — Appeal procedures.

(a) If any complaint is made to the department concerning any alleged violation of the laws or regulations governing a child care agency, the department shall investigate such complaint and shall take such action as it deems necessary to protect the children in the care of such agency.

(b)(1) If, during the licensing period, the department determines that a child care agency is not in compliance with the laws and regulations governing its operation, the department may place the agency on probation for a definite period of not less than thirty (30) days nor more than sixty (60) days, as determined by the department. Upon a determination by the department to place an agency on probation, the department shall serve written notice to the agency by personal delivery describing the violations of the licensing laws or rules that support the basis for the probationary status and the procedures for appeal of the probationary status. Ten (10) business days after the service of the probation notice on the agency, the department shall require the agency to post the notice of probation as directed by the department.

(2)(A) If placed on probation, the agency shall immediately post a copy of the probation notice, together with a list provided by the department of the violations that were the basis for the probation, in a conspicuous place as directed by the department and with the agency's license, and the agency shall immediately notify in writing the custodians of each of the children in its care of the agency's status, the basis for the probation and of the agency's right to an informal review of the probationary status.

(B) If the agency requests an informal review within two (2) business days of the imposition of probation, either verbally or in writing to the department's licensing staff that imposed the probation, the department shall informally review the probationary status by a licensing supervisor or other designee who was not involved in the decision to impose the probation. The agency may submit any written or oral statements as argument to the licensing supervisor or designee within five (5) business days of the imposition of the probation. Written and oral statements may be received by any available electronic means. The licensing supervisor or designee shall render a decision in writing upholding, modifying or lifting the probationary status within seven (7) business days of the imposition of the probation.

(3) If the licensing supervisor or designee does not lift the probation under subdivision (b)(2)(B), the agency may also appeal such action in writing to the commissioner within five (5) business days of the receipt of the notice of the licensing supervisor or designee's decision regarding the agency's probationary status as determined in subdivision (b)(2)(B). If timely appealed, the department shall conduct an administrative hearing pursuant to the contested case, provisions of the Uniform Administrative Procedures Act, compiled at title 4, chapter 5, part 3, concerning the department's action within fifteen (15) business days of receipt of the appeal, and shall render a decision in writing within seven (7) business days following conclusion of the hearing. The hearing officer may uphold, modify or lift the probation.

(4) This subsection (b) shall be discretionary with the department, and shall not be a prerequisite to any licensing action, to impose a civil penalty or to suspend, deny or revoke a license of a child care agency.

(c)(1) If the department determines that there exists any violation with respect to any person or entity required to be licensed pursuant to this part, the department may assess a civil penalty against such person or entity for each separate violation of a statute, rule or order pertaining to such person or entity in an amount ranging from fifty dollars ($50.00) for minor violations up to a maximum of one thousand dollars ($1,000) for major violations or violations resulting in death or injury to a child as defined in the rules of the department. Each day of continued violation constitutes a separate violation.

(2) The department shall by rule establish a graduated schedule of civil penalties designating the minimum and maximum civil penalties that may be assessed pursuant to this subsection (c). In developing the graduated civil penalty procedure, the following factors may be considered:

(A) Whether the amount imposed will be a substantial economic deterrent to the violator;

(B) The circumstances leading to the violation and the agency's history of violations;

(C)(i) The extent of deviation from the statutes, rules or orders governing the operation of the child care agency;

(ii) The severity of the violation, including specifically the level of risk of harm to the children in care of the person or entity caused by the violation; and

(iii) The penalty may be further classified based upon whether the violation resulted in the issuance of an order of summary suspension, denial or revocation of the license of the agency and whether death or injury of a child occurred as a result of violation;

(D) The economic benefits gained by the violator as a result of noncompliance;

(E) The agency's efforts to comply with the licensing requirements; and

(F) The interest of the public.

(3) The department shall assess the civil penalty in an order that states the reasons for the assessment of the civil penalty, the factors used to determine its assessment and the amount of the penalty.

(4) The order may be served on the licensee personally by an authorized agent of the department who shall complete an affidavit of service, or the order may be served by certified mail, return receipt requested.

(5) The licensee may appeal the penalty to the board of review by filing a request for an appeal in writing with the commissioner within ten (10) days of the service of the order.

(6)(A) Civil penalties assessed pursuant to this subsection (c) shall become final ten (10) days after the date an order of assessment is served if not timely appealed, or, if timely appealed, within seven (7) days following entry of the board's order unless the board's order is stayed.

(B) If the violator fails to pay an assessment when it becomes final, the department may apply to the chancery court for a judgment and seek execution of such judgment.

(C) Jurisdiction for recovery of such penalties shall be in the chancery court of Davidson County.

(7) All sums recovered pursuant to this subsection (c) shall be paid into the state treasury, but shall be earmarked to be used by the department exclusively to improve child care quality in this state by funding activities that include, but are not limited to, child care provider training activities, but excluding any costs associated with conducting criminal background checks.

(8) This subsection (c) relative to civil penalties shall be discretionary with the department, and shall not be a prerequisite to any licensing action to suspend, deny or revoke a license of a child care agency. Civil penalties may also be imposed in conjunction with the probation, suspension, denial or revocation of a license.

(d)(1) If the department determines that any applicant for a temporary license or for the renewal of an existing license has failed to attain, or an existing licensee has failed to maintain, compliance with licensing laws or regulations after reasonable notice of such failure and a reasonable opportunity to demonstrate compliance with licensing laws or regulations, the department may deny the application for the new or renewed license or may revoke the existing license; provided, that the department at any time may deny a temporary license if the applicant fails to meet the initial requirements for its issuance; and, provided, further, that if the department determines that repeated or serious violations of licensing laws or regulations warrant the denial or revocation of the license, then, notwithstanding any provisions of § 4-5-320 or this subsection (d) to the contrary, the department may seek denial or revocation of the license regardless of the licensee's demonstration of compliance either before or after the notice of denial of the application or before or after notice of the revocation.

(2) Notwithstanding § 4-5-320, the notice of denial or revocation may be served personally by an authorized representative of the department who shall verify service of the notice by affidavit, or the notice may be served by certified mail, return receipt requested.

(3) If application for the temporary, annual, or extended license is denied or if an existing license is revoked, the applicant may appeal the denial or revocation by requesting in writing to the department a hearing before the child care agency board of review within ten (10) days of the personal delivery or mailing date of the notice of denial or revocation. Failure to timely appeal shall result in the expiration of any existing license immediately upon the expiration of the time for appeal.

(4) The hearing upon the denial or revocation shall be heard by the board of review within thirty (30) days of the date of service of the notice of denial or revocation; provided, that, for good cause as stated in an order entered on the record, the board or the administrative law judge may continue the hearing. In order to protect the children in the care of the agency from any risk to their health, safety and welfare, the board or administrative law judge shall reset the hearing at the earliest date that circumstances permit.

(5)(A) If timely appeal is made, pending the hearing upon the denial or revocation, the child care agency may continue to operate pending the decision of the board of review unless the license is summarily suspended as provided in subsection (e).

(B) The board, as part of its decision regarding the status of the applicant's application for a license or the licensee's license, may direct that the child care agency be allowed to operate on a probationary or conditional status, or may grant or continue the license with any restrictions or conditions on the agency's authority to provide care.

(e)(1) Subject to this subsection (e), if the department determines at any time that the health, safety or welfare of the children in care of the child care agency imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of the license may be ordered by the department pending any further proceedings for revocation, denial or other action. If the department determines that revocation or denial of the license is warranted following suspension, those proceedings shall be promptly instituted and determined as authorized by this part.

(2) The department shall set forth with specificity in its order the legal and factual basis for its decision, stating in the order the specific laws or regulations that were violated by the agency, and shall state with specificity in the order the reasons that the issuance of the order of summary suspension is necessary to adequately protect the health, safety or welfare of children in the care of the child care agency. Summary suspension may be ordered in circumstances that have resulted in death, injury or harm to a child or that have posed or threatened to pose a serious and immediate threat of harm or injury to a child based upon the intentional or negligent failure to comply with licensing laws or regulations.

(3) In issuing an order of summary suspension of a license, the department shall use, at a minimum, the following procedures:

(A) The department shall proceed with the summary suspension of the agency's license and shall notify the licensee of the opportunity for an informal hearing within three (3) business days of the issuance of the order of summary suspension;

(B) The notice provided to the licensee may be provided by any reasonable means and, consistent with subdivision (e)(2), shall inform the licensee of the reasons for the action or intended action by the department and of the opportunity for an informal hearing as permitted by subdivision (e)(3)(C);

(C)(i) The informal hearing described by this subdivision (e)(3) shall not be required to be held under the contested case provisions of the Uni-

form Administrative Procedures Act;

(ii) The hearing is intended to provide an informal, reasonable opportunity for the licensee to present to the hearing official the licensee's version of the circumstances leading to the suspension order;

(iii) The sole issues to be considered are:

(a) Whether the public health, safety or welfare imperatively require emergency action by the department;

(b) What, if any, corrective measures have been taken by the child care agency following the violation of licensing laws or regulations and prior to the issuance of the summary suspension order that eliminate the threat to the public health, safety or welfare of the children in the care of the agency; and

(c) Whether the agency demonstrates a reasonable ability to maintain or continue compliance with all relevant licensing laws and regulations; and

(iv) The hearing official may lift, modify or continue the order of summary suspension;

(D) Subsequent to the hearing on the summary suspension, the department may proceed with revocation or denial of the license or other action as authorized by this part, regardless of the decision concerning summary suspension of the license.

(4) The department shall by rule establish any further necessary criteria that it determines are required for the determination of circumstances that warrant imposition of the summary suspension order and any other necessary procedures for implementation of the summary suspension process.

(5) If the conditions existing in the child care agency present an immediate threat to the health, safety or welfare of the children in care, the department may also seek a temporary restraining order from the chancery or circuit court of the county in which the child care agency is located, seeking immediate closure of the agency to prevent further harm or threat of harm to the children in care, or immediate restraint against any violations of the licensing laws or regulations that are harming or that threaten harm to the children in care. The department may seek any further injunctive relief as permitted by law in order to protect children from the violations, or threatened violations of the licensing laws or regulations. The use of injunctive relief as provided by this subdivision (e)(5) may be used as an alternative, or supplementary measure, to the issuance of an order of summary suspension or any other administrative proceedings.

(f)(1) In determining whether to deny, revoke or summarily suspend a license, the department may choose to deny, revoke or suspend only certain authority of the licensee to operate and may permit the licensee to continue operation, but may restrict or modify the licensee's authority to provide certain services or perform certain functions, including, but not limited to, transportation or food service, enrollment of children at the agency, the agency's hours of operation, the agency's use of certain parts of the agency's physical facilities or any other function of the child care agency that the department determines should be restricted or modified to protect the health, safety or welfare of the children. The board of review, in considering the actions to be taken regarding the license, may likewise restrict a license or place whatever conditions on the license and the licensee it deems appropriate for the protection of children in the care of the agency.

(2) The actions by the department or the board authorized by this subsection (f) may be appealed as otherwise provided in this part for any denial, revocation or suspension.

(g)(1) When an application for a license has been denied, or a license has been revoked, on one (1) occasion, the child care agency may not reapply for a license for a period of one (1) year from the effective date of the denial or revocation order if not appealed, or, if appealed, from the effective date of the board's or reviewing court's order.

(2) If application for a license has been denied, or a license has been revoked, on two (2) occasions, the child care agency may not reapply for a license for a period of two (2) years from the effective date of the denial or revocation if not appealed, or, if appealed, from the effective date of the board's or reviewing court's order.

(3) If an application for a license has been denied, or a license has been revoked, on three (3) occasions, the agency shall not receive another license for the care of children.

(4) No person who served as full or part owner or as director or as a member of the management of a child care agency shall receive a license to operate a child care agency if that person participated in such capacity in a child care agency that has been denied a license, or that had a license revoked, on three (3) occasions.

(5)(A) The time restrictions of subdivisions (g)(1) and (2) may be waived by the board of review in the hearing in which the denial or revocation is sustained, or, if requested by the former licensee in writing to the commissioner, in a separate subsequent hearing before the board of review or, in the discretion of the commissioner, upon review by the commissioner.

(B) The agency must show to the board's or the commissioner's satisfaction that the agency has corrected the deficiencies that led to the denial or revocation, and that the child care agency can demonstrate that it has the present and future ability, and is willing, to maintain compliance with licensing laws or regulations. The decision of the board or the commissioner shall be reduced to an order, which shall be a final order pursuant to the Uniform Administrative Procedures Act, and may be appealed pursuant to § 4-5-322.

(C) No waiver may be granted for any permanent restriction that has been imposed pursuant to subdivision (g)(3).

(h)(1) In conducting hearings of the appeal of a denial or revocation of a license before the board of

review or for review of summary suspension orders, it is the legislative intent that such hearings be promptly determined consistent with the safety of the children in the care of the child care agency appealing the department's licensing action and with the due process rights of the license applicants or licensees.

(2) If, however, the administrative procedures division of the office of the secretary of state certifies by letter to the recording secretary of the board of review that the division's contested case docket prevents the scheduling of a hearing on the appeal of the denial or revocation of a license before the board of review within the initial time frames set forth in this part, then the department shall have the authority to obtain an attorney who shall act as the administrative law judge to conduct the proceedings before the board. The substitute administrative law judge may be obtained by contract with a private attorney or by contract or agreement with another state agency. The substitute administrative law judge shall have all authority as an administrative law judge of the department of state. The hearing may be continued by order of the board for the purpose of obtaining a substitute judge.

(3) Hearings on summary suspension orders shall be heard by an administrative law judge from the administrative procedures division of the secretary of state's office, if the administrative law judge is available within the time frames for a summary suspension hearing. If the administrative procedures division of the secretary of state's office informs the department that an administrative law judge is unavailable, the department may obtain an administrative law judge or hearing officer who is not an employee of the department who may be obtained by the department by contract with a private attorney or by contract or agreement with another state agency. The administrative law judge or hearing officer shall have authority, as otherwise permitted in this section, to enter orders binding on the department resulting from show cause hearings involving summary suspension orders. If the administrative procedures division of the office of the secretary of state informs the department that the division's contested case docket prevents the scheduling of a hearing on the issuance of a summary suspension order within the initial time frames set forth in this part, and if the department is unable to obtain a private or state agency administrative law judge or hearing officer to hear the show cause hearing on the summary suspension order within the time frames set forth in this part, the department may utilize a hearing officer from the department's administrative review section.

(i) By July 1, 2000, any initial rules to implement this section shall be by emergency rules of the department; provided, however, that any permanent rules shall be promulgated pursuant to the Uniform Administrative Procedures Act.

History.

Acts 2000, ch. 981, § 10; 2001, ch. 453, §§ 16-19; 2009, ch. 566, § 12.

Compiler's Notes.

Acts 2009, ch. 566, § 12 provided that the Tennessee code commission is directed to change all references to public necessity rules, wherever such references appear in this code, to emergency rules, as sections are amended and volumes are replaced.

Former § 71-3-509 (Acts 1953, ch. 228, § 5 (Williams, § 4765.142); T.C.A. (orig. ed.), § 14-1409; Acts 1986, ch. 536, § 3; T.C.A., § 14-10-109), concerning a revocation of a license, was repealed by Acts 2000, ch. 981, § 1. For current provisions, see this section.

71-3-510. Board of review — Composition.

(a)(1) A child care agency licensing board of review shall review:

(A) Actions initiated by the departments of human services and children's services to deny or revoke or to otherwise limit any license except for summary suspension of, or probation involving, a license;

(B) Actions to review any civil penalties imposed by the department of human services; or

(C) Any safety plan implemented by the department of human services that will be, or has been in effect ninety (90) days or more.

(2)(A) In reviewing any licensing action pursuant to this part or pursuant to title 37, chapter 5, part 5, the board of review shall consist of nine (9) persons. Five (5) members of the board shall include the commissioners of health and education or their designees, the executive director of the commission on children and youth or designee, and a member from one (1) current or previous standards committee from the departments of human services and children's services. Four (4) persons shall be selected from a pool of up to twelve (12) representatives at-large to be selected by the five (5) stated board members, as follows:

(i) Four (4) shall be selected to serve for one (1) year;

(ii) Four (4) shall be selected to serve for two (2) years; and

(iii) Four (4) shall be selected to serve for three (3) years.

(B) Thereafter, each at-large representative shall be selected to serve for terms of three (3) years or until such representative's successor is selected.

(b) A quorum of the board shall consist of five (5) persons.

(c) In establishing a quorum for the board to conduct its review of the licensing actions of the departments, the chair shall randomly select the names of the at-large members of the board for the board's current licensing review action from the pool of twelve (12) persons selected pursuant to subsection (a) until the nine-member composition is reached or, if that is not possible, until a quorum is reached.

(d) The commissioner of education or the commissioner's designee shall serve as the chair of the board until a chair is selected by the board. The board shall elect a vice chair who shall serve in the absence of the chair. If the chair resigns, is unable to perform the

duties of the chair or is removed, or the chair's term on the board expires, the commissioner of education shall appoint a new chair until the board can elect a chair. The vice chair shall have authority to sign all orders of the board in the absence of the chair and for actions of the panels under subsection (f).

(e) The recording secretary for the board shall be a member of the professional staff of the department of human services based upon an inter-agency agreement for the services of the recording secretary as the commissioners of children's services and human services may deem appropriate, and any person selected by the agreement of the departments shall serve as recording secretary for the board. The recording secretary shall be responsible for scheduling the board's meetings and arranging for the facilities to conduct the hearings of the board for both departments and such other duties as may be necessary to accommodate the business of the board. The recording secretary shall serve without additional compensation from the department.

(f) In order to complete the work of the board, the chair may appoint one (1) or more panels of the board with a quorum of five (5) members, at least two (2) of whom shall be randomly selected at-large members selected by the chair. The chair of the board shall appoint the chair of the panel. The panel shall have complete authority to hear any case under the board's jurisdiction and shall have complete authority to enter any necessary orders concerning licensing actions conducted before the board of review. Any orders of the panel shall be signed by the chair of the panel, or by the board chair or vice chair.

(g) Any necessary regulations governing the board's procedure shall be promulgated by the department of human services, in consultation with the department of children's services, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 2.

(h) Any applicant or licensee may petition the chancery court of Davidson County pursuant to § 4-5-322 for judicial review of the board's decision.

(i)(1) All members of the review board shall serve without pay.

(2) The four (4) members at-large who are selected to serve on the board and the members from the standards committees of the departments shall receive reimbursement in conformity with law and regulations for their expenses incurred in the performance of their official duties pursuant to this part. Such expenses for the representatives from the standards committees from the respective department shall be paid from the funds appropriated to the departments.

(3) The expenses for the at-large members shall be shared equally by the departments of children's services and human services.

(4) All reimbursement for travel expenses shall be in accordance with the comprehensive state travel regulations applicable to state employees.

History.

Acts 2000, ch. 981, § 11; 2001, ch. 453, §§ 20-22.

Compiler's Notes.

The child care agency licensing board of review, created by this section, terminates June 30, 2019. See §§ 4-29-112, 4-29-240.

Former § 71-3-510 (Acts 1953, ch. 228, § 5 (Williams, § 4765.142); impl. am. Acts 1975, ch. 219, § 1 (a, b); T.C.A. (orig. ed.), §§ 14-1410, 14-10-110; Acts 1996, ch. 1079, § 168), concerning the board of review, was repealed by Acts 2000, ch. 981, § 1. For current provisions, see this section.

71-3-511. Licensing standards committees.

(a) The commissioner of human services shall appoint a standards committee composed of twelve (12) citizens, three (3) from each grand division of the state, and three (3) at-large for the purpose of developing or reviewing standards and regulations for each class of child care agency defined in this part. The classes of child care regulated by the department shall be represented by members of the standards committee.

(b) For any new class of child care agency as defined in this part, the standards committee shall develop and recommend to the commissioner the standards and regulations for that new class of child care agency. The standards and regulations of each existing class of child care agency shall be reviewed by a standards committee beginning every four (4) years following the date of submission of its last recommendations or more frequently as the commissioner may direct.

(c) The standards committee shall act in an advisory capacity to the commissioner in recommending any initial standards or regulations for any new class of child care agency or any changes to the existing standards or regulations of any class of child care agency.

(d) The committee shall cease to exist upon submitting its recommendations to the commissioner, but may be re-established by the commissioner at any time to further review its recommendations or to consider additional standards or regulations or to consider revisions to the standards or regulations.

(e)(1) In making appointments to the committee, the commissioner shall strive to ensure that at least one (1) person serving on the committee is sixty (60) years of age or older and that at least one (1) person serving on the committee is a member of a racial minority.

(2) Except as otherwise provided in this section, in making appointments to the standards committees, the departments shall strive to ensure that the membership of the standards committees includes a balance of representatives of the regulated industry and persons whose expertise would be of assistance to the departments. The departments shall appoint child advocates, social workers, attorneys, and other such persons with knowledge and expertise in the specified area, as well as citizen members to the committees.

(f) The members of the committee shall not receive any compensation for their services but shall be reimbursed for their travel to and from the committee

meetings and for their meals and lodging in accordance with the state travel procedures and regulations.

History.
Acts 2000, ch. 843, § 2; 2000, ch. 981, § 12; 2011, ch. 282, § 3.

Compiler's Notes.
Former § 71-3-511 (Acts 1953, ch. 228, § 5 (Williams, § 4765.142); 1976, ch. 806, § 1(141); T.C.A. (orig. ed.), §§ 14-1411, 14-10-111; Acts 1996, ch. 1079, § 169), concerning reimbursement of the board of review, was repealed by Acts 2000, ch. 981, § 1. For current provisions, see this section.

The standards committee, department of human services, created by this section, terminates June 30, 2019. See §§ 4-29-112, 4-29-240.

Acts 2000, ch. 843, § 2 was compiled as subdivision (e)(2), because this section, as added by Acts 2000, ch. 981, was closer in subject matter than former § 71-3-504.

71-3-512. Five-year-olds attending day care institutions lacking kindergarten status.

(a) A family child care home, group child care home or child care center that lacks approved kindergarten status for purposes of § 49-6-201 shall not enroll or continue to enroll any child five (5) years of age during the period of the local education agency's regular school year, without first obtaining from the child's parents or legal guardians a signed acknowledgment of the fact that the child's attendance at the family child care home, group child care home or child care center does not satisfy the mandatory kindergarten prerequisite for the child's enrollment in the first grade.

(b) Any such signed acknowledgment shall be retained by the family child care home, group child care home or child care center for a period of two (2) years. Failure to comply with the requirements of this section may subject the family child care home, group child care home, or child care center to probation, denial or revocation of the child care agency license, or to civil penalty, by the department.

History.
Acts 2000, ch. 981, § 13.

Compiler's Notes.
This section may be affected by Rule 4 (a) of the Rules of Appellate Procedure.

Former § 71-3-512 (Acts 1953, ch. 228, § 5 (Williams, § 4765.142); T.C.A. (orig. ed.), § 14-1412; Acts 1981, ch. 449, § 2; 1983, ch. 322, § 4; T.C.A., § 14-10-112), concerning appeals from the board of review, was repealed by Acts 2000, ch. 981, § 1. For current provisions, see this section.

71-3-513. Public records — Exceptions.

The records of any entity entering into a contract or grant with the state for child care broker services relating to such grant or contract shall be public records open for public inspection in accordance with § 10-7-503. Nothing in this section shall be construed to allow a social security number or residential address of any person to be considered a public record.

History.
Acts 2000, ch. 981, § 79.

Compiler's Notes.
Former § 71-3-513 (Acts 1953, ch. 228, § 4 (Williams, § 4765.141); T.C.A. (orig. ed.), §§ 14-1413, 14-10-113; Acts 1989, ch. 591, § 112; 1996, ch. 1079, § 170), concerning injunctions against unlicensed operations, was repealed by Acts 2000, ch. 981, § 1. For present law, see § 71-3-504.

71-3-514. Establishment of drug testing policy.

(a)(1) All persons or entities operating a child care agency as defined in this part, unless exempt as provided in § 71-3-503, shall establish a drug testing policy for employees, directors, licensees and operators of child care agencies and for other persons providing services under contract or for remuneration for the agency, who have direct contact, as defined by the department, with a child in the care of the agency.

(2) The policy shall specify how testing should be completed by the child care agency and provide for immediate and effective enforcement action involving such persons by the child care agency in the event of a positive drug test.

(3) The policy shall be provided by the child care agency to persons employed or engaged for contract or remunerative services prior to July 1, 2009, and to all such persons upon initial employment or initial engagement in contract or remunerative services for the agency.

(4) The policy established pursuant to this section shall not supersede the requirements of § 71-3-502(d)(7)(C)(v) that all persons described in § 71-3-502(d)(7)(C)(v) satisfactorily complete a drug test prior to engaging in transportation services for children in a child care agency.

(b)(1) The policy shall require drug testing based upon reasonable suspicion that employees, directors, licensees, or operators of a child care agency, or other persons providing services under contract or for remuneration for the agency are engaged in the use of illegal drugs.

(2) The policy shall require persons employed or engaged for contract or remunerative services prior to July 1, 2009, to have a drug test based upon reasonable suspicion that the persons are engaged in the use of illegal drugs.

(3) Events that may give rise to reasonable suspicion for purposes of requiring a drug test include, but are not limited to:

(A) Deterioration in job performance or changes in personal traits or characteristics;

(B) Appearance in a specific incident or observation which indicates that an individual is under the present influence of drugs;

(C) Changes in personal behavior not attributable to other factors;

(D) Involvement in or contribution to an accident where the use of drugs is reasonably suspected, regardless of whether the accident involves actual injury; or

(E) Alleged violation of or conviction of criminal drug law statutes involving the use of illegal drugs or prescription drugs.

(c) A child care agency shall, at no expense to the state, maintain for five (5) years and immediately make available to the department upon request a copy of

drug testing results for an individual who is employed as a caregiver, director, licensee or operator at the child care agency, or for other persons providing services under contract or for remuneration for the agency, who have direct contact with children in the care of the agency.

(d) It shall be the responsibility of the individual who is to be tested to pay the appropriate fees necessary to obtain a drug test pursuant to the policy established by a child care agency. Drug testing results obtained under this section are confidential and may be disclosed only for purposes of enforcing this part.

(e) Notwithstanding subsection (a), a licensee or operator of a family child care home who has direct contact with children in the care of the family child care home shall submit to a drug test at the expense of the licensee or operator, when the department has reasonable suspicion to believe that the licensee or operator is engaged in the use of illegal drugs.

(f) A child care agency that does not comply with this section is subject to the department:

(1) Denying the application for a license;

(2) Denying the application for a license renewal; or

(3) Suspending or revoking a license issued.

History.
Acts 2008, ch. 1068, § 1.

Compiler's Notes.
Acts 2008, ch. 1068, § 2 provided that the department of human services is authorized to promulgate rules and regulations to effectuate the purposes of this section. The rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Former §§ 71-3-514 — 71-3-523 (Acts 1953, ch. 228, § 6-15 (Williams, § 4765.143—4765.152); T.C.A. (orig. ed.), §§ 14-1414 — 14-1423, §§ 14-10-114 — 14-10-123), were repealed by Acts 2000, ch. 981, § 1, effective July 1, 2000.

71-3-515. Development of procedure for submitting names and other identifying information to determine if persons have perpetrated abuse or neglect of a child or adult — Due process rights.

(a) The department of children's services and the department of human services shall develop a procedure whereby the names and other identifying information for all potential employees of the department of human services in that department's licensing division and adult protective services program and any persons who are subject to § 71-2-403 or § 71-3-507, and who, under those sections, may have contact with children in a childcare agency or with adults in an adult day care agency licensed by the department of human services, shall be submitted to the department of children's services and the department of human services adult protective services program to determine if the potential employees or other persons subject to those provisions were found by the department of children's services or the department of human services adult protective services program to have perpetrated abuse or neglect of a child or adult.

(b) No person shall be reported as an indicated perpetrator of abuse or neglect for purposes of this part or chapter 2, part 4 of this title, by either the department of children's services or the department of human services adult protective services program unless it is determined that the due process rights of the person were either offered, but not accepted, or were fully concluded pursuant to the rules of the department of children's services or the department of human services and applicable state and federal law.

History.
Acts 2009, ch. 410, § 3; 2013, ch. 101, § 3.

Compiler's Notes.
Former §§ 71-3-515 — 71-3-523 (Acts 1953, ch. 228, § 6-15 (Williams, § 4765.143—4765.152); T.C.A. (orig. ed.), §§ 14-1414 — 14-1423, §§ 14-10-114 — 14-10-123), were repealed by Acts 2000, ch. 981, § 1, effective July 1, 2000.

71-3-516. Restrictions on license for drop-in center regarding care of school-age children on snow days.

Any license for a drop-in center issued under this part shall specify whether the center is appropriate for handling school-age children on snow days. A drop-in center may not accept any school-age child for care unless the department determines that center is an appropriate and safe location for such children on snow days. The department shall determine whether the center has adequate space for school-age children and shall set a limit on the number of such children that a center may accept on any one day. No child thirteen (13) years of age or older may be cared for by a drop-in center on a snow day. The center shall also provide to the department a list of trained care givers and other staff who are available for emergency calling and shall annually update such list.

History.
Acts 2005, ch. 93, § 2; T.C.A., § 71-3-534.

71-3-517. Development of a written multi-hazard plan to protect children in emergencies.

(a) All persons or entities operating a child care agency as defined in this part, excluding drop-in child care centers and those programs and facilities exempt from licensing as provided in § 71-3-503, shall, in consultation with appropriate local authorities and local emergency management, develop a written multi-hazard plan to protect children in the event of emergencies, including, but not limited to, fires, tornados, earthquakes, chemical spills, and floods. Such persons or entities shall also inform parents and guardians of children attending the child care agency of the plan.

(b) The written plan required pursuant to this section shall include:

(1) Procedures for child care agency staff to notify parents in an emergency;

(2) The development of designated relocation sites and evacuation routes to those sites;

(3) Reunification plans for children and families;

and

(4) Written individualized plans for accommodating a child's special needs in an emergency situation.

(c) The child care agency shall maintain documentation that the emergency plan is reviewed monthly.

(d) All child care agency staff persons shall be trained on the plan annually.

(e) The child care agency shall implement these emergency procedures through timely practice drills to meet local regulations and local emergency services plans and shall maintain documentation of drills for one (1) year. Such drills shall involve the following:

(1) At least one (1) fire drill shall be conducted monthly;

(2) Child care agencies shall alternate drills each month to cover each shift while children are present, including extended care hours;

(3) At least one (1) drill other than fire shall be conducted every six (6) months; and

(4) All drills shall be conducted in such a way as to simulate, as closely as is practical, conditions of a real emergency, with alarms to be utilized and evacuation plans to be practiced.

(f)(1) Emergency telephone numbers for the following entities shall be posted next to all child care agency telephones and shall be readily available to all child care agency staff members:

(A) Fire department;

(B) Police department and sheriff's office;

(C) Nearest hospital emergency room;

(D) Department of children's services child abuse hotline;

(E) Local emergency management agency;

(F) Ambulance or rescue squad;

(G) Poison control center; and

(H) Department of human services child care complaint hotline.

(2) If a generic emergency number, including, but not limited to, 911 service, is operable in the community, it shall also be posted in the manner prescribed in this subsection (f).

(g) All contact information for parents, guardians, and emergency personnel shall be readily available to all child care agency staff, including work, home and cell phone numbers.

History.

Acts 2013, ch. 216, § 1.

71-3-518. Priority on wait list of children with parent or guardian serving on active duty in armed forces.

(a) Unless otherwise prohibited by federal or state law, no child care agency licensed under this part shall place a dependent child on a wait list behind a child without a parent or legal guardian serving on active duty in the armed services of the United States, if the dependent child:

(1) Has a parent or legal guardian that is an active-duty member of the armed services of the United States; or

(2) Has a parent who was killed, died as a direct result of injuries received or has been officially reported as being either a prisoner of war or missing in action while serving honorably as a member of the United States armed forces during a qualifying period of armed conflict or was formerly a prisoner of war or missing in action under such circumstances.

(b) To be eligible under subdivision (a)(2), the dependent child or the legal guardian of the dependent child shall:

(1) Present official certification from the United States government that the parent veteran was killed or died as a direct result of injuries received while serving honorably as a member of the United States armed forces during a qualifying period of armed conflict; or

(2) Present official certification from the United States government that the parent veteran has been officially reported as being a prisoner of war or missing in action while serving honorably as a member of the United States armed forces during a qualifying period of armed conflict or was formerly a prisoner of war or missing in action under such circumstances as appropriate within one hundred and eighty (180) days prior to applying for child care services.

(c) As used in this section, "dependent child", "qualifying period of armed conflict", and "serving honorably" have the same meanings as in § 49-7-102.

History.

Acts 2013, ch. 291, § 1; 2014, ch. 972, § 2.

PART 6

ORPHAN ASYLUMS

71-3-601. Governing board.

All orphan asylums or houses for destitute children, incorporated under the laws of the state, shall be governed by boards of managers, trustees, or directors, which shall consist of twelve (12) or more persons, five (5) or more of whom shall constitute a quorum.

History.

Acts 1885, ch. 92, § 1; Shan., § 4343; Code 1932, § 4573; T.C.A. (orig. ed.), §§ 14-1201, 14-11-101.

71-3-602. Powers over property.

The corporations enumerated in § 71-3-601 may own and hold real and personal property necessary for building, cultivation, and to rent out to raise means to assist in the support of such corporations.

History.

Acts 1885, ch. 92, § 8; Shan., § 4351; Code 1932, § 4580; T.C.A. (orig. ed.), §§ 14-1202, 14-11-102.

71-3-603. Admission of children.

All such asylums or houses at the option of its board may receive or take charge of any destitute orphan or indigent child of either sex, or children of indigent parents, under eighteen (18) years of age, from any part of the state.

History.
Acts 1885, ch. 92, § 3; Shan., § 4345; mod. Code 1932, § 4574; T.C.A. (orig. ed.), § 14-1203; Acts 1984, ch. 663, § 1; T.C.A. (orig. ed.), § 14-11-103.

71-3-604. Control of indigent children.

The children referred to in § 71-3-603 shall be under the exclusive jurisdiction and control of the board until they become eighteen (18) years of age. The board may, in its discretion, require the parents of such indigent children to surrender all right and claim to the control of them, and to consent for the asylum to provide homes for them, by adoption by proper and suitable parties, for the purpose of caring for and educating them, teaching them trades and household duties generally.

History.
Acts 1885, ch. 92, § 3; Shan., § 4346; Code 1932, § 4575; T.C.A. (orig. ed.), §§ 14-1204, 14-11-104.

71-3-605. [Reserved.]

71-3-606. Welfare of child controlling.

No child shall be received into the asylum, or detained in the asylum, except that the welfare of the child may be thereby promoted, nor shall any child be indentured or given in adoption, except that the best interest of the child shall be thereby secured.

History.
Acts 1885, ch. 92, § 4; Shan., § 4347; Code 1932, § 4576; T.C.A. (orig. ed.), §§ 14-1206, 14-11-106.

71-3-607. Control of orphans and foundlings.

In all cases in which orphans or foundling children are placed in any of the orphan homes, whether voluntarily by their parent or parents or guardian or by the order of some competent court or other authority, or whether they come into the care and custody of any such institution as foundlings, the managing board shall have the right to retain the custody of such children until the children are eighteen (18) years of age; provided, that § 71-3-609 applies; and provided further, that such institutions may, within such homes or asylums, provide for such children, or may so provide for them in homes of suitable families outside of such institutions.

History.
Acts 1891, ch. 117, § 1; Shan., § 4353; Code 1932, § 4582; T.C.A. (orig. ed.), §§ 14-1207, 14-11-107.

71-3-608. Penalty for interference with children.

It is a Class B misdemeanor for any person to interfere in any way with any of such children in the control and custody of such homes while they are there or at the homes provided for them by such institutions.

History.
Acts 1891, ch. 117, § 2; Shan., § 4354; Code 1932, § 4583; T.C.A. (orig. ed.), §§ 14-1208, 14-11-108; Acts 1989, ch. 591, § 112.

71-3-609. Petition to take child from home.

At any time after the assumption of control by any of such homes, if the parent or other person, in whom the legal custody of such child would otherwise be, believes such parent or other person entitled to the custody of the child, such person may file a petition in the chancery court of the county in which the home is situated, and set out the facts upon which action is sought, and notice thereof shall be given to such institution, and proof may be taken and the application decided as the chancellor, in the chancellor's sound judgment, may determine, both as to the merits and the adjudication of costs. For this purpose jurisdiction is conferred upon the chancery courts, with the right of appeal.

History.
Acts 1891, ch. 117, § 3; Shan., § 4355; Code 1932, § 4584; T.C.A. (orig. ed.), §§ 14-1209, 14-11-109.

71-3-610. Education of children.

The board shall cause all children over six (6) years of age in such asylum to be instructed in such branches of useful knowledge as may be suited to their years and capabilities, and cause the girls to be taught domestic vocations, such as sewing, mending, knitting, and housekeeping in all its departments. The boys shall be taught such useful trades as the board may direct. All children in such asylums, of sufficient age, shall be taught according to the course of the common schools.

History.
Acts 1885, ch. 92, § 5; Shan., § 4348; Code 1932, § 4577; T.C.A. (orig. ed.), §§ 14-1210, 14-11-110.

71-3-611. Expenses paid by parent or guardian.

Any of such asylums may, at discretion, receive any child placed in its care and keeping by such child's parents or guardian, or those having the child in charge, and may keep and care for the child until the child is eighteen (18) years of age, unless sooner taken away by the request of such child's parent or parents, or those having guardianship or control of the child. The asylum shall not receive any child under this section until its parent or parents, or guardian, or person having the child in charge, shall agree with the officers of the asylum to supply sufficient funds, or such portion of the funds as the board of managers may agree upon, for the maintenance of the child in the asylum during such child's stay, and shall further agree to abide by all rules, bylaws, and requirements of the asylum. Should a child be admitted having a guardian lawfully appointed and qualified, who has money or property of such child under such guardian's control,

such guardian shall be required to pay to the asylum such portion of the child's funds as the guardian may lawfully use, or the guardian may be authorized to use, for the child's support.

History.
Acts 1885, ch. 92, § 7; Shan., § 4350; Code 1932, § 4579; T.C.A. (orig. ed.), §§ 14-1211, 14-11-111.

71-3-612. County contributions to expenses.

The expenses of such asylum shall be met as follows, to wit: at the end of each fiscal year, each of the boards of managers shall make a statement of the financial condition of the asylum under its control, which shall especially show how much the necessary expenses of the asylum exceeded its income, and this excess shall be paid by the several counties that had a child or children in the asylum for any part of the fiscal year; each county shall pay so much per capita according to the number of children from that county in the asylum and the length of time that they were there. Of all these particulars, strict, accurate, and systematic accounts shall be kept by the officers of the board, and when the pro rata of any county shall be thus ascertained and a statement of the pro rata has been brought to the notice of the county mayor or financial agent of any such county, it shall be that person's duty forthwith to draw that person's warrant on the county trustee of the county in payment of the same. No county shall be liable to pay at a greater rate than fifty dollars ($50.00) per capita per annum for each child it had in the asylum, and no county shall pay any expenses of any children of that county unless the child or children be apprenticed to or sent to the asylum by the proper authorities, and by proper orders of the county legislative body.

History.
Acts 1885, ch. 92, § 6; Shan., § 4349; Code 1932, § 4578; impl. am. Acts 1978, ch. 934, §§ 7, 16, 36; T.C.A. (orig. ed.), §§ 14-1212, 14-11-112; Acts 2003, ch. 90, § 2.

Compiler's Notes.
Acts 2003, ch. 90, § 2, directed the code commission to change all references from "county executive" to "county mayor" and to include all such changes in supplements and replacement volumes for the Tennessee Code Annotated.
This section may be affected by § 9-1-116, concerning entitlement to funds, absent appropriation.

PART 7

PROJECT RAP

71-3-701. Project RAP — Creation — Services.

(a) There is created within the department of children's services the responsible adolescent parenting project (also known as "Project RAP").

(b) The project shall include information, programs, counseling, and services:

(1) For teens who are pregnant with, or who have recently had, their first child; and

(2) For foster care teens.

(c) Project RAP may also include information, programs, counseling and services for other teens at high risk of pregnancy. In administering the project, the department shall strive to improve the parenting skills of those Project RAP clients who are pregnant or who are recent first time parents. The department shall also strive to prevent unintended future pregnancies among the total Project RAP client population and to encourage all project participants to pursue and complete educational and vocational opportunities.

History.
Acts 1989, ch. 293, § 1; 1996, ch. 1079, § 182.

71-3-702. Current operation — Expansion.

During fiscal year 1989-1990, the department shall continue to operate Project RAP in Memphis as a model program, as it has since 1986. Beginning July 1, 1990, if and only if funds are specifically allocated in the general appropriations act for the purpose of expanding Project RAP, then the department shall geographically expand Project RAP into additional areas of the state in which there are significant concentrations of first time teen mothers, foster care teens, and other teens at high risk of pregnancy. In implementing such expansion, priority shall be given to establishing Project RAP in each of the state's three (3) grand divisions within those areas in which the project can exercise maximum impact both upon the state's pregnancy rate, among females seventeen (17) years of age and under, and upon taxpayer expenditures for temporary assistance for needy families (TANF), other types of public assistance, and medicaid.

History.
Acts 1989, ch. 293, § 2.

CHAPTER 5

PROGRAMS AND SERVICES FOR POOR PERSONS

Part 1. Medical Assistance Act

SECTION.
71-5-101. Short title.
71-5-102. Purpose.
71-5-103. Part definitions.
71-5-104. Administration by department.
71-5-105. Powers and duties of department — Total number of ICF/MR beds — Certificate of need exemption for DIDD public ICF/MR non-facility beds established pursuant to federal litigation.
71-5-106. Determination of eligibility for medical assistance.
71-5-134. Rules and regulations — Funding medical assistance.
71-5-193. Children's mental health care — Development of interagency projects and programs.

PART 1

MEDICAL ASSISTANCE ACT

71-5-101. Short title.

This part may be cited as and shall be known as the "Medical Assistance Act of 1968."

History.
Acts 1968, ch. 551, § 1; T.C.A., §§ 14-1901, 14-23-101.

Compiler's Notes.
For transfer of certain TennCare-related functions from the department of finance and administration to the department of health, see Executive Order No. 11 (January 3, 1997).

For transfer of the TennCare program and its related functions and administrative support from the department of health to the department of finance and administration, see Executive Order No. 23 (October 19, 1999).

Acts 2003, ch. 390, § 1, provided that the TennCare Bureau shall submit a report on January 15, 2004, to the general assembly outlining the viability of the TennCare program.

71-5-102. Purpose.

(a) The purpose of this part is to make possible medical assistance to those recipients determined to be eligible under this chapter to receive medical assistance that conforms to the requirements of Title XIX of the Social Security Act, compiled in 42 U.S.C. § 1396 et seq., and the regulations promulgated pursuant to Title XIX. Medical assistance pursuant to this part may also be provided pursuant to any federal waiver received by the state that waives any or all of the provisions of Title XIX or pursuant to any other applicable federal law to the extent adopted by means of an amendment to the required Title XIX state plan.

(b)(1) Except as may be required by federal law or regulation, it is hereby declared to be the public policy of the state of Tennessee that participation in the TennCare program, or its successor programs, is not an entitlement and is conditional upon, among other things, specific appropriations for the program.

(2) Not less than annually, the governor shall recommend and the general assembly may, through provisions of the general appropriations act, prioritize the funding for the TennCare program in a manner that specifies that funds are available to:

(A) Continue coverage for enrollees currently in the program;

(B) Extend coverage to potential new enrollees, or categories of new enrollees, at current, higher or lower income levels;

(C) Withdraw coverage from all enrollees not eligible for medicaid; or

(D) Reimburse medical care providers for costs unreimbursed by managed care organizations out of state funds appropriated for that purpose or such federal funds as would be permitted to be used for that purpose under the terms of the TennCare waiver.

(c) Continuation, extension and withdrawal of coverage for enrollees in the TennCare program shall be determined in accordance with such priorities, if any, established by the general assembly in the general appropriations act.

(d) The bureau of TennCare shall have the authority to develop and implement initiatives or program modifications to control the costs of the TennCare program to the extent permitted under federal law and the TennCare waiver. Such cost-saving measures may include, but are not limited to, the elimination of covered benefits or limitations on the scope, intensity, or duration of such benefits; implementation of cost sharing requirements for enrollees, including the medicaid population; increases in cost sharing requirements for the expansion population; enforcement of cost sharing requirements through denial of service for failure to meet co-payment requirements with alternative access to medically necessary care through established safety net providers; enforcement of collection of required co-payments by providers; reassignment of enrollees into different eligibility categories; restrictions on eligibility for non-mandatory medicaid or waiver expansion categories; and the elimination from TennCare eligibility of some or all of the non-mandatory medicaid or waiver expansion categories. The bureau of TennCare may implement a premium-assistance initiative for persons disenrolled from TennCare. The bureau of TennCare shall also be authorized, in establishing or modifying benefits or cost sharing requirements, to define, through rules and regulations, categories of eligible enrollees who may be exempted from some or all benefit limits or cost sharing requirements, along with any requirements that must be met by such enrollees to prove or maintain exempted status. The bureau of TennCare shall have all such authority to control costs notwithstanding any other state law to the contrary.

History.
Acts 1968, ch. 551, § 2; 1973, ch. 276, § 1; T.C.A., § 14-1902; Acts 1982, ch. 730, § 1; T.C.A., § 14-23-102; Acts 1993, ch. 358, § 1; 2002, ch. 880, § 3; 2004, ch. 673, § 1.

Compiler's Notes.
Acts 2002, ch. 880, § 1 provided that the act is, and may be cited as, "The TennCare Reform Act of 2002".

Acts 2002, ch. 880, § 5 provided that any costs associated with the implementation of that act, except as to the costs of the medicaid fraud control unit of the Tennessee bureau of investigation, shall be paid from existing funds appropriated to the TennCare program.

Acts 2002, ch. 880, § 8 provided that: "(a) The fiscal review committee, in consultation with the bureau of TennCare and the select oversight committee on TennCare (repealed), shall study the feasibility of outsourcing eligibility determinations and reverifications for the TennCare expansion population, including requesting information from potential contractors. It is the legislative intent that information from interested potential contractors be received by October 15, 2002.

"(b) The fiscal review committee, in consultation with the bureau of TennCare and the select oversight committee on TennCare (repealed), shall evaluate the responses from potential contractors and shall, no later than January 1, 2003, report its findings to the general assembly, the commissioner of finance and administration, the comptroller of the treasury and the governor, relative to whether eligibility and reverification services should be contracted and procured through competitive proposals."

Acts 2002, ch. 880, § 20 provided that the provisions of that act shall only apply so long as the state operates the TennCare program as a statewide waiver with an expansion population of uninsureds and uninsurables under Section 1115 of the federal Social Security Act [42 U.S.C. § 1315]. If at any time the state ceases to operate under such a waiver, then the provisions of the act shall not be applied and enforcement of such provisions shall be terminated.

Acts 2004, ch. 673, § 29 provided that to effectuate the provisions of the act, the commissioner of finance and administration shall have the authority to promulgate any necessary rules and regulations not otherwise provided for in this act. All rules and regulations provided for in this act are authorized to be promulgated as public necessity rules (now emergency rules) pursuant to § 4-5-209 (now § 4-5-208). All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

71-5-103. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Adult behavioral health services for the seriously and persistently mentally ill" means behavioral health services for individuals nineteen (19) years of age and older, including, but not limited to, assessment, evaluation, diagnostic, therapeutic intervention, case management, psychiatric medication management, labs related to medication management and pharmacy assistance and coordination;

(2) "Adult emergency dental services" means dental services for individuals twenty-one (21) years of age and older to treat a dental condition that manifests itself by symptoms of sufficient severity, including severe pain, infection or trauma, that:

(A) A prudent layperson who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate dental attention to potentially result in:

(i) Placing the person's, or with respect to a pregnant woman, her unborn child's, health in jeopardy;

(ii) Serious impairment of bodily functions;

(iii) Serious dysfunction of any bodily organ or part; or

(B) Includes treatment of dental condition necessary for an individual to receive essential medical treatment, including, but not limited to, extraction of abscessed or periodontally involved teeth prior to an individual receiving a prosthetic heart valve, a donor organ, other replacement prosthetic devices or head and neck radiation therapy;

(3) "Applicant" means any person who has applied for benefits under this part;

(4) "County office" means the county office of the state department of human services in the county wherein the applicant resides;

(5) "Department" means the department of health;

(6) "Home-based and community-based services" means any of the following supportive services and systems, as approved by the health care financing administration (HCFA), that are provided to older persons and individuals with disabilities to remain independent and avoid inappropriate institutionalization and that help individuals maintain physical, social, and spiritual independence in the least restrictive environment:

(A) Living environments and supportive services, e.g., assisted care living facilities, homes for the aged and assistive technology;

(B) Personal care, homemaker and chore services;

(C) Adult day services;

(D) Congregate and home delivered meals;

(E) Home care organizations;

(F) Rehabilitative care;

(G) Assisted transportation or mobility services; and

(H) Support services to caregivers, including hospice and respite care;

(7) "Medical assistance" means payment of the cost of care, services and supplies necessary to prevent, diagnose, correct or cure conditions in the person that cause acute suffering, endanger life, result in illness or infirmity, interfere with the person's capacity for normal activity, or threaten some significant handicap and that are furnished an eligible person in accordance with this part and the rules and regulations of the department. Such care, services and supplies include services of qualified practitioners licensed under the laws of this state;

(8) "Medically needy" means a class or classes of persons whose present income and financial assets are not sufficient to meet their present liabilities for health costs; provided, that the department of health or the department of human services, as may be designated by the governor, may through regulation establish an income limitation as well as other criteria, such as cash, savings, intangible assets and real and personal property for the determination of "medically needy." To the extent of any federal waiver received by the state that waives any or all of the provisions of Title XIX, compiled in 42 U.S.C. § 1396 et seq., or pursuant to any other federal law as adopted by amendment to the required Title XIX state plan, "medically needy" means those persons whose income and assets are insufficient to purchase health insurance and those persons who are uninsurable as a result of an existing or prior medical condition;

(9) "Mobile dental services" means an intact comprehensive dental services unit operated on-site at a long-term care facility, interfacing with the facility's common electrical and water sources;

(10) "Recipient" means any person who has been determined eligible to receive benefits under this part and who has received such benefits;

(11) "Resident" means any individual who is living within the state, with the intent that such person's permanent home be within the state, and not temporarily. Temporary absences from the state shall not cause a person to lose residential status;

(12) "Responsible parties" means the following representatives and relatives of recipients of medical assistance pursuant to this part who are not financially eligible to receive benefits under this part: parents, spouses, children, and guardians;

(13) "Title XIX" means Title XIX of the Social Security Act as amended (P.L. 89-97), compiled in 42 U.S.C. § 1396 et seq., administered by the United States department of health and human services or its successor in office and including amendments of Title XIX and other federal social security laws replacing that title in whole or in part; and

(14) "Vendor" means any person, institution, agency, or business concern providing medical care services or goods authorized under this part, holding, where applicable, a current valid license to provide such services or to dispense such goods; or any health maintenance organization, as defined in title 56, chapter 32, with which the state has entered into a contract based on a per capita rate of payment for services provided under this part.

History.

Acts 1968, ch. 551, § 3; 1973, ch. 276, § 2; impl. am. Acts 1975, ch. 219, § 1 (a, b); Acts 1979, ch. 177, § 2; T.C.A., § 14-1903; Acts 1981, ch. 286, § 1; 1982, ch. 730, §§ 2, 3; T.C.A., § 14-23-103; Acts 1993, ch. 358, § 2; 1998, ch. 1093, § 3; 2002, ch. 717, § 1; 2008, ch. 1064, § 1; 2009, ch. 95, § 1.

Compiler's Notes.

For the transfer of TennCare from the department of finance and administration to the department of health, See Executive Orders Nos. 1 (January 26, 1995) and 11 (January 7, 1997).

For transfer of the TennCare program and its related functions and administrative support from the department of health to the department of finance and administration, see Executive Order No. 23 (October 19, 1999).

For the Preamble to the act regarding the behavioral health safety net of Tennessee, please refer to Acts 2009, ch. 95.

71-5-104. Administration by department.

(a) The department of health is hereby designated as the department to administer this part as provided in Title XIX of the Social Security Act as amended (P.L. 89-97), compiled in 42 U.S.C. § 1396 et seq., or as provided by any federal waiver received by the state that waives any or all of the provisions of Title XIX or pursuant to any other federal law as adopted by amendment to the required Title XIX state plan.

(b) The bureau of TennCare shall notify each member of the general assembly via electronic mail or other type of electronic communication when it:

(1) Proposes a change in services or reimbursement that affects more than two thousand five hundred (2,500) beneficiaries; or

(2) Proposes a change that will affect current or future appropriations made by the general assembly in any amount that is greater than ten million dollars ($10,000,000).

(c) The bureau of TennCare shall report at least quarterly to members of the Tennessee general assembly via electronic mail or other type of electronic communication on the following:

(1) Status of TennCare reform and improvements;

(2) Number of recipients on TennCare and costs to the state;

(3) Viability of MCOs and providers in the TennCare program; and

(4) Success of fraud detection and prevention.

(d) The bureau of TennCare shall concurrently transmit to members of the general assembly via electronic mail or other type of electronic communication TennCare's annual budget proposal when presented in a public forum.

History.

Acts 1968, ch. 551, § 4; 1973, ch. 276, § 3; impl. am. Acts 1975, ch. 219, § 1 (a), (b); T.C.A., § 14-1904; Acts 1982, ch. 730, § 4; T.C.A., § 14-23-104; Acts 1993, ch. 358, § 3; 2010, ch. 1079, § 3.

Compiler's Notes.

For the transfer of TennCare from the department of finance and administration to the department of health, See Executive Orders Nos. 1 (January 26, 1995) and 11 (January 7, 1997).

For transfer of the TennCare program and its related functions and administrative support from the department of health to the department of finance and administration, see Executive Order No. 23 (October 19, 1999).

71-5-105. Powers and duties of department — Total number of ICF/MR beds — Certificate of need exemption for DIDD public ICF/MR non-facility beds established pursuant to federal litigation.

(a) The department shall:

(1) Supervise the administration of medical assistance for eligible recipients;

(2) Make uniform rules and regulations, not inconsistent with the law, for implementing, administering and enforcing this part in an efficient, economical and impartial manner;

(3)(A) Establish, in consultation with the comptroller of the treasury, rules and regulations for the determination of payment for hospitals, and other health care providers who contract with the department for the care of persons eligible for assistance pursuant to this part;

(B) Establish, in consultation with the comptroller of the treasury and the Tennessee Health Care Association, rules and regulations for the determination of the per diem cost for those institutions or distinct parts of institutions defined as an "intermediate care facility" by the rules and regulations of the department and as designated and certified by the department. The method of cost determination shall include depreciation on buildings, equipment, and fixtures, and interest expense as allowable items of cost. The per diem cost may take into consideration the kinds, levels, and quantities of services provided to the recipients by the institution; the cost of providing such services; and the levels and types of patient care required for recipients. The commissioner may establish the maximum amount to be paid to such institutions, consistent with the requirements of federal law;

(C) Establish, in consultation with the comptroller of the treasury and the Tennessee Health Care Association, rules and regulations for the determination of the per diem cost for those institutions or distinct parts of institutions defined as a "skilled nursing facility" by the rules and regulations of the department, and as designated and certified by the department. The per diem cost may conform to the principles of reimbursement for provider cost under Title XVIII of the Social Security Act as amended, Public Law 89-97, compiled in 42 U.S.C. § 1395 et seq., and applicable regulations. The commissioner may establish the maximum amount to be paid to such institutions, consistent with the requirements of federal law;

(D) Upon passage of any law authorizing the promulgation of rules establishing an acuity-based reimbursement methodology for nursing facility care, the per diem cost reimbursement methodology set forth in subdivisions (a)(3)(B) and (C) shall be phased out in accordance with such regulations establishing an acuity-based reimbursement methodology, and shall be inapplicable upon the full implementation of the acuity-based reimbursement methodology;

(4) Cooperate with the appropriate federal department in any reasonable manner as may be necessary to qualify for federal aid in connection with the medical assistance program;

(5) Within sixty (60) days after the close of each fiscal year, prepare and print an annual report, which shall be submitted to the governor and members of the general assembly. This report shall include a full account of the operations and the expenditures of all funds under this part, adequate and complete statistics divided by counties about all medical assistance within the state, rules and regulations of the department promulgated to carry out this part, and such other information as it may deem advisable;

(6) Prepare or have prepared and release a summary statement monthly showing by counties the amount paid under this part and the total number of persons assisted;

(7) Establish and enforce safeguards to prevent unauthorized disclosures or improper use of the information contained in applications, reports of investigations and medical examinations, and correspondence in the individual case records of recipients of medical assistance;

(8) Furnish information to acquaint needy persons and the public generally with the plan for medical assistance of this state;

(9) Cooperate with agencies in other states in establishing reciprocal agreements to provide for payment of medical assistance to recipients who have moved to another state, consistent with this part and of Title XIX, compiled in 42 U.S.C. § 1396 et seq., as amended;

(10) Contract, to the extent feasible, with one (1) or more contractors or fiscal intermediaries, or both, to provide or arrange services under this part. All such contracts shall be procured in accordance with the requirements of title 12, chapter 4, part 1; provided, that the department shall be required to solicit competitive proposals for contracts with fiscal intermediaries;

(11) Increase the coverage under medicaid for inpatient hospital days from fourteen (14) days to twenty (20) days, as provided for in the public health regulations of the United States department of health and human services, health care financing administration (HCFA). Coverage for inpatient hospital days shall be unlimited for any infant under the age of one (1) year to the extent required by federal law or regulations. The commissioner is further directed to promulgate a rule establishing a system of prospective reimbursement, targeted reimbursement, diagnosis-related groups, other method of reimbursement related to diagnosis, or other method of reimbursement pursuant to any federal waiver that waives any or all of the provisions of Title XIX, compiled in 42 U.S.C. § 1396 et seq., that the state may receive or pursuant to any other federal law as adopted by amendment to the required Title XIX state plan, at which time such mechanism shall be used to determine the number of inpatient hospital days instead of the twenty-day limitation provided in this subdivision (a)(11); and

(12) Notwithstanding any law to the contrary, assist the council on children's mental health care in developing a plan that will establish demonstration sites in certain geographic areas where children's mental health care is child-centered, family-driven, and culturally and linguistically competent and that provides a coordinated system of care for children's mental health needs in this state.

(b)(1) The total number of beds in private for-profit and private not-for-profit intermediate care facilities for persons with mental retardation (ICF/MR) facilities shall not exceed a total maximum number of six hundred sixty-eight (668). In compliance with the certificate of need process, private for-profit and private not-for-profit ICF/MR beds may be transferred from one location to another but the total number of such beds shall not exceed six hundred sixty-eight (668).

(2) Beginning July 1, 2006, the total number of beds in ICF/MR facilities shall increase by forty (40) beds per year for the next four (4) years, resulting in a maximum of eight hundred twenty-eight (828) beds by July 1, 2009. Only providers that have been providing services to persons with developmental disabilities under contract with the state for at least five (5) years shall be eligible to apply for these new beds. These new beds shall be initially filled by persons exiting the developmental centers, and upon the death or discharge of the person who exited the developmental center, the bed may be filled by individuals currently enrolled in one of the home and community based services (HCBS) waivers for individuals with intellectual disabilities or the waiting list for individuals with intellectual disabilities, subject to the individual's freedom of choice and pursuant to a process established and administered by the department of intellectual and developmental disabilities (DIDD) in order to ensure that such placement is the most integrated and cost-effective setting appropriate. Providers may refuse persons based on needs compatibility with the total mix of persons in the facility. If fewer than four (4) persons transitioning from a developmental center as part of the developmental center closure have selected a provider, the remaining beds necessary to establish the four-person home may be filled by individuals currently enrolled in one of the HCBS waivers for individuals with intellectual disabilities or the waiting list for individuals with intellectual disabilities, subject to the individual's freedom of choice and pursuant to a process established and administered by DIDD in order to ensure that such placement is the most integrated and cost-effective setting appropriate. DIDD shall do everything possible to provide referrals for these new beds. DIDD shall demonstrate a commitment to ensuring the individual's freedom of choice and ensure that every eligible service recipient is fully informed of all services available to them, including community ICF/MR facilities and the specialized services they provide.

(3) DIDD is to appoint a nine-person taskforce to review oversight, utilization, and future need for

ICF/MR services and make recommendations to the general assembly and governor by June 30, 2007. Three (3) of the members of the taskforce shall be appointed by the DIDD from a list of persons provided by Tennessee Community Organizations (TNCO), and three (3) of the members shall be appointed by DIDD from a list of persons provided by ARC of Tennessee. The remaining three (3) members shall be employees of DIDD or other state agencies. DIDD shall designate one (1) of the members as chair of the taskforce.

(c) Notwithstanding any authority to the contrary, DIDD public ICF/MR non-facility beds established pursuant to federal litigation settlements or orders arising out of the cases *United States v. State of Tennessee*, 798 F. Supp. 483; 1992 U.S. Dist. LEXIS 14004 (W.D. Tenn. 1992), or *People First of Tennessee, et al., v. Clover Bottom Developmental Center, et al.*, NO. 00-5342 (Docket) (C.A.6 Mar. 22, 2000), shall be exempt from all requirements and processes for the application and granting of certificates of need as set forth in § 68-11-1607. The establishment of all private ICF/MR non-facility beds remains subject to certificate of need requirements and processes.

History.

Acts 1968, ch. 551, § 5; T.C.A., § 14-1905; Acts 1982, ch. 730, § 5; 1984, ch. 787, § 9; 1986, ch. 831, § 1; 1986, ch. 884, § 1; T.C.A., § 14-23-105; Acts 1989, ch. 45, § 1; 1989, ch. 296, § 1; 1992, ch. 903, § 1; 1993, ch. 358, § 4; 1997, ch. 478, § 3; 2006, ch. 761, § 1; 2007, ch. 307, § 1; 2008, ch. 1062, § 11; 2008, ch. 1190, § 19; 2009, ch. 458, § 1; 2009, ch. 477, § 1; 2010, ch. 1100, § 139; 2013, ch. 239, § 1; 2016, ch. 630, § 1.

Compiler's Notes.

Acts 1984, ch. 787, § 14, provided "Rules and regulations of the comptroller and other departments of state government affected by this act shall remain in effect until subsequently repealed. Rules and regulations promulgated hereunder may be initially promulgated as public necessity rules (now emergency rules) pursuant to Tennessee Code Annotated, § 4-5-209 (now § 4-5-208)."

For the transfer of TennCare from the department of finance and administration to the department of health, See Executive Orders Nos. 1 (January 26, 1995) and 11 (January 7, 1997).

For transfer of the TennCare program and its related functions and administrative support from the department of health to the department of finance and administration, see Executive Order No. 23 (October 19, 1999).

Acts 2002, ch. 844, §§ 1-3 provided that:

"The fiscal review committee is directed to study: (1) The need for placement of additional beds at private community-based, not-for-profit ICF/MR facilities; (2) Current rates for payment of costs in ICFs/MR and whether current methodology and procedures to establish such rates are appropriate and adequate to insure the lowest and most cost-effective services; 3) Administrative oversight of ICFs/MR facilities to assess adequacy of control to insure cost-effective service delivery and appropriate programmatic quality control; and (4) The role of ICFs/MR in the overall system of services and supports, including admissions and discharges; and to make appropriate legislative proposals to implement any recommendations the committee determines to be beneficial to the state of Tennessee and its citizens. The committee shall specifically consider the necessity of adding beds to certain facilities in light of the costs of such additions. The committee shall also study whether additional capacity should be added to other forms of housing such as supported living and the effects of changes on developmental disability centers.

"The departments of health and mental health and developmental disabilities and the division of mental retardation services shall provide assistance to the fiscal review committee upon request of the chair.

"The fiscal review committee shall timely report its findings and recommendations, including any proposed legislation or interim reports, to the One Hundred Third General Assembly no later than February 15, 2003."

For the Preamble to the act regarding to the mental health needs of Tennessee's children and youth, please refer to Acts 2008, ch. 1062.

Acts 2008, ch. 1190, § 20 provided that, except as otherwise specified, the commissioner is authorized to promulgate rules and regulations to effectuate the purposes of the act. The rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

For the Preamble to the act regarding long-term care, please refer to Acts 2008, ch. 1190.

Acts 2009, ch. 477, § 1, directed the code commission to change all references from "division of mental retardation services" to "division of intellectual disabilities services" and to include the changes in supplements and replacement volumes for the Tennessee Code Annotated.

71-5-106. Determination of eligibility for medical assistance.

(a)(1) The departments of health and human services, as may be designated by the governor, shall make the determination of eligibility under this part, subject to approval of the finance, ways and means committees of the senate and the house of representatives and the health and welfare committee of the senate and the health committee of the house of representatives. Such determination of eligibility may be accomplished through contractual agreement with agencies of the federal government. Eligibility for assistance shall be determined in a manner that will ensure that medical assistance is provided, within the limits of available resources subject to federal financial participation, to all persons who, although ineligible for supplementary security income (SSI), complied under Title XVI of the Social Security Act, 42 U.S.C. § 1381 et seq., or are medically needy.

(2)(A) A notice that awards medicaid benefits shall include the following statement:

"A person with both medicare and medicaid does not usually need other health insurance. Did you buy a medicare supplement policy after November 4, 1991? If so, you can have the insurance company put your policy and your payments on hold. The insurance company can do this for up to twenty-four (24) months while you are on medicaid. If you lose medicaid during the twenty-four-month period, you can get your policy back.

"To put your policy on hold, contact your insurance company within ninety (90) days of when you get medicaid. To get your policy back, you must tell your insurance company within ninety (90) days after you lose medicaid."

(B) A notice that terminates medicaid benefits shall include the following statement:

"Did you have medicare supplement insurance that you put on hold while you had medicaid? You may be able to get your policy back if you have put it on hold less than two (2) years ago. Contact your insurance company within ninety (90) days after you lose medicaid. Tell the insurance company that you want your policy reinstated."

(b) In determining the eligibility of an individual for benefits under this chapter, resources that have been

previously owned and transferred by the individual, or such individual's spouse, shall be treated in a manner consistent with Title XIX of the Social Security Act, compiled in 42 U.S.C. § 1396 et seq.

(c) Any transaction described in subsection (b) shall be presumed to have been for the purpose of establishing eligibility for benefits or assistance under this part, unless such individual or eligible spouse furnishes convincing evidence to establish that the transaction was exclusively for some other purpose.

(d) For purposes of subsection (b), the value of such a resource or interest shall be the fair market value of such resource or interest at the time it was sold or given away, less the amount of compensation received for such resource or interest, if any.

(e) In the event that any resource, or interest in any resource, is given away or sold for less than fair market value by a person holding a power of attorney by the owner of the resource or interest, such resource or interest shall not be counted as a resource to the owner of the property pursuant to subsections (b)-(d) under the following circumstances:

(1) The power of attorney was not executed for the purpose of establishing or continuing medicaid eligibility;

(2) The owner of the property has, at the time of the transfer, neither actual nor constructive knowledge of the transfer or is unable because of mental or physical incapacity to take reasonable and necessary steps to prevent such sale or transfer.

(f) If any resource or interest in any resource is given away or sold for less than fair market value by a person holding a power of attorney by the owner of such resource, the sale or gift shall be set aside by a court of competent jurisdiction as being in defraud of the state upon motion of the state of Tennessee or of any party representing the owner of the resource, unless the person holding the power of attorney proves by a preponderance of the evidence that the sale or gift was exclusively for some other purpose than the establishment or continuance of medicaid eligibility.

(g) In addition to the requirements of subsection (f), the person exercising the power of attorney and the person to whom the resource is given or sold for less than fair market value shall be jointly and severally liable to the state of Tennessee for any costs incurred by it in providing medicaid benefits to the owner of the resource, until such time as the conveyance is set aside, for any costs, including attorney fees, court costs, and any other related expenses, incurred by it in having the conveyance set aside, and for any losses incurred as a result of any damage, destruction, expenditure, waste, transfer of the resources or other act of the persons involved that diminishes the value of the resource. Such liability shall be limited to the actual value of the resource.

(h) In the event that a person otherwise eligible for medicaid has filed an action in court to set aside a transfer for less than value because of fraud, duress, trick or otherwise, such person shall be or shall remain eligible, or both, and the state of Tennessee shall have recourse under subsections (f) and (g) to set aside the transfer and recover.

(i) In addition to the other categories of eligibility under this section, there shall be a category of medical assistance eligibility for those children who:

(1)(A) Were born after September 30, 1967;

(B) Are eighteen (18) years of age or younger; and

(C) Are in intact families that meet the TANF income and resource requirements; or

(2) As provided in Title IV of the Social Security Act, compiled in 42 U.S.C. § 601 et seq., have been determined to be a child with special needs, for whom there is in effect an adoption assistance agreement between the department of children's services and an adoptive parent or parents, and who the department of children's services has determined cannot be placed with an adoptive parent or parents without medical assistance because such child has special needs for medical, mental health, or rehabilitative care.

(j) Subsections (b)-(j) shall not limit the ability of the state to extend medical assistance to persons who are medically needy pursuant to any federal waiver received by the state that waives any or all of the provisions of Title XIX, compiled in 42 U.S.C. § 1396 et seq., or pursuant to any other federal law as adopted by amendment to the required Title XIX state plan.

(k) Effective January 1, 1998, if the actual enrollment of non-previously enrolled children under eighteen (18) years of age that began on April 1, 1997, has not reached seventy-five percent (75%) of anticipated enrollment level of fifty thousand (50,000) children, the commissioner of health shall offer enrollment in the Title XIX waiver program, TennCare, to children under eighteen (18) years of age whose family income is below two hundred percent (200%) of the federal poverty level schedule in effect for calculation of TennCare premiums. Such offer of enrollment in the TennCare program shall be made in accordance with TennCare promulgated rules and regulations. It is the legislative intent that this section be implemented only to the extent that it is determined to be consistent with the terms, conditions and eligibility criteria of the TennCare waiver as approved by the United States department of health and human services and that state and federal funding is available for such purpose.

(*l*) Beginning January 1, 2003, the bureau of TennCare or its designee shall determine eligibility for TennCare on an annual basis as follows:

(1) All non-medicaid eligible TennCare enrollees will have the responsibility to complete an eligibility process each year; in the absence of re-application and completion of the process, coverage will expire;

(2) Upon notification by the bureau of TennCare, the enrollee must submit application for continuation of eligibility within ninety (90) days; once an application has been timely submitted, the enrollee must provide all required documentation to verify continued eligibility in accordance with TennCare rules and regulations;

(3) Notification to the enrollee is presumed when a notice is mailed to the last known address;

(4) Lack of receipt of the notification does not excuse the responsibility of the enrollee to submit an

application and provide documentation for continuation of eligibility as required by TennCare rules and regulations if the enrollee has changed addresses and failed to notify the bureau of TennCare or its designee; and

(5) Failure of the enrollee to contact the bureau of TennCare or its designee concerning a change in address relieves the bureau of responsibility for contacting the enrollee.

(m) To the extent permitted by federal law, the state may impose a reasonable fee for costs of eligibility determinations for applicants applying for medical assistance as part of the medically eligible expansion population under the TennCare waiver.

(n) In the TennCare waiver expansion population, except for persons medically eligible as uninsurable persons, enrollment shall not be permitted for individuals from households with incomes of greater than two hundred fifty percent (250%) of federal poverty levels.

(o) Except as may be required by federal law or the TennCare waiver, no person shall be eligible to receive TennCare benefits, except employee health insurance subsidy payments, as part of the TennCare waiver expansion population if such person is enrolled in a health insurance plan as such coverage is defined in TennCare rules and regulations, or if such person is eligible for participation in medicare or group health insurance offered through an employer or family member's employer, or COBRA coverage.

(p) All determinations of eligibility for persons medically eligible as uninsurable in the TennCare waiver's expansion population shall be made on the basis of health conditions that prevent the person from obtaining health insurance. Such a determination will be based upon a review of medical records and information in accordance with TennCare rules and regulations.

(q) To the extent permitted by the terms of relevant court orders and decrees, any applicable federal waiver under Title XIX of the federal Social Security Act, compiled in 42 U.S.C. § 1396 et seq., or any other federal law, the bureau of TennCare may not remove persons from eligibility for or participation in medical assistance provided pursuant to this chapter for reasons relating to restricting eligibility or enrollment for fiscal or other reasons that are not required by federal law until the bureau has complied with both of the following:

(1) The bureau has verified at the time of application the validity of the social security number of every person enrolled in the medical assistance program provided pursuant to this chapter with appropriate federal databases in order to determine whether persons who are not lawful residents of the United States are present in the program, or are otherwise fraudulent applicants; and

(2) Removed from the program all such ineligible persons who are current recipients in the program but are not lawful residents of the United States, or are otherwise fraudulent applicants.

(r)(1) An individual who is an inmate of a public institution shall have eligibility for medical assistance suspended but not terminated during periods of actual incarceration.

(2) An individual who is an inmate of a public institution shall be eligible for temporary reinstatement of medical assistance for care received outside of a jail or correctional facility in a hospital or other health care facility for more than twenty-four (24) hours.

(3) A public institution may make efforts to establish eligibility for or renew assistance for such individuals prior to their release from the public institution.

History.

Acts 1968, ch. 551, § 6; 1973, ch. 276, § 4; 1974, ch. 440, § 1; T.C.A., § 14-1906; Acts 1981, ch. 315, §§ 1-3; 1981, ch. 476, § 1; 1982, ch. 714, § 1; 1985, ch. 430, § 2; 1986, ch. 845, § 1; T.C.A., § 14-23-106; Acts 1987, ch. 332, § 1; 1989, ch. 143, § 1; 1991, ch. 406, § 1; 1992, ch. 799, § 1; 1993, ch. 358, §§ 5, 6; 1997, ch. 495, § 1; 1998, ch. 1097, § 29; 2002, ch. 880, § 2; 2004, ch. 673, §§ 4-8; 2009, ch. 429, § 1; 2013, ch. 236, § 86; 2014, ch. 926, § 1.

Compiler's Notes.

Section 2 of Acts 1982, ch. 714 provides "that nothing contained in this Act shall be construed to invalidate any eligibility determination made on or after July 1, 1981, in accordance with Public Chapter 315 of the Public Acts of 1981 and the regulations promulgated pursuant thereto."

This section may be affected by § 9-1-116, concerning entitlement to funds, absent appropriation.

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), P.L. 99-272, § 9401, referred to in this section, is codified in 42 U.S.C. §§ 1396a and 1396b.

For the transfer of TennCare from the department of finance and administration to the department of health, See Executive Orders Nos. 1 (January 26, 1995) and 11 (January 7, 1997).

For transfer of the TennCare program and its related functions and administrative support from the department of health to the department of finance and administration, see Executive Order No. 23 (October 19, 1999).

Acts 2002, ch. 880, § 1 provided that the act is, and may be cited as, "The TennCare Reform Act of 2002".

Acts 2002, ch. 880, § 5 provided that any costs associated with the implementation of that act, except as to the costs of the medicaid fraud control unit of the Tennessee bureau of investigation, shall be paid from existing funds appropriated to the TennCare program.

Acts 2002, ch. 880, § 8 provided that: "(a) The fiscal review committee, in consultation with the bureau of TennCare and the select oversight committee on TennCare (repealed), shall study the feasibility of outsourcing eligibility determinations and re-verifications for the TennCare expansion population, including requesting information from potential contractors. It is the legislative intent that information from interested potential contractors be received by October 15, 2002.

"(b) The fiscal review committee, in consultation with the bureau of TennCare and the select oversight committee on TennCare (repealed), shall evaluate the responses from potential contractors and shall, no later than January 1, 2003, report its findings to the general assembly, the commissioner of finance and administration, the comptroller of the treasury and the governor, relative to whether eligibility and re-verification services should be contracted and procured through competitive proposals."

Acts 2002, ch. 880, § 20 provided: that the provisions of that act shall only apply so long as the state operates the TennCare program as a statewide waiver with an expansion population of uninsureds and uninsurables under Section 1115 of the federal Social Security Act [42 U.S.C. § 1315]. If at any time the state ceases to operate under such a waiver, then the provisions of the act shall not be applied and enforcement of such provisions shall be terminated.

Acts 2004, ch. 673, § 29 provided that to effectuate the provisions of the act, the commissioner of finance and administration shall have the authority to promulgate any necessary rules and regulations not otherwise provided for in this act. All rules and regulations provided for in this act are authorized to be promulgated as public necessity rules (emergency rules) pursuant to § 4-5-209 (now § 4-5-208). All such rules and regulations shall be promulgated in accordance with the

provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

71-5-134. Rules and regulations — Funding medical assistance.

The commissioner of finance and administration is authorized to promulgate rules and regulations to effectuate the purposes of the amendments to §§ 71-5-102 — 71-5-106 by Acts 1993, ch. 358. All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

History.
Acts 1993, ch. 358, § 7; 2007, ch. 505, §§ 1, 2.

71-5-193. Children's mental health care — Development of interagency projects and programs.

The department shall involve the council in the development of interagency projects and programs, whether state or federally funded, related to children's mental health care, except where otherwise prohibited by state or federal law.

History.
Acts 2008, ch. 1062, § 12.

Compiler's Notes.
Former § 71-5-193 (Acts 2002, ch. 880, § 4), concerning the establishment of a TennCare advisory board, was repealed by Acts 2003, ch. 410, § 1, effective June 23, 2003.
For the Preamble to the act regarding to the mental health needs of Tennessee's children and youth, please refer to Acts 2008, ch. 1062.

CHAPTER 6

PROGRAMS AND SERVICES FOR ABUSED PERSONS

Part 2. Family Violence Shelters and Child Abuse Prevention Services

SECTION.
71-6-201. Programs established — Funding.
71-6-202. Part definitions.
71-6-203. Administration of programs.
71-6-204. Incorporation, taxation and reporting prerequisites for receiving funds.
71-6-205. Prerequisites to receiving funds for shelters or shelter services.
71-6-206. Prerequisites to receiving funds for child abuse prevention services.
71-6-207. Legislative intent.
71-6-208. Shelter locations privileged — Service of papers or process.

PART 2

FAMILY VIOLENCE SHELTERS AND CHILD ABUSE PREVENTION SERVICES

71-6-201. Programs established — Funding.

(a) There are hereby established programs for the establishment and funding of family violence shelters and shelter services and child abuse prevention services. The program for the establishment of family violence shelters and shelter services shall be administered by the department of finance and administration. The program for the establishment of child abuse prevention services shall be administered by the department of children's services. Any reference to the department of human services in any existing statute, regulation, executive order, or contract relating to the administration of these programs shall be deemed to be a reference to the department that has jurisdiction over these programs pursuant to this section. This section does not change the agencies designated to receive certain reports under § 71-6-204.

(b) Funding for such programs shall be limited to the amounts provided in the general appropriations act.

History.
Acts 1984, ch. 930, § 1; T.C.A., § 14-33-101; Acts 2002, ch. 697, § 1.

71-6-202. Part definitions.

As used in this part, unless the context requires otherwise:

(1) "Child abuse prevention services" means those services designed to prevent the occurrence of child abuse and neglect. They may include, but are not limited to:

(A) Services relating to prevention of child abuse, such as counseling, self-help groups, hot lines and other related services; and

(B) Community and direct education services on child abuse awareness and prevention and related topics, such as parenting, coping with family stress, child development and prenatal care;

(2) "Family or household member" means those persons who customarily reside in the household and who are in need of temporary shelter because their lives or welfare are in danger;

(3) "Family violence" means causing or attempting to cause bodily injury to a family or household member or placing a family or household member in fear of imminent physical harm by threat of force, regardless of age or mental functioning;

(4) "Shelter" means a place where family violence victims and their children can seek temporary refuge twenty-four (24) hours a day and seven (7) days a week, including a program that develops and manages a system under which private homes or commercial lodgings are used as refuge for family violence victims and their children; and

(5) "Shelter services" means counseling for family violence victims, counseling for perpetrators, advocacy for family violence victims, referral of family violence victims to other community resources, community education regarding prevention of family violence and rehabilitation of perpetrators.

History.
Acts 1984, ch. 930, § 2; 1986, ch. 605, § 1; T.C.A., § 14-33-102.

71-6-203. Administration of programs.

In administering these programs, the department with authority over each program:

(1) Shall divide all funds received under this part equally, with fifty percent (50%) of the funds to be

allocated to the department of finance and administration for family violence shelters and shelter services and fifty percent (50%) to be allocated to the department of children's services for child abuse prevention services, unless the statute or appropriations bill allocating the funds provides otherwise;

(2) Shall, in disbursing funds received under this part for child abuse prevention services, give priority, where possible, to services for those children at risk because they reside in households where family violence occurs;

(3) In order to assure that funds are distributed statewide, may not disburse more than fifty thousand dollars ($50,000) from state funds provided under this part to any one (1) shelter service or child abuse prevention service in one (1) fiscal year, unless the responsible department finds that exceeding the fifty thousand dollar ($50,000) guideline is warranted by the availability of funds, the area served by the provider, or the best interests of the citizens served by the program;

(4) Shall accept federal funds that may be available for use in carrying out this part and may use state funds, in addition to funds generated under this part, as matching funds for federal funds if matching funds are required;

(5) Shall assure, to the extent feasible, that any funds allocated under this part shall be used to provide services in addition to those already provided by the department;

(6) May expend only those actual amounts reasonably necessary for administration of the funds provided under this part;

(7) Shall promulgate rules and regulations in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, necessary to carry out the purposes of this part related to the programs under its jurisdiction. Each department may, upon recommendation of its advisory committee, establish standards for operation of the services, including establishment of a timetable for application and disbursement of funds;

(8)(A) Shall require an annual report from each service funded, which shall include, in addition to all information required by the department, statistics on the number of persons requesting service, the number of persons served, the type of service rendered and a description of the social and economic characteristics of the person served and the number and type of referrals, including medical, legal and education services, made to other community resources. No information contained in the report shall identify any person served or enable any person to determine the identity of such a person;

(B) Notwithstanding any law to the contrary, the department of children's services may require each child abuse service funded to submit certain identifying information relating solely to recipients of child abuse prevention services for the narrow purpose of tracking the effectiveness of child abuse prevention services. Such information must be maintained by the department of children's services as confidential and may not be released for any purpose. Nothing in this subdivision (8) should be construed as allowing access to any identifying information relating to family violence shelters and shelter services; and

(9) Shall establish an advisory committee, which shall review all program criteria adopted by each department and advise the commissioner relative to the allocation of funds under this part. Such committee members will be appointed by the commissioner of the department with consent and approval of the governor. Each committee member shall be selected for a four-year term and may be selected to serve successive terms. However, the commissioner, with consent and approval of the governor, may appoint any member of the current committee previously appointed by the commissioner of human services to a new committee created by this section. Committee members shall be reimbursed for their actual expenses in attending meetings, with the travel expenses to be reimbursed in accordance with the comprehensive travel regulations promulgated by the department of finance and administration and approved by the attorney general and reporter. These advisory committees may be made subcommittees of the social services advisory committee.

(A) The committee on child abuse prevention services shall consist of six (6) members, including one (1) former client of the child abuse prevention service.

(B) The committee on family violence shelters shall consist of five (5) members, one (1) of which should be a former client of the family violence shelter. At least one (1) of the members selected to serve on the committee may be chosen by the department from a list of nominees submitted by the Tennessee coalition against domestic and sexual violence.

History.

Acts 1984, ch. 930, § 3; T.C.A., § 14-33-103; Acts 1993, ch. 366, § 1; 2002, ch. 697, § 2; 2003, ch. 283, § 1.

71-6-204. Incorporation, taxation and reporting prerequisites for receiving funds.

To receive funds under this part, organizations shall:

(1) Be incorporated as a not-for-profit corporation, and be tax-exempt under § 501 of the Internal Revenue Code, codified in 26 U.S.C. § 501; and

(2) Comply with §§ 37-1-403 and 37-1-605 by reporting cases of suspected child abuse or neglect or child sexual abuse to the department of children's services and comply with § 71-6-103 by reporting suspected cases of adult abuse, sexual abuse, neglect or exploitation to the department of human services.

History.
Acts 1984, ch. 930, § 4; T.C.A., § 14-33-104; Acts 1996, ch. 1079, § 183.

71-6-205. Prerequisites to receiving funds for shelters or shelter services.

To receive funds under this part for family violence shelter services or shelters, or both, all applicants shall show that they have provided shelter services for at least six (6) months prior to the application for funds under this part, and that the funds provided under this part will enable them to establish or maintain a shelter for victims of family violence within a defined timetable, in addition to any other services provided as described in the standards promulgated under § 71-6-203(7).

History.
Acts 1984, ch. 930, § 5; T.C.A., § 14-33-105.

71-6-206. Prerequisites to receiving funds for child abuse prevention services.

To receive funds under this part for child abuse prevention services, all applicants shall show that the funds provided under this part will enable them to provide some of the following services:

(1) Counseling for the prevention of child abuse;

(2) Child abuse prevention self-help groups;

(3) Child abuse prevention hot lines;

(4) Community and direct education services on child abuse awareness; and

(5) Prevention and related topics, such as parenting, coping with family stress, child development and prenatal care.

History.
Acts 1984, ch. 930, § 6; T.C.A., § 14-33-106.

71-6-207. Legislative intent.

It is the legislative intent that in providing services to family violence victims that shelter services be provided to male children twelve (12) to eighteen (18) years of age to the maximum extent feasible.

History.
Acts 1984, ch. 930, § 8; T.C.A., § 14-33-107.

71-6-208. Shelter locations privileged — Service of papers or process.

(a) No person can be compelled to provide testimony or documentary evidence in a criminal, civil or administrative proceeding that would identify the address or location of a shelter.

(b) In any proceeding involving a shelter or a person staying at a shelter, the sheriff, constable or other person serving any legal papers or process shall serve any such legal papers or process by contacting the shelter by telephone and making arrangements for service of the papers or process on the shelter or the person staying at the shelter.

History.
Acts 1993, ch. 484, § 3; 2001, ch. 198, § 1.

TENNESSEE RULES OF JUVENILE PRACTICE AND PROCEDURE

[ADOPTED FEBRUARY 22, 2016; EFFECTIVE JULY 1, 2016]

TABLE OF CONTENTS

General Provisions.
Rule.
101. Title of Rules — Scope — Purpose and Construction.
(a) Title.
(b) Scope.
(c) Exclusions.
(d) Purpose and Construction.
102. [Reserved.]
103. Service of process and summons.
(a) General Provisions.
(b) Order to Appear and Bring Child to Hearing.
(c) Service of Summons.
(d) Waiver of Service.
104. Appearance of attorney.
(a) Entry of Appearance.
(b) Continued Representation.
(c) Prosecuting Attorney.
105. Responsive pleadings and motions.
(a) Answer.
(b) Motion.
106. Filing and service of pleadings and other papers.
(a) Service — When Required.
(b) Service — How Made.
(c) Service — Proof of.
(d) Filing.
(e) Filing with the Court Defined.
(f) Facsimile Filing.
(g) Facsimile Filing Exceptions.
(h) Electronic Filing, Signing, Or Verification.
107. Subpoenas.
(a) Form — Issuance.
(b) Subpoena of Persons.
(c) Subpoena for Production of Documents and Things.
(d) Service.
108. Injunctive relief.
(a) How Obtained.
(b) In General.
(c) Ex Parte Restraining Order.
(d) Injunction.
(e) Injunctive Relief Against Non-Party.
109. Orders for the attachment of children.
(a) Requirements for Issuance of Orders for Attachment.
(b) Failure to Appear.
(c) Terms of Order.
110. Time.
(a) Computation.
(b) Extension.
(c) Exceptions.
111. Scheduling conferences and orders.
(a) Conference.
(b) Scheduling Order.
(c) Sanctions.
112. Attendance of parties and other necessary persons.
(a) Initial Inquiry by Court.
(b) Responsibility of Department when Party to Proceeding.
(c) Participation by Contemporaneous Means.
113. [Reserved.]
114. Confidentiality of proceedings.
(a) Dependent and Neglect Proceedings.
(b) Delinquent and Unruly Proceedings.
115. Recording hearings.
116. Standard of proof.
117. Entry of order.
(a) Effective.
Rule.
(b) Duties of Clerk.
118. Appeals.
(a) General.
(b) Right to an Attorney.
(c) When Right Attaches.
(d) Notification.
(e) Filing.
(f) Perfection.
(g) Indigent Status.
(h) Record on Appeal.
(i) Parties to the Appeal.
Delinquent/Unruly Proceedings.
Rule.
201. Preliminary inquiry and informal adjustment.
(a) Purposes.
(b) Receipt of Complaint.
(c) Duties of Designated Court Officer.
(d) Informal Adjustment.
(e) Informal Adjustment Determined Inappropriate.
(f) Statements of Child.
202. Pretrial diversion.
(a) Pretrial Diversion Agreement.
(b) Consent.
(c) Time Limits.
(d) Requirements.
(e) Violation of Pretrial Diversion.
(f) Statements of Child.
203. Procedures upon taking a delinquent child into custody.
(a) Delinquent child taken into custody and released.
(b) Delinquent child taken into custody and not released.
(c) Secure detention of delinquent child.
(d) Detention Hearing.
(1) Advisement of Rights.
(2) Evidence.
(3) Required Determinations.
(4) Release of Child.
(5) Continued Detention of Child.
(6) Waiver of Time Limit for Detention Hearing.
204. Use of restraints on children in the courtroom.
205. Notification and waiver of rights of children.
(a) Right To Attorney.
(1) Notification of Right to Attorney.
(2) Waiver of Right to an Attorney.
(3) Appointment of Attorney.
(b) Notification And Waiver of Additional Rights at a Hearing.
(1) Notification of Rights to a Child Who has Waived the Right to an Attorney.
(2) Notification and Waiver Where Child Represented by An Attorney.
(3) Waiver of Rights Where Child Not Represented by An Attorney.
(c) Knowing and Voluntary Waivers.
(1) Criteria for Knowing and Voluntary Waivers.
(2) Procedure for Making and Confirming Waivers.
206. Discovery.
207. Procedures related to child's mental condition.
(a) At Time of Adjudicatory Hearing.
(b) At Time of the Offense; Affirmative Defense.
(c) Inadmissibility of Child's Statements During Competency Examination.
208. Transfer to criminal court.
(a) Notice of Intent to Seek Transfer of Jurisdiction of Child to Criminal Court.
(b) Transfer Hearing.
209. Plea of guilty or no contest — Judicial diversion.
(a) Court's Inquiry of Child.
(b) Determination of Voluntariness of Plea.
(c) Factual Basis for Guilty Plea.
(d) No Contest.
(e) Agreement on Disposition.
(f) Judicial Diversion.
210. Adjudicatory hearings.
(a) Scope of Hearing.

Rule.
(b) Time Limits on Scheduling Adjudicatory Hearings.
(c) Beginning Adjudicatory Hearing.
(d) Evidence Admissible.
(e) Adjudication; Standard of Proof; and Findings in Delinquent Cases.
(f) Adjudication; Standard of Proof; and Findings in Unruly Cases.
(g) Transfer to Home County.
211. Dispositional hearings.
(a) Time Limits on Scheduling Dispositional Hearings.
(b) Separate from Adjudicatory Hearing.
(c) Notice of Right to Appeal.
(d) Temporary Order.
(e) Evidence Admissible; Standard of Proof.
212. Probation or home placement supervision violation.
(a) Procedure.
(b) Burden of proof.
(c) Disposition.
213. Modification of or relief from judgments or orders.
(b) Modification of Orders.
(1) Clerical Mistakes.
(2) Modification for Changed Circumstances.
(3) Modification for Newly Discovered Evidence.
(c) Relief from Judgments or Orders.
(d) Procedure.
(e) Disposition.
Dependent and Neglect Proceedings.
Rule.
301. Initiation of cases.
302. Procedures upon taking child into custody.
(a) Child Taken Into Custody Without Court Order.
(b) Child Taken Into Custody Pursuant to Court Order.
(c) Findings of Protective Custody Order.
(d) Preliminary Hearing.
(1) Appointment of Guardian ad Litem.
(2) Notification of Rights.
(3) Evidence.
(4) Required Determinations.
(5) Determination at Preliminary Hearing.
(6) Waiver of Time Limit for Preliminary Hearing.
303. Notification and waiver of rights.
(a) Right to Attorney.
(1) Notification of Right to an Attorney.
(2) Waiver of Right to an Attorney.
(3) Appointment of Attorney.
(b) Notification and Waiver of Additional Rights.
(1) Notification and Waiver Where Party Represented by an Attorney.
(2) Waiver of Rights Where Party Not Represented by an Attorney.
(3) Notification of Rights to a Party Who has Waived the Right to an Attorney.
(c) Knowing and Voluntary Waiver.
(1) Criteria for Knowing and Voluntary Waivers.
(2) Procedure for Making and Confirming Waivers.
304. Intervention.
(a) Intervention as of Right.
(b) Permissive Intervention.
(c) Procedure.
305. Discovery.
306. Taking children's testimony.
307. Adjudicatory hearings.
(a) Scope of Hearing.
(b) Time Limits on Scheduling Adjudicatory Hearings.
(c) Beginning Adjudicatory Hearing.
(d) Evidence Admissible.
(e) Adjudication of Status, Standard of Proof, and Findings.
(f) Transfer to Home County for Disposition.
308. Dispositional hearings.
(a) Time Limits on Scheduling Dispositional Hearings.
(b) Separate from Adjudicatory Hearing.
(c) Notice of Right to Appeal.
(d) Temporary Order.
(e) Evidence Admissible; Standard of Proof.
309. Agreed orders.
(a) General Provisions.
Rule.
(b) Modification.
310. Modification of or relief from judgments or orders.
(a) Modification of Orders.
(1) Clerical Mistakes.
(2) Modification for Newly Discovered Evidence.
(3) Modification for Changed Circumstances.
(b) Relief from Judgments or Orders.
(c) Procedure.
(d) Disposition.
Foster Care Proceedings.
Rule.
401. Ratification hearings.
(a) Purpose of Ratification Hearing.
(b) Notification of Parties.
(c) Review of Permanency Plan.
(d) Inclusion of Recommendations of Foster Care Review Board.
(e) Evidentiary Hearing.
(f) Agreement — Modification.
(g) Abandonment Criteria.
(h) Rights of Party Not Served.
(i) Findings — Order.
402. Periodic progress reviews.
403. Foster care review board.
(a) Scheduling and Notice.
(b) Documentation.
(c) Quorum and Attendance.
(d) Conduct of the Review.
(e) Recommendations.
(f) Announcement of Recommendations — Scheduling Next Review.
(g) Summary Form Filed with Clerk.
(h) Review by Judge or Magistrate.
(i) Direct Referral.
(j) Statements of Child.
404. Permanency hearings.
(a) Review of Previous Orders/Recommendations by Court.
(b) Purpose of Hearing.
(c) Testimony.
(d) Reasonable Efforts Finding as to Goal.
(e) Hearing for Youth Seventeen Years or Older Prior to Release from Department.
(f) Youth Planning to Accept Extension of Foster Care.
(g) Bifurcated Permanency Hearing and Ratification Hearing.

General Provisions.

Rule 101. Title of Rules — Scope — Purpose and Construction. (a) Title. These rules shall be known and cited as the Tennessee Rules of Juvenile Practice and Procedure.

(b) Scope. These rules apply to delinquent, unruly, and dependent and neglect proceedings.

(c) Exclusions. **(1)** Traffic offenses are governed by T.C.A. § 37-1-146.

(2) Surrenders of parental rights are governed by T.C.A. §§ 36-1-111 and 112.

(3) The Tennessee Rules of Civil Procedure shall govern the following proceedings:

(A) termination of parental rights pursuant to T.C.A. § 36-1-113;

(B) parentage pursuant to T.C.A. § 36-2-301, et seq;

(C) guardianship and mental health commitment involving children;

(D) child custody proceedings under T.C.A. §§ 36-6-101, et seq., 36-6-201, et seq., and 37-1- 104(a)(2) and (e);

(E) grandparent visitation proceedings pursuant to

T.C.A. § 36-6-306; and

(F) civil contempt pursuant to T.C.A. §§ 29-9-104 and 105.

(4) The procedures employed in general sessions court under the Tennessee Rules of Criminal Procedure shall govern the following proceedings:

(A) child abuse prosecutions, pursuant to T.C.A. §§ 37-1-412 and 39-15-401;

(B) nonsupport of children pursuant to T.C.A. § 39-15-101, et. seq.;

(C) contributing to the delinquency or unruly behavior of a child, pursuant to T.C.A. § 37-1- 156;

(D) contributing to the dependency and neglect ofa child, pursuant to T.C.A. § 37-1-157;

(E) offenses involving adults arising under T.C.A. § 49-6-3001, et. seq.; and

(F) criminal contempt pursuant to T .C.A. § 29-9-102.

(5) The Rules of the Tennessee Supreme Court shall govern proceedings under T.C.A. §§ 37-10- 303 and 304.

(d) Purpose and Construction. These rules are designed to implement the purposes of the juvenile court as expressed in T.C.A. § 37-1-101 by providing speedy and inexpensive procedures for the hearing of juvenile cases that assure fairness and equity and that protect the rights and interests of all parties; by promoting uniformity in practice and procedure; and by providing guidance to judges, magistrates, attorneys, parties, youth services and probation officers, and others participating in the juvenile court. [Added by order filed December 29, 2015, effective July 1, 2016.]

Advisory Commission Comments. These rules are promulgated pursuant to statutory authority granting rule-making power to the Supreme Court. They are intended to provide a simple and practical means of operating in juvenile court in a manner which will adequately implement the law.

These rules are not comprehensive. For example, they do not provide specific procedures for proceedings for the transfer between Tennessee and another state of children found to be delinquent, unruly, or dependent and neglected, for disposition as provided in T.C.A. §§ 37-1-141- 37-1-144; nor do they deal with proceedings under the Interstate Juvenile Compact as found at T.C.A. §§ 37-4-101 - 37-4-106; with proceedings under the Interstate Compact on the Placement of Children as found at T.C.A. §§ 37-4-201, 37-4-202; with proceedings in which children seek to obtain judicial consent to marriage, employment, or enlistment in the armed services; nor with special medical proceedings pursuant to T.C.A. § 33-8-301, et. seq. It is intended that these rules be applied in every instance in which they address the procedure involved. If they do not expressly or by clear implication relate to the procedure in question, then existing law is to be applied.

The Commission recommends that local juvenile courts adopt their own written rules consistent with these rules and with relevant statutory and case law, to cover particular circumstances not presently addressed by these rules. Examples of areas which might be addressed by local rules are suggested in the comments to these rules.

Rule 1.01(c) identifies the proceedings not covered by these rules and denotes the statutes or rules that are applicable to each type of proceeding.

The 2016 amendments revised and re-ordered the rules, dividing them into four sections: (1) general, (2) delinquent and unruly, (3) dependent and neglected, and (4) foster care.

Compiler's Notes. The adoption of Rule 101, as promulgated and adopted by the Supreme Court in its order dated December 29, 2015, was ratified and approved by 2016 House Resolution 145 and Senate Resolution 79. The order promulgating the adoption of Rule 101 provided that it take effect July 1, 2016.

Rule 102. [Reserved.]

Rule 103. Service of process and summons. (a) General Provisions. After the petition has been filed the clerk shall schedule a time for a hearing. The clerk shall, without delay, issue the summonses to the parties, including a child alleged to be delinquent or unruly, requiring them to appear before the court to answer the allegations of the petition. The summons shall also be directed to the child alleged to be dependent and neglected and 14 or more years of age. A copy of the petition shall accompany the summons unless the summons is served by publication in which case the published summons shall indicate the general nature of the allegations and where a copy of the petition can be obtained.

(b) Order to Appear and Bring Child to Hearing. The court may endorse upon the summons an order directing the parents, guardian or other custodian of the child to appear personally at the hearing and directing the person having custody, possession or control of the child to bring the child to the hearing.

(c) Service of Summons. **(1)** With the exception of an emergency hearing, preliminary hearing, or detention hearing, if a party to be served with a summons is within this state and can be found, the summons shall be served upon the party personally at least 3 days before the hearing. If the party is within this state and cannot be found, but the party's address is known or can with reasonable diligence be ascertained, the summons may be served upon the party by mailing a copy by registered or certified mail at least 5 days before the hearing. If the party is without this state but can be found or the party's address ascertained, service of the summons may be made either by delivering a copy to the party personally or by mailing a copy to the party by registered or certified mail at least 5 days before the hearing. Service by mail shall not be the basis for the entry of a judgment by default unless the record contains a return receipt showing personal acceptance by the party. If service by mail is unsuccessful, it may be tried again or other methods authorized by these rules or by statute may be used. If a party refuses to accept delivery by mail and it is so stated in the return receipt of the United States Postal Service, the written return receipt if returned and filed in the action shall be deemed an actual and valid service of the summons, process, or notice. Service by mail is complete upon mailing.

(2) If the child has been removed from the home, an attempt must be made to serve the summons and petition prior to an emergency hearing, preliminary hearing, or detention hearing. If service cannot be achieved prior to the hearing, the parties shall be notified as soon as possible of the date, time and place of the hearing, the child's custody status and the reasons for the child's removal.

(3) If after reasonable effort the party cannot be found and the party's mailing address cannot be ascertained, the court may order service of the summons upon the party by publication in accordance with T.C.A. §§ 21-1-203 and 204. The hearing shall not be earlier

than 5 days after the date of the last publication.

(4) Service of the summons may be made by any suitable person who is not a party and is not less than 18 years of age.

(5) The court may authorize the payment of the costs of service and of necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing, as provided by law.

(6) Service of a summons upon a party in a foreign country shall be pursuant to the Tennessee Rules of Civil Procedure Rule 4A - Service Upon Defendant In a Foreign Country.

(d) Waiver of Service. A party other than a child may waive service of summons by written stipulation or voluntary appearance. A delinquent or unruly child may waive service of summons in accordance with Rule 205. [Added by order filed December 29, 2015, effective July 1, 2016.]

Advisory Commission Comments. The 2016 amendment adds a distinction in subdivision (c) between the requirements for emergency, preliminary and detention hearings and the requirements for other types of hearings. There may be a circumstance where a party has been notified of the hearing but has not been served. This does not relieve the petitioner of the obligation to effect service.

The time to serve a summons is excluded from Rule 110 regarding the calculation and extension of time. See Rule 201 regarding the initiation of cases in delinquent and unruly proceedings and Rule 301 for dependent and neglect proceedings.

If a party appears voluntarily at a hearing and has not been served, the court should provide the party with a copy of the petition and memorialize the service in an order or return.

Compiler's Notes. The adoption of Rule 103, as promulgated and adopted by the Supreme Court in its order dated December 29, 2015, was ratified and approved by 2016 House Resolution 145 and Senate Resolution 79. The order promulgating the adoption of Rule 103 provided that it take effect July 1, 2016.

Rule 104. Appearance of attorney. (a) Entry of Appearance. An attorney who undertakes to represent a party in any juvenile court action shall immediately notify the court, unless appointed by written order of the court. An attorney must notify all parties of the entry or appointment. For the purpose of this rule, the filing of any pleading signed by an attorney constitutes an entry of appearance.

(b) Continued Representation. An attorney who has entered an appearance or who has been appointed by the court shall continue such representation until relieved by order of the court.

(c) Prosecuting Attorney. Whenever required by statute or rule, or at his or her discretion, the district attorney general shall appear in the juvenile court and prosecute on behalf of the state. [Added by order filed December 29, 2015, effective July 1, 2016.]

Advisory Commission Comments. The Commission cautions attorneys to pay special attention to subdivision (b). In the absence of a court order relieving the attorney, that attorney remains attorney of record in any case to which the attorney was appointed or entered an appearance.

In no event should a youth services officer or other employee of the court appear as prosecutor in juvenile court or fulfill in any way such role. This does not, however, prevent the youth services officer from being the petitioner or a witness in a proceeding.

Compiler's Notes. The adoption of Rule 104, as promulgated and adopted by the Supreme Court in its order dated December 29, 2015, was ratified and approved by 2016 House Resolution 145 and Senate Resolution 79. The order promulgating the adoption of Rule 104 provided that it take effect July 1, 2016.

Rule 105. Responsive pleadings and motions. (a) Answer. A written answer to a petition shall not be required.

(b) Motion. **(1)** An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be in writing, shall state with particularity the grounds relied upon, and shall set forth the relief or order sought.

(2) Upon the filing of the motion, the clerk shall schedule a tentative date for the motion to be heard.

(3) All motions shall include the date upon which the motion is expected to be heard and shall be served on the parties a reasonable time prior to that date.

(4) A written response to a motion shall not be required. [Added by order filed December 29, 2015, effective July 1, 2016.]

Advisory Commission Comments. This rule was formerly Rule 20 of the Tennessee Rules of Juvenile Procedure.

The Commission notes that, although a written response to a pleading or motion is not required under these rules, it is not prohibited.

The Commission suggests that local rules would be an appropriate place to establish guidelines for what a "reasonable time" under this rule would be. This may differ among various localities due to the differences in dockets and available hearing dates. A best practice would be to consult with opposing counsel and any unrepresented parties in advance in order to set a date for hearing of any motion to ensure that all necessary persons are available.

Effective July 1, 2012, the Supreme Court adopted Tenn. Sup. Ct. R. 10B governing motions seeking disqualification or recusal of a judge. Section 1 of Rule 10B provides a procedural framework for determining when the judge of a court of record should not preside over the case. In summary, Section 1 provides for the filing of a motion for disqualification or recusal and also provides for the judge's prompt ruling on the motion. Section 2 of Rule 10B governs appeals from the denial of such motions, and it provides that such appeals may be affected either by filing an interlocutory appeal as of right authorized by the rule or by raising the disqualification or recusal issue in an appeal as of right at the conclusion of the case. Under Section 2.01, those two methods of appeal are "the exclusive methods for seeking appellate review of any issue concerning the trial court's ruling on a motion filed pursuant to this Rule." (Emphasis added.) As a result, "neither Tenn. R. App. P. 9 nor Tenn. R. App. P. 10 may be used to seek an interlocutory or extraordinary appeal by permission concerning the judge's ruling on such a motion." Tenn. Sup. Ct. R. 10B, Explanatory Comment to Section 2.

The Explanatory Comment to Tenn. Sup. Ct. R. 10B § 1 notes that juvenile courts are courts of record and that juvenile court judges therefore are included within Section 1 of this Rule. Section 4 of Tenn. Sup. Ct. R. 10B, however, governs motions for disqualification of judicial officers other than a judge of a court of record (e.g. magistrates, referees, and masters).

Attorneys or self-represented litigants should consult Tenn. Sup. Ct. R. 10B, concerning the procedure for filing motions seeking the disqualification or recusal of a juvenile court judge or other judicial officer and for appealing from a denial of such a motion.

Compiler's Notes. The adoption of Rule 105, as promulgated and adopted by the Supreme Court in its order dated December 29, 2015, was ratified and approved by 2016 House Resolution 145 and Senate Resolution 79. The order promulgating the adoption of Rule 105 provided that it take effect July 1, 2016.

Rule 106. Filing and service of pleadings and other papers. (a) Service — When Required. Unless the Court otherwise orders, every order required by its terms to be served; every pleading subsequent to the original petition; and every written motion (other than

ex parte), notice, appearance, or similar papers shall be served upon each of the parties, including the child alleged to be delinquent or unruly. Service shall also be made on a child alleged to be dependent and neglected, if age 14 or over. If a court appointed special advocate (CASA) is appointed, the CASA volunteer shall be served in the same manner as a party.

(b) Service — How Made. **(1)** Whenever service of a pleading is required or permitted to be made on a party represented by an attorney or guardian ad litem, the service shall be made upon the attorney or guardian ad litem unless service on the party is ordered by the court. Service upon the attorney, guardian ad litem or upon a party shall be made by delivering a copy of the document to be served either in person, by leaving it at the person's office, by leaving it at the person's home in a conspicuous place or with a person of suitable age and discretion residing therein, or by mailing it to such person's last known address. If no address is known, service is completed by leaving a copy with the clerk of the court. Service by mail is complete upon mailing. Items which may be filed by facsimile transmission pursuant to this rule may be served by facsimile transmission.

(2) If all parties, their attorneys or guardians ad litem agree, in writing, service of documents may be made via email in Adobe PDF format in lieu of service by mail. A signed notice of such agreement, containing the email addresses of parties and the attorneys, shall be filed with the clerk.

(c) Service — Proof of. Whenever any pleading or other paper is served, proof of the time and manner of such service shall be filed before action is taken thereon by the court or the parties. Proof may be by certificate of an attorney of record, the clerk, by affidavit of the person who served the papers, or by any other proof satisfactory to the court.

(d) Filing. All papers after the petition required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter. Discovery need not be filed, unless ordered by the court.

(e) Filing with the Court Defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and immediately transmit them to the office of the clerk. The clerk shall endorse upon every pleading and other papers filed with the clerk in an action the date and hour of the filing. If papers required or permitted to be filed are prepared by or on behalf of a pro se litigant incarcerated in a correctional facility and are not received by the clerk of the court until after the deadline for filing, filing shall be timely if the papers were delivered to the appropriate individual at the correctional facility within the time allowed for filing. This provision shall also apply to service of papers by such litigants. "Correctional facility" shall include a prison, jail, county workhouse or similar institution in which the pro se litigant is incarcerated. Should timeliness of filing or service become an issue, the burden is on the pro se litigant to establish compliance with this provision.

(f) Facsimile Filing. The juvenile court clerk shall accept papers for filing by facsimile transmission as provided in Rule 5A of the Rules of Civil Procedure.

(g) Facsimile Filing Exceptions. The following documents shall not be filed by facsimile transmission:

(1) Any pleading or similar document for which a filing fee must be paid (excluding the facsimile service charge), including, without limitation, a petition, a request for a hearing before the judge from the magistrate's order, or a notice of appeal to a trial court or appellate court; or

(2) A summons; bond; a document requiring an official seal; or a document the court has previously ordered to be filed under seal.

(h) Electronic Filing, Signing, Or Verification. Any juvenile court may, by local rule, allow papers to be filed, signed or verified by electronic means that comply with technological standards promulgated by the Supreme Court. Pleadings and other papers filed electronically under such local rules shall be considered the same as written papers. [Added by order filed December 29, 2015, effective July 1, 2016.]

Advisory Commission Comments. Subdivision (a) addresses service of documents upon the parties subsequent to the filing of the original petition. This is intended to include service of any proposed permanency plan for a child in foster care prior to the initial or any subsequent ratification hearing.

Subdivision (b) allows for items which may be filed by facsimile to be served in the same manner. In addition, service upon a party, attorney, or guardian ad litem may be made by email upon a signed agreement of all parties, attorneys or guardians ad litem. Documents served by email are required to be attached as Adobe PDF files. Adobe PDF format was chosen because it is required for federal court filings and for service by email pursuant to Rule 5.02 of the Tennessee Rules of Civil Procedure.

Subdivision (f) requires the juvenile court clerk accept papers for filing by facsimile transmission as provided in Rule SA of the Rules of Civil Procedure. Rule 5A.04 sets out the charge for facsimile filing, and specifies the procedure for collecting the charge when the sending party has been allowed to proceed on a paupers oath. The documents excepted from facsimile filing in subdivision (g) of this Rule are consistent with the exceptions in Rule SA of the Rules of Civil Procedure. When filing by facsimile, the sender bears the risk of ineffective transmission and should confirm the clerk received the facsimile.

Subdivision (g) provides for the electronic filing, signing and verification of papers in juvenile court by local rule. The local rule must comply with technological standards promulgated by the Supreme Court, published at Electronic Filing for Civil Cases, Policy & Technical Standards, Administrative Office of the Courts, adopted September 2011, or any future standards. This amendment is modeled after Rule 58 of the Rules of Civil Procedure.

When applicable, attorneys of record and unrepresented parties are encouraged to file a notice of change of address with the court and to serve copies of the notice on all attorneys of record and unrepresented parties. Failure to do so may result in a party not receiving important documents and information.

Attorneys and unrepresented parties are responsible for inquiring whether the juvenile court has local rules that allow for facsimile or electronic filing.

Compiler's Notes. The adoption of Rule 106, as promulgated and adopted by the Supreme Court in its order dated December 29, 2015, was ratified and approved by 2016 House Resolution 145 and Senate Resolution 79. The order promulgating the adoption of Rule 106 provided that it take effect July 1, 2016.

Rule 107. Subpoenas. (a) Form — Issuance. Every subpoena shall be issued by the clerk. Each subpoena shall state the name of the court and the title of the

action. Each subpoena shall command the person to attend and give testimony at a hearing and shall specify the time and place and the name of the party for whom testimony will be given. The clerk shall issue a subpoena or a subpoena for the production of documentary evidence, signed but otherwise in blank, to a party requesting it, who shall fill it in before service.

(b) Subpoena of Persons. With the exception of emergency hearings, preliminary hearings, detention hearings, or for good cause shown, all subpoenas for the attendance of witnesses shall be served at least 5 calendar days prior to the hearing.

(c) Subpoena for Production of Documents and Things. With the exception of emergency hearings, preliminary hearings, and detention hearings, all subpoenas for the production of documents, images, records, data or like information shall be served at least 10 calendar days prior to the hearing, unless otherwise provided by law.

(d) Service. A subpoena may be served by any person authorized to serve process or the witness may acknowledge service in writing on the subpoena. Service of the subpoena shall be made by delivering or offering to deliver a copy to the person to whom it is directed in accordance with this or any local rule. [Added by order filed December 29, 2015, effective July 1, 2016.]

Advisory Commission Comments. The original Rules of Juvenile Procedure did not contain a rule regarding the issuance of subpoenas. The rule only applies to serving a subpoena for a court hearing. See Rule 206 regarding discovery in delinquent and unruly cases and Rule 305 in dependent and neglect cases.

This rule provides for a minimum time in which a subpoena must be served prior to a court hearing. The time limits do not apply to emergency, detention or preliminary hearings, though subpoenas should be served as far in advance of the hearing as practicable.

The time to serve a subpoena is excluded from Rule 110 regarding the calculation and extension of time.

Subdivision (c) is applicable to a subpoena for the production of documents and things. Note that other laws may override this provision. For example, the Health Insurance Portability and Accountability Act of 1996 (HIPAA; Pub.L. 104-191), contains specific provisions regarding the disclosure of health care records in response to a subpoena. See 45 CFR 164.512.

Subdivision (d) allows juvenile courts to have local rules addressing acceptable methods of service of subpoenas.

This rule does not preclude the filing of a motion to quash a subpoena.

Compiler's Notes. The adoption of Rule 107, as promulgated and adopted by the Supreme Court in its order dated December 29, 2015, was ratified and approved by 2016 House Resolution 145 and Senate Resolution 79. The order promulgating the adoption of Rule 107 provided that it take effect July 1, 2016.

Rule 108. Injunctive relief. (a) How Obtained. **(1)** A request for injunctive relief shall be in the form of a motion or a petition, or on the court's own initiative, and may be obtained by:

(A) An ex parte restraining order;

(B) An injunction issued during the pendency of a matter;

(C) An injunction issued as part of a dispositional order; or

(D) A no contact order pursuant to T.C.A. § 37-1-152.

(2) Every request for injunctive relief shall state whether a previous application for the relief has been refused by any court.

(b) In General. **(1)** Every ex parte restraining order or injunction shall be specific in terms and shall describe in reasonable detail the act restrained or enjoined.

(2) Every ex parte restraining order or injunction shall be indorsed with the date and hour of issuance, shall be signed by the judge or magistrate granting it, and shall be filed in the clerk's office.

(3) Every ex parte restraining order or injunction shall be binding upon the parties to the action, their officers, agents and attorneys; and upon other persons in active concert or participation with them who receive actual notice of the ex parte restraining order or injunction by personal service or otherwise.

(c) Ex Parte Restraining Order. **(1)** An ex parte restraining order shall only restrict the doing of an act.

(2) An ex parte restraining order may be issued by the judge of the court in which the matter is pending or is to be filed, or by any magistrate serving such court.

(3) An ex parte restraining order may be issued when the court finds: (1) that a child may abscond or be removed from the court's jurisdiction; or (2) that there is a danger of immediate harm to a child such that a delay for a hearing would be likely to result in severe or irreparable harm.

(4) The standard of proof applicable in issuance of an ex parte restraining order shall be probable cause. The court may consider a motion, petition, sworn affidavit, sworn testimony or reliable hearsay.

(5) A copy of the ex parte restraining order shall be promptly served on each party by a person authorized to serve a summons. If an ex parte restraining order is issued at the commencement of an action, a copy shall be served with the summons.

(6) An ex parte restraining order becomes effective and binding on the party to be restrained at the time of service or when the party to be restrained is informed of the order, whichever is earlier.

(7) An ex parte restraining order shall expire by its terms and shall not exceed 15 days unless within such time period: (1) the court extends the order after affording the party to be restrained an opportunity to be heard, or (2) the party to be restrained consents to the extension. Any such extension of an ex parte restraining order shall be in the form of an injunction.

(d) Injunction. **(1)** An injunction may restrict or mandatorily direct the doing of an act, either temporarily or permanently.

(2) Prior to the issuance of an injunction, the court shall afford the party to be enjoined notice, grounds therefore, and an opportunity to be heard.

(3) An injunction may be issued, modified or dissolved by the judge or magistrate of the court in which the matter is pending. The court shall only modify or dissolve an injunction when the court finds such to be consistent with the child's best interests.

(4) During the pendency of a matter, the court may issue an injunction when the court finds that the conduct of the person to be enjoined is or may be detrimental or harmful to the child.

(5) As part of a dispositional order, the court may issue an injunction when the court finds that the

conduct of the person to be enjoined is or may be detrimental or harmful to the child and would tend to defeat the execution of a dispositional order.

(6) The standard of proof applicable in issuance of injunctive relief shall be preponderance of the evidence. Evidence shall be admitted in accordance with the Rules of Evidence. In the court's discretion, any evidence so admitted may be admissible in the underlying matter and need not be repeated if all parties participated in the hearing for injunctive relief.

(7) The court may issue an injunction upon such terms and conditions, and the injunction shall remain in force for such time, as the court determines to be consistent with the child's best interests.

(e) Injunctive Relief Against Non-Party. The court may issue an ex parte restraining order, injunction, or no contact order against a person who is not a party to the dependent and neglected, delinquent, or unruly proceeding if that person's conduct is or may be detrimental or harmful to the child. In such cases, the person to be restrained or enjoined shall be a party only to the petition or motion for injunctive relief. Neither the request for injunctive relief nor the order granting injunctive relief shall confer party status in the underlying case on the person to be enjoined. [Added by order filed December 29, 2015, effective July 1, 2016.]

Advisory Commission Comments. Injunctive relief may be issued pursuant to T.C.A. § 37-1-152.

The Commission has chosen to use the term "restraining order" to refer only to an ex parte order granted by the court, while the term "injunction" applies to all orders granted after a hearing. The Commission chose the term "injunction" to clarify that the court may restrain an act or mandatorily direct the doing of an act.

A dependent and neglect matter is an inquiry as to the status of a child rather than a proceeding to determine guilt or to apportion blame or liability among various persons. As the court stated in *State Dep't of Children's Servs. v. Huffines-Dalton*, No. M2008-01267-COA-R3-JV, 2009 Tenn. App. LEXIS 364, at *18, 2009 WL 1684679 (Tenn. Ct. App. June 15, 2009):

Under Tenn. Code Ann. § 37-1-129, the court must first hold a hearing and make findings whether a child is dependent and neglected within the meaning of the statute. "The function of the adjudicatory hearing is to determine whether the allegations of dependency, neglect, or abuse are true." Accordingly, the adjudication is not against either parent or the custodian but addresses the question of whether the child is dependent and neglected for any of the reasons enumerated by the statute. During this adjudicatory phase, the parties are "entitled to the opportunity to introduce evidence and otherwise be heard in the party's own behalf and to cross examine adverse witnesses," Tenn. Code Ann. § 37-1-127(a), and the Rules of Evidence apply.

(Citations omitted.)

Because a dependent and neglect proceeding may involve persons other than parents or guardians, such as "caretakers" as referenced in the definition of "abuse" in T.C.A. § 37-1- 102(b)(1), or "persons with whom the child lives" under T.C.A. § 37-1-102(b)(12)(B), the Commission intended to clarify that injunctive relief may be sought against such persons. Such persons may not enjoy a legal relationship with the child but such person's conduct may have caused or contributed to the child being found to be dependent and neglected. As the Court stated in *In re: Melanie T.*, 352 S.W.3d 687, 697 (Tenn. Ct. App. 2011):

[I]t is clear that a biological or legal parent/child relationship is not essential to uphold a finding that a minor is "dependent and neglected." The statute expressly states that a "child" is "dependent and neglected" if that child lives with a "parent, guardian or person" who *"by reason of cruelty, … immorality or depravity is unfit to properly care for such child."* By using the words "parent, guardian or person with whom the child lives," the General Assembly made it perfectly clear that a dependent and neglect claim … does not require that the "unfit" person be a biological or legal parent of the child at issue. Therefore, a person who lives with a child need not be a biological or legal parent of the child in order for a "dependent and neglected" action to be maintained against that person.

(Emphasis in original; citations omitted.)

Thus, the seeking of injunctive relief against such non-parent persons is allowed and does not, in and of itself, confer party status on such persons in the underlying dependent and neglect matter. Further, the proceeding regarding the issuance of injunctive relief may be separate from the underlying matter.

The issue of who, exactly, is a "party" to a dependent or neglect proceeding is not as straightforward as it first appears. Those with a legal relationship to the child, such as parents, are, of course, proper parties and are named respondents in such matters. The analysis grows more complex when the matter involves a step-parent or a boyfriend or girlfriend to a parent, those who have no legal interest in the child. Such persons may have caused or contributed to the child's dependent and neglect status, and whose conduct is in issue in the proceeding, but may not be appropriate persons to take steps to regain entrance to the child's life. The better practice is to view those more remote, legally, from the child as respondents in an injunction proceeding, but not as respondents in the underlying dependent and neglect matter.

The Commission notes *City of Chattanooga v. Swift*, 442 S.W.2d 257, 258 (Tenn. 1969) ("By the term 'party', in general, is meant one having a right to control proceedings, to make a defense, to adduce and cross-examine witnesses, and to appeal from the judgment") (citing *Boyles v. Smith*, 37 Tenn. 105, 107 (Tenn. 1857)).

If the request for an ex parte restraining order is brought against a parent of a child and the relief requested would interfere with the parent's constitutional right to have care and control of the child, the court should proceed with a preliminary hearing within 72 hours, pursuant to Rule 302, rather than the 15 day timeframe prescribed in subdivision (c)(7) above.

The Commission recognizes that, pursuant to T.C.A. § 37-1-152(b), the Department of Children's Services or child protection team may apply to the court for the issuance of a no contact order with regard to suspected perpetrators of child sexual abuse. This order may require the removal from the child's home of the suspected perpetrator. The standard of proofin this proceeding is the lesser standard of probable cause while the standard of proof generally in injunctive proceedings (other than requests for an ex parte restraining order) is preponderance of the evidence.

See Rule 110 for the computation of time.

Compiler's Notes. The adoption of Rule 108, as promulgated and adopted by the Supreme Court in its order dated December 29, 2015, was ratified and approved by 2016 House Resolution 145 and Senate Resolution 79. The order promulgating the adoption of Rule 108 provided that it take effect July 1, 2016.

Rule 109. Orders for the attachment of children. (a) Requirements for Issuance of Orders for Attachment. Orders for the attachment of children shall be based upon a judicial determination that there is probable cause to believe that the child is in need of the immediate protection of the court because:

(1) The conduct, condition or surroundings of the child are endangering the child's health or welfare or that of others; or

(2) The child may abscond or be removed from the jurisdiction of the court; or

(3) Service of a summons or subpoena would be ineffectual or the parties are evading service.

The statement of a person requesting the order of attachment must be by affidavit or sworn testimony reduced to writing and must provide sufficient factual information to support an independent determination that probable cause exists for the issuance of the order. If hearsay evidence is relied upon, the affidavit or testimony must include the basis for the credibility of both the declarant and the declarant's statements.

(b) Failure to Appear. When a child fails to appear at a hearing or other court-scheduled proceeding to which the child has been properly served or directed by

appropriate court personnel to appear, the court may, on its own initiative or on the basis of a sworn writing, issue an attachment.

(c) Terms of Order. The order for attachment shall order that the child be brought immediately before the court or that the child be taken into custody in accordance with Rule 203 or 302. [Added by order filed December 29, 2015, effective July 1, 2016.]

Advisory Commission Comments. Ordinarily, proceedings in juvenile court will be initiated and conducted pursuant to the issuance of a petition and summons rather than the issuance of attachment. Attachments should be used only when necessary to further the goals and purposes of the juvenile court. The Commission notes that the offense of failure to appear is a defined offense and may provide independent grounds for the issuance of an order to take a child into custody if charged.

The issuance of an order of attachment does not determine what should occur once that child is taken into custody. There may be instances in which an order to take a child into custody is warranted but, once accomplished, that child may not meet the requirements to be held in a secure facility pending hearing. In addition, the purpose of an order to take a child into custody may vary from case to case. The order should give specific instructions as to how the attachment order should be carried out.

Subdivision (b) allows the court to issue an attachment in the event the child fails to appear at a court-scheduled hearing, meeting or conference after the child has been duly summoned to appear and fails to do so. The attachment may direct the appropriate authorities to take the child to a detention facility or to court or to another place. Prior to issuing an attachment for failure to appear, whether or not the child is charged with the delinquent act of failure to appear, the child must have received appropriate notice specifying the date, time and location of the proceeding in issue. Accordingly, the Commission encourages each court to implement notice procedures which satisfy due process and afford court participants ample notice of proceedings. For instance, a summons generally is required to initiate most court proceedings, unless the child is served with an arrest warrant or has been issued a citation, while notice of subsequent court dates may be accomplished by less formal means so long as the method chosen is effective.

This rule clarifies the evidentiary requirements for the issuance of orders for the attachment of children based on the provisions of T.C.A. §§ 37-1-113(2), 114(a)(2), 122, and 128(b)(2).

This rule will apply to the process of obtaining an "arrest order" for a child pursuant to T.C.A. §§ 37- 1-113(2).

As only attachments of children are addressed in this rule, reference to T.C.A. § 37-1-122, regarding attachments of parents, guardians, and other persons having custody of children under juvenile court jurisdiction, was omitted from the rule. That code section should be consulted for guidance in regard to such action.

Compiler's Notes. The adoption of Rule 109, as promulgated and adopted by the Supreme Court in its order dated December 29, 2015, was ratified and approved by 2016 House Resolution 145 and Senate Resolution 79. The order promulgating the adoption of Rule 109 provided that it take effect July 1, 2016.

Rule 110. Time. (a) Computation. In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the date of the act, event or default is not to be included. The last day of the period so computed shall be included unless:

(1) it is a Saturday, a Sunday, or a legal holiday as defined in Tenn. Code Ann. § 15-1-101, or

(2) the act to be done is the filing of a paper in court, and the last day is a day on which the office of the court clerk is closed or on which weather or other conditions have made the office of the court clerk inaccessible.

In either instance, the event period runs until the end of the next day which is not one of the aforementioned days. Absent statutory authority or a Rule of Juvenile Procedure to the contrary, when the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

(b) Extension. For cause shown, the court may extend the period of time to perform an act if the request is made prior to the expiration of the period originally prescribed. However, upon motion made after the expiration of the specified period of time to perform an act, the court may permit the act to be done where the failure to act was the result of excusable neglect. This subdivision does not apply to the time for scheduling a detention or preliminary hearing, holding hearings regarding the violation of a valid court order, filing a notice of appeal or request for hearing before the judge from the magistrate's order.

(c) Exceptions. This rule does not apply to the time provided to:

(1) serve a summons or subpoena;

(2) make a probable cause determination pursuant to Rules 203 and 302;

(3) ratify a permanency plan pursuant to T.C.A. § 37-2-403(a); or

(4) hold a permanency hearing pursuant to T.C.A. §§ 37-1-166(g)(5) and 37-2-409. [Added by order filed December 29, 2015, effective July 1, 2016.]

Advisory Commission Comments. Rule 110 adopts the same formula as that provided by T.C.A. § 1-3-102, with two additions: (1) If the last day of a period falls on a Saturday, Sunday, or legal holiday, the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday. Thus, if the period would normally expire, for example, on November 9, but November 9 fell on a Saturday, November 10 was a Sunday, and November 11 was a legal holiday, the rule makes it clear that the period would run until the end of the day, Tuesday, November 12. When the prescribed period is less than 11 days, intermediate Saturdays, Sundays and holidays are excluded. When the time allowed is so short, the party limited by the time should not be further handicapped by losing 1 or more days because normal business operations are suspended by Saturday, Sunday, or legal holiday observances.

Subdivision (b) establishes a single standard for the courts to follow in granting enlargement of the time periods within which various acts must be done. The Rules of Civil Procedure allow for extensions to be liberally granted, but this should not be the case in juvenile court. Extension is to be allowed, even after expiration of the original period, where the failure to take timely action was due to excusable neglect. This subdivision does not apply to the time for scheduling a detention or preliminary hearing, holding hearings regarding the violation of a valid court order, filing a notice of appeal or request for hearing before the judge from the magistrate's order.

See Rule 117 regarding the entry of orders. Prior to the entry of an order, a lawyer or party may request that a copy of the order be mailed upon entry. If the clerk fails to mail a copy of the order immediately after entry, the parties prejudiced may pursue relief through Rule 213 in delinquent or unruly cases and Rule 310 in dependent and neglect cases, rather than pursuant to this rule.

Subdivision (c) provides that the entire rule is not applicable to the time provided to serve a summons, make a probable cause determination pursuant to Rules 203 and 302, ratify a permanency plan pursuant to T.C.A. § 37-2-403(a), or hold a permanency hearing pursuant to T.C.A. §§ 37-1-166(g)(S) and 37-2-409. The time period of 48 hours for making the probable cause determination pursuant to Rules 203 and 302 is compulsory and may not be extended by the court. The timeframes for ratification of the permanency plan and holding permanency hearings are federally mandated and tied to funding requirements for children in foster care. Service of a summons or subpoena is also excepted from this rule.

Subdivision (c) also tolls the time for a child charged with a delinquent offense and found to be incompetent to stand trial. An adjudicatory hearing or hearing to transfer the child to criminal court

may not be held until such time as the child is found to be competent to stand trial.

Compiler's Notes. The adoption of Rule 110, as promulgated and adopted by the Supreme Court in its order dated December 29, 2015, was ratified and approved by 2016 House Resolution 145 and Senate Resolution 79. The order promulgating the adoption of Rule 110 provided that it take effect July 1, 2016.

Rule 111. Scheduling conferences and orders. (a) Conference. In any action, the court may in its discretion, or upon motion of any party, conduct a conference with the attorneys for the parties and any unrepresented parties, in person, by telephone, or other suitable means, and thereafter enter a scheduling order that limits the time to:

(1) join other parties and to amend the pleadings;

(2) file and hear motions;

(3) complete discovery; and

(4) set the matter for adjudication.

(b) Scheduling Order. After any conference held pursuant to this rule, an order shall be entered reciting the action taken. This order shall control the subsequent course of the action unless modified by a subsequent order.

(c) Sanctions. The court may sanction a party or a party's attorney if:

(1) a party or party's attorney fails to obey a scheduling order, or

(2) no appearance is made on behalf of a party at a scheduling conference, or

(3) a party or party's attorney is substantially unprepared to participate in the conference, or

(4) a party or party's attorney fails to participate in good faith,

In lieu of or in addition to any other sanction, the court may require the party or the attorney representing the party or both to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney's fees, unless the court finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust. [Added by order filed December 29, 2015, effective July 1, 2016.]

Advisory Commission Comments. The 2016 amendments added this rule for the purpose of reducing unnecessary delays. It is based on parts of Rule 16 of the Tennessee Rules of Civil Procedure. This rule does not preclude a court entering a scheduling order without holding a pretrial conference.

Judges may consider entering a scheduling order at a preliminary hearing in a dependent and neglect proceeding. The scheduling order may include, but is not limited to, the dates of the Department's child and family team meeting, ratification hearing, foster care review board, adjudication, and dispositional hearings.

See Rule 37.02 of the Tennessee Rules of Civil Procedure for guidance regarding sanctions.

Compiler's Notes. The adoption of Rule 111, as promulgated and adopted by the Supreme Court in its order dated December 29, 2015, was ratified and approved by 2016 House Resolution 145 and Senate Resolution 79. The order promulgating the adoption of Rule 111 provided that it take effect July 1, 2016.

Rule 112. Attendance of parties and other necessary persons. (a) Initial Inquiry by Court. At the beginning of each hearing, the court shall ascertain whether all necessary persons are before the court, which may include the child, parents (including alleged biological fathers), guardian or other custodian, and other parties and participants to the proceeding. If a necessary person is not present, the court shall determine whether notice of the hearing was provided to that person and whether the hearing may proceed.

(b) Responsibility of Department when Party to Proceeding. If a parent's identity or whereabouts are unknown and the Department of Children's Services is a party to the proceedings, the court shall ascertain whether the Department has made reasonable efforts to determine the identity and the whereabouts of the absent parent and include such finding in its order.

(c) Participation by Contemporaneous Means. In any proceeding, for good cause shown in compelling circumstances and with appropriate safeguards, the court may permit participation in open court by contemporaneous audio-visual transmission from a different location. However, during a delinquent or unruly adjudicatory hearing, a witness may only testify from a different location if the child has waived the right to confrontation. [Added by order filed December 29, 2015, effective July 1, 2016.]

Advisory Commission Comments. The 2016 amendment is based on the requirements of the previous rule regarding permanency hearings. It is important that juvenile courts make the same inquiries at all hearings. If the court determines that an absent party did not receive adequate notice of the hearing, then the hearing should be continued.

Statutory law should be consulted in determining whether a participant is a necessary person pursuant to subdivision (a). T.C.A. § 37-1-149(b) provides for the appointment of a court appointed special advocate (CASA) to act in the best interests of the child "during and after court proceedings." T.C.A. § 37-2-416 specifies that foster parents, prospective adoptive parents, or a relative providing care for a child in state custody should be notified of any hearing or review to be held with respect to the child. The statute indicates these persons have a right to be heard at any hearing or review. However, these statutes do not confer party status to CASA volunteers, foster parents, prospective adoptive parents, or a relative providing care for a child. If these participants are to testify, they should be treated as any other witness.

When a parent, who is absent due to that parent's incarceration, expresses a desire to participate by audio-visual means, the court should request that the facility make reasonable accommodations to allow that parent's participation possible. If the facility where the parent is incarcerated is able to transport and guard the parent for the purpose of in-person participation, the court should assist with coordinating those efforts.

When the court is determining whether or not the Department of Children's Services has made reasonable efforts to ascertain the identity and whereabouts of an absent parent, the court may find it helpful to consult the Department's Administrative Policies and Procedures on conducting diligent searches.

Subdivision (c) is similar to Tenn. R. Civ. P. 43.01 and allows for participation by a party or witness by contemporaneous audio-visual transmission from a different location. This should be allowed only for good cause, in compelling circumstances, and with appropriate safeguards. Additionally, a number of statutes permit telephonic testimony in certain types of cases. *See, e.g.*, Tenn. Code Ann. § 24-7-121(d) (2000) (permitting telephonic testimony regarding payment records in child support cases); Tenn. Code Ann. § 34-8-106(b) (Supp. 2014) (permitting witnesses located in other states to testify by telephone in conservatorship or guardianship proceedings); Tenn. Code Ann. § 36-1- 113(f)(3) (2014) (permitting an incarcerated parent or guardian to participate by telephone in a hearing to terminate parental rights); Tenn. Code Ann. § 36-S-2316(f) (2014) (permitting a witness located in another state to testify by telephone in cases under the Uniform Interstate Family Support Act); Tenn. Code Ann. § 36-6-214(b) (2014) (permitting a witness located in another state to testify by telephone in cases under the Uniform Child Custody Jurisdiction and Enforcement Act). Participation by an attorney from a different location may be appropriate in preliminary or administrative matters.

Compiler's Notes. The adoption of Rule 112, as promulgated and adopted by the Supreme Court in its order dated December 29, 2015, was ratified and approved by 2016 House Resolution 145 and Senate Resolution 79. The order promulgating the adoption of Rule 112 provided that it take effect July 1, 2016.

Rule 113. [Reserved.]

Rule 114. Confidentiality of proceedings. (a) Dependent and Neglect Proceedings. Dependent and neglect cases shall not be open to the public.

(b) Delinquent and Unruly Proceedings. Delinquent and unruly cases are open to the public. However, in the discretion of the court, the general public may be excluded from any proceeding. On application of a party or on the court's own initiative, the court may determine that a proceeding, in whole or in part, should be closed except to those persons having a direct interest in the case. In determining whether to close the proceedings, and thereby balancing the interests of the parties and the public's interests in open proceedings, the court shall apply the following rules:

(1) When closure is sought by a party:

(A) The party seeking to close the hearing shall have the burden of proof;

(B) The court shall not close proceedings to any extent unless it determines that failure to do so would result in particularized prejudice to the party seeking closure that would override the public's compelling interest in open proceedings;

(C) Any order of closure must not be broader than necessary to protect the determined interests of the party seeking closure;

(2) The juvenile court must consider reasonable alternatives to closure of proceedings; and

(3) The juvenile court must make adequate written findings to support any order of closure. [Added by order filed December 29, 2015, effective July 1, 2016.]

Advisory Commission Comments. This rule clarifies that dependent and neglect cases should be closed and not open to the public. This proceeding should be open to only those persons who are necessary to the particular proceeding.

State v. James, 902 S.W.2d 911 (Tenn. 1995) authorizes the closure process specified in subdivision (b) for delinquent and unruly cases. Such proceedings "'"may" be closed only through the process as outlined above.

Compiler's Notes. The adoption of Rule 114, as promulgated and adopted by the Supreme Court in its order dated December 29, 2015, was ratified and approved by 2016 House Resolution 145 and Senate Resolution 79. The order promulgating the adoption of Rule 114 provided that it take effect July 1, 2016.

Rule 115. Recording hearings. All hearings, except ex parte hearings, shall be audio recorded by the clerk of the court and retained for a minimum of one year from the date of the final disposition of the case. [Added by order filed December 29, 2015, effective July 1, 2016.]

Advisory Commission Comments. In accordance with T.CA §§ 37-1-124(c) and 37-1-159(a), the juvenile court is a court of record. Under this rule, all juvenile courts must create and maintain an audio recording of all hearings in juvenile court, in addition to keeping and maintaining appropriate minutes of hearings. Alternative means of recording, e.g. audio-visual equipment, are acceptable. This rule does not preclude simultaneous recording by a court reporter or other means of recording by a party.

This rule is not applicable to reviews conducted by a foster care review board.

Compiler's Notes. The adoption of Rule 115, as promulgated and adopted by the Supreme Court in its order dated December 29, 2015, was ratified and approved by 2016 House Resolution 145 and Senate Resolution 79. The order promulgating the adoption of Rule 115 provided that it take effect July 1, 2016.

Rule 116. Standard of proof. In any hearing in which the standard of proof is not expressly designated by statute or rule, the standard of proof shall be preponderance of the evidence. [Added by order filed December 29, 2015, effective July 1, 2016.]

Advisory Commission Comments. Most hearings in juvenile court apply an appropriate standard of proof found in statute or rule. However, the standard of proof in some hearings is not expressly stated. For example, the rule governing competency hearings does not designate a specific standard of proof. Other examples would be court approval of pretrial diversion under these rules or hearings to terminate home placement under T.C.A. § 37-1-137(e). In any such hearing, and in the absence of appellate court guidance, the appropriate standard of proof to be applied by the court would be preponderance of the evidence.

Compiler's Notes. The adoption of Rule 116, as promulgated and adopted by the Supreme Court in its order dated December 29, 2015, was ratified and approved by 2016 House Resolution 145 and Senate Resolution 79. The order promulgating the adoption of Rule 116 provided that it take effect July 1, 2016.

Rule 117. Entry of order. (a) Effective. Entry of a court order is effective when an order containing one of the following is marked on the face by the clerk as filed for entry:

(1) the signatures of the judge or magistrate and all parties or counsel, or

(2) the signatures of the judge or magistrate and one party or counsel with a certificate of counsel that a copy of the proposed order has been served on all other parties or counsel, or

(3) the signature of the judge or magistrate and a certificate of the clerk that a copy has been served on all other parties or counsel.

(b) Duties of Clerk. Following the entry of order, the clerk shall make appropriate docket notations and shall copy the order on the minutes, but failure to do so will not affect the validity of entry of the order. When requested by counselor self-represented parties, the clerk shall without delay mail or deliver a copy of the entered order to all parties or counsel. If the clerk fails to do so, a party prejudiced by that failure may seek relief under Rule 213 in delinquent or unruly cases and Rule 310 in dependent and neglect cases. [Added by order filed December 29, 2015, effective July 1, 2016.]

Advisory Commission Comments. This rule is designed to make uniform across the state the procedure for the entry of an order and to make certain the effective date of the order. Under this rule, unless otherwise ordered by the court, the effective date of the order is the date of its filing with the clerk after being signed by the judge or magistrate, even though it may not be copied or entered on the minute book until a later date.

Prior to entry of a written order, parties are usually bound by the terms of the court's oral command, assuming the command is specific and unambiguous. *Blackburn v. Blackburn*, 270 S.W.3d 42 (Tenn. 2008). *See also Ross v. Ross*, No. M2008-00594-COA-R3-CV, 2008 Tenn. App. LEXIS 729, 2008 WL 5191329 (Tenn. Ct. App. Dec. 10, 2008)

(holding that violating the court's oral command may constitute contempt if the command is specific and unambiguous in all respects).

Subdivision (a) specifies that an order of the court cannot be filed until it bears not only signature of the judge or magistrate, but also (1) the signatures of all parties or their counselor (2) a certificate of counselor the clerk that copies of the order have been served on all parties or counsel of record. The purpose is to provide notice to all parties or their counsel before the order becomes final to allow any party to file a timely appeal.

Occasionally, it is foreseeable that an order will not be entered promptly upon submission to the judge or magistrate although a party contemplates filing an appeal or post-trial motion. When a party anticipates such an order will not be promptly entered, the party may be assured of notice of entry by employing this rule. A lawyer or party who requests a copy of the order stamped with the entry date should not be prejudiced by a clerk's failure to comply with the request. Upon request, the clerk is to immediately mail or deliver a copy of the order to all concerned. The request and mailing, or failure to mail, do not affect the time for filing a post-trial motion or a notice of appeal. Parties prejudiced by clerical negligence may pursue relief pursuant to Rule 213 in delinquent or unruly cases and Rule 310 in dependent and neglect cases.

Rule 106 requires service on counsel when a party is represented.

Delivery of the order by the clerk may be accomplished by physically providing the order to the person, or through facsimile or electronic transmission of the order.

Compiler's Notes. The adoption of Rule 117, as promulgated and adopted by the Supreme Court in its order dated December 29, 2015, was ratified and approved by 2016 House Resolution 145 and Senate Resolution 79. The order promulgating the adoption of Rule 117 provided that it take effect July 1, 2016.

Rule 118. Appeals. (a) General. Appeals shall be taken pursuant to T.C.A. § 37-1-159.

(b) Right to an Attorney. The right to an attorney at all stages of the proceedings shall include the right to an attorney in an appeal.

(c) When Right Attaches. The right to an appeal attaches upon entry of the final order.

(d) Notification. At any hearing which will result in a final order, the judge shall notify all parties of their right to appeal and the time limits for and manner in which the right to appeal can be perfected, and the right to an attorney on appeal.

(e) Filing. An appeal may be filed with the clerk of the juvenile court within 10 days of the entry of the final order. A prematurely filed notice of appeal shall be treated as filed on the day of entry of the order from which the appeal is taken.

(f) Perfection. An appeal is perfected when a notice of appeal is filed and:

(1) a filing fee is paid, or bond in lieu of the filing fee is posted;

(2) an affidavit of indigency is filed within the applicable time period and an order allowing filing on a pauper's oath is subsequently entered; or

(3) the court has previously determined the appellant to be indigent.

(g) Indigent Status. If leave to proceed as an indigent person is denied, the clerk of the juvenile court shall serve notice of the denial to the parties.

(h) Record on Appeal. When an appeal has been perfected, the clerk shall cause the entire record in the case, including the juvenile court's findings and written reports from probation officers, court employees or professional consultants, to be taken to the circuit court, where the case shall be set for a *de novo* hearing.

(i) Parties to the Appeal. All parties to the juvenile court proceeding shall be parties to the *de novo* hearing. [Added by order filed December 29, 2015, effective July 1, 2016.]

Advisory Commission Comments. Appeals under this rule do not include the request for a hearing before the juvenile court judge after entry of a magistrate's order. Such requests are controlled by T.C.A. § 37-1-107 governing magistrates.

The right to appeal accrues upon entry of a final order. Prior to the 2016 amendment, the previous language read "upon entry of the order of final disposition." The Commission modified the language to make clear that orders other than an order entered following a dispositional hearing may be considered "final orders." Black's Law Dictionary defines final order as "an order that is dispositive of the entire case." *Black's Law Dictionary* 1206 (9 th ed. 2009). Tennessee case law holds that a judgment is final "when it decides and disposes of the whole merits of the case leaving nothing for the further judgment of the court." *Richardson v. Board of Dentistry*, 913 S.W.2d 446, 460 (Tenn. 1995) (citing *Saunders v. Metropolitan Gov't of Nashville & Davidson County*, 383 S.W.2d 28, 31 (Tenn. 1964)). Examples of final orders in juvenile court include, but are not limited to, orders revoking probation or terminating home placement, an order finding a child violated a valid court order pursuant to § 31.303 (f)(2) & (3) of Title 28 of the Code of Federal Regulations, dispositional orders, and the same orders issued by a magistrate that have not been appealed to the judge. This list is not exclusive, and other orders may be considered final orders. The Commission also notes the case of *In re Valentine*, 79 S.W.3d 539, 547 (Tenn. 2002), in which the court held that ratification of a permanency plan is not a final order.

This rule clarifies that a notice of an appeal, pursuant to T.C.A. § 37-1-159, must be filed with the clerk of the juvenile court and not with the youth services officer or any other office.

Pursuant to subdivision (i) and T.C.A. § 37-1-159, all parties subject to the final order are parties to the appeal.

This rule clarifies that an appeal is perfected when the notice of appeal is filed and the required filing fee is paid or otherwise satisfied. Such satisfaction includes payment of the fee or by proceeding *in forma pauperis*. See T.C.A. § 20-12-127.

See Rule 110 for the computation of time.

T.C.A. § 37-1-103, regarding the juvenile court's exclusive jurisdiction, has been amended to make clear that the juvenile court retains jurisdiction to the extent needed to complete any reviews or permanency hearings for children in foster care during the pendency of the appeal to administer the case until the appeal has been decided or further orders entered by the circuit court.

The constitutional prohibition against being placed twice in jeopardy for the same offense applies to juvenile court proceedings as well as adult proceedings. *Breed v. Jones*, 421 U.S. 519 (1975); *State v. Jackson*, 503 S.W.2d 185 (Tenn. 1973). Normally, jeopardy attaches in a non-jury proceeding when a witness is sworn to testify. *State v. Pennington*, 952 S.W.2d 420, 422 (Tenn. 1997). *See also, State v. Bryan*, W1999-00620-CCA-R3-CD, 2000 WL 33288749, 2000 Tenn. Crim. App. LEXIS 511 (Tenn. Crim. App. June 27, 2000). The constitutional prohibition against being placed twice in jeopardy for the same offense precludes the state from seeking de novo appeal in a delinquent or unruly case which has been dismissed following a hearing on the merits. *State v. Jackson*, supra.

Compiler's Notes. The adoption of Rule 118, as promulgated and adopted by the Supreme Court in its order dated December 29, 2015, was ratified and approved by 2016 House Resolution 145 and Senate Resolution 79. The order promulgating the adoption of Rule 118 provided that it take effect July 1, 2016.

Delinquent/Unruly Proceedings.

Rule 201. Preliminary inquiry and informal adjustment. (a) Purposes. The juvenile court preliminary inquiry is intended to:

(1) Provide for resolution of complaints by excluding from the juvenile court at its inception:

(A) Those matters over which the juvenile court has no jurisdiction;

(B) Those matters in which there appears to be insufficient evidence to support a petition; or

(C) Those matters in which sufficient evidence may exist to bring a child within the jurisdiction of the juvenile court but which are not serious enough to require official action under the juvenile court law or which may be suitably referred to a non-judicial agency available in the community;

(2) Provide for the commencement of proceedings in the juvenile court by the filing of a petition only when necessary for the welfare of the child or the safety and protection of the public.

(b) Receipt of Complaint. Any person or agency having knowledge of the facts may file a complaint with the juvenile court or an officer designated by the court alleging facts to indicate a child is delinquent or unruly. The court representative accepting the complaint shall note thereon the date and time of receipt of the complaint.

(c) Duties of Designated Court Officer. Upon receipt of the complaint, the designated court officer shall:

(1) Interview or otherwise seek information from the complainant, victim and any witness to the alleged offense.

(2) Conduct an interview with the child who is the subject of the complaint and the child's parents, guardian or legal custodian. At the beginning of the interview, the officer shall explain the nature of the complaint and inform the child of the right to counsel, where applicable, that if the child cannot afford an attorney one will be appointed if applicable, and that the child has a right to remain silent and any statements made by the child will not be admissible in any proceeding prior to the dispositional hearing.

(A) If the child invokes the right to an attorney, the designated court officer shall immediately suspend the interview, allow for the appointment or retention of counsel, and reschedule the matter.

(B) If the child chooses to proceed with the interview without counsel, the designated court officer shall obtain a written waiver from the child and proceed with the interview.

(3) If the designated court officer determines that the juvenile court does not have jurisdiction over the matter or there appears to be insufficient evidence to support the complaint, then the complaint shall be closed and no further action taken by the court.

(d) Informal Adjustment. **(1)** If the designated court officer determines that the matter is not serious enough to require official action before the juvenile court judge, then the designated court officer may remedy the situation by giving counsel and advice to the parties through an informal adjustment. In determining whether informal adjustment should be undertaken, the designated court officer may consider:

(A) Whether the child has had a problem in the home, school or community which indicates that counsel and advice would be desirable;

(B) Whether the child and the parents, guardian or legal custodian seem able to resolve the matter with the assistance of the designated court officer or other court staff, and without formal juvenile court action;

(C) Whether further observation or evaluation by the designated court officer is needed before a decision can be reached;

(D) The attitude of the child, parents, guardian, or legal custodian;

(E) The concerns of the victim, child, the parents, guardian, or legal custodian, and/or any other affected persons or agencies;

(F) The age, maturity and mental condition of the child;

(G) The prior history or record, if any, of the child;

(H) The recommendation, if any, of the referring party or agency;

(I) The results of any mental health, drug and alcohol or other assessments or screenings of the child; and

(J) Any other circumstances which indicate that informal adjustment would be consistent with the best interest of the child and the public.

(2) The informal adjustment shall not occur without the consent of the child and the child's parents, guardian or other legal custodian. Prior to giving consent, the child must be notified that participation is optional and may be terminated by the child at any time.

(3) The informal adjustment process shall not continue beyond a period of 3 months from its commencement unless such extension is approved by the court for an additional period not to exceed a total of 6 months. The process shall only include counsel and advice, or referral to an agency available in the community for successful completion of a suitable treatment program, class or some form of alternative dispute resolution.

(4) Upon successful completion of a period of informal adjustment, the complaint shall be closed and no further action taken by the court. If a petition has been filed, then the petition shall be dismissed with prejudice.

(5) The designated court officer may terminate the informal adjustment and proceed with formal court action if at any time the child or the child's parents, guardian or legal custodian:

(A) Declines to participate further in the informal adjustment process;

(B) Denies the jurisdiction of the juvenile court over the instant matter;

(C) Expresses a desire that the facts be determined by the court;

(D) Fails to comply with the terms of the informal adjustment program.

(6) Upon termination of the informal adjustment process, the designated court officer shall notify the child and the child's parent, guardian or legal custodian thereof, and the victim. The termination shall be reported to the court. Such notification shall include the basis for the termination.

(e) Informal Adjustment Determined Inappropriate. If the designated court officer determines informal adjustment to be inappropriate, then formal court proceedings shall commence with the filing of a petition or citation.

(f) Statements of Child. Any statements made by the child during the preliminary inquiry or informal adjustment are not admissible in any proceeding prior to the dispositional hearing. [Added by order filed December 29, 2015, effective July 1, 2016.]

Advisory Commission Comments. The 2016 amendment combines two previous rules regarding intake in and informal adjustment in delinquent and unruly cases. The intent of this rule is to allow local courts flexibility in how they handle informal adjustment, but also to spell out those basic procedures which must take place in every case in which informal adjustment is undertaken to ensure that informal adjustment is voluntary, as required in T.C.A § 37-1-110.

The requirement in subdivision (b) that the court representative accepting a complaint shall note thereon the date and time of receipt of the complaint has been added to ensure that complaints are reduced to writing and documentation exists as to when the complaint was received. The term "complaint" includes, but is not limited to, a petition or citation. The complaint may be filed with the clerk of the court or another person designated by the court. The term "complaint" as used in these rules is not equivalent to a complaint referenced in the Rules of Civil Procedure.

As part of the preliminary inquiry, subdivision (c) requires the designated court officer to notify the child of the child's right to an attorney at the beginning of the interview with the child. T.CA § 37-1-126 provides that a child is entitled to be represented by an attorney in any delinquent proceeding. A child is entitled to an attorney when charged with an unruly offense when the child is in jeopardy of being removed from the home pursuant to T.C.A. § 37-1-132(b). Not all children charged with an unruly offense are entitled to an attorney. The right attaches when the child is in jeopardy of being placed outside the child's home with a person, agency or facility. Prior to placing custody of an unruly child with the Department of Children's Services, the court is obligated to refer the child to the Department's juvenile-family crisis intervention program pursuant to T.C.A. § 37-168. A child's assertion of the right to counsel should not preclude an informal adjustment when appropriate.

It should be noted that, although attitude may be a factor under subdivision (d)(l)(iv) to consider in determining whether to undertake informal adjustment, it should not be the sole basis for denying informal adjustment. Each locality is encouraged to adopt and implement standardized risk and needs assessment tools in order to assist in this process.

Because informal adjustment allows only for counseling and advice, subdivision (d)(3) does not allow for sanctions such as restitution. However, in many instances, the child or the child's family may desire to pay the alleged victim for any harm done. If the child and the victim agree to restitution, this can be done independently of the informal adjustment and not as a prerequisite or condition of the informal adjustment. If the intent is to make restitution a condition, the appropriate resolution is pretrial diversion and not informal adjustment.

Subdivision (e) provides that when an informal adjustment is determined to be inappropriate then formal court proceedings shall commence with the filing of a petition or citation. If a petition has not been filed at this point in time, then such petition should be filed with the clerk of the court. If a citation has been filed that meets the requirements ofT.CA § 40-7-118, then a petition need not be filed in order to commence formal proceedings. If an informal adjustment is determined to be inappropriate, the designated court officer should assess whether a pretrial diversion is appropriate.

Courts should develop written local procedures and criteria for initiating informal adjustments. Such criteria might include a listing of the types of cases, or charges, which might be handled by informal adjustment. Local rules should include a process by which the district attorney general, petitioner, or victim of the offense may object to an informal adjustment.

Compiler's Notes. The adoption of Rule 201, as promulgated and adopted by the Supreme Court in its order dated December 29, 2015, was ratified and approved by 2016 House Resolution 145 and Senate Resolution 79. The order promulgating the adoption of Rule 201 provided that it take effect July 1, 2016.

Rule 202. Pretrial diversion. (a) Pretrial Diversion Agreement. If the designated court officer determines that the matter is appropriate for pretrial diversion, the pretrial diversion agreement shall be in writing and signed by the child, the child's parent, guardian or other legal custodian and the designated court office. The agreement must be approved by the court before it is of any force and effect.

(b) Consent. The pretrial diversion shall not occur without consent of the child and the child's parent, guardian or other legal custodian.

(c) Time Limits. The pretrial diversion process may continue for a period up to 6 months, unless the child is discharged sooner by the court. Upon application of any party made prior to the expiration of the initial time period, and after notice and a hearing, the diversion may be extended for a period not to exceed an additional 6 months.

(d) Requirements. In addition to any counsel and advice authorized for an informal adjustment, sanctions, including, but not limited to community service work and monetary restitution may be made a part of the agreement. The parties, by mutual consent and with court approval, may modify the requirements of the agreement at any time before its termination.

(e) Violation of Pretrial Diversion. If failure to comply with the agreement is alleged, the child shall be given written notice of the alleged violation and an opportunity to be heard on that issue prior to the reinstatement of proceedings pursuant to the original charge. Notice of the failure to comply must be filed prior to the expiration of the pretrial diversion. The filing of the notice extends the period of pretrial diversion pending a prompt hearing on the merits of the alleged violation.

(f) Statements of Child. Any statements made by the child during the preliminary inquiry or pretrial diversion are not admissible in any proceeding prior to the dispositional hearing. [Added by order filed December 29, 2015, effective July 1, 2016.]

Advisory Commission Comments. The procedures set forth in this rule essentially allow for a process similar to informal adjustment, with no official finding as to guilt; however, because conditions of a pretrial diversion may be more demanding than those allowed in an informal adjustment there must be court approval of any agreement. Prior to determining whether a case is appropriate for pretrial diversion, the designated court officer should follow the procedures in Rule 201(a)-(c), regarding the preliminary inquiry. Though sanctions, such as community service work or monetary restitution, are not allowed to be imposed on an informal adjustment, these sanctions are appropriate requirements for a pretrial diversion.

Courts should develop written local procedures and criteria for initiating pretrial diversion. Such criteria might include a listing of the types of cases, or charges, which might be handled by pretrial diversion. Pretrial diversion might be initiated by the parties or by the court itself, through motion or through whatever other procedure the court determines is appropriate. Local rules and procedures should ensure the district attorney general is notified of cases in which pretrial diversion is being considered, in light of the legitimate public interest in the disposition of more serious cases.

Pursuant to T.C.A. § 37-1-110, if the child completes the pretrial diversion agreement, the case is dismissed. If the court, or the designated court officer, determines that the case is serious enough that such dismissal should not occur, the case should proceed to court as in any other case warranting official court action, and, if the child readily admits guilt and wishes to negotiate a settlement based upon a plea of guilty, such negotiated settlement should be handled in accordance with Rule 209.

Compiler's Notes. The adoption of Rule 202, as promulgated and adopted by the Supreme Court in its order dated December 29, 2015, was ratified and approved by 2016 House Resolution 145 and Senate Resolution 79. The order promulgating the adoption of Rule 202 provided that it take effect July 1, 2016.

Rule 203. Procedures upon taking a delinquent child into custody. (a) Delinquent child taken

INTO CUSTODY AND RELEASED. When a child is taken into custody and is not detainable, the child shall be released to the child's parent, guardian or other custodian within a reasonable time. The child and the person to whom a child is released shall be served a summons requiring the child's return to court at such time and place as the court directs.

(b) DELINQUENT CHILD TAKEN INTO CUSTODY AND NOT RELEASED. **(1)** If a child is taken into custody without an order and:

(A) The child is alleged to be delinquent and held in secure detention, a probable cause determination that an offense has been committed by the child shall be made by a magistrate within 48 hours of the child being taken into custody; or

(B) The child is alleged to be delinquent and detained under the special circumstances exception pursuant to T.C.A. § 37-1-114(c)(3), a probable cause determination that an offense has been committed by the child and a finding of special circumstances shall be made by a magistrate within 24 hours, excluding nonjudicial days, but no later than 48 hours of the child being taken into custody.

In either case, if the magistrate does not make the required findings, the child shall be immediately released to the child's parent, guardian or other custodian. "Magistrate" means a person designated as such pursuant to the provisions of T.C.A §§ 37-1-107 or 40-1-106. Probable cause determinations shall be based on a written affidavit, which may be sworn to in person or by audio-visual electronic means.

(2) If a child alleged to be delinquent is taken into custody pursuant to an order of attachment or if a probable cause determination is made pursuant to paragraph (b), the child shall not remain in detention longer than 72 hours, excluding nonjudicial days, but in no event more than 84 hours, unless a detention hearing is held. For a child so detained, a petition setting forth the allegations against the child and the basis for asserting the court's jurisdiction shall be filed prior to the child's detention hearing.

(c) SECURE DETENTION OF DELINQUENT CHILD. **(1)** A child alleged to be delinquent and not released shall be placed in a juvenile detention facility. The court and the child's parent, guardian or other custodian shall immediately be notified of the child's location and of the reason for the child's detention.

(2) A child not released shall be informed upon being placed in the detention facility, both verbally and in writing, by a person designated by the court of:

(A) The reason for being detained, including the nature of the alleged offense;

(B) The child's right to a detention hearing and an explanation of the purpose of a detention hearing;

(C) The child's right to an attorney and that an attorney will be appointed to represent the child as soon as possible prior to the detention hearing if the child's parent or custodian is financially unable or refuses to retain an attorney for the child;

(D) The right not to say anything about the charges being placed against the child and that anything the child says may be used against the child in court;

(E) The right to communicate with the child's attorney and parent, guardian or other custodian, and that provision will be made by the detention facility to allow for such private communication.

(d) DETENTION HEARING. **(1)** ADVISEMENT OF RIGHTS. At the beginning of the detention hearing, the court shall inform the parties of the purpose of the hearing and the possible consequences of the detention hearing, and shall inform the child of the child's rights pursuant to Rule 205.

(2) EVIDENCE. Any finding that there is probable cause to believe that an offense has been committed, and that the child committed it, shall be based on evidence admitted pursuant to the Rules of Evidence, except that such evidence may include reliable hearsay.

(3) REQUIRED DETERMINATIONS. The court, in making the decision on whether to detain the child, shall:

(A) Determine whether probable cause exists as to whether the charged offense or a lesser included offense has been committed and whether the child committed it; and

(B) If probable cause has been determined, whether the offense is one which qualifies for continued detention under T.C.A § 37-1-114; and

(C) If probable cause has been determined and the offense qualifies for continued detention, determine whether it is in the best interest of the child and the community that the child remain in detention pending further hearings. In making this best interest determination, the court should consider the likelihood that the child would abscond or be removed from the jurisdiction of the court; and

(D) Determine whether any less restrictive alternatives to detention are available which would satisfy the court's best interest determination above. The court may impose conditions on release such as the setting of bail, restrictions on the child's movements and activities, requirements of the child's parent, guardian, or custodian, or other community-based alternatives as an alternative to continued detention.

(4) RELEASE OF CHILD. If the court does not find the child is detainable as above, the child shall be released to an appropriate parent, guardian or responsible adult. The court may impose conditions on release as above, and a hearing shall be scheduled.

(5) CONTINUED DETENTION OF CHILD. If the court orders the child to be detained, or if the child waives a the detention hearing, the court shall ensure that the child's case will be scheduled so as to limit the time the child spends in secure detention.

(6) WAIVER OF TIME LIMIT FOR DETENTION HEARING. The time limit for the hearing may be waived by a knowing and voluntary written waiver by the child. Any such waiver may be revoked at any time, at which time a detention hearing shall be held within the time frame outlined in T.C.A. § 37-1-117. [Added by order filed December 29, 2015, effective July 1, 2016.]

Advisory Commission Comments. This rule applies only to children alleged to be delinquent. A child alleged to be unruly and taken into custody may not be held in a secure facility for a period longer than allowed in T.C.A. § 37-1- 114.

Subdivision (b) clarifies that upon a warrantless arrest of a child alleged to be delinquent, a neutral and detached magistrate must make a probable cause determination that the child has committed the delinquent offense within 48 hours of the arrest. This determination may be made *ex parte*. Under the Fourth Amendment, in order for a state to detain a person arrested without a warrant, a judicial officer must determine that probable cause exists to believe the person has committed a crime. *Gerstein v. Pugh*, 420 U.S. 103 (1974). The judicial officer must make this determination "either before or promptly after arrest. "*Id.* at 124. Seventeen years later, the Court further refined its *Gerstein* decision, holding that probable cause determinations must be made within 48 hours of a warrantless arrest. *County of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991) ("A jurisdiction that chooses to offer combined [probable cause and arraignment] proceedings must do so as soon as is reasonably feasible, but in no event later than 48 hours after arrest"). Although the Supreme Court has not addressed whether *Gerstein* hearings are required for juveniles, the Sixth Circuit has answered this question affirmatively. *Cox v. Turley*, 506 F.2d 1347, 1353 (6th Cir. 1974) ("Both the Fourth Amendment and the Fifth Amendment were violated because there was no prompt determination of probable cause — a constitutional mandate that protects juveniles as well as adults"). See also *State v. Bishop*, No. W2010-01207-SC-R11-CD, 2014 Tenn. LEXIS 189, 2008 WL 888198 (Tenn. 2013), and *State v. Huddleston*, 924 S.W.2d 666 (Tenn. 1996).

The probable cause determination in subdivision (b)(l) must be based on a written affidavit reciting the facts, which may be sworn to in person or by audio-visual electronic means. Black's Law Dictionary defines affidavit as "(a) voluntary declaration of facts written down and sworn to by the declarant before an officer authorized to administer oaths." *Black's Law Dictionary* 66 (9th ed. 2009).

Subdivision (b)(2) refers to an "order of attachment." The Commission uses the phrase "order of attachment" to refer to any court order commanding that the child be taken into custody. Some jurisdictions may refer to these orders as orders of arrest or arrest warrants. Such orders of attachment may direct the appropriate authorities to take the child to a detention facility, to the police station, to court, or to another place.

Wherever possible, community-based alternatives to secure detention facilities should be used. This preference is in keeping with the prohibition in T.C.A. § 37-1-114 against any detention or shelter care of children unless "there is no less drastic alternative to removal of the child from the custody of his parent, guardian or legal custodian available which would reasonably and adequately protect the child's health or safety or prevent the child's removal from the jurisdiction of the court pending a hearing."

The Commission recognizes that detention is a severe curtailment of the child's liberty and affects not only the child, but the child's parent, guardian or custodian. A child in detention is presumed to be innocent and retains all rights guaranteed to children facing charges but who are not detained. Accordingly, detention should be as brief as possible and should be used only when absolutely necessary to accomplish the objectives of the statute. The court should determine, on an individual basis, whether the child's continued detention is warranted under T.C.A. § 37-1-114 and that there are no less drastic alternatives available. The court should make specific findings of fact justifying continued detention.

A child alleged to be delinquent has the right to an attorney at the detention hearing, as well as all other stages of a delinquency proceeding. The court must inform the child of the right to an attorney at the beginning of the hearing, pursuant to the procedures in Rule 205. Also, in order for a child to effectively waive the right to an attorney, the court must comply with the process to obtain a knowing and voluntary waiver in that rule.

Courts should have an established practice in place for the appointment of attorneys as soon as possible prior to detention hearings. If at all practicable, detention hearings should not be continued for the sole reason of locating and appointing attorneys. The Commission recognizes that time constraints may interfere with this objective, but would stress that continued deprivation of liberty is a significant event in the life of a child.

Compiler's Notes. The adoption of Rule 203, as promulgated and adopted by the Supreme Court in its order dated December 29, 2015, was ratified and approved by 2016 House Resolution 145 and Senate Resolution 79. The order promulgating the adoption of Rule 203 provided that it take effect July 1, 2016.

Rule 204. Use of restraints on children in the courtroom. (a) Children appearing in juvenile court may be restrained if the court determines that:

(1) The behavior of the child represents a threat to his or her safety or the safety of other people in the courtroom; or

(2) The behavior of the child presents a substantial risk of flight from the courtroom; and

(3) There are no less restrictive alternatives to restraints that will prevent flight or risk of harm to the child or another person in the courtroom.

(b) Any party may request to be heard as to whether or not restraints are necessary, and upon request, a judge shall make findings on the record regarding the decision to restrain the child. [Added by order filed December 29, 2015, effective July 1, 2016.]

Advisory Commission Comments. The general statutory requirement is to "remove the taint of criminality" from children appearing in our juvenile courts.

It is not anticipated by this Commission that juvenile courts will be required to engage in an extensive fact-finding hearing prior to ruling that restraints on a particular child are appropriate. It is further understood that Tennessee juvenile courtrooms vary greatly in structure, availability of security personnel and their ability to handle security concerns. A few of the factors the court may wish to consider prior to ruling restraints are appropriate are:

1) The seriousness of the charges;
2) The delinquency history of the child;
3) Any past disruptive courtroom behavior by the child;
4) Any past escape attempts by the child;
5) Any security risks at a particular time in a courtroom due to structure and/or low staffing levels of security personnel.

The Commission is seeking to promote an individual determination by the court as to whether a child should be restrained in the courtroom. The focus of this rule should be balancing between the child's best interest and the safety of the courtroom. This rule only addresses children within the courtroom. It does not address transportation to and from the courthouse and to and from the courtroom.

A large number of children in delinquency proceedings have suffered neglect or abuse, and/or have physical or mental disabilities. Restraints on these children are particularly inappropriate in most circumstances.

Communication between a child and an adult attorney is often difficult, and restraints compound that problem. Children disengage from communication with their attorneys even more than adult defendants because "juveniles have limited understanding of the criminal justice system and the roles of the institutional actors within it." *Graham v. Florida*, 560 U.S. 48, 51 (2010).

Compiler's Notes. The adoption of Rule 204, as promulgated and adopted by the Supreme Court in its order dated December 29, 2015, was ratified and approved by 2016 House Resolution 146 and Senate Resolution 78. The order promulgating the adoption of Rule 204 provided that it take effect July 1, 2016.

Rule 205. Notification and waiver of rights of children. (a) Right To Attorney. **(1)** Notification of Right to Attorney. In all proceedings in which a child is by law entitled to representation by an attorney, the court shall expressly inform the child of the right to an attorney. If a child waives the right to an attorney, the court shall inform the child of the continuing right to an attorney at all stages of the proceedings.

(2) Waiver of Right to an Attorney. No child shall be deemed to have waived the assistance of an attorney until and unless:

(A) The child has been fully informed of the right to an attorney;

(B) The child subsequently knowingly and voluntarily waives the right to an attorney; and

(C) The waiver is confirmed in writing by the child.

(3) Appointment of Attorney. When a child who is entitled to a court-appointed attorney does not know-

ingly and voluntarily waive the right to an attorney and cannot afford an attorney, or when the child's parents or other persons legally obligated to care for and support the child are able to afford an attorney but refuse to hire one, the court shall appoint an attorney and assess attorney's fees pursuant to T.C.A. § 37-1-150.

(b) NOTIFICATION AND WAIVER OF ADDITIONAL RIGHTS AT A HEARING. **(1)** NOTIFICATION OF RIGHTS TO A CHILD WHO HAS WAIVED THE RIGHT TO AN ATTORNEY. At the outset of any juvenile court hearing, the court shall advise any child who has waived the right to an attorney of:

(A) The right to remain silent;

(B) The right to plead not guilty;

(C) The right to a trial;

(D) The right to confront and cross-examine adverse witnesses;

(E) The right to present testimony on the child's behalf;

(F) The right to subpoena evidence on the child's own behalf;

(G) The right to appeal any final order, the time limits for and manner in which the right to appeal can be perfected, and the right to an attorney on appeal.

(2) NOTIFICATION AND WAIVER WHERE CHILD REPRESENTED BY AN ATTORNEY. When the child is represented by an attorney, the attorney shall fully advise the child of the child's rights under the Constitution of the United States, the Constitution of Tennessee, any other law, and any rule of court. The child shall make the decision whether or not to waive those rights, after full consultation with the child's attorney. The obligation of the attorney to advise the child of the child's rights in no way diminishes the Court's obligations both to advise the child of the child's rights and to ascertain whether waivers of those rights are made knowingly and voluntarily.

(3) WAIVER OF RIGHTS WHERE CHILD NOT REPRESENTED BY AN ATTORNEY. When the child is not represented by an attorney, the child may not waive any rights guaranteed to the child under the Constitution of the United States, the Constitution of Tennessee, any other law, or any rule of court unless the Court has fully advised the child of the child's rights and has determined that the child knowingly and voluntarily waives those rights. The court shall not accept a waiver or deem a waiver to be knowing and voluntary unless or until the child has consulted with a knowledgeable adult who has no interest adverse to the child.

(c) KNOWING AND VOLUNTARY WAIVERS. **(1)** CRITERIA FOR KNOWING AND VOLUNTARY WAIVERS. The court shall only accept a waiver if the child is able to make an intelligent and understanding decision based on the child's mental condition, age, education, experience, the nature or complexity of the case, or any other relevant factor.

(2) PROCEDURE FOR MAKING AND CONFIRMING WAIVERS. Any and all waivers of rights at a hearing shall be made orally and in open court, and shall be confirmed in writing by the child and the judge. When the child is not represented by an attorney, the court shall advise the child in open court of the right to an appointed attorney. The court shall not proceed with the hearing unless the child has waived the right to an attorney in accordance with the provisions of this rule. [Added by order filed December 29, 2015, effective July 1, 2016.]

Advisory Commission Comments. Children alleged to be delinquent and children alleged to be unruly and in jeopardy of being removed from the home have the right to an attorney pursuant to T.C.A. § 37-1-126. In addition, this statute also mandates appointment of an attorney for a child who is "not represented by the child's parent, guardian, guardian ad litem, or custodian" and who is alleged to be delinquent, or unruly and in jeopardy of being removed from the home. The statute contemplates that a child will not appear in court without adult guidance and representation. Parents are not automatically disqualified from fulfilling this function. However, as the Supreme Court has observed in a different context, "As a general rule, counsel should be provided, and ... any doubt should be resolved in favor of appointment of counsel." *State ex rei. Gillard v. Cook,* 528 S.W.2d 545, 548 (Tenn. 1975).

A "knowledgeable adult who has no interest adverse to the child," referenced in subdivision (b)(3), is a person who can provide advice to the child and who will have no interests that interfere with providing dispassionate and mature advice to the child. This person should have no interests that prevent the person from keeping the child's best interests and the child's desires in the forefront. A person who now or in the past brought charges against the child generally does not qualify. Where possible, this person should have a pre-existing relationship with the child. While parents generally satisfy this requirement, the court should determine the level of trust between the child and the child's parents before allowing the parent to satisfy this requirement. When a child is in the custody of the Department, its employees do not satisfy the requirement of this rule. Depending on the circumstances, a foster parent may qualify.

It is the responsibility of the attorney representing the child charged with a delinquent or unruly offense to fully advise the child of his or her rights. If a child chooses to waive his or her rights, the child can only do so once the court has determined that the child has been advised of each and every right and knowingly and voluntarily is waiving each of the rights.

All waivers of rights shall be made orally and in open court and confirmed in a writing signed by both the judge and the child waiving the rights. The confirming document can be a preprinted form, but must specify the rights that are being waived and must acknowledge that the individual is choosing to waive those rights.

Subdivision (c) provides that the court shall only accept a waiver by a child of his or her rights only if the child is able to make an intelligent and understanding decision based on certain factors. The Tennessee Supreme Court has applied the totality-of-the-circumstances test in analyzing juvenile waivers. *See State v. Callahan*, 979 S.W.2d 577 (Tenn. 1998).

The court should address the child, not the parents or other adults who are present in the courtroom, and should always take into account the child's age, mental condition, education, experience and the nature and complexity of the case when deciding how to question the child about the child's understanding of the rights and whether the child waives those rights. The court must address the child in language appropriate to that particular child.

Compiler's Notes. The adoption of Rule 205, as promulgated and adopted by the Supreme Court in its order dated December 29, 2015, was ratified and approved by 2016 House Resolution 145 and Senate Resolution 79. The order promulgating the adoption of Rule 205 provided that it take effect July 1, 2016.

Rule 206. Discovery. (a) Each juvenile court shall ensure that the parties in delinquent and unruly proceedings have access to any discovery materials consistent with Rule 16 of the Rules of Criminal Procedure.

(b) An informal request for discovery is encouraged, but if the parties cannot agree as to discovery, then a formal discovery request shall be made. [Added by order filed December 29, 2015, effective July 1, 2016.]

Advisory Commission Comments. In drafting this rule, the Commission was concerned with potential burdens and delays that might be caused if existing criminal discovery methods were applied without modification to juvenile court proceedings. This does not preclude adoption by each court of local rules of procedure to implement the discovery mechanisms found in the Tennessee Rules of Criminal Procedure. The Commission emphasizes the mandate of Supreme Court Rule 18, which limits local rules to those "not inconsistent with … the Rules of Juvenile Procedure[.]"

State v. Willoughby, 594 S. W.2d 388 (Tenn. 1980) holds that discovery rules do not apply to preliminary examinations and hearings. Therefore, this rule would not apply to any probable cause hearing in juvenile court with the caveat that this rule is not the exclusive procedure for obtaining discovery. Please note that some discovery may be critical in a transfer hearing. The Court should use its discretion in granting access to information necessary to defend or prosecute a transfer case. The state must disclose any exculpatory evidence to the child's attorney per *Brady v. Maryland*, 373 U.S. 83 (1963).

If the parties cannot agree on discovery, then the Tennessee Rules of Criminal Procedure shall be utilized to ensure that each side has access to discovery materials in each case. If a request for discovery is made on behalf of the child and the district attorney is not prosecuting the case, the person prosecuting the case must comply with Rule 16 of the Rules of Criminal Procedure.

Juvenile court practitioners are advised to fully acquaint themselves with Rule 16 of the Rules of Criminal Procedure.

Compiler's Notes. The adoption of Rule 206, as promulgated and adopted by the Supreme Court in its order dated December 29, 2015, was ratified and approved by 2016 House Resolution 145 and Senate Resolution 79. The order promulgating the adoption of Rule 206 provided that it take effect July 1, 2016.

Rule 207. Procedures related to child's mental condition. (a) At Time of Adjudicatory Hearing. **(1)** If at any time prior to or during the adjudicatory hearing in a delinquent or unruly case, the court has reasonable grounds to believe the child named in the petition may be incompetent to proceed with an adjudicatory hearing, the court shall stay the proceedings pending a determination of the child's competency to stand trial. Reasonable grounds to believe that the child is incompetent to proceed may be based upon an oral or written motion by any party or upon the court's own initiative.

(2) The court shall order one or more evaluations of a child to assist in determining whether the child is mentally competent to stand trial. The evaluations are to be performed by a licensed psychologist or psychiatrist who has expertise in child development and has received training in forensic evaluation procedures through formal instruction, professional supervision, or both.

(3) If the issue of a child's competency to stand trial arises prior to the child having either a retained or appointed attorney, no further action will occur until an attorney is in place to represent the child.

(4) In any case in which such an evaluation is ordered, the court shall schedule a hearing in order to determine competency.

(5) If the child is found to be incompetent to proceed with the adjudicatory hearing, the adjudication shall be stayed pending further proceedings and time limits shall be tolled. If the court finds that the provision of services or treatment to the child may result in the child achieving competence, then the court may order such treatment or services. In addition, the court may inform the parties as to procedures for voluntary admission to public and private mental health facilities in lieu of judicial commitment. If the child does not meet the standards for involuntary hospitalization, but remains incompetent to stand trial, the child shall be released to the appropriate guardian or custodian pending further hearings in juvenile court.

(6) If the child is found to be competent the court shall proceed with an adjudicatory hearing.

(7) The child's mental competence to stand trial may be raised at any stage of the proceeding by motion, and the court has a continuing obligation to consider the issue when raised.

(b) At Time of the Offense; Affirmative Defense. **(1)** If the child named in the petition intends to introduce expert testimony relating to a mental disease, defect, or other condition bearing upon the issue of whether the child had the mental state required for the offense charged, the child shall, within the time provided for the filing of pretrial motions or at such later time as the court may direct, notify the court in writing of such intention and file a copy of such notice with the clerk. Upon filing of the notice, upon motion of the state, or on its own initiative, the court may cause the child to be examined in accordance with the procedures set forth in this rule and consistent with the procedures outlined in Rule 12.2 of the Rules of Criminal Procedure.

(2) The court, upon good cause shown and in its discretion, may waive the requirements in subdivision (b)(l) and permit the introduction of such defense, or may continue the hearing for the purpose of an examination in accordance with the procedures set forth in this rule. A continuance granted for this purpose tolls the time limits for adjudicatory hearings.

(c) Inadmissibility of Child's Statements During Competency Examination. No statement made by the child in the course of any examination relating to his or her competency to stand trial (whether conducted with or without the child's consent), no testimony by any expert based on such statement, and no other fruits of the statement are admissible in evidence against the child in a delinquent or unruly adjudicatory hearing. [Added by order filed December 29, 2015, effective July 1, 2016.]

Advisory Commission Comments. There are no reported cases in Tennessee addressing the question of whether or under what circumstances an insanity defense is available in juvenile court proceedings. Application of this defense in juvenile proceedings has been recognized in various jurisdictions. *See, e.g. In re Two Minor Children*, 592 P.2d 166 (Nev. 1979); *State ex reI. Causey*, 363 So. 2d 472 (La. 1978); *Winburn v. State*, 145 N.W.2d 178 (Wis. 1966); *see also In re Ramon M.*, 584 P.2d 524 (Cal. 1978); and *State v. Ferrell*, 209 S.W.2d 642 (Tex. Civ. App. 1948). The leading case holding the insanity defense inapplicable to delinquency proceedings, *In re H.C.*, 256 A.2d 322 (N.J. 1969), was subsequently held to be overridden by modifications of the New Jersey Juvenile Court Act. *In re R.G. W.*, 342 A.2d 869 (N.J. 1975), aff"d, 358 A.2d 473 (N.J. 1976). However, at least one jurisdiction continues to preclude the insanity defense from being asserted at the adjudicatory hearing (although recognizing the claim of incompetence to stand trial). *See In re C. W.M.*, 407 A.2d 617 (D.C. 1979); *see also Golden v. State*, 21 S.W.3d 801 (Ark. 2000).

This rule is not intended to alter the substantive law respecting the applicability of the insanity defense to juvenile court proceedings in Tennessee or to delineate those circumstances under which such a defense may be available. Rather, it provides procedures for those cases in which "the child intends to introduce expert testimony relating to mental disease, defect or other condition bearing upon the issue of whether the child had the mental state required for the offense charged."

The 2016 amendment was drafted to articulate a clear difference between a finding of incompetency by the court and an affirmative defense of diminished capacity. In addition, the rule clarifies that a child's statements made during an evaluation of their competency shall not be used against them in court as an admission of guilt.

Rule 110 provides that in a delinquency proceeding the computation of time shall toll during the period in which the child is found to be incompetent to stand trial.

Compiler's Notes. The adoption of Rule 207, as promulgated and adopted by the Supreme Court in its order dated December 29, 2015, was ratified and approved by 2016 House Resolution 145 and Senate Resolution 79. The order promulgating the adoption of Rule 207 provided that it take effect July 1, 2016.

Rule 208. Transfer to criminal court. (a) NOTICE OF INTENT TO SEEK TRANSFER OF JURISDICTION OF CHILD TO CRIMINAL COURT. The state must file written notice, in good faith and not for the purpose of delay, of the intent to seek transfer in accordance with Tenn. Code Ann. § 37-1-134. The decision on whether or not the state will seek transfer must be made within 90 days of the child being charged with an offense and no less than 14 days prior to the transfer hearing or the adjudicatory hearing, whichever occurs first. This time period may be extended by the court for good cause. The written notice of intent to seek transfer must be filed at least 14 days prior to the transfer hearing. Once that notice is filed, the court shall not hear the case on its merits, but shall proceed to conduct a hearing only in accordance with Tenn. Code Ann. § 37-1-134.

(b) TRANSFER HEARING. **(1)** At the transfer hearing:

(A) A prosecutor shall represent the state;

(B) The child shall be represented by an attorney;

(C) The child may testify as a witness in his or her own behalf, and may call and examine other witnesses and produce other evidence on his or her own behalf, however no plea shall be accepted by the court; and

(D) Each witness shall testify under oath or affirmation and be subject to cross-examination.

(2) The same rules of evidence shall apply as are applicable to a preliminary examination, pursuant to the Tennessee Rules of Criminal Procedure.

(3) Unless the child appears in any way to be mentally ill or intellectually disabled, and unless personally or through counsel asserts that the child is mentally ill or intellectually disabled, it shall be presumed that the child is not committable to an institution for the mentally ill or intellectually disabled, and the court may so find. If mental illness is alleged, the court shall order psychological or psychiatric examination at any stage of the proceeding.

(4) If the court determines that the criteria for transfer have been satisfied and finds that there are reasonable grounds for transfer, the child may be transferred to criminal court.

(5) Any order of transfer shall specify the grounds for transfer and set bond if the offense is bailable pursuant to state law. [Added by order filed December 29, 2015, effective July 1, 2016.]

Advisory Commission Comments. When considering whether "reasonable grounds" is equivalent to "probable cause," the courts in Tennessee have opined: "While no definition of 'reasonable grounds' is provided in the statute, the term has been used interchangeably with 'probable cause' by the courts of this state." *State v. Bowery*, 189 S.W.3d 240, 248 (Tenn. Crim. App. 2004); *State v. Melson*, 638 S.W.2d 342, 350 (Tenn. 1982); *State v. Humphreys*, 70 S.W.3d 752, 761 (Tenn. Crim. App. 2001).

Regarding the provision in subdivision (b)(l) that the child shall be represented by an attorney, the child must have the benefit of an attorney at the transfer hearing due to the significant ramifications if the child's case is transferred to adult court.

The U. S. Supreme Court's rulings in *Miller v. Alabama*, 132 S. Ct. 2455 (2012), *Graham v. Florida*, 560 U.S. 48 (2010), and *Roper v. Simmons*, 543 U.S. 551 (2005) recognized that courts must consider a juvenile's "lessened culpability" and greater "capacity for change". In accordance with these cases, the child must be represented by counsel in order to ensure consideration by the courts of all issues involving a minor defendant in a delinquency action, especially the unique nature of the juvenile offender.

Under T.C.A. § 37-1-134, the court must find reasonable grounds to believe that (i) the child committed the delinquent act as alleged, (ii) the child is not committable to an institution for the intellectually disabled or mentally ill, and (iii) the interests of the community require that the child be put under legal restraint or discipline. Regarding subdivision (b)(3) and § 37-1-134, it has been held by both the Tennessee Court of Appeals and Court of Criminal Appeals that, although the burden of proof is on the prosecution on such issue, there is a presumption of noncommittability similar to that relating to sanity in criminal trials. Such presumption can be rebutted by evidence introduced by the defendant, and in such event the burden would shift back to the prosecution to persuade the court the child is not committable. *See Howell v. Hodge*, 710 F.3d 381, 386 (6th Cir. 2013). The Commission suggests, however, that it is good practice in any case for the court to arrange for testing and evaluation, evidence of which may be introduced by either of the parties or the court on the issue of committability.

Subdivision (b)(l)(C) provides that no plea shall be accepted by the court during the transfer hearing. This does not preclude the parties from agreeing to terminate the transfer hearing prior to its completion and holding an adjudicatory hearing. Once a plea is accepted by the juvenile court, double jeopardy attaches and the matter may not be transferred to criminal court. *See Breed v. Jones*, 421 U.S. 519, 95 S. Ct. 1779 (1975) and *State v. Jackson*, 503 S.W.2d 185 (Tenn. 1973).

If the case is not transferred to criminal court, T.C.A. § 37-1-134 prohibits the judge who conducted the transfer hearing from presiding over the adjudicatory hearing on the petition if a party objects. Also, T.C.A. § 37-1-134 prohibits a judge who has conducted a transfer hearing from presiding at a hearing in the same case in criminal court. Such a situation might arise if a judge were sitting specially in criminal court, or if a person who was formerly the juvenile court judge were elected to the criminal court or to any other court which might hear such a case by special arrangement.

Compiler's Notes. The adoption of Rule 208, as promulgated and adopted by the Supreme Court in its order dated December 29, 2015, was ratified and approved by 2016 House Resolution 145 and Senate Resolution 79. The order promulgating the adoption of Rule 208 provided that it take effect July 1, 2016.

Rule 209. Plea of guilty or no contest — Judicial diversion. (a) COURT'S INQUIRY OF CHILD. Before accepting a plea of guilty or no contest, and in addition to the requirements set out in Rule 205, the court must address the child personally in open court and inform the child of, and determine that the child understands, the following:

(1) The nature of the charge to which the plea is offered and the possible dispositional consequences of the plea; if a specific disposition is the basis of the plea, the child should be informed specifically of the nature of that disposition;

(2) That if the child is not represented by an attorney, the child has a right to be represented by an attorney at every stage of the proceedings including the guilty plea, and that, if necessary, one will be appointed;

(3) That the child has the right to plead not guilty or to persist in that plea if it has already been made;

(4) That if the child has been charged with a delinquent offense, the child has a right to a trial to determine whether the child is guilty of the charged offense; and that, at that trial, the judge may only find the child guilty if the judge finds that the state has proven the child's guilt of the offense or a lesser included offense beyond a reasonable doubt;

(5) That if the child has been charged with being unruly, the child has a right to a trial to determine whether the child is unruly; and that, at that trial, the judge may only find the child unruly if the judge finds that the charge has been proven by clear and convincing evidence;

(6) At the trial, the child has the right to call witnesses and present evidence, including the right to subpoena witnesses and documents to the proceeding and the right to confront and cross-examine adverse witnesses, and the right to testify;

(7) That the child has the right against self-incrimination, including the right not to testify at the trial;

(8) That if the child pleads guilty or no contest, there will not be a trial (except as to the disposition in cases in which disposition is not part of the plea agreement), and that by pleading guilty, the child waives the right to a trial on the merits;

(9) That if the child pleads guilty or no contest, the child admits there is a need of treatment and rehabilitation;

(10) That if the child pleads guilty or no contest, the child waives the right to appeal the adjudication to the circuit court or to have a hearing before the judge on the issue of adjudication if the matter is being heard by a magistrate;

(11) That if the plea includes an agreement as to disposition, the child also waives the right to appeal the disposition to the circuit court or to have a hearing before the judge on the issue of disposition if the matter is being heard by a magistrate;

(12) That if the child pleads guilty or no contest, the court may ask the child questions about the offense to which the plea was made; if the child answers these questions falsely under oath, the child's answers may later be used against the child in a prosecution for perjury or false statement, unless the plea is a best interest guilty plea; and

(13) That if the child pleads guilty or no contest, the plea may have an effect upon the child's immigration or naturalization status, and, if the child is represented by counsel, the court shall determine that the child has been advised by counsel of the immigration consequences of a plea.

(b) Determination of Voluntariness of Plea. The court shall not accept a guilty or no contest plea without first, by addressing the child personally in open court, determining that the plea is voluntary and not the result of force or threats or promises apart from a plea bargain agreement. If a child stands mute or pleads evasively, a plea of not guilty shall be entered by the court.

(c) Factual Basis for Guilty Plea. The court shall neither enter a judgment upon a guilty plea nor approve an agreed disposition without satisfying itself that there is a factual basis for the guilty plea.

(d) No Contest. A child may plead no contest only with the consent of the court. Before accepting a plea of no contest, the court shall consider the views of the parties and the interest of the public in the effective administration of justice.

(e) Agreement on Disposition. If the court accepts a guilty or no contest plea pursuant to an agreement on disposition, the court shall approve the agreed disposition. If the court rejects a guilty or no contest plea, the dispositional agreement shall be null and void.

(f) Judicial Diversion. If the court accepts a guilty or no contest plea pursuant to a judicial diversion and approves the conditions of probation, the plea shall not be entered as a judgment of gUilty and the child shall not be found delinquent. If the child violates the terms of the diversion and the court so finds, then the plea may be entered as a judgment of guilty, and the child shall be found delinquent. [Added by order filed December 29, 2015, effective July 1, 2016.]

Advisory Commission Comments. Pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), and with the consent of the court, a child may enter a "best interests" guilty plea. This is not a no contest plea. When the child enters an *Alford* plea, he or she is pleading guilty because it is in his or her best interests, but he or she does not necessarily agree to the factual basis of the plea as set out by the state's attorney. A guilty plea entered pursuant to *Alford* has all the legal effects of a guilty plea, except that the child cannot be charged with perjury or false statement if he or she later disputes the facts that serve as a basis for the guilty plea or denies his or her guilt of the offense.

The 2016 amendment to this rule adds a provision to allow the child to enter a no contest (nolo contendere) plea. Latin for "I do not wish to contend," Black's Law Dictionary defines a nolo contendere plea as follows: "A plea by which the defendant does not contest or admit guilt." *Black's Law Dictionary* 1269 (9th ed. 2009). *See also* Tenn. R. Crim. Proc. 11(a)(1) and (2). The no contest plea requires the court's approval and is similar in legal effect to an *Alford* plea.

The court is required to inquire about any prior discussions the child may have had regarding potential dispositions. The court should properly make itself aware of such interactions and "bargains," and of their effect on the child's willingness to plead guilty or no contest, before it makes a decision whether to accept any such plea. The court should also ascertain, through this inquiry, with whom any such discussions took place, and whether the child's attorney or parent, guardian or custodian was present.

The 2016 amendment adds the provision that if the child pleads guilty or no contest, the child waives the right to appeal the adjudication to the circuit court, or to have a hearing before the judge on the issue of adjudication if the matter is being heard by a magistrate.

The court may at any time prior to the beginning of a dispositional hearing permit a plea of guilty or no contest to be withdrawn, and if an adjudication has been entered thereon, set aside such adjudication and allow another plea to be substituted for the plea of guilty or nolo contendere. In the subsequent adjudicatory hearing, the court may not consider the plea which was withdrawn as an admission. Evidence of a guilty or no contest plea, later withdrawn, or of statements made in connection therewith, would not be admissible in any proceeding against the child.

The 2016 amendment adds that if the plea includes an agreement as to disposition, the child waives the right to appeal the disposition to the circuit court or to have a hearing before the judge on the issue of disposition, if the matter is being heard by a magistrate.

Finally, the 2016 amendment allows the court to accept a plea of guilty or no contest on a judicial diversion, pursuant to T.C.A. § 37-1-129(a), and defer further proceedings while placing a child on probation. In doing so, the plea shall not be entered as a judgment, and the child shall not found delinquent.

Compiler's Notes. The adoption of Rule 209, as promulgated and adopted by the Supreme Court in its order dated December 29, 2015, was ratified and approved by 2016 House Resolution 145 and Senate Resolution 79. The order promulgating the adoption of Rule 209 provided that it take effect July 1, 2016.

Rule 210. Adjudicatory hearings. (a) Scope of Hearing. The adjudicatory hearing is the proceeding at which the court determines whether the evidence supports a finding that a child is delinquent or unruly, and whether the child is in need of treatment and rehabilitation. The adjudicatory hearing shall be held in accordance with T.C.A. § 37-1-129.

(b) Time Limits on Scheduling Adjudicatory Hearings. In all cases, except violations of valid court orders, in which a child is in detention or otherwise has been placed out of the home by court order shall be heard within 30 days of the date the child was placed outside of the home. For good cause shown, the adjudicatory hearing may be continued beyond the 30 day time limit to a date certain as the court may direct. All other cases shall be heard within 30 days of the date of the filing of the petition if such scheduling appears to the court to be reasonable and possible considering the circumstances of the case, including without limitation, whether service on all parties has been achieved. Every case shall be heard within 90 days of the date of the filing of the petition. For good cause shown, the adjudicatory hearing may be continued beyond the 90 day time limit to a date certain as the court may direct.

(c) Beginning Adjudicatory Hearing. At the beginning of each hearing, the court shall:

(1) Ascertain whether the parties before the court are represented by attorneys;

(2) Verify the name, age and residence of the child who is the subject of the case, and ascertain the relationship of the parties, each to the other;

(3) Ascertain whether all necessary parties are present;

(4) Ascertain whether notice requirements have been complied with, and if not, whether the affected parties knowingly and voluntarily waive compliance;

(5) Explain to the parties the purpose of the hearing and the possible consequences thereof; and

(6) Explain to the parties their rights as set forth in Rule 205.

(d) Evidence Admissible. The court shall consider only evidence which has been formally admitted at the adjudicatory hearing. All testimony shall be under oath and may be in narrative form. Evidence shall be admitted as provided by the Tennessee Rules of Evidence. Evidence illegally seized or obtained shall not be received over objection to establish the allegations in the petition. In addition, no statement made by a child to the youth services officer or designated intake officer shall be admissible against the child prior to the dispositional hearing.

(e) Adjudication; Standard of Proof; and Findings in Delinquent Cases. At the conclusion of the adjudicatory hearing, the court shall enter an order in accordance with the following provisions:

(1) If the court finds that the delinquent offense has not been proved beyond a reasonable doubt, it shall dismiss the petition.

(2) If the court finds that the delinquent offense has been proved beyond a reasonable doubt, it shall enter an order finding the child guilty and shall immediately proceed to a hearing to determine whether the child is in need of treatment or rehabilitation, or shall schedule it for a later date. At that hearing:

(A) If the court does not find that the child is in need of treatment or rehabilitation, no further proceedings shall be held and the court shall discharge the child from any detention or other restriction previously ordered. In such event, the court shall enter an order finding that the child is not in need of treatment or rehabilitation. The child shall not be adjudicated delinquent.

(B) If the court finds the child is in need of treatment and rehabilitation, it shall enter an order finding that the child is in need of treatment or rehabilitation and that the child is adjudicated delinquent. The court shall immediately proceed to a dispositional hearing or schedule it to be heard on a later date.

(f) Adjudication; Standard of Proof; and Findings in Unruly Cases. At the conclusion of the adjudicatory hearing, the court shall enter an order in accordance with the following provisions:

(1) If the court finds that the unruly offense has not been proved by clear and convincing evidence, it shall dismiss the petition.

(2) If the court finds that the unruly offense has been proved by clear and convincing evidence, it shall enter an order finding the child gUilty and shall immediately proceed to a hearing to determine whether the child is in need of treatment or rehabilitation, or shall schedule it for a later date. At that hearing:

(A) If the court does not find that the child is in need of treatment or rehabilitation, no further proceedings shall be held and the court shall discharge the child from any detention or other restriction previously ordered. In such event, the court shall enter an order finding that the child is not in need of treatment or rehabilitation. The child shall not be adjudicated unruly.

(B) If the court finds the child is in need of treatment and rehabilitation, it shall enter an order finding that the child is in need of treatment or rehabilitation and that the child is adjudicated unruly. The court shall immediately proceed to a dispositional hearing or schedule it to be heard on a later date.

(g) Transfer to Home County. The case of an out-of-county resident may be transferred to the child's county of residence for disposition. [Added by order filed December 29, 2015, effective July 1, 2016.]

Advisory Commission Comments. It is the Commission's intent that the court consider only evidence which has been properly admitted during the adjudicatory hearing. The Commission recognizes that the court may have held one or more hearings prior to the adjudicatory hearing which may have resulted in the admission of evidence. Furthermore, the Commission recognizes that the court's file may contain reports and other items submitted by the Department, CASA, law enforcement, or service providers. Such reports and items may not be considered by the court unless properly admitted during the adjudicatory hearing.

This rule combines previous Rule 17 regarding Time Limits on Scheduling Adjudicatory Hearings and Rule 28 Adjudicatory Hearings. The Commission felt this to be logically consistent and would aid practitioners' use of the rule. This rule highlights the statutory framework of a delinquent or unruly case with regard to the adjudicatory hearing.

This rule does not apply to a violation of a Valid Court Order. See the Appendix to these rules regarding Valid Court Orders.

During the adjudicatory hearing and prior to disposition, the court makes two distinct findings with regard to each child charged as a delinquent or unruly child: whether the evidence is sufficient to sustain the allegations in the petition, and, if so, whether the child is in need of treatment or rehabilitation. Upon making these findings, the court then proceeds to the dispositional hearing. T.C.A. § 37-1-129(b) states that upon a finding of guilt the court must "proceed immediately or at a postponed hearing" to determine whether the child is "in need of treatment or rehabilitation." This is consistent with the definition of "delinquent child" under T.C.A. § 37-1-102(b) ("delinquent child means a child who has committed a delinquent act and is in need of treatment and rehabilitation"), and T.C.A. § 37-1-129(f), which allows the court to continue the adjudicatory hearing to receive evidence bearing upon the issue of treatment and rehabilitation. Similarly, the definition of "unruly child" under T.C.A. § 37-1-102(b) also requires a finding of "in need of treatment and rehabilitation" in order to adjudicate the child to be an unruly child.

The Commission understands that many courts may, in an effort to achieve judicial economy, and absent contrary circumstances, elect to conduct both the "treatment and rehabilitation" phase of the adjudicatory hearing and the dispositional hearing immediately after the guilt phase of the adjudicatory hearing. In the event the court continues the adjudicatory hearing to receive evidence bearing upon the issue of treatment and rehabilitation, the court has the authority pursuant to T.C.A. § 37-1-129(f) to issue orders regarding the child pending the resumption of the hearing.

The Commission notes that T.C.A. § 37-1-129(b) states that the commission of acts which constitute a felony or that reflect recidivistic delinquency is sufficient to sustain a finding that the child is in need of treatment or rehabilitation.

The Commission notes that the Juvenile Offender Act, T.C.A. § 55-10-701 et. seq., also known as the Drug Free Youth Act, requires the adjudicatory court to send to the Department of Safety an order of denial of driving privileges when the child is "convicted of the offense." As explained above, a conviction does not necessarily lead to an adjudication of delinquency due to the added requirement that the court find that the child is in need of treatment and rehabilitation. All parties must be aware of the court's duty under the Act.

The new rule changes the requirement that the adjudicatory hearing be "scheduled for adjudication" within either 30 or 90 days to a requirement that the adjudicatory hearing be "heard."

The varying time limits in these rules for children in custody or detention and children not in custody indicate the Commission's strong intent that cases involving children in custody, and especially in secure detention, be given priority on the docket. Of course, all hearings should be scheduled and held as speedily as possible in the interest of providing timely treatment for children. The Commission recognizes the fact that a child's perception of time is quite different from that of an adult, with shorter periods of time being felt as being much extended, so that it is important that whatever action is taken be taken expeditiously, within the limits of practicability.

There are instances, however, where it will be quite appropriate to allow for a relatively longer period of time prior to disposition, in particular, for the child to prove to the court that a less restrictive disposition may be desirable in the case, for example. This is the purpose of the longer 90-day limit in cases in which children are not being held in custody, and of the provisions allowing for extensions of the time limits. Another valid reason for extensions of the limits would be to obtain psychological evaluations and testing which could not be obtained within the specified time limits.

In any case in which the time limits prescribed are not complied with, or in which the provisions for continuances are not complied with, the court may dismiss the charges with prejudice where it determines that failure to comply with the time limits constitutes a violation of the child's right to a speedy trial. In any case in which the time limits prescribed are not complied with, or in which the provisions for extensions are not complied with, the court may discharge the child from the jurisdiction of the juvenile court if the court determines that the interests of justice so require.

These rules do not require a pretrial conference; however, the Commission encourages courts to schedule a pretrial conference or settlement date during which negotiations may occur with the parties and counsel, law enforcement, victims, and the district attorney.

Compiler's Notes. The adoption of Rule 210, as promulgated and adopted by the Supreme Court in its order dated December 29, 2015, was ratified and approved by 2016 House Resolution 145 and Senate Resolution 79. The order promulgating the adoption of Rule 210 provided that it take effect July 1, 2016.

Rule 211. Dispositional hearings. (a) Time Limits on Scheduling Dispositional Hearings. Dispositional hearings shall be held within 15 days of the adjudicatory hearing if the child is in detention or otherwise has been placed out of the home by court order, and within 90 days of the adjudicatory hearing in all other cases. Upon good cause shown, the dispositional hearing may be continued to a date certain.

(b) Separate from Adjudicatory Hearing. A dispositional hearing shall be separate and distinct from the adjudicatory hearing to which it relates. However, it may be held immediately following the adjudicatory hearing or at a later date.

(c) Notice of Right to Appeal. At the conclusion of the dispositional hearing, the court shall advise the child of the right to appeal the dispositional order.

(d) Temporary Order. Where a continuance of the dispositional hearing is ordered, the court may enter such temporary order that is in the best interest of the child. Detention may ordered, but only where such detention appears to be necessary for the protection of the child or others, or where necessary to assure the child's appearance at the subsequent dispositional hearing.

(e) Evidence Admissible; Standard of Proof. In arriving at its dispositional decision, the court shall consider only evidence which has been formally admitted and the juvenile court record of the child. All testimony shall be under oath and may be in narrative form. The rules of evidence shall apply except that reliable hearsay, including, but not limited to, documents such as psychiatric or psychological screenings or evaluations of the child or the child's parents or custodian or reports or assessments prepared by a probation officer, youth services officer or the Department of Children's Services, may be admitted provided that the opposing party is accorded a fair opportunity to rebut any hearsay evidence so admitted. However, this subdivision shall not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or of the Tennessee Constitution. The parties shall have the right to examine any person who has prepared any report admitted into evidence. The standard of proof at the dispositional hearing is preponderance of the evidence. [Added by order filed December 29, 2015, effective July 1, 2016.]

Advisory Commission Comments. The purpose of a dispositional hearing is to design an appropriate plan to meet the needs of the child and to achieve the objectives of the state in exercising jurisdiction. When possible, the initial approach should involve working with the child and the family in their own home so that the appropriate community resources may be involved in care, supervision, and treatment according to the needs of the child.

In choosing among statutorily permissible dispositions in delinquent and unruly cases, the judge should select the least restrictive disposition both in terms of kind and duration that is appropriate to the seriousness of the offense, the degree of culpability indicated by the circumstances of the particular case, and the age and prior record of the child. The preference is for the child to be treated and rehabilitated through community-level resources when appropriate and available. The Commission encourages the making of written findings of fact and reasons for ordering particular dispositions within the law.

If a child alleged to be unruly is placed under a "valid court order" pursuant to § 31.303(f)(3) of Title 28 of the Code of Federal Regula-

tions, the dispositional hearing and order shall be in accordance with the federal regulations, found in the Appendix to these rules.

At the dispositional hearing, it is appropriate that youth services and probation officers be witnesses regarding admissible evidence of which they have knowledge. Youth services officers or probation officers may act as a fact witness.

Although a report may be admissible as reliable hearsay, all the contents of the report may not be reliable hearsay. This is especially important when the source gives an opinion that the person is not qualified to give.

Compiler's Notes. The adoption of Rule 211, as promulgated and adopted by the Supreme Court in its order dated December 29, 2015, was ratified and approved by 2016 House Resolution 145 and Senate Resolution 79. The order promulgating the adoption of Rule 211 provided that it take effect July 1, 2016.

Rule 212. Probation or home placement supervision violation. (a) Procedure. Proceedings to establish a violation of the conditions of probation or home placement supervision shall be conducted in the same manner as proceedings on petitions alleging delinquent conduct. The child whose probation or home placement supervision is sought to be modified or revoked shall be entitled to all rights that a child alleged to be delinquent is entitled to under law and these rules. A petition is required for a violation of probation. A petition is also required for a violation of home placement supervision when the child has been released from the custody of the Department of Children's Services. The petition shall identify the remedy being sought and the factual basis for the action.

(b) Burden of proof. The burden of proof shall be a preponderance of the evidence.

(c) Disposition. If the child violates the conditions of probation or home placement supervision, the court may make any other disposition which would have been permissible in the original proceeding, subject to T.C.A. § 37-1-137. [Added by order filed December 29, 2015, effective July 1, 2016.]

Advisory Commission Comments. The term "probation" refers to a child on either state or county probation, and a petition is required to initiate a proceeding to violate.

The term "home placement supervision" refers to a child who has been in state custody and is now placed at home for a trial period. A child on home placement supervision remains in state custody until discharged by operation of law at the expiration of 30 days. During that 30 day period the Department of Children's Services is authorized to remove the child from the home at its discretion. A petition is not required to remove the child, but notice must be filed with the court. A review hearing must be scheduled within 30 days of the child's removal, pursuant to T.C.A. § 37-1- 137(d)(2) or within 7 days if the child is placed in detention, pursuant to T.C.A. § 37-1-137(e).

Upon discharge from custody, the child may continue on home placement supervision, a program that the Department refers to as "aftercare." When a child who is not in the legal custody of the Department violates home placement supervision (aftercare), a violation petition is required. A hearing is required and must occur within 7 days if the child is placed in detention. *See* T.C.A. § 37- 1-137(e).

Compiler's Notes. The adoption of Rule 212, as promulgated and adopted by the Supreme Court in its order dated December 29, 2015, was ratified and approved by 2016 House Resolution 145 and Senate Resolution 79. The order promulgating the adoption of Rule 212 provided that it take effect July 1, 2016.

Rule 213. Modification of or relief from judgments or orders. (a) Except in cases where the petition has been heard upon the merits and dismissed, the procedures herein shall be followed to obtain appropriate relief under this rule.

(b) Modification of Orders. **(1)** Clerical Mistakes. Clerical mistakes and errors arising from oversight or omission in orders or other parts of the record may be corrected by the court at any time on its own initiative or on motion of any party.

(2) Modification for Changed Circumstances. An order of the court may be modified on the ground that, since the entry of the order, changed circumstances and the best interests of the child require it; however, an order committing a delinquent or unruly child to the Department of Children's Services or an order of dismissal may not be modified on these grounds.

(3) Modification for Newly Discovered Evidence. A dispositional order may be modified on the ground that newly discovered evidence so requires. The court, in making this determination, shall make any modification consistent with the best interests of the child.

(c) Relief from Judgments or Orders. An order of the court shall be set aside if it is determined that:

(1) It was obtained by fraud or mistake sufficient to satisfy the legal requirements for relief in any other civil action;

(2) The court lacked jurisdiction over a necessary party or of the subject matter; or

(3) Newly discovered evidence so requires. The court must determine that, with regard to such newly discovered evidence, the movant was without fault in failing to present such evidence at the original proceeding, and that such evidence may have resulted in a different judgment at the original proceeding.

(d) Procedure. Any party to a proceeding, a probation officer, or other person having supervision or legal custody of or an interest in a child may seek the relief provided in this rule. A motion shall set forth in concise language the grounds upon which the relief is requested. Notice of the date and time for a hearing on the motion shall be given to the parties to the proceeding and to those affected by the relief sought.

(e) Disposition. After the hearing, the court shall deny or grant relief as the evidence warrants. Where a modification of an order is granted, the court may order any disposition which would be permissible at the original dispositional hearing, or the court may schedule a dispositional hearing in accordance with these rules. [Added by order filed December 29, 2015, effective July 1, 2016.]

Advisory Commission Comments. T.CA § 37-1-139 authorizes the modification of and relief from orders under certain circumstances. Note that a motion, and not a petition, is to be filed when seeking relief pursuant to this rule.

The procedures in this rule regarding setting aside of orders draws from the concepts contained in T.C.A. § 40-26-105, writ of error coram nobis in criminal matters. Relief pursuant to this statute is limited to "subsequently or newly discovered evidence" and requires the court to find that the defendant was without fault in failing to present such evidence at the original proceeding and that such evidence "may have resulted in a different judgment" had it been presented at the original proceeding.

In the event an order is set aside, the District Attorney General will, of course, decide if a delinquency matter should be retried. The petitioner in an unruly matter will likewise make such a decision. The court, however, is to reschedule the hearing and proceed as it did with the original proceeding.

Placements after a child has been committed to the Department of Children's Services shall be reviewed as provided in T.C.A. § 37-1-137 and these rules.

Compiler's Notes. The adoption of Rule 213, as promulgated and adopted by the Supreme Court in its order dated December 29, 2015, was ratified and approved by 2016 House Resolution 145 and Senate Resolution 79. The order promulgating the adoption of Rule 213 provided that it take effect July 1, 2016.

DEPENDENT AND NEGLECT PROCEEDINGS.

Rule 301. Initiation of cases. A dependent and neglect case is commenced by the filing of a petition. When the petitioner is not the Department of Children's Services, the court shall promptly refer the case to the Department for investigation. [Added by order filed December 29, 2015, effective July 1, 2016.]

Advisory Commission Comments. This rule is intended to define the commencement of a dependent and neglect case in juvenile court. The former practice of informally adjusting dependent and neglect cases has been eliminated.

A dependent and neglect case may be initiated by the Department of Children's Services, a private party, or the court. The clerk shall not prevent any person from filing a petition in accordance with the law.

When an intake court officer receives information alleging facts that, if true, indicate that a child is dependent and neglected and is subject to the jurisdiction of that court, the officer shall assist in the filing of a petition and refer the allegations for investigation by the Department of Children's Services. A private party shall be permitted to file a petition with the court clerk regardless of whether the officer assisted with the preparation of the petition. If a private party chooses not to file a petition, the officer may still make a referral to the Department.

There are situations in which a court must exercise its authority on an emergency basis to protect a child already under the jurisdiction of the court on a previously filed petition other than a dependent and neglect petition. The exercise of that authority is typically done in a bench order. In such circumstances, a dependent and neglect petition must be filed within 2 judicial days, pursuant to T.C.A. § 37-1-128.

Unless there are new dependent and neglect allegations, any subsequent petition alleging material change of circumstances, filed after the disposition of the original case, shall be considered a continuation of that original case.

Compiler's Notes. The adoption of Rule 301, as promulgated and adopted by the Supreme Court in its order dated December 29, 2015, was ratified and approved by 2016 House Resolution 145 and Senate Resolution 79. The order promulgating the adoption of Rule 301 provided that it take effect July 1, 2016.

Rule 302. Procedures upon taking child into custody. (a) CHILD TAKEN INTO CUSTODY WITHOUT COURT ORDER. When a child is taken into custody without a court order pursuant to T.CA § 37-1-113(a)(3), a written protective custody order for the removal of legal custody, containing the probable cause determination required by T.CA § 37-1-114(a)(2), shall issue from a magistrate, as defined by T.C.A. §§ 37-1-107 or 40-1-106, within 48 hours of the taking of physical custody. The probable cause determination shall be based on a written affidavit, which may be sworn to in person or by audio-visual electronic means. If the court denies the protective custody order, the child shall be returned to the parent, guardian, or legal custodian. If the protective custody order is issued, a preliminary hearing shall be held within 72 hours, excluding non-judicial days, of the child being taken into custody.

(b) CHILD TAKEN INTO CUSTODY PURSUANT TO COURT ORDER. If a child is removed from the home of a parent, guardian or legal custodian pursuant to a protective custody order, the child shall not remain in protective custody longer than 72 hours, excluding non-judicial days, unless a preliminary hearing is held.

(c) FINDINGS OF PROTECTIVE CUSTODY ORDER. A protective custody order issued pursuant to subdivision (a) or (b) shall include findings of fact supporting the probable cause determination required by T.CA § 37-1-114(a)(2). In addition, if the protective custody order places the child in the custody of the Department of Children's Services, the order shall include facts supporting a finding that it is contrary to the welfare of the child to remain in the home.

(d) PRELIMINARY HEARING. **(1)** APPOINTMENT OF GUARDIAN AD LITEM. The court shall make every effort to appoint a guardian ad litem for the child prior to the preliminary hearing.

(2) NOTIFICATION OF RIGHTS. At the beginning of the preliminary hearing, the court shall inform the parties of the purpose of the hearing and the possible consequences of the preliminary hearing, and shall inform the parties of their rights pursuant to Rule 303.

(3) EVIDENCE. Reliable hearsay may be considered at the preliminary hearing.

(4) REQUIRED DETERMINATIONS. The court, in making a decision on whether the child's continued removal from the home is warranted, shall:

(A) Determine whether probable cause exists that the child is a dependent and neglected child; and

(B) If probable cause is found, determine whether the child is subject to an immediate threat to the child's health or safety, or whether the child may be removed from the jurisdiction of the court; and

(C) Determine whether any less drastic alternative is available to the removal of the child from the custody of the parent, guardian or legal custodian.

(5) DETERMINATION AT PRELIMINARY HEARING. If the court finds that the child's continued removal from the home is not warranted, the court shall return the child to the person from whom custody was removed. If the court determines at the hearing that the child's removal is required, the court may order that the child be placed in the custody of a suitable person, persons, or agency. If the court returns the child to the person from whom custody was removed, the court may enter a temporary order setting forth conditions of the return designed to protect the rights and interests of the child and the parties pending further hearing.

(6) WAIVER OF TIME LIMIT FOR PRELIMINARY HEARING. The time limit for the hearing may be waived by a knowing and voluntary written waiver by the respondent. Any such waiver may be revoked at any time, at which time a preliminary hearing shall be held within the time frame outlined in T.C.A. § 37-1-117. [Added by order filed December 29, 2015, effective July 1, 2016.]

Advisory Commission Comments. Subdivision (a) establishes the procedure for obtaining a probable cause determination when the child has been removed from the home due to the existence of exigent circumstances and without a court order. T.C.A. § 37-1-128(b)(2) currently requires both the probable cause determination defined in T.C.A. § 37-1-114(a)(2) and a court order for removal of a child from the child's parent, guardian, legal custodian or the person who physically possesses or controls the child. T.C.A. § 37-1- 113(a)(3) also references the probable cause determination contained in T.C.A. § 37-1-114(a)(2). Reading these three statutes in conjunction, T.C.A. § 37-1-113(a)(3)

must be interpreted to allow the taking of physical possession of the child only, prior to the judicial probable cause determination and order. Subdivision (a) provides a time limit for the judicial probable cause determination and issuance of the statutorily-required order prior to the preliminary hearing. The judge or magistrate should be contacted after removal to make the probable cause determination and to issue a written order within the 48 hour limit. These requests and determinations are made *ex parte* as to the parent, guardian, or legal custodian. Non-judicial days are included in the time computation and shall not extend the 48 hour limit. As these requests address the immediate protection of the child, as referenced by T.C.A. § 37-1-128(b)(2), the time limit requires that judges and magistrates be available at inconvenient hours to make probable cause determinations.

The probable cause determination in subdivision (a) must be based on a written affidavit reciting the facts, which may be sworn to in person or by electronic means. Black's Law Dictionary defines affidavit as "(a) voluntary declaration of facts written down and sworn to by the declarant before an officer authorized to administer oaths." *Black's Law Dictionary* 66 (9th ed. 2009).

The time limit of 48 hours tracks the time period in Rule 203 regarding the probable cause determination required after a warrantless arrest of a child alleged to be delinquent. That time limit is based on *Gerstein v. Pugh*, 420 U.S. 103 (1974), *County of Riverside v. McLaughlin*, 500 U.S. 44,57 (1991), *Cox v. Turley*, 506 F.2d 1347, 1353 (6th Cir. 1974), *State v. Bishop*, No. W2010-01207-SCR11- CD, 2014 Tenn. LEXIS 189, 2008 WL 888198 (Tenn. 2013), and *State v. Huddleston*, 924 S.W.2d 666 (Tenn. 1996). It is reasonable to apply the same time limits for a probable cause determination by an independent magistrate to (1) a delinquent child arrested without a warrant, and (2) a parent whose child is removed without a prior court order, as well as the child who is removed in a dependent and neglect case.

If a child is taken into custody pursuant to either subdivisions (a) or (b) (which is applicable to the situation where the court issues a protective custody order prior to the child being removed from the home), a preliminary hearing must be held within 72 hours, excluding non-judicial days, of when the child was taken into custody, pursuant to T.C.A. § 37-1-117. Pursuant to Rule 111, judges may consider entering a scheduling order at a preliminary hearing, especially when the child is in the custody of the Department of Children's Services. The scheduling order may include, but is not limited to, the dates of the Department's child and family team meeting, ratification hearing, foster care review board, adjudication, and dispositional hearings.

The second sentence of subdivision (c) is applicable to a child who is placed in custody of the Department of Children's Services. Federal law requires a "contrary to the welfare" finding in the first order that removes the child from the home in order for the child to be eligible for Title IV-E funding. 45 C.F.R. § 1356.21(E).

Compiler's Notes. The adoption of Rule 302, as promulgated and adopted by the Supreme Court in its order dated December 29, 2015, was ratified and approved by 2016 House Resolution 145 and Senate Resolution 79. The order promulgating the adoption of Rule 302 provided that it take effect July 1, 2016.

Rule 303. Notification and waiver of rights. (a) Right to Attorney. **(1)** Notification of Right to an Attorney. In all proceedings in which a party is by law entitled to representation by an attorney, the court shall expressly inform the party of the right to an attorney. If a party waives the right to an attorney, the court shall inform the party of the continuing right to an attorney at all stages of the proceedings.

(2) Waiver of Right to an Attorney. No party shall be deemed to have waived the assistance of an attorney until and unless:

(A) The party has been fully informed of the right to an attorney;

(B) The party subsequently knowingly and voluntarily waives the right to an attorney; and

(C) The waiver is confirmed in writing by the party.

(3) Appointment of Attorney. When an indigent party who is entitled to an attorney does not knowingly and voluntarily waive the right to an attorney, the court shall appoint an attorney to represent that party.

(b) Notification and Waiver of Additional Rights. **(1)** Notification and Waiver Where Party Represented by an Attorney. When the party is represented by an attorney, the attorney shall fully advise that party of the party's rights under the Constitution of the United States, the Constitution of Tennessee, any other law, and any rule of court. The party shall make the decision whether or not to waive those rights, after full consultation with the party's attorney. The obligation of the attorney to advise the party of the party's rights in no way diminishes the court's obligations both to advise the party of the party's rights and to ascertain whether waivers of those rights are made knowingly and voluntarily.

(2) Waiver of Rights Where Party Not Represented by an Attorney. When the party is not represented by an attorney, that party may not waive any rights guaranteed to the party under the Constitution of the United States, the Constitution of Tennessee, any other law, or any rule of court unless the Court has fully advised the party of the party's rights and has determined that he or she knowingly and voluntarily waives those rights.

(3) Notification of Rights to a Party Who has Waived the Right to an Attorney. At the outset of any juvenile court hearing, the court shall advise any party who has waived the right to an attorney or who does not have an attorney of:

(A) The privilege against self-incrimination;

(B) The right cross-examine adverse witnesses;

(C) The right to present testimony on the party's behalf;

(D) The right to subpoena evidence on the party's behalf;

(E) The right to appeal any final order, the time limits for and manner in which the right to appeal can be perfected, and the right to an attorney on appeal.

(c) Knowing and Voluntary Waiver. **(1)** Criteria for Knowing and Voluntary Waivers. A court shall not accept a waiver or deem a waiver to have been made voluntarily and knowingly if the party is or was unable to make an intelligent and understanding decision because of the party's mental condition, education, experience, the nature or complexity of the case, or any other relevant factor.

(2) Procedure for Making and Confirming Waivers. Any and all waivers of rights shall be made orally and in open court, and shall be confirmed in writing by the party and the judge. When the party is not represented by an attorney, the court shall advise that party in open court of the right to an attorney. The court shall not proceed with the hearing unless that party has waived the right to an attorney in accordance with the provisions of this rule. [Added by order filed December 29, 2015, effective July 1, 2016.]

Advisory Commission Comments. In a proceeding in which a party is entitled to counsel and in which the court has determined the individual is not indigent, the court should allow the party a reasonable time to retain counsel. However, if a party engages in a "cat and mouse" game with the court in order to impede the judicial process, then the court may make a determination that the party has effectively waived the right to counsel. *State v. Houston*, 2013 Tenn. Crim. App. LEXIS 112, 2013 WL 500231 (Tenn. Crim. App., Feb. 11, 2013).

A waiver of any right shall be made orally and in open court and confirmed in a writing signed by both the judge and the party waiving the rights. The confirming document may be a preprinted form, but it must specify the rights that are being waived and must acknowledge that the individual is choosing to waive those rights.

Compiler's Notes. The adoption of Rule 303, as promulgated and adopted by the Supreme Court in its order dated December 29, 2015, was ratified and approved by 2016 House Resolution 145 and Senate Resolution 79. The order promulgating the adoption of Rule 303 provided that it take effect July 1, 2016.

Rule 304. Intervention. (a) Intervention as of Right. Upon timely application, anyone shall be permitted to intervene in an action: (l)when a provision of the Tennessee Constitution, the United States Constitution, or a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the subject matter of the action and the applicant is so situated that the disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect that interest unless the applicant's interest is adequately represented by an existing party; or (3) by written stipulation of all of the parties.

(b) Permissive Intervention. Upon timely application, anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. In exercising its discretion, the court shall consider whether intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure. Except for interventions for the purpose of modification of an order pursuant to Rule 310, anyone desiring to intervene shall serve a written motion to intervene upon the parties as provided in Rule 103. The motion shall state the grounds for the requested intervention and shall further state the claim or defense for which intervention is sought. For a person seeking to intervene as a matter of right, the motion shall state the statute or constitutional provision which gives the person the right to intervene. The court shall conduct a hearing on the motion to intervene as soon as practicable after filing of the motion. [Added by order filed December 29, 2015, effective July 1, 2016.]

Advisory Commission Comments. The original Rules of Juvenile Procedure did not contain a process for seeking intervention. The Tennessee Supreme Court concluded that intervention in juvenile court should be analyzed under the provisions of Rule 24 of the Tennessee Rules of Civil Procedure, specifically finding that application of the rule "would not compromise the efficacy of juvenile proceedings." *Gonzalez v. Tennessee Department of Children's Services*, 136 S.W. 3d 613, 617 (Tenn. 2004). Other jurisdictions have concluded that the state's rules of civil procedure should govern intervention in juvenile court. *See In re T.H.*, 753 S.E. 2d 207,211 (N.C. App. 2014). Consequently, the language of this Rule is taken nearly verbatim from Rule 24 of the Tennessee Rules of Civil Procedure.

Subdivision (a) preserves any statutory right to intervene in a specific action and allows interventions by right when an applicant can show that the disposition of the action will, as a practical matter, impair that person's ability to protect the asserted interest. Permissive intervention, which is directed to the discretion of the juvenile court, is allowed when the person seeking intervention can show a claim or defense which is in common with or has questions of fact or law common to the claims and defenses of an original party. Allowing intervention is designed to prevent multiple litigation without unduly delaying the proceeding in the juvenile court. The court's discretion to permit intervention under subdivision (b) should be exercised in the context of the purposes of the Juvenile Court Act — particularly the provision of a "simple judicial procedure … in which the parties are ensured a fair hearing[.]" T.C.A. § 37-1-101.

For the purposes of intervention, the term "person" includes any public or private agency — in particular, the Department of Children's Services when the Department is not the original petitioner. A person's application to intervene must be "timely"; that concept again is to be considered within the purposes of the Juvenile Court Act. The procedure established in subdivision (c) presumes that the court will address the issue of intervention as soon as practicable without delaying the resolution of the action in question and without compromising the best interest of the child involved.

The rule does not attempt to define which persons can automatically intervene and which are to be automatically excluded from intervention. That determination will be made on an individual basis depending upon the particular facts of the case and the stage of the proceeding in which intervention is sought. A court also has the authority to allow intervention on a limited basis. *See In re Marquise T.G.*, No. M2011-00809-COA-R3-JV, 2012 Tenn. Ct. App. LEXIS 324, 2012 WL 1825766 (Tenn. Ct. App, 2012) (grandmother allowed to intervene for the purpose of seeking visitation, but not allowed to intervene to seek custody).

When a person seeks to intervene for the purpose of modification of an order, the person should refer to Rule 310.

Compiler's Notes. The adoption of Rule 304, as promulgated and adopted by the Supreme Court in its order dated December 29, 2015, was ratified and approved by 2016 House Resolution 145 and Senate Resolution 79. The order promulgating the adoption of Rule 304 provided that it take effect July 1, 2016.

Rule 305. Discovery. (a) Each court shall ensure that the parties in dependent and neglect proceedings have access to information which would be available in circuit court.

(b) Parties shall attempt to achieve any necessary discovery informally, in order to avoid undue expense and delay in the resolution of cases. Only when such attempts have failed, discovery may be sought and effectuated in accordance with the Tennessee Rules of Civil Procedure without a court order.

(c) Leave to obtain discovery pursuant to the Tennessee Rules of Civil Procedure for reasons other than a failed attempt at informal discovery shall be freely given by the court when justice so requires.

(d) Upon motion of a party or upon the court's own initiative, the court may order that the discovery be completed by a certain date.

(e) Any motion to compel discovery, motion to quash, motion for protective order, or other discovery related motion shall:

(1) quote verbatim the interrogatory, request, question, or subpoena at issue, or be accompanied by a copy of the interrogatory, request, subpoena, or excerpt of a deposition which shows the question and objection or response, if applicable;

(2) state the reason or reasons supporting the motion; and

(3) be accompanied by a statement certifying that the moving party or counsel has made a good faith effort to resolve by agreement the issues raised and that agreement has not been achieved. Such effort shall be set forth with particularity in the statement.

(f) The court shall decide any motion relating to discovery in accordance with the Tennessee Rules of Civil Procedure.

(g) A child shall be required to respond to discovery requests only if the child is the petitioner or a respon-

dent to the action.

(h) A guardian ad litem shall not testify at a deposition.

(i) Except as provided in subdivision (e) above, discovery materials shall not be filed with the court. [Added by order filed December 29, 2015, effective July 1, 2016.]

Advisory Commission Comments. This rule permits parties to utilize the discovery rules found in the Tennessee Rules of Civil Procedure if: (1) an attempt to conduct informal discovery fails; or (2) if the party has obtained permission in a court order. A party may utilize subdivision (c) of this rule only when informal discovery is not possible or practical, e.g., the party may need to depose a non-party witness prior to trial. When attempts at informal discovery fail or are at an impasse, the parties should then presume that they are participating in formal discovery.

In order to reduce the cost of depositions, attorneys and parties should note that Rule 30.02 of the Tennessee Rules of Civil Procedure allows for non-stenographic recording and for telephone depositions. Likewise, Rule 26.03 of the Tennessee Rules of Civil Procedure permits the court to issue a protective order when a party seeks to limit discovery in order to avoid undue burden or expense, as well as for other reasons.

The Commission recognizes that formal discovery could potentially lengthen the time it takes to set and conclude dependent and neglect proceedings. Courts, attorneys, and parties should note that subdivision (d) permits a court ordered deadline for the completion of discovery. The Tennessee Rules of Civil Procedure allow the court to shorten deadlines for responding to discovery requests. Courts are encouraged to conduct scheduling conferences and issue scheduling orders as permitted under Rule 111.

Compiler's Notes. The adoption of Rule 305, as promulgated and adopted by the Supreme Court in its order dated December 29, 2015, was ratified and approved by 2016 House Resolution 145 and Senate Resolution 79. The order promulgating the adoption of Rule 305 provided that it take effect July 1, 2016.

Rule 306. Taking children's testimony. (a) Any examination of a child witness shall be conducted in a manner that takes into account the child's age and developmental level. Such testimony shall be recorded.

(b) When a child testifies, the examination shall be conducted either in chambers or in a courtroom which has been cleared of observers and non-party witnesses.

(c) Upon motion of any party or upon its own initiative and upon good cause shown based upon the best interest of the child, the court may order one or more of the following accommodations:

(1) Arrangement of the courtroom or chambers so that certain individuals are not within the child's line of vision;

(2) Exclusion of the parties from chambers or the courtroom while the child is testifying; any motion for exclusion of the parties shall be made prior to trial, except in extraordinary circumstances;

(3) Examination of the child through written questions and written answers;

(4) Observation by the parties of the child's testimony by closed circuit television or other contemporaneous audio-visual transmission;

(5) Examination of the child by the court rather than directly by the parties or attorneys;

(6) Allowing the presence of a properly trained comfort animal;

(7) Permitting the child to have a stuffed animal or similar comfort toy while the child is testifying; or

(8) Permitting the child to be accompanied by a support person who is not a party or a witness.

(d) If the court excludes the parties from chambers or the courtroom while the child is testifying, the court shall ensure the following procedures are followed:

(1) Counsel for the parties and child(ren), including the guardian(s) ad litem, shall be permitted to be present during the child's testimony.

(2) The court shall inform any party who is not represented by counsel of the right to be represented by counsel and shall appoint counsel if requested by an indigent party who is entitled to an attorney.

(e) If the court examines the child rather than permitting the parties or attorney to directly examine the child, the court shall ensure the following procedures are followed:

(1) The parties or their counsel if represented, the guardian(s) ad litem, and attorney(s) ad litem shall submit written questions to the court prior to the child's testimony. The court shall ask the questions as written.

(2) If a party or attorney has an objection to a question, he or she may make the objection by raising his or her hand and then submitting the objection in writing. The written objection shall be provided to the party or attorney who wrote the question, and he or she shall be provided an opportunity to respond to the objection, before the court may sustain the objection.

(3) After all of the submitted questions have been asked by the court, the court shall take a recess. During the recess, the attorneys shall have an opportunity to consult with their clients. If a party or attorney wishes to ask additional questions, he or she shall submit the questions in writing prior to the end of the recess.

(4) The court shall continue the above process until there are no further questions for the child from any party or attorney. [Added by order filed December 29, 2015, effective July 1, 2016.]

Advisory Commission Comments. The Commission drafted this rule in order to provide guidelines to courts and attorneys as they seek to balance the due process rights of the respondents with the need to protect child witnesses from unnecessary trauma.

Subdivision (b) requires that when a child testifies the examination must be conducted either in chambers or in a courtroom which has been cleared of observers and non-party witnesses. Court appointed special advocates (CASAs) appointed pursuant to T.C.A. § 37-1-149, as well as foster parents, prospective adoptive parents, and relatives providing care for a child in state custody are not parties to the dependent and neglected action and should be excluded from the courtroom while the child is testifying.

When an unrepresented party requests appointment of an attorney or time to retain an attorney due to the court's decision to allow a child's testimony to be taken pursuant to subdivision (d), the hearing will likely need to be continued. In addition to the time it takes to appoint or retain the attorney, the attorney will need reasonable time to prepare.

Courts and attorneys should note that it is neither necessary nor desirable for the alleged perpetrator to be made a party to the dependent and neglect proceeding unless that person is the child's parent or legal guardian. In cases where the alleged perpetrator is not the parent or legal guardian, and where a court order limiting the alleged perpetrator's access to the child is appropriate, a related petition for a restraining order pursuant to T.C.A. § 37-1-152 and Rule 108 could accomplish the goal of protecting the child without granting the alleged perpetrator party status in the underlying action. In addition to other benefits, this strategy could limit or eliminate the alleged perpetrator's participation in the dependent and neglect case hearings and increase the child's comfort level.

Courts and attorneys may find it helpful to refer to Rule 112 concerning when testimony may be taken by audio-visual means.

Compiler's Notes. The adoption of Rule 306, as promulgated and adopted by the Supreme Court in its order dated December 29, 2015, was ratified and approved by 2016 House Resolution 145 and Senate Resolution 79. The order promulgating the adoption of Rule 306 provided that it take effect July 1, 2016.

Rule 307. Adjudicatory hearings. (a) SCOPE OF HEARING. The adjudicatory hearing is the proceeding at which the court determines whether the evidence supports a finding that a child is dependent and neglected. The adjudicatory hearing shall be held in accordance with T.C.A. § 37-1-129.

(b) TIME LIMITS ON SCHEDULING ADJUDICATORY HEARINGS. **(1)** All cases in which a child has been placed out of the home by court order shall be heard within 30 days of the date the child was placed outside of the home. All other cases shall be heard within 30 days of the date of filing of the petition if such early scheduling appears to the court to be reasonable and possible considering the circumstances of the case, including but not limited to, whether service on all parties has been achieved. In any event, every case shall be heard for adjudication within 90 days of either the date the child was placed outside the home or date of filing of the petition, as applicable.

(2) Upon good cause shown, the adjudicatory hearing may be continued to a date certain.

(c) BEGINNING ADJUDICATORY HEARING. **(1)** At the beginning of each hearing, the court shall:

(A) Ascertain whether the parties before the court are represented by attorneys;

(B) Verify the name, age and residence of the child who is the subject of the case, and ascertain the relationship of the parties, each to the other;

(C) Ascertain whether all necessary parties are present;

(D) Ascertain whether notice requirements have been complied with, and if not, whether the affected parties knowingly and voluntarily waive compliance;

(E) Explain to the parties the purpose of the hearing and the possible consequences thereof; and

(F) Explain to the parties their rights as set forth in Rule 303.

(d) EVIDENCE ADMISSIBLE. The court shall consider only evidence which has been formally admitted at the adjudicatory hearing. All testimony shall be under oath and may be in narrative form. Evidence shall be admitted as provided by the Tennessee Rules of Evidence.

(e) ADJUDICATION OF STATUS, STANDARD OF PROOF, AND FINDINGS. **(1)** At the conclusion of the adjudicatory hearing, the court shall enter an order in accordance with the following provisions:

(A) If the court finds that the allegations have not been proved by clear and convincing evidence, it shall dismiss the petition.

(B) If the court finds that the allegations have been proved by clear and convincing evidence, it shall adjudicate the child dependent and neglected. The court shall immediately proceed to a dispositional hearing or schedule it to be heard on a later date.

(C) If the court finds that the child is dependent and neglected, the court shall additionally make a finding whether the parents or either of them or another person who had custody of the child committed severe child abuse.

(2) The court shall include findings of fact in its adjudicatory order. The adjudicatory order shall be filed within 30 days of the close of the hearing or, if a petition for certiorari is filed, within 5 days thereafter.

(f) TRANSFER TO HOME COUNTY FOR DISPOSITION. The case of an out-of-county resident may be transferred to the child's county of residence for disposition. [Added by order filed December 29, 2015, effective July 1, 2016.]

Advisory Commission Comments. The varying time limits in these rules for children placed out of the home by court order versus those who remain in the home indicate that cases involving children placed out of the home be given priority on the docket. All hearings should be scheduled and held as speedily as possible in the interest of providing timely resolution for children and families. It is important that whatever action is taken be completed expeditiously, within the limits of practicability, given the fact that a child's perception of time is quite different from that of an adult, with shorter periods of time perceived as being much extended.

Some proceedings may be so complex that the court and parties may benefit from a pretrial conference to narrow or limit issues, decide evidentiary issues, and address other pretrial matters so as to achieve judicial economy.

This rule clarifies that the court must file its written adjudicatory hearing order within 30 days from the closing of the hearing, or, if a petition for certiorari is filed, within 5 days thereafter, pursuan tto T.C.A. § 37-1-129(a). See Rule 110 for the computation of time.

Compiler's Notes. The adoption of Rule 307, as promulgated and adopted by the Supreme Court in its order dated December 29, 2015, was ratified and approved by 2016 House Resolution 145 and Senate Resolution 79. The order promulgating the adoption of Rule 307 provided that it take effect July 1, 2016.

Rule 308. Dispositional hearings. (a) TIME LIMITS ON SCHEDULING DISPOSITIONAL HEARINGS. Dispositional hearings shall be held within 15 days of the adjudicatory hearing if the child is placed out of the home by court order, and within 90 days of the adjudicatory hearing in all other cases. Upon good cause shown, the dispositional hearing may be continued to a date certain.

(b) SEPARATE FROM ADJUDICATORY HEARING. A dispositional hearing shall be separate and distinct from the adjudicatory hearing to which it relates. However, it may be held immediately following the adjudicatory hearing or at a later date.

(c) NOTICE OF RIGHT TO APPEAL. At the conclusion of the dispositional hearing, the court shall advise the parties of the right to appeal the dispositional order.

(d) TEMPORARY ORDER. Where a continuance of the dispositional hearing is ordered, the court may enter a temporary order that is in the best interest of the child.

(e) EVIDENCE ADMISSIBLE; STANDARD OF PROOF. In arriving at its dispositional decision, the court shall consider only evidence which has been formally admitted, and the juvenile court record of the child. All testimony shall be under oath and may be in narrative form. The Rules of Evidence shall apply except that reliable hearsay including, but not limited to, documents such as psychiatric or psychological screenings or evaluations of the child or the child's parents or custodian or

reports or assessments prepared by a probation officer, youth services officer or the Department of Children's Services, may be admitted provided that the opposing party is accorded a fair opportunity to rebut any hearsay evidence so admitted. However, this subdivision shall not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or the Tennessee Constitution. The parties shall have the right to examine any person who has prepared any report admitted into evidence. The standard of proof at the dispositional hearing is preponderance of the evidence. [Added by order filed December 29, 2015, effective July 1, 2016.]

Advisory Commission Comments. The purpose of dispositions in juvenile court actions is to design an appropriate order to meet the needs of the child and to achieve the objectives of the state in exercising jurisdiction. When possible, the initial approach should involve working with the child and the family in their own home so that the appropriate community resources may be involved in care, supervision, and treatment according to the needs of the child and family.

At the dispositional hearing, it is appropriate that youth services and probation officers be witnesses regarding admissible evidence of which they have knowledge. Youth services officers or probation officers may be a fact witness but shall not engage in the unauthorized practice of law.

Although a report may be admissible as reliable hearsay, all the contents of the report may not be reliable hearsay. This is especially important when the source gives an opinion that the person is not qualified to give.

Though this rule allows for the dispositional hearing to be held within 15 days of the adjudicatory hearing when the child is placed out of the home by court order or 90 days in all other cases, it should be noted that under these rules the dispositional hearing may be held immediately following the adjudicatory hearing if the court determines that delay for preparation by the parties is not necessary.

Compiler's Notes. The adoption of Rule 308, as promulgated and adopted by the Supreme Court in its order dated December 29, 2015, was ratified and approved by 2016 House Resolution 145 and Senate Resolution 79. The order promulgating the adoption of Rule 308 provided that it take effect July 1, 2016.

Rule 309. Agreed orders. (a) General Provisions. Any or all issues within a case may be resolved by a written agreement between all parties, submitted to the court in the form of an agreed order. An agreed order, signed by all parties or counsel, upon being approved by the court and entered in its minutes, becomes the order of the court. An agreed order should recite that the parties are aware that the agreement is the order of the court and that failure to comply with the order may constitute contempt of court.

(b) Modification. An agreed order may be modified in accordance with Rule 310. [Added by order filed December 29, 2015, effective July 1, 2016.]

Advisory Commission Comments. This rule clarifies that unless previously dismissed from the proceeding all parties to the original proceedings, including the Department of Children's Services and any interveners, are required to agree to an order for it to constitute an agreed order. Any party not wishing to participate in further proceedings may seek approval from the court to be dismissed as a party.

Compiler's Notes. The adoption of Rule 309, as promulgated and adopted by the Supreme Court in its order dated December 29, 2015, was ratified and approved by 2016 House Resolution 145 and Senate Resolution 79. The order promulgating the adoption of Rule 309 provided that it take effect July 1, 2016.

Rule 310. Modification of or relief from judgments or orders. (a) Modification of Orders. **(1)** Clerical Mistakes. Clerical mistakes and errors arising from oversight or omission in orders or other parts of the record may be corrected by the court at any time on its own initiative or on motion of any party.

(2) Modification for Newly Discovered Evidence. A dispositional order may be modified on the ground that newly discovered evidence so requires. The court, in making this determination, shall make any modification consistent with the best interests of the child.

(3) Modification for Changed Circumstances. An order of the court may be modified on the ground that, since the entry of the order, changed circumstances and the best interests of the child require it.

(b) Relief from Judgments or Orders. An order of the court shall be set aside if it is determined that:

(1) It was obtained by fraud or mistake sufficient to satisfy the legal requirements for relief in any other civil action;

(2) The court lacked jurisdiction over a necessary party or of the subject matter; or

(3) Newly discovered evidence so requires. The court must determine that, with regard to such newly discovered evidence, the movant was without fault in failing to present such evidence at the original proceeding, and that such evidence may have resulted in a different judgment at the original proceeding.

(c) Procedure. Any party to a proceeding, the guardian ad litem, or other person having legal custody of or an interest in a child may seek the relief provided in this rule. A request for relief under this rule shall set forth in concise language the grounds upon which the relief is requested. If relief is sought under subdivisions (a)(l) and (2) or (b), a motion shall be filed and notice shall be given pursuant to Rule 106. If relief is sought under subdivision (a)(3), a petition shall be filed and served pursuant to Rule 103.

(d) Disposition. After the hearing, the court shall deny or grant relief as the evidence warrants. Where a modification of an order is granted, the court may order any disposition which would be permissible at the original dispositional hearing, or the court may schedule a dispositional hearing in accordance with these rules. [Added by order filed December 29, 2015, effective July 1, 2016.]

Advisory Commission Comments. T.C.A. § 37-1-139 authorizes the modification of and relief from orders under certain circumstances. A motion is filed if relief is sought under subdivisions (a)(l) and (2) or (b). However, a petition is required if relief is sought because of changed circumstances under subdivision (a)(3).

The Commission anticipates that persons not a party to the original proceeding will request relief under this rule. In such cases, the motion should include a request to intervene as a party. In the event that the person is making new allegations that the child is dependent and neglected, the person should file a dependent and neglect petition under T.C.A. §§ 37-1-119 and 120, rather than a petition to modify.

Compiler's Notes. The adoption of Rule 310, as promulgated and adopted by the Supreme Court in its order dated December 29, 2015, was ratified and approved by 2016 House Resolution 145 and Senate Resolution 79. The order promulgating the adoption of Rule 310 provided that it take effect July 1, 2016.

Foster Care Proceedings.

Rule 401. Ratification hearings. (a) Purpose of Ratification Hearing. The court shall explain on the

record the purpose of the hearing.

(b) Notification of Parties. The court shall verify all parties have been properly served. In the event a party's whereabouts are unknown and the party could not be notified of the ratification hearing, the court shall determine the Department of Children's Services' reasonable efforts to notify the party of the contents of the permanency plan. If the court finds the Department has made reasonable efforts to notify the party of the contents of the plan, then the court shall proceed with the ratification of the plan.

(c) Review of Permanency Plan. The court shall review the permanency plan for each child in foster care. In reviewing the permanency plan, the court shall address the following:

(1) Whether the parties participated in the development of the plan and are in agreement with the provisions of the plan;

(2) Whether the permanency goals are appropriate, and if a concurrent goal is needed;

(3) Whether the plan includes outcomes and corresponding action steps for each permanency goal;

(4) Whether the child's placement is safe and appropriate;

(5) Whether the child's well-being is appropriately addressed through health, education and independent living skills if applicable;

(6) Whether the visitation schedule is sufficient to maintain the bond between the child and parent, and the child and siblings, who are not residing in the same placement; and

(7) Whether the statement of responsibilities for each party are reasonably related to remedying the conditions that necessitate foster care or prevent the child from safely returning home.

(d) Inclusion of Recommendations of Foster Care Review Board. If a foster care review board hearing has occurred prior to the ratification hearing, the court shall review the recommendations of the board. If the board's recommendations are in the best interest of the child, the court shall incorporate the recommendations into the plan.

(e) Evidentiary Hearing. An evidentiary hearing shall be required to ratify the plan if the following occur:

(1) The parties do not agree on the provisions of the plan;

(2) The guardian ad litem objects to the provisions of the plan; or

(3) The court determines the Department has not prioritized the outcomes and corresponding action steps for each party in the statement of responsibilities.

(f) Agreement — Modification. If the parties are in agreement to the provisions of the plan and the plan is found to be in the best interest of the child, or at the conclusion of the hearing, the court shall ratify the plan upon making fact-specific findings pursuant to T.C.A. § 37-2-403. If the court modifies the plan, and a party is not present at the hearing, the court shall direct the Department to make reasonable efforts to notify the party of the modified provisions of the plan.

(g) Abandonment Criteria. The court shall explain on the record the law relating to abandonment and the possible consequences of termination of parental rights.

(h) Rights of Party Not Served. The court may issue a temporary order ratifying the plan. Such order shall be without prejudice to the rights of any party who has not been served with the original petition. If a party was not served, the court shall set a hearing within 60 days to determine whether the Department has conducted a diligent search.

(i) Findings — Order. The court shall make fact-specific findings pursuant to T.C.A. § 37-2-403 and shall enter an order within 30 days of the hearing. [Added by order filed December 29, 2015, effective July 1, 2016.]

Advisory Commission Comments. Permanency planning is the process of carrying out within a time-limited period a set of goal directed activities designed to help the foster child live with a permanent family. The permanency planning process requires the juvenile court to identify a permanency goal and oversee the implementation and modification of the permanency plan for each child in foster care. The permanency planning process includes, but is not limited to, the ratification hearing, periodic progress review hearing, foster care review board hearing and permanency hearing.

The purpose of the ratification hearing is for the court to review the permanency plan for the child prepared by the Department and approve the plan if it is in the best interest of the child. The permanency plan becomes an order of the court once ratified and should outline the responsibilities of each party to achieve one or more specific goals for the child. If court determines the permanency plan is not in the best interest of the child, the court should order that the plan be modified accordingly. In determining whether the permanency plan is in the child's best interest, the plan is to be reviewed by the court as described in subdivision (c) and T.C.A. § 37-2-403.

A ratification hearing is held to approve the initial permanency plan and all subsequent permanency plans. The initial permanency plan must be ratified within 60 days of the date the child is placed in foster care, except as provided in T.C.A. § 37-1-166. A subsequent plan must be ratified within 12 months of the original plan if the child remains in foster care. T.C.A. § 37-2-403.

The ratification hearing is separate and distinct from a periodic progress review (previously termed judicial review) or a permanency hearing. At the ratification hearing the court is not determining the compliance of the parties to the plan; it is reviewing the plan being presented for ratification and determining if the plan is in the best interest of the child.

T.C.A. § 37-2-403 provides that the permanency plan should be reevaluated and updated annually. However, new plans should be submitted to the court for ratification more frequently when the priority of responsibilities change, new facts are discovered which prevent the child from safely returning home, or there is a change in the goal on the plan. After the initial permanency plan is ratified, a subsequent permanency plan presented to the court for ratification should not be a duplicate of the initial plan. The subsequent plan should reflect the changes that have occurred in the child's case since the ratification of the prior plan.

A child adjudicated to be delinquent or unruly is a party to the proceeding and should attend the ratification hearing, as well as all hearings associated with permanency planning. Also, a child alleged or found to be dependent and neglected who is 14 years of age or older, should attend the ratification hearing, as well as all hearings associated with permanency planning.

Subdivision (d) provides that the court include in the permanency plan the recommendations of the foster care review board if the court finds the recommendations to be in the best interest of the child.

Subdivision (e) requires that an evidentiary hearing be held if the parties do not agree or if the guardian ad litem objects to the permanency plan. In addition, if the Department has not prioritized the outcomes and corresponding action steps for each party in the statement of responsibilities, an evidentiary hearing must be held and testimony presented regarding the priority of responsibilities. The reason for this requirement is that when the court does review compliance of the parties at the periodic progress review or permanency hearing, the court is required to determine the weight assigned to each action step in order to determine whether the Department has

made reasonable efforts and whether the parent is in substantial compliance.

If the parties are in agreement to the permanency plan, the court must also find that the plan is in the best interest of the child. This may be done without an evidentiary hearing.

Subdivision (g) requires the court to explain on the record the law relating to abandonment, pursuant to T.C.A. § 37-2-403(a)(2)(8).

Subdivision (h) provides that, if a party has not been served with the original petition, the court may enter a temporary order ratifying the permanency plan without prejudice to that person's rights. The court must schedule a hearing to determine whether the Department has conducted a diligent search. Absent parties, especially parents, should be included as soon as possible in the child's case in order to prevent a delay in permanency for the child.

Compiler's Notes. The adoption of Rule 401, as promulgated and adopted by the Supreme Court in its order dated December 29, 2015, was ratified and approved by 2016 House Resolution 145 and Senate Resolution 79. The order promulgating the adoption of Rule 401 provided that it take effect July 1, 2016.

Rule 402. Periodic progress reviews. (a) A periodic progress review hearing shall occur when the court has not established a foster care review board or has elected to review certain cases instead of assigning the cases to the board.

(b) The court shall explain on the record the purpose of the hearing and review the following:

(1) The continued appropriateness of the permanency goals , and if a concurrent goal is needed;

(2) Whether the child's placement is safe and appropriate;

(3) Whether the child's well-being is being appropriately addressed through health, education, and independent living skills if applicable;

(4) Whether the visitation schedule continues to be sufficient to maintain the bond between the child and parent, and the child and siblings, who are not residing in the same placement;

(5) The reasonableness of the Department of Children's Services' efforts to identify or locate the parent or child whose identity or whereabouts are unknown;

(6) The reasonableness of the Department's efforts based on the prioritization of the outcomes and corresponding action steps in the statement of responsibilities; and

(7) The compliance of the parents or child with the statement of responsibilities in the plan.

(c) If a foster care review board hearing has occurred prior to the periodic progress review, the court shall review the recommendations of the board. If the court finds the board's recommendations are in the best interest of the child, the court shall incorporate the recommendations into the plan.

(d) If in addition to the periodic progress review the Department requests the court also ratify a new permanency plan, the periodic progress review and ratification hearing on the new plan shall be bifurcated.

(e) At the conclusion of the hearing, the court shall make fact-specific findings including a timeline for goal completion and shall enter an order within 30 days of the hearing. If the court finds additional services are necessary to mitigate the causes necessitating foster care, the court shall order the Department to incorporate the services into the permanency plan. [Added by order filed December 29, 2015, effective July 1, 2016.]

Advisory Commission Comments. The periodic progress review (formerly known as judicial review) of the permanency plan is held pursuant to T.C.A. § 37-2-404. Either a foster care review board or periodic progress review must be held within 90 days of the date of custody and no less often than every 6 months thereafter.

The purpose of this hearing is to ensure that the child is safe, that provisions are being made for the child's well-being, and that the permanency plan and goals remain in the best interest of the child. The court has a duty to monitor and determine compliance with the terms of the permanency plan by the parties, and issue such orders as may be appropriate to enforce compliance by reviewing those matters outlined in subdivision (b). The periodic progress review is an opportunity for the court to correct potential delays or barriers to permanency for the child prior to the permanency hearing.

A child adjudicated to be delinquent or unruly is a party to the proceeding and should attend the periodic progress review. The Commission notes that there is a distinction between visitation and home passes when reviewing a child adjudicated delinquent or unruly and placed in a residential facility. The child may not be eligible for home passes, but this should not deter visitation between the parent or prior legal guardian and child at the facility.

If the Department is seeking ratification of a new permanency plan at this hearing, the hearings are to be bifurcated as the purpose of the hearings is different. *See* Rule 401.

Compiler's Notes. The adoption of Rule 402, as promulgated and adopted by the Supreme Court in its order dated December 29, 2015, was ratified and approved by 2016 House Resolution 145 and Senate Resolution 79. The order promulgating the adoption of Rule 402 provided that it take effect July 1, 2016.

Rule 403. Foster care review board. (a) Scheduling and Notice. The court shall determine the date, time and location of each foster care review board and shall notify the Department of Children's Services and the board members no later than 14 calendar days prior to the scheduled review. Each case shall be set at a specific time that allows for a comprehensive review. All parties, their attorneys, guardians ad litem, and foster parents shall be notified in writing of the review not less than 10 calendar days prior to the scheduled review.

(b) Documentation. The Department shall provide supporting documentation in regard to the child's safety, well-being, and permanency as determined by local rule. Documentation should be provided to the court facilitator no less than 7 calendar days prior to review for distribution to the board members.

(c) Quorum and Attendance. Prior to the beginning of each review, the court facilitator shall verify that a quorum of members exists. In verifying the quorum, the court facilitator shall inquire as to any conflicts of interest of the board members requiring recusal. The review shall proceed only if it is determined that all necessary persons who are not present were properly notified. If timely notification was not provided, the court facilitator will reschedule the matter as soon as possible.

(d) Conduct of the Review. **(1)** The board shall use a summary form to gather information.

(2) Information provided to the board shall only come from persons before the board during the review or from documentation provided by the parties.

(3) Only the parties, their attorneys, the child, and the guardian ad litem or attorney for the child have the right to be present during the entire review. Necessary persons may be present during the entire review if agreed to by all the parties. Necessary persons are to present information to the board in the presence of the

parties.

(4) The board may hear from the child outside the presence of the parties.

(e) RECOMMENDATIONS. The board shall make written recommendations that address the child's safety, well-being, and permanency. The board shall deliberate to develop recommendations. All deliberation shall occur outside the presence of the parties, their attorneys, and other persons present for the review. Recommendations shall be made addressing the needs pursuant to Rule 402(b) of these rules. All recommendations should be agreed upon by a majority of board. If there is no majority agreement for each recommendation, the court facilitator shall:

(1) Identify the conflict;

(2) Instruct the board to review all relevant documentation and testimony;

(3) Instruct the board to ensure that the recommendations provide for the safety, well-being, permanency of the child, and are in the child's best interest; and

(4) In the event no consensus can be reached, make a direct referral to the court.

(f) ANNOUNCEMENT OF RECOMMENDATIONS — SCHEDULING NEXT REVIEW. After deliberation, the board will announce its recommendations to the parties and set a date for the next review. No additional information may be presented during the announcement of the recommendations. The court facilitator shall ensure the signatures of all parties present at the review are obtained on the summary form, noting those persons were present for the review. The court facilitator shall also note anyone else who was present for the review.

(g) SUMMARY FORM FILED WITH CLERK. The court facilitator shall file the summary form with the clerk of the court, who shall record the date and time of the filing. The clerk of the court shall send a copy of the summary form to all parties and their attorneys of record or guardians ad litem.

(h) REVIEW BY JUDGE OR MAGISTRATE. The court shall establish a procedure to provide the recommendations to the judge or magistrate within 10 judicial days of the review for the court to review the recommendations, determine if they are in the best interest of the of the child, and confirm as an order of the court at the next ratification hearing, periodic progress review, or permanency hearing.

(i) DIRECT REFERRAL. When the board makes the determination that a direct referral shall be made by the court, the court facilitator will determine the type of direct referral as provided by T.C.A § 37-2-406(c)(1)(8). The court facilitator will file the direct referral with the clerk of the court. The court facilitator shall inform the review board of the outcome of the direct referral at the next review of the child's case before the foster care review board.

(j) STATEMENTS OF CHILD. Any statements made by a child at the review are not admissible in a delinquent or unruly proceeding prior to a dispositional hearing. [Added by order filed December 29, 2015, effective July 1, 2016.]

Compiler's Notes. The adoption of Rule 403, as promulgated and adopted by the Supreme Court in its order dated December 29, 2015, was ratified and approved by 2016 House Resolution 145 and Senate Resolution 79. The order promulgating the adoption of Rule 403 provided that it take effect July 1, 2016.

Rule 404. Permanency hearings. (a) REVIEW OF PREVIOUS ORDERS/RECOMMENDATIONS BY COURT. Prior to the beginning of a permanency hearing, the court shall review previous ratification orders, periodic progress review orders, and foster care review board recommendations.

(b) PURPOSE OF HEARING. The court shall explain on the record the purpose of the hearing.

(c) TESTIMONY. The court shall receive testimony from the parties related to the following:

(1) Whether the Department's efforts to assist the parent or child in complying with the statement of responsibilities are reasonable based on the Department's prioritization of the outcomes and corresponding action steps in the statement of responsibilities in the permanency plan;

(2) Whether the parent or child is in substantial compliance with the statement of responsibilities in the plan;

(3) If the child is able to communicate, the child's views on the provisions in the plan;

(4) Whether the independent living plan or transitional living plan is designed to assist and prepare foster youth in making the transition from foster care to adulthood by providing opportunities to obtain life skills for self-sufficiency, independence, and permanency;

(5) If the youth is seventeen years old, testimony from the Department regarding extension of foster care services available to the youth at the age of eighteen and testimony from the youth as to whether the youth understands the available services;

(6) Whether the proposed permanency goals and timelines for achieving the goals are in the best interest of the child; and

(7) Whether barriers exist to successfully achieving the proposed permanency goals, and if services are needed to eliminate the barriers.

(d) REASONABLE EFFORTS FINDING AS TO GOAL. At the conclusion of the hearing, if the goal on the existing permanency plan is to return home, the court shall make fact-specific findings as to whether the Department has provided reasonable efforts for the child to return home safely. If the plan contains a goal other than return home, the court shall make fact-specific findings as to whether the Department has provided reasonable efforts to place the child consistent with the specific goal. If the permanency plan contains concurrent goals, the court shall make reasonableefforts findings as to both goals.

(e) HEARING FOR YOUTH SEVENTEEN YEARS OR OLDER PRIOR TO RELEASE FROM DEPARTMENT. A permanency hearing shall be held 3 months prior to the release from foster care of a youth who is 17 years or older. The court shall hold an evidentiary hearing on the transition living plan and review the plan to ensure the plan sufficiently addresses the following, if applicable: support person or system, education, employment, health needs, information on available benefits through other agencies, avail-

able transportation, youth has received all essential documentation including government issued identification, and any special factors.

(f) YOUTH PLANNING TO ACCEPT EXTENSION OF FOSTER CARE. At the permanency hearing to approve the transition plan for a youth who plans to accept extension of foster care, the court shall set a hearing date within 60 days of the youth's eligibility for extension of foster care for the purpose of confirming the voluntary placement agreement and ratification of the transition plan.

(g) BIFURCATED PERMANENCY HEARING AND RATIFICATION HEARING. If, in addition to the permanency hearing, the Department requests the court also ratify a new permanency plan, the permanency hearing and ratification hearing on the new plan shall be bifurcated with the permanency hearing occurring first. [Added by order filed December 29, 2015, effective July 1, 2016.]

Advisory Commission Comments. A permanency hearing is a separate and distinct hearing from the ratification and periodic progress review hearings. The purpose of the permanency hearing is to decide upon the final permanency outcome for the child. In determining the final permanency outcome, the court is to review the compliance of all parties and decide on a final permanency outcome for the child that is in the child's best interest. The court must outline a specific timetable and plan for the child to return home or to achieve another permanency goal, if returning home is not in the child's best interest.

In order to make a decision regarding the final permanency outcome of the case, the permanency hearing must be bifurcated from any ratification hearing on a new permanency plan. The decisions made during the permanency hearing dictate the contents of a new permanency plan. The permanency plan that is ratified after a permanency hearing should not be a revision of a previous plan. Rather, it should be a detailed and comprehensive schedule that charts the child's final path to permanency subsequent to the permanency hearing.

At the beginning of the hearing, the court must determine if all necessary persons are present pursuant to Rule 112. All children are required to attend the permanency hearing pursuant to T.C.A. § 37-2-409, except any child under a doctor's care who is prevented by the doctor from attending, a child placed outside the state, or a child on runaway status. The court should consider allowing a child who cannot attend because of the first two exceptions to participate by another means as prescribed in Rule 112. The court must hear directly from the child on the child's views on the provisions in the plan. When receiving testimony from the child, the court shall comply with the provisions of Rule 306.

Compiler's Notes. The adoption of Rule 404, as promulgated and adopted by the Supreme Court in its order dated December 29, 2015, was ratified and approved by 2016 House Resolution 145 and Senate Resolution 79. The order promulgating the adoption of Rule 404 provided that it take effect July 1, 2016.

APPENDIX

The appendix to the Tennessee Rules of Juvenile Procedure shall consist of sections 37-1-101, 37-1-102, 37-1-105, 37-1-106, 37-1-111, 37-1-113, 37-1-114, 37-1-116 and 37-1-117 of the Tennessee Code Annotated and the following § 31.303(f)(3) of Title 28 of the Code of Federal Regulations, known as the "valid court order" regulations:

§ 31.303 Substantive requirements.

* * * *

(f) * * *

(2) For the purpose of monitoring for compliance with section 223(a)(12)(A) of the Act, a secure detention or correctional facility is any secure public or private facility used for the lawful custody of accused or adjudicated juvenile offenders or nonoffenders, or used for the lawful custody of accused or convicted adult criminal offenders. Accused status offenders or nonoffenders in lawful custody can be held in a secure juvenile detention facility for up to twenty-four hours, exclusive of weekends and holidays, prior to an initial court appearance and for an additional twenty-four hours, exclusive of weekends and holidays, following an initial court appearance.

(3) Valid Court Order. For the purpose of determining whether a valid court order exists and a juvenile has been found to be in violation of that valid order all of the following conditions must be present prior to secure incarceration:

(i) The juvenile must have been brought into a court of competent jurisdiction and made subject to an order issued pursuant to proper authority. The order must be one which regulates future conduct of the juvenile. Prior to issuance of the order, the juvenile must have received the full due process rights guaranteed by the Constitution of the United States.

(ii) The court must have entered a judgment and/or remedy in accord with established legal principles based on the facts after a hearing which observes proper procedures.

(iii) The juvenile in question must have received adequate and fair warning of the consequences of violation of the order at the time it was issued and such warning must be provided to the juvenile and to the juvenile's attorney and/or to legal guardian in writing and be reflected in the court record and proceedings.

(iv) All judicial proceedings related to an alleged violation of a valid court order must be held before a court of competent jurisdiction. A juvenile accused of violating a valid court order may be held in secure detention beyond the 24-hour grace period permitted for a noncriminal juvenile offender under OJJDP monitoring policy, for protective purposes as prescribed by State law, or to assure the juvenile's appearance at the violation hearing, as provided by State law, or to assure the juvenile's appearance at the violation hearing, as provided by State law, if there has been a judicial determination based on a hearing during the 24-hour grace period that there is probable cause to believe the juvenile violated the court order. In such case the juveniles may be held pending a violation hearing for such period of time as is provided by State law, but in no event should detention prior to a violation hearing exceed 72 hours exclusive of nonjudicial days. A juvenile alleged or found in a violation hearing to have violated a Valid Court Order may be held only in a secure juvenile detention or correctional facility, and not in an adult jail or lockup.

(v) Prior to and during the violation hearing the following full due process rights must be provided:

(A) The right to have the charges against the juvenile in writing served upon him or her a reasonable time before the hearing;

(B) The right to a hearing before a court;

(C) The right to an explanation of the nature and consequences of the proceeding;

(D) The right to legal counsel, and the right to have such counsel appointed by the court if indigent;

(E) The right to confront witnesses;

(F) The right to present witnesses;

(G) The right to have a transcript or record of the proceedings [see definition for "record" in Rule 2]; and

(H) The right of appeal to an appropriate court.

(vi) In entering any order that directs or authorizes the placement of a status offender in a secure facility, the judge presiding over an initial probable cause hearing or violation hearing must determine that all the elements of a valid court order (paragraphs (f)(3)(i), (ii), (iii) of this section) and the applicable due process rights (paragraph (f)(3)(v) of this section) were afforded the juvenile and, in the case of a violation hearing, the judge must obtain and review a written report that: reviews the behavior of the juvenile and the circumstances under which the juvenile was brought before the court and made subject to such order; determines the reasons for the juvenile's behavior; and determines whether all dispositions other than secure confinement have been exhausted or are clearly inappropriate. This report must be prepared and submitted by an appropriate public agency (other than a court or law enforcement agency).

(vii) A non-offender such as a dependent or neglected child cannot be placed in secure detention or correctional facilities for violating a valid court order.

Compiler's Notes. The introductory paragraph was edited by the compiler in 1996 to reflect changes in Tennessee Code Annotated and Code of Federal Regulations citations.

RULES OF THE SUPREME COURT OF THE STATE OF TENNESSEE

[EFFECTIVE JANUARY 28, 1981]

TABLE OF CONTENTS

13. Appointment, Qualifications, and Compensation of Counsel for Indigent Defendants.
24. Rules of Procedure Governing Petitions for Waiver of Parental Consent for Abortions by Minors.
40. Guidelines for Guardians Ad Litem for Children in Juvenile Court Neglect, Abuse and Dependency Proceedings.
40A. Appointment of Guardians Ad Litem in Custody Proceedings.

Rule 13. Appointment, Qualifications, and Compensation of Counsel for Indigent Defendants.

Section 1. Right to counsel and procedure for appointment of counsel.

(a)(1) The purposes of this rule are:

(A) to provide for the appointment of counsel in all proceedings in which an indigent party has a statutory or constitutional right to appointed counsel;

(B) to provide for compensation of appointed counsel in non-capital cases;

(C) to establish qualifications and provide for compensation of appointed counsel in capital cases, including capital post-conviction proceedings;

(D) to provide for payment of expenses incident to appointed counsel's representation;

(E) to provide for the appointment and compensation of experts, investigators, and other support services for indigent parties in criminal cases, parental rights termination proceedings, dependency and neglect proceedings, delinquency proceedings, and capital post-conviction proceedings;

(F) to establish procedures for review of claims for compensation and reimbursement of expenses; and

(G) to meet the standards set forth in Section 107 of the Antiterrorism and Effective Death Penalty Act of 1996.

(2) The failure of any court to follow the provisions of this rule shall not constitute grounds for relief from a judgment of conviction or sentence. The failure of appointed counsel to meet the qualifications set forth in this rule shall not be deemed evidence that counsel did not provide effective assistance of counsel in a particular case.

(b) Each trial court exercising criminal jurisdiction shall maintain a roster of attorneys from which appointments will be made. However, a court may appoint attorneys whose names are not on the roster if necessary to obtain competent counsel according to the provisions of this rule.

(c) All general sessions, juvenile, trial, and appellate courts shall appoint counsel to represent indigent defendants and other parties who have a constitutional or statutory right to representation (herein "indigent party" or "defendant") according to the procedures and standards set forth in this rule.

(d)(1) In the following cases, and in all other cases required by law, the court or appointing authority shall advise any party without counsel of the right to be represented throughout the case by counsel and that counsel will be appointed if the party is indigent and requests appointment of counsel:

(A) Cases in which an adult is charged with a felony or a misdemeanor and is in jeopardy of incarceration;

(B) Contempt of court proceedings in which the defendant is in jeopardy of incarceration;

(C) Proceedings initiated by a petition for *habeas corpus*, early release from incarceration, suspended sentence, or probation revocation;

(D) Proceedings initiated by a petition for post-conviction relief, subject to the provisions of Tennessee Supreme Court Rule 28 and Tenn. Code Ann. §§ 40-30-101 et seq.;

(E) Parole revocation proceedings pursuant to the authority of state and/or federal law;

(F) Judicial proceedings under Tenn. Code Ann., Title 33, Chapters 3 through 8, Mental Health Law;

(G) Cases in which a superintendent of a mental health facility files a petition under the guardianship law, Tenn. Code Ann., Title 34;

(H) Cases under Tenn. Code Ann. § 37-10-304 and Tennessee Supreme Court Rule 24, relative to petitions for waiver of parental consent for abortions by minors; and

(I) Proceedings initiated pursuant to Tenn. R. Crim. P. 36.1 and in which the trial court, pursuant to Tenn. R. Crim. P. 36.1(b), has determined that the motion states a colorable claim for relief.

(2) In the following proceedings, and in all other proceedings where required by law, the court or appointing authority shall advise any party without counsel of the right to be represented throughout the case by counsel and that counsel will be appointed if the party is indigent and, except as provided in (C) and (D) below, requests appointment of counsel:

(A) Cases in which a juvenile is charged with juvenile delinquency for committing an act which would be a misdemeanor or a felony if committed by an adult;

(B) Cases under Titles 36 and 37 of the Tennessee Code Annotated involving allegations against parents that could result in finding a child dependent or neglected or in terminating parental rights;

(C) Reports of abuse or neglect or investigation reports under Tenn. Code Ann. §§ 37-1-401 through 37-1-411. The court shall appoint a guardian ad litem for every child who is or may be the subject of such report. The appointment of the guardian ad litem shall be made upon the filing of the petition or upon the court's own motion, based upon knowledge or reasonable belief that the child may have been abused or neglected. The child who is or may be the subject of a report or investigation of abuse or neglect shall not be required to request appointment of counsel. A single

guardian ad litem shall be appointed to represent an entire sibling group unless the court finds that conflicting interests require the appointment of more than one guardian. For purposes of this subsection, the compensation limits established in Section 2 apply to each guardian ad litem appointed rather than to each child;

(D) Proceedings to terminate parental rights. The court shall appoint a guardian ad litem for the child, unless the termination is uncontested. The child who is or may be the subject of proceedings to terminate parental rights shall not be required to request appointment of counsel. A single guardian ad litem shall be appointed to represent an entire sibling group unless the court finds that conflicting interests require the appointment of more than one guardian. For purposes of this subsection, the compensation limits established in Section 2 apply to each guardian ad litem appointed rather than to each child; and

(E) Cases alleging unruly conduct of a child which place the child in jeopardy of being removed from the home pursuant to § 37-1-132(b).

(e)(1) Except in cases under Sections 1(d)(1)(F) proceedings under the mental health law, 1(d)(1)(G) proceedings for guardianship under Title 34, and 1(d)(2)(A) juvenile delinquency proceedings, whenever a party to any case in Section 1(d) requests the appointment of counsel, the party shall be required to complete and submit to the court an Affidavit of Indigency Form provided by the Administrative Office of the Courts, herein "AOC".

(2) Upon inquiry, the court shall make a finding as to the indigency of the party pursuant to the provisions of Tenn. Code Ann. § 40-14-202, which finding shall be evidenced by a court order.

(3) Upon finding a party indigent, the court shall enter an order appointing counsel unless the indigent party rejects the offer of appointment of counsel with an understanding of the legal consequences of the rejection.

(4)(A) When appointing counsel for an indigent defendant pursuant to Section 1(e)(3), the court shall appoint the district public defender's office, the state post-conviction defender's office, or other attorneys employed by the state for indigent defense (herein "public defender") if qualified pursuant to this rule and no conflict of interest exists, unless in the sound discretion of the trial judge appointment of other counsel is necessary. Appointment of public defenders shall be subject to the limitations of Tenn. Code Ann. §§ 8-14-201 et seq.

(B) If a conflict of interest exists as provided in Tennessee Rules of Professional Conduct 1.7 or the public defender is not qualified pursuant to this rule, the court shall designate counsel from the roster of private attorneys maintained pursuant to Section 1(b).

(C) The court shall appoint separate counsel for indigent defendants having interests that cannot be represented properly by the same counsel or when other good cause is shown.

(D) The court shall not make an appointment if counsel makes a clear and convincing showing that adding the appointment to counsel's current workload would prevent counsel from rendering effective representation in accordance with constitutional and professional standards.

(E) When the court appoints counsel pursuant to this subsection, the order of appointment shall assess the non-refundable administrative fee provided by Tenn. Code Ann. § 37-1-126(c)(1) or § 40-14-103(b)(1). Additionally the court shall consider the financial ability of the indigent party to defray a portion or all of the cost for representation by the public defender or a portion or all of the costs associated with the provision of court appointed counsel indigent party is financially able to defray a portion or all the cost of the indigent party's representation, the court shall enter an order directing the indigent party to pay into the registry of the clerk of such court such sum as the court determines the indigent party is able to pay as specified by Tenn. Code Ann. § 40-14-202(e).

(5) Appointed counsel shall continue to represent an indigent party throughout the proceedings, including any appeals, until the case has been concluded or counsel has been allowed to withdraw by a court. *See* Tenn. Sup. Ct. R. 14 (setting out the procedure for withdrawal in the Court of Appeals and Court of Criminal Appeals); Tenn. Sup. Ct. R. 8, RPC 1.16.

(f)(1) Indigent parties shall not have the right to select appointed counsel. If an indigent party refuses to accept the services of appointed counsel, such refusal shall be in writing and shall be signed by the indigent party in the presence of the court.

(2) The court shall acknowledge thereon the signature of the indigent party and make the written refusal a part of the record in the case. In addition, the court shall satisfy all other applicable constitutional and procedural requirements relating to waiver of the right to counsel. The indigent party may act pro se without the assistance or presence of counsel only after the court has fulfilled all lawful obligations relating to waiver of the right to counsel. [As amended by order filed June 25, 2013.]

Explanatory Comment: Section 1(e)(1) has been revised for simplicity and organization. Section 1(e)(2) emphasizes that the finding of indigency must be evidenced by a court order. Section 1(e)(4)(A) is stricter than the former rule and emphasizes that trial courts "shall" appoint the public defender to represent criminal defendants unless a conflict of interest exists or in the sound discretion of the trial court, appointment of another counsel is necessary. Section 1(e)(4)(D) includes a specific standard that must be satisfied before counsel may refuse an appointment. Section 1(e)(4)(E) emphasizes that courts have a statutory duty to assess the administrative fee when appointing counsel as well as a statutory duty to consider whether the indigent party can afford to defray a portion or all of the costs of representation. Section 1(e)(5) clarifies that appointed counsel is obligated to represent the indigent party until a court allows counsel to withdraw. Section 1(f) delineates the rights of indigent parties and the obligations of courts when an indigent party chooses to proceed without counsel.

Section 2. Compensation of counsel in non-capital cases.

(a)(1) Appointed counsel, other than public defenders, shall be entitled to reasonable compensation for services rendered as provided in this rule. Reasonable compensation shall be determined by the court in which services are rendered, subject to the limitations in this rule, which limitations are declared to be

reasonable.

(2) These limitations apply to compensation for services rendered in each court: municipal, juvenile, or general sessions; criminal, circuit, or chancery; Court of Appeals or Court of Criminal Appeals; Tennessee Supreme Court; and United States Supreme Court.

(b) Co-counsel or associate attorneys in non-capital cases shall not be compensated.

(c)(1) The hourly rate for appointed counsel in non-capital cases shall not exceed forty dollars ($40) per hour for time reasonably spent in trial preparation and fifty dollars ($50) per hour for time reasonably spent in court.

(2) For purposes of this rule, "time reasonably spent in trial preparation" means time spent preparing the case to which the attorney has been appointed to represent the indigent party. "Time reasonably spent in court" means time spent before a judge on the case to which the attorney has been appointed to represent the indigent party.

(d)(1) The maximum compensation allowed shall be determined by the original charge or allegations in the case. Except as provided in section 2(e), the compensation allowed appointed counsel for services rendered in a non-capital case shall not exceed the following amounts:

(2) Five hundred dollars ($500) for:

(A) Contempt of court cases where an adult or a juvenile is in jeopardy of incarceration;

(B) Parole revocation proceedings pursuant to the authority of state and/or federal law;

(C) Judicial proceedings under Tennessee Code Annotated, Title 33, Chapters 3 through 8, Mental Health Law;

(D) Cases in which a superintendent of a mental health facility files a petition under the guardianship law, Tennessee Code Annotated, Title 34;

(E) Cases under Tenn. Code Ann. § 37-10-304 and Tennessee Supreme Court Rule 24, relative to petitions for waiver of parental consent for abortions by minors; and

(F) Cases alleging unruly conduct of a child which place the child in jeopardy of being removed from the home pursuant to § 37-1-132(b).

(3) One thousand dollars ($1,000) for:

(A) Preliminary hearings in general sessions and municipal courts in which an adult is charged with a felony;

(B) Cases in which an adult or a juvenile is charged with a misdemeanor and is in jeopardy of incarceration;

(C) Direct and interlocutory appeals in the Court of Appeals or Court of Criminal Appeals;

(D) Direct and interlocutory appeals in the Tennessee Supreme Court;

(E) Cases in which a defendant is applying for early release from incarceration or a suspended sentence;

(F) Non-capital post-conviction and *habeas corpus* proceedings;

(G) Probation revocation proceedings;

(H) Cases in which a juvenile is charged with a non-capital felony;

(I) All other non-capital cases in which the indigent party has a statutory or constitutional right to be represented by counsel.

(4)(A) One thousand, five hundred dollars ($1,500) for cases in trial courts in which the defendant is charged with a felony other than first-degree murder or a Class A or B felony;

(B) Two thousand, five hundred dollars ($2,500) for cases in trial courts in which the defendant is charged with first-degree murder or a Class A or B felony;

(5) Maximum compensation for juvenile dependency and neglect proceedings and termination of parental rights proceedings is as follows:

(A) Seven Hundred and Fifty dollars ($750) for:

(i) Dependent or neglected child cases, from the filing of the dependency petition through the dispositional hearing, including the preliminary hearing, ratification of the initial permanency plan, adjudicatory and dispositional hearings;

(ii) Guardian ad litem representation in accordance with section 1(d)(2)(C) for a child or sibling group who is or may be the subject of a report of abuse or neglect or an investigation report under Tennessee Code Annotated sections 37-1-401 through 37-1-411, from the filing of the dependency petition through the dispositional hearing, including the preliminary hearing, ratification of the initial permanency plan, adjudicatory and dispositional hearings; and

(iii) Counsel appointed pursuant to Tennessee Supreme Court Rule 40(e)(2) and in accordance with section 1(d)(2)(C) for a child or sibling group who is or may be the subject of a report of abuse or neglect or an investigation report under Tennessee Code Annotated sections 37-1-401 through 37-1-411, from the filing of the dependency petition through the dispositional hearing, including the preliminary hearing, ratification of the initial permanency plan, adjudicatory and dispositional hearings;

(B) One Thousand Dollars ($1,000) for:

(i) Dependent or neglected child cases, for all post-dispositional proceedings, including foster care review board hearings, post-dispositional court reviews and permanency hearings;

(ii) Guardian ad litem representation in accordance with section 1(d)(2)(C) for a child or sibling group who is or may be the subject of a report of abuse or neglect or an investigation report under Tennessee Code Annotated sections 37-1-401 through 37-1-411, for all post-dispositional proceedings, including foster care review board hearings, post-dispositional court reviews, and permanency hearings; and

(iii) Counsel appointed pursuant to Tennessee Supreme Court Rule 40(e)(2) and in accordance with section 1(d)(2)(D) for a child or sibling group who is or may be the subject of a report of abuse or neglect or an investigation report under Tennessee Code Annotated sections 37-1-401 through 37-1-411, for all post-dispositional proceedings, including foster care review board hearings, post-dispositional court reviews, and permanency hearings;

(C) One thousand dollars ($1000) for:

(i) Proceedings against parents in which allegations against the parents could result in termination

of parental rights;

(ii) Guardian ad litem representation in termination of parental rights cases in accordance with section 1(d)(2)(D); and

(iii) Counsel appointed pursuant to Tennessee Supreme Court Rule 40(e)(2) and in accordance with section 1(d)(2)(C) for a child or sibling group in termination of parental rights cases.

(e)(1) Notwithstanding the provisions of section (2)(d), an amount in excess of the maximum, subject to the limitations of section (2)(e)(3), may be sought by filing a motion in the court in which representation is provided. The motion shall include specific factual allegations demonstrating that the case is complex or extended. The court shall enter an order which evidences the action taken on the motion. The following, while neither controlling nor exclusive, indicate the character of reasons that may support a complex or extended certification:

(A) The case involved complex scientific evidence and/or expert testimony;

(B) The case involved multiple defendants and/or numerous witnesses;

(C) The case involved multiple protracted hearings;

(D) The case involved novel and complex legal issues.

(E) If the motion is granted, an order shall be forwarded to the Director of the AOC (herein "director") certifying the case as complex or extended. The order shall either recite the specific facts supporting the finding or incorporate by reference and attach the motion which includes the specific facts supporting the finding. To qualify for payment under this section, the order certifying the claim as extended or complex must be signed contemporaneously with the court's approval of the claim. *Nunc pro tunc* certification orders are not sufficient to support payment under this section.

(2) All payments under Section 2(e)(1) must be submitted to the director for approval. If a payment under Section 2(e)(1) is not approved by the director, the director shall transmit the claim to the chief justice for disposition. The determination of the chief justice shall be final.

(3) Upon approval of the complex or extended claim by the director or the chief justice, the following maximum amounts apply:

(A) One thousand dollars ($1,000) in those categories of cases where the maximum compensation is otherwise five hundred dollars ($500);

(B) One thousand, five hundred dollars ($1,500) in those categories of cases where the maximum compensation is otherwise seven hundred and fifty dollars ($750);

(C) Except as provided in Section (2)(e)(3)(D), two thousand dollars ($2,000) in those categories of cases where the maximum compensation is otherwise one thousand dollars ($1,000);

(D) Three thousand dollars ($3,000) in cases in trial courts in which the defendant is charged with a felony other than first-degree murder or a Class A or B felony; and

(E) Five thousand dollars ($5,000) in cases in trial courts in which the defendant is charged with first-degree murder or a Class A or B felony. Where the felony charged is first-degree murder, the director may waive the five thousand dollar ($5,000) maximum if the order demonstrates that extraordinary circumstances exist and failure to waive the maximum would result in undue hardship.

(f) Attorneys shall not be compensated for time associated with traveling to a court in another county for the sole purpose of hand-delivering or filing a document.

(g) Counsel appointed or assigned to represent indigents shall not be paid for any time billed in excess of 2,000 hours per calendar year unless, in the opinion of the Administrative Director, an attorney has made reasonable efforts to comply with this limitation, but has been unable to do so, in whole or in part, due to the attorney's representation pursuant to Section 3 of this Rule. It is the responsibility of private counsel to manage their billable hours in compliance with the annual maximum. [As amended by order filed March 5, 2013; by order filed September 19, 2013, effective January 1, 2014.]

Explanatory Comment: Section 2(b) unequivocally provides that only one attorney will be compensated in non-capital cases. Section 2(c) clarifies that appointed counsel will not be paid in-court rates for time spent waiting for a case to be called and that appointed counsel will not be compensated for time spent on Board of Professional Responsibility complaints arising from appointments. Section 2(d) has been reorganized for simplicity and clarity. Compensation rates for counsel appointed in juvenile, dependency and neglect, and termination of parental rights cases are now contained in Section 2(d)(4). Section 2(d)(4) further defines the dispositional and post-dispositional phases at which compensation is appropriate and also compensates attorneys appointed pursuant to Tennessee Supreme Court Rule 40(e)(2). Section 2(d)(4)(B) increases the maximum compensation for appointed counsel in certain post-dispositional proceedings from $500 to $750. Section 2(e)(1) further delineates the procedure and factors supporting certification of a case as complex or extended, including the mandatory requirement that the order certifying the claim be submitted to the AOC contemporaneously with the claim requesting complex or extended compensation. Section 2(e)(2) reiterates that approval of the director or the chief justice is required and that the determination of the chief justice is final. Section 6 of this rule sets out in more detail the claims review process. Section 2(e)(3)(A)-(C) has been revised to simplify and clarify the language. Section 2(e)(3)(D) has been revised to limit waiver of the $3,000 maximum to first-degree murder cases, rather than all homicide cases. Section 2(f) precludes compensating attorneys for time spent traveling to and from a clerk's office in another county for the sole purpose of hand-delivering or filing documents.

Section 3. Minimum qualifications and compensation of counsel in capital cases.

(a) For purposes of this rule, a capital case is a case in which a defendant has been charged with first-degree murder and a notice of intent to seek the death penalty, as provided in Tenn. Code Ann. § 39-13-208 and Tennessee Rule of Criminal Procedure 12.3(b), has been filed and no order withdrawing the notice has been filed. Non-capital compensation rates apply to services rendered by appointed counsel after the date the notice of intent to seek the death penalty is withdrawn.

(b)(1) The court shall appoint two attorneys to represent a defendant at trial in a capital case. Both attorneys appointed must be licensed in Tennessee and have significant experience in Tennessee criminal trial

practice, unless in the sound discretion of the trial court, appointment of one attorney admitted under Tennessee Supreme Court Rule 19 is appropriate. The appointment order shall specify which attorney is "lead counsel" and which attorney is "co-counsel." Whenever possible, a public defender shall serve as and be designated "lead counsel."

(2) If the notice of intent to seek the death penalty is withdrawn at least thirty (30) days prior to trial, the trial court shall enter an order relieving one of the attorneys previously appointed. In these circumstances, the trial court may grant the defendant, upon motion, a reasonable continuance of the trial.

(3) If the notice is withdrawn less than thirty (30) days prior to trial, the trial court may either enter an order authorizing the two attorneys previously appointed to remain on the case for the duration of the present trial, or enter an order relieving one of the attorneys previously appointed and granting the defendant, upon motion, a reasonable continuance of the trial.

(c) Lead counsel must:

(1) be a member in good standing of the Tennessee bar or be admitted to practice *pro hac vice*;

(2) have regularly participated in criminal jury trials for at least five years;

(3) have completed, prior to the appointment, a minimum of six (6) hours of specialized training in the defense of defendants charged with a capital offense; and, complete a minimum of six (6) hours of specialized training in the defense of defendants charged with a capital offense every two years thereafter;

(4) have at least one of the following:

(A) experience as lead counsel in the jury trial of at least one capital case;

(B) experience as co-counsel in the trial of at least two capital cases;

(C) experience as co-counsel in the trial of a capital case and experience as lead or sole counsel in the jury trial of at least one murder case;

(D) experience as lead counsel or sole counsel in at least three murder jury trials or one murder jury trial and three felony jury trials; or

(E) experience as a judge in the jury trial of at least one capital case.

(5) The provisions of this subsection requiring lead counsel to have participated in criminal jury trials for at least five years, rather than three years, and requiring six (6) hours of specialized training shall become effective January 1, 2006.

(d) Co-counsel must:

(1) be a member in good standing of the Tennessee bar or be admitted to practice *pro hac vice*;

(2) have completed, prior to the appointment, a minimum of six (6) hours of specialized training in the defense of defendants charged with a capital offense; and, complete a minimum of six (6) hours of specialized training in the defense of defendants charged with a capital offense every two years thereafter;

(3) have at least one of the following qualifications:

(A) qualify as lead counsel under (c) above; or

(B) have experience as sole counsel, lead counsel, or co-counsel in a murder jury trial.

(4) The provisions of this subsection requiring six (6) hours of specialized training shall become effective January 1, 2006.

(e) Attorneys who represent the defendant in the trial court in a capital case may be designated to represent the defendant on direct appeal, provided at least one trial attorney qualifies as new appellate counsel under Section 3(g) of this rule and both attorneys are available for appointment. However, new counsel will be appointed to represent the defendant if the trial court, or the court in which the case is pending, determines that appointment of new counsel is necessary to provide the defendant with effective assistance of counsel or that the best interest of the defendant requires appointment of new counsel.

(f) If new counsel are appointed to represent the defendant on direct appeal, both attorneys appointed must be licensed in Tennessee, unless in the sound discretion of the judge, appointment of one attorney admitted under Tennessee Supreme Court Rule 19 is appropriate.

(g) Appointed counsel on direct appeal, regardless of any prior representation of the defendant, must have three years of litigation experience in criminal trials and appeals, and they must have at least one of the two following requirements: experience as counsel of record in the appeal of a capital case; or experience as counsel of record in the appeal of at least three felony convictions within the past three years and a minimum of six hours of specialized training in the trial and appeal of capital cases.

(h) Counsel eligible to be appointed as post-conviction counsel in capital cases must have the same qualifications as appointed appellate counsel, or have trial and appellate experience as counsel of record in state post-conviction proceedings in three felony cases, two homicide cases, or one capital case. Counsel also must have a working knowledge of federal *habeas corpus* practice, which may be satisfied by six hours of specialized training in the representation in federal courts of defendants under the sentence of death imposed in state courts; and they must not have previously represented the defendant at trial or on direct appeal in the case for which the appointment is made, unless the defendant and counsel expressly consent to continued representation.

(i) No more than two attorneys shall be appointed to represent a death-row inmate in a proceeding regarding competency for execution. See *Van Tran v. State*, 6 S.W.3d 257 (Tenn. 1999). At least one of the attorneys appointed shall be qualified as post-conviction counsel as set forth in Section 3(h).

(j) Appointed counsel in capital cases, other than public defenders, shall be entitled to reasonable compensation as determined by the court in which such services are rendered, subject to the limitations of this rule, which limitations are declared to be reasonable. Compensation shall be limited to the two attorneys actually appointed in the case. Appointed counsel in a capital case shall submit claims in accordance with Section 6 of this rule.

(k) Hourly rates for appointed counsel in capital cases shall be as follows:

(1) Lead counsel out-of-court—seventy-five dollars ($75);

(2) Lead counsel in-court—one hundred dollars ($100);

(3) Co-counsel out-of-court—sixty dollars ($60);

(4) Co-counsel in-court—eighty dollars ($80);

(5) Post-conviction counsel out-of-court—sixty dollars ($60);

(6) Post-conviction counsel in-court—eighty dollars ($80);

(7) Counsel appointed pursuant to Section 3(i) out-of-court—sixty dollars ($60);

(8) Counsel appointed pursuant to Section 3(i) in-court—eighty dollars ($80).

(*l*) For purposes of this rule, "out-of-court" means time reasonably spent working on the case to which the attorney has been appointed to represent the indigent party. "In-court" means time spent before a judge on the case to which the attorney has been appointed to represent the indigent party.

(m) Attorneys shall not be compensated for time associated with traveling to a court in another county for the sole purpose of hand-delivering or filing a document.

Explanatory Comment: Section 3(a) clarifies that even if a trial court allows two appointed attorneys to remain on a case, under Section 3(b)(3), after a notice of intent to seek the death penalty is withdrawn, counsel will be compensated at non-capital rates for services rendered after the date the notice is withdrawn. Section 3(b)(1) has been revised to require that the appointment order must specify lead and co-counsel and that the public defender must serve and be designated lead counsel whenever possible. Section 3(b)(2) and (3) previously appeared as Section 3(l) of Rule 13. Section 3 now permits former prosecutors and judges with appropriate experience to be appointed counsel in capital cases. Section 3(c)(2) has been revised to require five years participation in criminal jury trials, rather than three years representation of defendants in criminal jury trials. Section 3(c)(3) has been revised to enhance the educational requirements for appointed counsel. Section 3(c)(4)(E) has been revised to include an experience requirement applicable only to former judges. Section 3(i) has been revised to clarify that its scope is limited to affording compensation to appointed counsel in a proceeding challenging the inmate's competency to be executed. Section 3(k)(7) and (8) provides that attorneys appointed in competency proceedings will be compensated at the same $60/$80 rates applicable in other capital post-conviction proceedings. Section 3(l) precludes compensating appointed counsel at in-court rates for time spent waiting for a case to be called and also precludes compensating appointed counsel for time spent defending against a Board of Professional Responsibility action that arises from the appointment. Section 3(m) precludes compensating attorneys for time spent driving to and from a clerk's office in another county for the sole purpose of hand-delivering or filing a document.

Section 4. Payment of expenses incident to representation.

(a)(1) Appointed counsel, experts, and investigators may be reimbursed for certain necessary expenses directly related to the representation of indigent parties.

(2) The services or time of a paralegal, law clerk, secretary, legal assistant, or other administrative assistants shall not be reimbursed. Normal overhead expenses also shall not be reimbursed.

(3) The following expenses will be reimbursed without prior approval if reasonably necessary to the representation of the indigent party:

(A) Long distance telephone charges, if supported by a log showing the date of the call, the person or office called, the purpose of the call, and the duration of the call stated in one-tenth ($^1/_{10}$) hour segments;

(B) Mileage for travel within the state in accordance with Judicial Department travel regulations, if supported by a log showing the mileage, the purpose of the travel, and the origination and destination cities;

(C) Lodging where an overnight stay is required at actual costs, if supported by a receipt, not to exceed the current authorized executive branch rates;

For in-state rates: www.state.tn.us/finance/act/travel.html

For out-of-state rates: www.state.tn.us/finance/act/policy.html

(D) Meals in accordance with the Judicial Department travel regulations if supported by a receipt, where an overnight stay is required;

(E) Parking at actual costs up to ten dollars per day if supported by a receipt;

(F) Photocopying — Black and White Copies —

(i) In-house copying at a rate not to exceed seven cents ($0.07) per page.

(ii) Actual cost of outsourced copying if supported by a receipt, at a rate not to exceed ten cents ($0.10) per page.

(iii) Actual cost of providing to client a copy of appellate briefs and opinion.

(iv) The cost of providing to the indigent party a copy of the court file or transcript will not be reimbursed once the appeal is complete because the original file and transcript belong to the client.

(v) Prior approval of the court and the director is required if an attorney, expert, or investigator anticipates that total copying costs will exceed $500.

(G) Photocopying — Color Copies —

(i) In-house color copying at a rate not to exceed one dollar ($1.00) per page;

(ii) Actual cost of outsourced color copies at a rate not to exceed $1.00 per page if supported by a receipt;

(iii) Prior approval of the court and the director is required if an attorney, expert, or investigator anticipates that total copying costs will exceed $500.

(H) Computerized Research at actual cost for case-related legal and internet research if supported by receipts. If actual costs are not incurred, compensation will be limited to time spent conducting the search. Pro rata cost of subscription[s] will not be paid.

(I) Miscellaneous expenses such as postage, commercial delivery service having computer tracking capacity, film, or printing will be compensated at actual cost, not to exceed the fair and reasonable market value, if accompanied by a receipt. Prior approval of the court and the director is required if an attorney, expert, or investigator anticipates that total miscellaneous expenses will exceed $250.

(J) Expenses relating to improving the indigent party's appearance, including but not limited to expenses for dental plates, haircuts, clothing and cleaning charges for clothing, are not reimbursable.

(K) Appellate Record—Actual expenses for an electronic copy of the appellate record (excluding exhibits) and of any transcripts on appeal purchased from the

Appellate Court Clerk's Office, not to exceed $100.00.

(b) Expenses not listed in Section 4(a), including travel outside the state, will be reimbursed only if prior authorization is obtained from the court in which the representation is rendered and prior approval is obtained from the director.

(1) Authorization of expenses shall be sought by motion to the court.

(2) The motion shall include both an itemized statement of the estimated or anticipated costs and specific factual allegations demonstrating that the expenses are directly related to and necessary for the effective representation of the indigent party.

(3) The court shall enter an order that evidences the action taken on the motion. If the motion is granted, the order shall either recite the specific facts demonstrating that the expenses are directly related to and necessary for the effective representation of the indigent party or incorporate by reference and attach the defense motion that includes the specific facts demonstrating that finding.

(4) The order and any attachments shall be submitted to the director for prior approval before any expenses are incurred.

(c) The director is hereby authorized to reimburse the Department of Children's Services at the Judicial Department rate for the expense of transcripts in termination of parental rights appeals without obtaining prior approval by court order in each case.

(d) Foreign Language Interpreters and Translators.

The appointment of interpreters and/or translators, and the compensation by the AOC for costs associated with an interpreter's and/or translator's services, are governed by Rule 42, Rules of the Tennessee Supreme Court. [As amended by order filed June 27, 2012, effective July 1, 2012; and by order filed February 20, 2013, effective April 1, 2013.]

Explanatory Comment: : Section 4(a) provides uniform guidelines and certainty as to expenses that will be reimbursed and delineates the documentation that must accompany a claim for reimbursement. Section 4(a)(3) permits reimbursement without prior approval of certain expenses and is intended to eliminate time previously spent by attorneys and judges considering such expenses. Section 4(a)(3)(F)(iv) clarifies that attorneys will not be reimbursed for the costs of copying the record since the record belongs to the indigent party. Section 4(b) delineates the expenses for which prior approval is required and sets out the requirements and procedure for obtaining prior approval. Section 4(b) dispenses with the former requirement that prior approval be obtained from both the director and the chief justice and makes prior approval of the director essential and final. Section 4(d) cross-references Tenn. Sup. Ct. R. 42, which provides the mechanism and method for compensating foreign language interpreters and translators.

Section 5. Experts, investigators, and other support services.

(a)(1) In the trial and direct appeal of all criminal cases in which the defendant is entitled to appointed counsel and in the trial and appeals of post-conviction proceedings in capital cases involving indigent petitioners, the court, in an *ex parte* hearing, may in its discretion determine that investigative or expert services or other similar services are necessary to ensure that the constitutional rights of the defendant are properly protected. If such determination is made, the court may grant prior authorization for these necessary services in a reasonable amount to be determined by the court. The authorization shall be evidenced by a signed order of the court. The order shall provide for the payment or reimbursement of reasonable and necessary expenses by the director. *See* Tenn. Code Ann. § 40-14-207(b); *State v. Barnett*, 909 S.W.2d 423 (Tenn. 1995); *Owens v. State*, 908 S.W.2d 923 (Tenn. 1995).

(2) In non-capital post-conviction proceedings, funding for investigative, expert, or other similar services shall not be authorized or approved. See *Davis v. State*, 912 S.W.2d 689 (Tenn. 1995).

(b)(1) Every effort shall be made to obtain the services of a person or entity whose primary office of business is within 150 miles of the court where the case is pending. If the person or entity proposed to provide the service is not located within the 150-mile radius, the motion shall explain the efforts made to obtain the services of a provider within the 150-mile radius.

(2) Any motion seeking funding for expert or similar services shall itemize:

(A) the nature of the services requested;

(B) the name, address, qualifications, and licensure status, as evidenced by a curriculum vitae or resume, of the person or entity proposed to provide the services;

(C) the means, date, time, and location at which the services are to be provided; and

(D) a statement of the itemized costs of the services, including the hourly rate, and the amount of any expected additional or incidental costs.

(3) Any motion seeking funding for investigative or other similar services shall itemize:

(A) the type of investigation to be conducted;

(B) the specific facts that suggest the investigation likely will result in admissible evidence;

(C) an itemized list of anticipated expenses for the investigation;

(D) the name and address of the person or entity proposed to provide the services; and

(E) a statement indicating whether the person satisfies the licensure requirement of this rule.

(4) If a motion satisfies these threshold requirements, the trial court must conduct an *ex parte* hearing on the motion and determine if the requested services are necessary to ensure the protection of the defendant's constitutional rights.

(c)(1) Funding shall be authorized only if, after conducting a hearing on the motion, the court determines that there is a particularized need for the requested services and that the hourly rate charged for the services is reasonable in that it is comparable to rates charged for similar services.

(2) Particularized need in the context of criminal trials and appeals is established when a defendant shows by reference to the particular facts and circumstances that the requested services relate to a matter that, considering the inculpatory evidence, is likely to be a significant issue in the defense at trial and that the requested services are necessary to protect the defendant's right to a fair trial. See, *Barnett*, 909 S.W.2d at 423.

(3) Particularized need in the context of capital post-conviction proceedings is established when a peti-

tioner shows, by reference to the particular facts and circumstances of the petitioner's case, that the services are necessary to establish a ground for post-conviction relief and that the petitioner will be unable to establish that ground for post-conviction relief by other available evidence. See *Owens*, 908 S.W.2d at 928.

(4) Particularized need cannot be established and funding requests should be denied where the motion contains only:

(A) undeveloped or conclusory assertions that such services would be beneficial;

(B) assertions establishing only the mere hope or suspicion that favorable evidence may be obtained;

(C) information indicating that the requested services relate to factual issues or matters within the province and understanding of the jury; or

(D) information indicating that the requested services fall within the capability and expertise of appointed counsel. See, e.g., *Barnett* 909 S.W.2d at 430; *Caldwell v. Mississippi*, 472 U.S. 320, 323 n.1 (1985); *State v. Abraham*, 451 S.E.2d 131, 149 (N.C. 1994).

(d)(1) The director and/or the chief justice shall maintain uniformity as to the rates paid individuals or entities for services provided to indigent parties. Appointed counsel shall make every effort to obtain individuals or entities who are willing to provide services at an hourly rate less than the maximum. Although not an exclusive listing, compensation for individuals or entities providing the following services shall not exceed the following maximum hourly rates:

(A) Accident Reconstruction	$115.00
(B) Medical Services/Doctors	$250.00
(C) Psychiatrists	$250.00
(D) Psychologists	$150.00
(E) Investigators (Guilt/Sentencing)	$50.00
(F) Mitigation Specialist	$65.00
(G) DNA Expert	$200.00
(H) Forensic Anthropologist	$125.00
(I) Ballistics Expert	$75.00
(J) Fingerprint Expert	$75.00
(K) Handwriting Expert	$75.00

(2) For persons or entities compensated at a rate of one hundred dollars ($100) per hour or more, time spent traveling shall be compensated at no greater than fifty percent (50%) of the approved hourly rate.

(3) Investigators shall not be compensated unless licensed by the Private Investigation and Polygraph Commission of Tennessee or exempted from this licensure requirement, except when an investigator licensed in another state is authorized by a court in Tennessee to conduct an investigation in that other state.

(4) In a post-conviction capital case, a trial court shall not authorize more than a total of $20,000 for *all* investigative services, unless in its sound discretion the trial court determines that extraordinary circumstances exist that have been proven by clear and convincing evidence.

(5) In a post-conviction capital case, a trial court shall not authorize more than *a total of* $25,000 for the services of *all* experts unless in its sound discretion the trial court determines that extraordinary circumstances exist that have been proven by clear and convincing evidence.

(6) Expenses shall not be authorized or approved for expert tests or expert services if the results or testimony generated from such tests or services will not be admissible as evidence.

(e)(1) If the requirements of Sections 5(c) and (d) are satisfied and the motion is granted, the authorization shall be evidenced by a signed order of the court. Unless otherwise indicated in the order, the amount authorized includes both fees and necessary expenses under Section 4(a).

(2) The order shall include a finding of particularized need and the specific facts that demonstrate particularized need as well as the information required by Section 5(b)(1) or (b)(2).

(3) The court may satisfy the requirements of subsection (e)(2) above by incorporating and attaching that portion of the defense motion that includes the specific facts supporting the finding of particularized need.

(4) Once the services are authorized by the court in which the case is pending, the order and any attachments must be submitted to the director for prior approval. Claims for these services may not be submitted electronically.

(5) If the director denies prior approval of the request, the claim shall also be transmitted to the chief justice for disposition and prior approval. The determination of the chief justice shall be final. [As amended by order filed February 6, 2013, effective July 1, 2013.]

Explanatory Comment: : Section 5(a)(1) contains the language that previously appeared as Section 5(a). Section 5(a)(2) unequivocally provides that funding for investigative, expert, or other similar services is not available in non-capital post-conviction proceedings. Section 5(b)(1) explains that counsel must make "every effort" to obtain the services of experts, investigators or others who are located within 150 miles of the court where the case is pending. Section 5(b)(2) delineates the information that must be included in or submitted with a motion requesting funding for expert or similar services. Section 5(b)(3) delineates the information that must be included in or submitted with a motion requesting funding for investigative or similar services. Section 5(c) has been revised for clarity and includes in subsections (c)(1)-(4) definitions of particularized need and the standards governing a trial court's consideration of funding requests. Section 5(d) has been revised to provide certainty and guidance to attorneys, service providers, and trial courts. Section (5)(d)(1) establishes maximum hourly rates for certain services, instructs the director and the chief justice to maintain state-wide uniformity as to the rates paid for services, and directs appointed counsel to seek to retain individuals and/or entities willing to provide services at a rate less than the maximum. Section 5(d)(2) establishes permissible compensation rates for travel for experts paid in excess of $100 per hour. Section 5(d)(3) establishes the licensure requirements for investigators. Section 5(d)(4) and (5) impose maximum limits on the amounts that may be approved in capital post-conviction proceedings and permit funding in excess of these amounts only upon clear and convincing evidence that extraordinary circumstances exist. Section 5(d)(6) precludes funding for expert tests or services if the results of the tests or the expert's testimony is per se inadmissible. Section 5(e)(1)-(3) delineates the information that must be included in or attached to orders authorizing funding. Section 5(e)(4)-(5) sets out the procedure that must be followed in obtaining prior approval of the request. Section 5(e)(5) provides that only those claims denied by the director will be submitted to the chief justice for disposition. This changes prior law which required the chief justice to review every request for funding involving an hourly rate in excess of $150 or an overall amount in excess of $5,000, even those requests approved by the director.

Section 6. Review of claims for compensation and reimbursement of expenses.

(a)(1) All claims for attorney compensation and expenses shall be submitted utilizing the system established by the AOC for electronic submission. Claims of two hundred dollars ($200.00) or more for attorney compensation and expenses shall be electronically submitted, and shall be reviewed and approved by the judge who presided over final disposition of the case prior to payment by the AOC. Electronic claims that total less than two hundred dollars ($200) shall be exempt from the judicial review and approval requirement; such claims, however, shall be subject to the AOC's examination and audit pursuant to this section.

(2) Time spent by counsel on a single case or proceeding shall be included in a single claim for compensation.

(3) Claims shall be supported by a copy of the court order appointing counsel or authorizing the expenditure and, in the case of expenses requiring prior approval, a copy of the approval of the director and/or the chief justice.

(4) Appointed counsel in a capital case shall file interim claims. Interim claims shall be filed at least every 180 days, but no more frequently than every 30 days. Any portion of a claim requesting payment for services rendered more than 180 days prior to the date on which the claim is approved by the court in which the services were rendered shall be deemed waived and shall not be paid. The provisions of this subsection regarding the time frame for submission of claims shall become effective January 1, 2005.

(5) Appointed counsel in non-capital cases are not permitted to file interim claims but shall file claims for compensation no later than 180 days after disposition of the case in each court in which representation is provided. However, claims for the post-dispositional phase of a juvenile dependency and neglect proceeding shall be filed no later than 180 days from the last activity related to the case. Claims for compensation submitted after the 180-day period shall be deemed waived and shall not be paid. The provisions of this subsection regarding the time frame for submission of claims shall become effective January 1, 2005.

(6) Counsel will be held to a high degree of care in the keeping of contemporaneous time records supporting all claims and in the application for payment. Counsel is required to maintain records supporting claims for payment Failure to provide sufficient specificity in the claim or supporting documentation may constitute grounds for denial of the claim for compensation or reimbursement.

(7) The payment of a claim by the AOC shall not prejudice the AOC's right to object to or question any claim or matter in relation thereto. Claims shall be subject to reduction for amounts included in any claim or payment previously made which are determined by the AOC not to constitute proper remuneration for compensable services. The AOC reserves the right to deduct from claims which are or shall become due and payable any amounts which are or shall become due and payable to the AOC.

(8) As a part of its examination and audit of claims for compensation and reimbursement under this Rule 13, the AOC shall determine from information provided by the Board of Professional Responsibility whether there are unpaid costs assessed against counsel submitting the claim pursuant to Tenn. Sup. Ct. R. 9, Section 31.3. Claims for compensation and reimbursement under this Rule 13 shall be subject to reduction for any such unpaid costs.

(b)(1) The AOC shall examine and audit all claims for compensation and reimbursement to insure compliance with this rule and other statutory requirements. The AOC may decline to make any payment or decline to continue to accept any assignment should either the attorney or the third-party assignee fail to comply with the requirements of Rule 13 and other statutory requirements.

(2) After such examination and audit and giving due consideration to state revenues, the director shall make a determination as to the compensation and/or reimbursement to be paid and cause payment to be issued in satisfaction thereof.

(3) Payment may be made directly to the person, agency, or entity providing the services.

(4) The determination by the director shall be final, except where review by the chief justice also is required. In those instances, the determination of the chief justice shall be final. The chief justice may designate another justice to perform this function if the chief justice determines that a designation is appropriate or necessary.

(5) If the director denies an attorney's fee claim in whole or substantial part, such denial shall be forwarded to the chief justice for review. The determination of the chief justice shall be final. Reductions made during the process of auditing a fee claim which are due to mathematical miscalculations or result from requests for payments not permitted by this rule shall not be forwarded to the chief justice for review.

(c)(1) Appointed counsel may contract with a third-party agent to prepare and file claims for attorney compensation and expenses; provided, however, that counsel shall remain responsible for all filings and communications in connection with such claims;

(2) Appointed counsel may assign the right to payment of claims for attorney compensation and expenses to a third-party assignee; provided, however, that: (i) counsel electing to assign the right to payment shall assign such right for all subsequent cases in which counsel will present claims for payment pursuant to this rule; and (ii) counsel shall provide adequate written notice to the director of counsel's assignment of the right to payment to the third-party assignee. Such written notice shall not be effective unless submitted on the Uniform Assignment of Payment For Services Due to An Attorney form provided by the administrative office of the courts. Upon receipt of adequate written notice of counsel's assignment, the director shall make subsequent payments of counsel's claims to the third-party assignee. An assignment submitted to the director shall not relieve counsel of the responsibility for the accuracy and timeliness of all filings nor

shall it relieve counsel of the responsibility to personally respond to inquiries from the administrative office of the courts in connection with counsel's claims. Counsel's written notice of assignment shall remain in effect until the director receives written notice that counsel revokes the assignment. The third-party assignee shall agree in writing to indemnify and hold the state harmless for all payments made by the administrative office of the courts in good faith and without notification that the assignment has been revoked and shall file such writing with the director. [As amended by order filed February 6, 2013, effective July 1, 2013; by order filed September 4, 2013, effective January 1, 2014.]

Explanatory Comment: : Section 6(a)(1)-(3) has been revised to clarify the requirements and process for submitting claims for compensation and reimbursement. Section 6(a)(4) mandates that appointed counsel in capital cases file interim claims at least every 180 days but no more frequently than every 30 days and provides that any portion of a claim for services rendered more than 180 days prior to the date on which the claim is approved by the court will be deemed waived and not paid. The effective date of Section 6(a)(4) is January 1, 2005. Section 6(a)(5) precludes appointed counsel in non-capital cases from filing interim claims for compensation but requires them to submit claims for compensation no later than 180 days after disposition of the case in each court in which representation is provided, with the 180 day period running from the date of the last case-related activity for post-dispositional phases of a dependency and neglect proceeding. Claims for compensation submitted after the 180-day period will be deemed waived and not paid. The effective date of Section 6(a)(5) is January 1, 2005. Section 6(a)(6) provides that counsel will be held to a high degree of care in record keeping and documentation of the claim. Section 6(a)(7) provides that the AOC reserves the right to review claims that come into question even if they have already been paid and establishes that the AOC may recoup any overpayment by setting off the amount of any such overpayment against claims that may be filed. Section 6(b) delineates how claims are audited, approved for payment, and how payments are made. Section 6(b)(4) provides that the determination of the director and/or the chief justice is final. Unlike prior law, Section 6 does not provide for an appeal to the Tennessee Supreme Court from the decision of the director or the chief justice. Section 6(b)(4) also provides that the chief justice may designate another justice to review these claims if the chief justice determines that designation is appropriate or necessary. Section 6(b)(5) sets out those instances where an attorney may appeal the director's decisions to the chief justice.

Section 7. Contracts for indigent representation. In addition and as an alternative to the procedures for appointment and compensation of court-appointed counsel for services described above, the Administrative Director is authorized to enter into agreements with attorneys, law firms, or associations of attorneys to provide legal services for a fee to indigent persons in: (1) emergency involuntary judicial hospitalization actions brought pursuant to Tenn. Code Ann. Title 33, Chapter 6, Part 4; (2) Title IV-D child support enforcement proceedings brought pursuant to Tenn. Code Ann. Title 36, Chapter 5; and (3) cases under Titles 36 and 37 of the Tennessee Code Annotated involving allegations against parents that could result in finding a child dependent or neglected or in terminating parental rights. Such contracts may establish a fixed fee for representation in a specified number and type of cases; provided, however, that any such fixed fee shall not exceed the rates specified in Section 2.

Any such contracts for indigent representation shall be awarded based on an evaluation to determine the quality of representation to be provided, including the ability of attorneys making proposals to exercise independent judgment on behalf of each client, and to maintain workload rates that allow for attorneys to devote adequate time to each client covered by such contracts.

Attorneys providing legal services pursuant to contracts entered into pursuant to this Section shall be appointed to represent all indigent defendants in these cases unless such representation is otherwise prohibited by the Rules of Professional Conduct. See Tenn. Sup. Ct. R. 8. In any such case, the court shall appoint qualified counsel pursuant to the provisions of Section 1 of this rule.

The Administrative Director shall prescribe adequate procedures to ensure compliance with the terms of such contracts and shall report to the Court annually on the effectiveness of the contract process for the provision of indigent representation. [Adopted by order dated November 19, 2014, effective January 1, 2015]

[As adopted by order filed June 1, 2004, effective July 1, 2004; and amended by order filed September 2, 2004; by order filed September 2, 2005, effective October 1, 2005; by order filed June 12, 2006, effective June 12, 2006; by order filed February 27, 2008, effective February 27, 2008; by order filed October 9, 2008, effective July 1, 2008; by order filed July 13, 2011, effective July 13, 2011; by order filed June 27, 2012, effective July 1, 2012; by order filed February 6, 2013, effective July 1, 2013; by order filed February 20, 2013, effective April 1, 2013; by order filed March 5, 2013; by order filed September 4, 2013, effective January 1, 2014; by order filed September 19, 2013, effective January 1, 2014; by order dated November 19, 2014, effective January 1, 2015.]

IN THE _____ **COURT FOR** _____ **COUNTY**

STATE OF TENNESSEE Case No. _____
vs.

_____
Defendant

UNIFORM AFFIDAVIT OF INDIGENCY

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

PART I

1. Full Name: _____ **2.** Social Security No.: _____
3. Any other names ever used: _____ **4.** Address: _____
5. Telephone Nos.: (Home) _____ (Work) _____ (Other) _____
6. Are you working anywhere? Yes ( ) No ( ) Where _____
7. How much do you make? _____ (weekly, monthly, etc.) **8.** Birthdate: _____
9. Do you receive any governmental assistance or pensions (disability, SSI, AFDC, etc.)? Yes ( ) No ( ) What is its value? _____ (weekly, monthly, etc.)
10. Do you own any property (house, car, bank acct., etc.): Yes ( ) No ( ) What is its value? ____
11. Are you, or your family, going to be able to post your bond? Yes ( ) No ( )
12. Are you, or your family, going to hire a private attorney? Yes ( ) No ( )
13. Are you now in custody? Yes ( ) No ( ) If so, how long have you been in custody? _____

(If the defendant is in custody, unable to make bond and the answers to questions one (1) through eleven (11) make it clear that the defendant has no resources to hire a private attorney, skip Part II and complete Part III. If Part II is to be completed, do not list items already listed in Part I.)

PART II

14. Names & ages of all dependents: _____ relationship _____
_____ relationship _____
_____ relationship _____
15. I have met with following lawyer(s), have attempted to hire said lawyer(s) to represent me, and have been unable to do so:
Name _____ _____
Address _____ _____
16. All my income from all sources (including, but not limited to wages, interest, gifts, AFDC, SSI, social security, retirement, disability, pension, unemployment, alimony, worker's compensation, etc.):
$ _____ per _____ from _____
$ _____ per _____ from _____
$ _____ per _____ from _____
17. All money available to me from any source: A. Cash _____
B. Checking, Saving, or CD Account(s)-give bank, acct. no., balance _____
_____
C. Debts owed me _____

D. Credit Card(s)-give acct. no., balance, credit limit, and type (Visa, Mastercard, American Express, etc.)

_____

E. Other _____

18. All vehicles/vessels owned by me, solely or jointly, within the last six months (including but not limited to cars, trucks, motorcycles, farm equip., boats etc.):

_____ value $ _____ amt. owed _____
_____ value $ _____ amt. owed _____
_____ value $ _____ amt. owed _____

19. All real estate owned by me, solely or jointly, within the last six months (including land, lots, houses, mobile homes, etc.):

_____ value $ _____ amt. owed _____
_____ value $ _____ amt. owed _____

20. All assets or property not already listed owned within the last six months or expected in the future:

_____ value $ _____ amt. owed _____
_____ value $ _____ amt. owed _____

21. The last income tax return I filed was for the year _____ and it reflected a net income of $ _____.

I will file a copy of same within one week if required.

22. I am out of jail on bond of $ _____ made by _____.
The money to make bond, $ _____ was paid by _____.

PART III

23. Acknowledging that I am still under oath, I certify that I have listed in Parts I and II all assets in which I hold or expect to hold any legal or equitable interest.

24. I am financially unable to obtain the assistance of a lawyer and request the court to appoint a lawyer for me.

25. I understand that **it is a Class A misdemeanor** for which I can be sentenced to jail for up to 11 months 29 days or be fined up to $2500.00 or both **if I intentionally or knowingly misrepresent, falsify, or withhold any information required in this affidavit.** I also understand that I may be required by the Court to produce other information in support of my request for an attorney.

This _____ day of _____, _____. _____
Defendant

Sworn to and Subscribed before me this _____ day of _____, _____.

_____ _____
Clerk Judge

UNIFORM ASSIGNMENT OF PAYMENT FOR SERVICES DUE TO AN ATTORNEY UNDER RULE 13

In accordance with and subject to the requirements of Tennessee Supreme Court Rule 13 ("Rule 13"), I, _____, BPR No. ____ ("Assignor"), hereby assign any and all sums of money owed to me for legal services rendered pursuant to Rule 13, as evidenced by claims submitted to the Administrative Office of the Courts ("AOC") on and after the date of the receipt of this notice by the AOC. The AOC is hereby authorized and requested to pay all such sums directly to _____ ("Assignee"), at the following address:

This assignment is to remain in full force and effect for all claims submitted to the AOC until further notice. I understand that written notification to the AOC and acknowledgment of the receipt thereof by the AOC shall be required to terminate this assignment. I hereby agree to indemnify and hold harmless the State of Tennessee, its agents and employees, and the Tennessee Supreme Court, its agents and employees (including but not limited to employees of the AOC), against any and all claims for payment by any person or agency, including myself, for legal services provided by me pursuant to Rule 13 on and after the effective date of this assignment and prior to written acknowledgment by the AOC of the termination of this assignment. I also acknowledge that this assignment does not relieve me of my responsibility for the accuracy and timeliness of all filings, nor shall it relieve me of my responsibility to personally respond to inquiries from the AOC in connection with claims for payment submitted by me or on my behalf.

Dated this ____ day of _____, 20____.

_____
Attorney (Assignor)

To be Completed by Assignee:

As an agent of _____, the Assignee of the payments identified above, I acknowledge that I have full authority to act on behalf of such Assignee, and in that capacity, I further acknowledge that Assignee is familiar with and agrees to the requirements of Rule 13 regarding assignments of payment by attorneys. In accordance with Rule 13, Assignee agrees to indemnify and hold harmless the State of Tennessee, its agents and employees, and the Tennessee Supreme Court, its agents and employees (including but not limited to employees of the AOC), against any and all claims for payment for the services which are the subject of this assignment by any indi-

vidual or organization (including the Assignor) unless and until written notification that this assignment has been revoked has been received and acknowledged by the AOC.

Dated this ____ day of _____, 20____.

For the Assignee, _____

By: _____

To be Completed by the AOC:

This assignment was received and acknowledged by the AOC on the ____ day of _____, 20____.

By: _____

The revocation of this assignment was received and acknowledged by the AOC on the ____ day of _____, 20____.

By: _____

Rule 24. Rules of Procedure Governing Petitions for Waiver of Parental Consent for Abortions by Minors. — Pursuant to Tenn. Code Ann. § 37-10-304(i), this rule is promulgated to ensure that proceedings governing petitions for waiver of parental consent for abortions by minors are conducted in an expeditious and anonymous manner.

(1) **Definitions.**

(a) "Act" means Acts 1988, ch. 929, as amended by Acts 1989, ch. 412, and Acts 1995, ch. 458.

(b) "Applicant" means a pregnant female less than eighteen years of age and not emancipated, or a person acting as next friend on such female's behalf.

(c) "Petition" includes a motion or application.

(d) "Court" means the Juvenile Court, the Circuit Court, or the Supreme Court.

(2) **Confidentiality.**

(a) The proceedings governed by this rule shall be confidential, and every effort should be made to ensure that the anonymity of the applicant is protected.

(b) The record shall be sealed. The record includes, without limitation, the petition, pleadings, submissions, transcripts, exhibits, orders, evidence, findings, and conclusions and any other written material to be maintained.

(c) Except as provided in Section 5(c) of this rule, the identity of the applicant shall not be disclosed at any stage of the proceeding. In all documents and proceedings, the applicant shall be identified or referred to only by the initials of her first and last name.

(d) The clerks of the various courts shall undertake to ensure that the applicant's contact with the clerk's office is confidential and expeditious to the fullest extent practicable.

(3) **Precedence of the Proceeding.**

Proceedings under this rule shall be given such precedence over other pending matters to enable the court to render a decision within the time requirements established below.

(4) **Commencement of the Proceeding.**

The proceeding shall be commenced by filing a petition in the Juvenile Court of any county of this state.

(5) **Content of Petition and Assistance in Preparation.**

(a) The petition shall contain the following:

(i) The initials of the applicant;

(ii) The age of the applicant;

(iii) A statement that the applicant has been fully informed of the risks and consequences of the abortion;

(iv) A statement whether the applicant is of sound mind and has sufficient intellectual capacity to consent to the abortion;

(v) a prayer for relief asking the court to enter an order authorizing a physician to perform an abortion upon the applicant without first obtaining parental consent;

(vi) An unsworn verification stating that the information therein is true and correct and that the applicant is aware that any false statements made in the application are a violation of Tenn. Code Ann. § 39-16-702; and

(vii) The signature of the applicant, which shall consist only of the applicant's initials.

(b) An applicant proceeding under this rule has the right to court-appointed counsel. Upon request, the court shall immediately appoint counsel to assist the applicant in the proceeding.

(c) One copy of the petition shall contain the complete true name of the minor applicant, shall be filed with the court, and shall be kept in a separate file under seal. This file shall not be open to inspection by anyone, except as provided in Tenn. Code Ann. § 37-10-304(h).

(6) **Form of Petition.**

The form of the petition shall be prepared and filed in substantial conformity with the form set forth in the appendix to this rule. Provided, that the court should not decline to decide a case brought under Tenn. Code Ann. § 37-10-304 and this rule because of any pleading omissions or other technical defects, but should favor the disposition of the case on the merits by liberally construing the pleadings.

(7) **Filing Fees.**

No filing fees or court costs shall be required of the applicant.

(8) **Dockets and Document Maintenance.**

(a) Each court shall maintain a separate sealed docket of proceedings under this rule that shall not be open to public inspection. The name or initials of the applicant shall not appear on any docket that is subject to public inspection.

(b) The proceeding shall be identified in any docket open to public inspection by case number only.

(c) Documents pertaining to the proceeding shall not be entered on court minutes. They shall be maintained in a closed file which shall be conspicuously marked "SEALED MATERIALS — CONFIDENTIAL" and identified by the case number only.

(9) **Record of the Proceedings.**

Proceedings in the juvenile court and the circuit court shall be recorded by a court reporter, who shall maintain the anonymity of the petitioner and the confidentiality of the proceedings and the record. The expenses of reporting and transcribing the proceeding shall be paid by the state.

(10) **Entry and Effects of Judgments.**

A judgment or decision by the juvenile court, the circuit court, or the Supreme Court granting or denying

the petition is effective immediately upon the filing thereof. The clerk of the court in which the petition is pending shall notify the applicant by delivering to her counsel a certified copy of the order. Upon entry by any court of an order granting the petition, counsel for the petitioner shall deliver a certified copy of the order to the person who will perform or induce the abortion. The order shall become a part of the applicant's medical records. There shall be no appeal from a judgment granting the petition.

(11) **Proceedings in the Juvenile Court.**

(a) The case shall be heard by a juvenile court judge and not by a juvenile court referee. If a juvenile court judge is unavailable to hear the case within the time requirements established below, the case shall be immediately transferred to the Circuit Court for disposition.

(b) Upon filing of the petition, the case shall be immediately docketed for a hearing to be held as soon as the parties can be assembled, but in no event later than the next business day following the filing of the petition. The parties to the hearing should be limited to: the applicant, the applicant's counsel, the court-appointed advocate, the judge, one representative from the clerk's office, and the court reporter.

(c) The hearing shall be closed to all other persons. Witnesses shall be admitted only for the duration of their testimony. The hearing shall be held in a location where privacy can be assured and access limited. It may be held in chambers at the discretion of the court.

(d) The court should endeavor to rule at the conclusion of the hearing, but in any event shall render a decision within forty-eight (48) hours of the time of filing of the petition, weekends and holidays included, unless the applicant consents to an extension. The decision must be in writing, and must include specific findings of fact and conclusions of law. Failure to render a decision within forty-eight (48) hours shall be deemed a denial of the petition, and the applicant may immediately pursue an appeal. In the event the court does not rule at the conclusion of the hearing, the court reporter shall prepare a transcript of the hearing immediately.

(e) If the decision is not rendered immediately following the hearing, then the petitioner shall be responsible for contacting the clerk of the court for notification of the decision. All notifications pursuant to this procedure may be informal and shall be confidential.

(f) If the petition is denied or a decision is not reached within forty-eight (48) hours, an appeal may be had by filing a Notice of Appeal with the Juvenile Court Clerk. Upon receipt of the Notice of Appeal, the Juvenile Court Clerk shall immediately hand deliver the notice of appeal and the record to the Circuit Court Clerk. The transcript of the hearing in juvenile court shall be delivered to the Circuit Court Clerk by the court reporter not later than two (2) hours prior to the time set for the hearing in circuit court.

(12) **Proceedings in the Circuit Court.**

(a) Upon receipt of the Notice of Appeal, the Circuit Court Clerk shall immediately docket the case.

(b) A hearing shall be held within seventy-two (72) hours of the filing of the Notice of Appeal, weekends and holidays included.

(c) The hearing shall be closed to all persons other than the following: the applicant, the applicant's counsel, the court-appointed advocate, the judge, one representative from the clerk's office, and the court reporter. The hearing shall be held in a location where privacy can be assured and access limited. It may be held in chambers at the discretion of the court.

(d) The court may hear the case *de novo* on the record, or require the witnesses, or some of them, to testify in person. The court may also hear additional witnesses in its discretion.

(e) The court should endeavor to rule at the conclusion of the hearing, but in any event shall render a decision within seventy-two (72) hours of the time of filing of the notice of Appeal, weekends and holidays included, unless the applicant consents to an extension. The decision must be in writing and must include specific findings of fact and conclusions of law. Failure to render a decision within seventy-two (72) hours shall be deemed a denial of the petition, and the applicant may immediately pursue an appeal.

(f) If the decision is not rendered immediately following the hearing, then the petitioner shall be responsible for contacting the clerk of the court for notification of the decision. All notifications pursuant to this procedure may be informal and shall be confidential.

(g) The applicant may appeal the decision of the Circuit Court denying the petition directly to the Supreme Court by filing a Notice of Appeal with the Circuit Court Clerk. Upon receipt of the Notice of Appeal, the Circuit Court Clerk shall immediately transmit the Notice to the Supreme Court Clerk by facsimile. The Circuit Court Clerk shall thereafter contact the Supreme Court Clerk telephonically to confirm that the facsimile was received.

(h) Immediately upon receipt of the Notice of Appeal, the Circuit Court Clerk shall notify the court reporter who shall prepare a transcript of the hearing in the circuit court and file it with the Circuit Court Clerk within forty-eight (48) hours of the filing of the notice of appeal. The Circuit Court Clerk shall prepare the record in accordance with Tenn. R. App. P. 24 and 25, except that the record must be completely assembled by the clerk, authenticated by the Circuit Court judge, and transmitted to the Supreme Court within five (5) business days of the filing of the Notice of Appeal. The record on appeal shall consist of the following:

(i) The petition;

(ii) The findings of fact, conclusions of law, and final order of the circuit court;

(iii) Any other order relevant to the appeal and the papers upon which that other order is based;

(iv) Exhibits material to the appeal;

(v) Any other paper or exhibit filed in the trial court that the applicant requests be included in the record;

(vi) The notice of appeal;

(vii) The transcripts of the hearings in the juvenile court and the Circuit Court; and

(viii) The certificate of the clerk.

(13) **Proceedings in the Supreme Court.**

(a) Upon receipt of the Notice of Appeal, the Supreme Court Clerk shall immediately notify the Chief

Justice or his/her designee of the filing.

(b) Filing of a brief. The applicant shall file in the Supreme Court a brief within two (2) calendar days after the record is filed with the Court. The brief shall include copies of the orders and opinions of the lower courts, and may include those parts of the record necessary for determination of the appeal. *See*Tenn. R. Civ. P. 10.03.

(c) Unless oral argument is waived, the Supreme Court shall conduct a hearing within two (2) calendar days after the brief and record are filed in the Supreme Court. When necessary because of the exigencies of the situation, oral argument may be conducted by telephone, at the Court's discretion.

(d) Oral argument shall be deemed waived unless requested. *See*Tenn. R. App. P. 35.

(e) The Supreme court shall hear the case *de novo* upon the record.

(f) If possible, the Supreme Court will render a decision at the conclusion of the argument, if held. In any event, the Court will render a decision no later than forty-eight (48) hours after hearing argument, or after the record and brief are filed, whichever is later, weekends and holidays included.

(g) If the decision is not rendered immediately following argument, then the petitioner shall be responsible for contacting the Supreme Court Clerk for notification of the decision. All notifications pursuant to this procedure may be informal and shall be confidential.

(h) Upon application and for good cause shown, the Supreme Court may order the time periods in this rule reduced in order to ensure an expedited review. The requirement of good cause will be satisfied if the applicant shows that the requested relief may become unavailable and the issue will become moot by the passage of time unless the time periods are reduced.

IN THE _____ COURT OF _____ COUNTY, TENNESSEE
AT _____
IN RE: (Initials of Applicant))
A minor) No. _____

PETITION FOR JUDICIAL AUTHORIZATION OF AN ABORTION WITHOUT PARENTAL CONSENT

Comes now the applicant, _____, a minor, who respectfully states:

1. Applicant is a pregnant female.
2. Applicant's date of birth is _____.
3. Applicant is approximately _____ weeks pregnant.
4. The applicant desires to terminate her pregnancy and has consulted with the physician who is to perform the abortion, or with a referring physician, for that purpose the _____ day of _____, 20_____. The applicant has been fully informed of the risks and consequences of the abortion.
5. Applicant consents to the abortion procedure.
6. Applicant is of sound mind and has sufficient intellectual capacity to consent to an abortion.
7. Applicant is mature and capable of giving informed consent to the proposed abortion. **AND/OR** The performance of an abortion upon the applicant would be in the applicant's best interests.

WHEREFORE, applicant prays this Honorable Court to enter an Order authorizing a physician to perform an abortion upon applicant without first obtaining parental consent.

Respectfully submitted,
_____ (Applicant's initials)
_____ (Signature of Counsel)

VERIFICATION

I verify that the statements made in this petition are true and correct to the best of my personal knowledge or information and belief. I understand that any false statements made herein are subject to the penalties of Tenn. Code Ann. § 39-16-702 relating to perjury.

_____ (Applicant's initials)
_____ (Date)

[Adopted by order entered June 22, 1989, effective July 1, 1989; as amended by order filed April 22, 1997; and by order filed February 11, 2000.]

Rule 40. Guidelines for Guardians Ad Litem for Children in Juvenile Court Neglect, Abuse and Dependency Proceedings.

(a) **Application.**

These Guidelines set forth the obligations of lawyers appointed to represent children as guardians ad litem only in juvenile court neglect, abuse and dependency proceedings pursuant to Tenn. Code Ann. § 37-1-149, Rules 37 of the Tennessee Rules of Juvenile Procedure, and Supreme Court Rule 13. By adoption of these guidelines it is intended that they not be applied to proceedings in other courts that involve child custody or related issues.

(b) **Definitions.**

As used in this rule, unless the context otherwise requires:

(1) "Guardian ad litem" is a lawyer appointed by the court to advocate for the best interests of a child and to ensure that the child's concerns and preferences are effectively advocated.

(2) "Child's best interests" refers to a determination of the most appropriate course of action based on objective consideration of the child's specific needs and preferences. In determining the best interest of the child the guardian ad litem should consider, in consultation with experts when appropriate, the following

factors:

(i) the child's basic physical needs, such as safety, shelter, food, clothing, and medical care;

(ii) the child's emotional needs, such as nurturance, trust, affection, security, achievement, and encouragement;

(iii) the child's need for family affiliation;

(iv) the child's social needs;

(v) the child's educational needs;

(vi) the child's vulnerability and dependence upon others;

(vii) the physical, psychological, emotional, mental, and developmental effects of maltreatment upon the child;

(viii) degree of risk;

(ix) the child's need for stability of placement;

(x) the child's age and developmental level, including his or her sense of time;

(xi) the general preference of a child to live with known people, to continue normal activities, and to avoid moving;

(xii) whether relatives, friends, neighbors, or other people known to the child are appropriate and available as placement resources;

(xiii) the love, affection and emotional ties existing between the child and the potential or proposed or competing caregivers;

(xiv) the importance of continuity in the child's life;

(xv) the home, school and community record of the child;

(xvi) the preferences of the child;

(xvii) the willingness and ability of the proposed or potential caretakers to facilitate and encourage close and continuing relationships between the child and other persons in the child's life with whom the child has or desires to have a positive relationship, including siblings; and

(xviii) in the case of visitation or custody disputes between parents, the list of factors set forth in Tenn. Code Ann. § 36-6-106.

(c) **General Guidelines.**

(1) The child is the client of the guardian ad litem. The guardian ad litem is appointed by the court to represent the child by advocating for the child's best interests and ensuring that the child's concerns and preferences are effectively advocated. The child, not the court, is the client of the guardian ad litem.

(2) Establishing and maintaining a relationship with the child is fundamental to representation. The guardian ad litem shall have contact with the child prior to court hearings and when apprised of emergencies or significant events affecting the child. The age and developmental level of the child dictate the type of contact by the guardian ad litem. The type of contact will range from observation of a very young or otherwise nonverbal child and the child's caretaker to a more typical client interview with an older child. For all but the very young or severely mentally disabled child, for whom direct consultation and explanation would not be effective, the guardian ad litem shall provide information and advice directly to the child in a developmentally appropriate manner.

(3) The obligation of the guardian ad litem to the child is a continuing one and does not cease until the guardian ad litem is formally relieved by court order. The guardian ad litem shall represent the child at preliminary, adjudicatory, dispositional and post-dispositional hearings, including the permanency plan staffings, court reviews, foster care review board hearings and permanency hearings. The guardian ad litem should maintain contact with the child and be available for consultation with the child between hearings and reviews. For a child who is very young or severely mentally disabled, the guardian ad litem should regularly monitor the child's situation through contacts with the child's caretakers and others working with the child and through periodic observations of the child.

(d) **Responsibilities and duties of a lawyer guardian ad litem.**

The responsibilities and duties of the guardian ad litem include, but are not limited to the following:

(1) Conducting an independent investigation of the facts that includes:

(i) Obtaining necessary authorization for release of information, including an appropriate discovery order;

(ii) Reviewing the court files of the child and siblings and obtaining copies of all pleadings relevant to the case;

(iii) Reviewing and obtaining copies of Department of Children's Services' records;

(iv) Reviewing and obtaining copies of the child's psychiatric, psychological, substance abuse, medical, school and other records relevant to the case;

(v) Contacting the lawyers for other parties for background information and for permission to interview the parties;

(vi) Interviewing the parent(s) and legal guardian(s) of the child with permission of their lawyer(s) or conducting formal discovery to obtain information from parents and legal guardians if permission to interview is denied;

(vii) Reviewing records of parent(s) or legal guardian(s), including, when relevant to the case, psychiatric, psychological, substance abuse, medical, criminal, and law enforcement records;

(viii) Interviewing individuals involved with the child, including school personnel, caseworkers, foster parents or other caretakers, neighbors, relatives, coaches, clergy, mental health professionals, physicians and other potential witnesses;

(ix) Reviewing relevant photographs, video or audio tapes and other evidence; and

(x) Engaging and consulting with professionals and others with relevant special expertise.

(2) Explaining to the child, in a developmentally appropriate manner:

(i) the subject matter of litigation;

(ii) the child's rights;

(iii) the court process;

(iv) the guardian ad litem's role and responsibilities;

(v) what to expect before, during and after each hearing or review;

(vi) the substance and significance of any orders entered by the court and actions taken by a review

board or at a staffing.

(3) Consulting with the child prior to court hearings and when apprised of emergencies or significant events affecting the child. If the child is very young or otherwise nonverbal, or is severely mentally disabled, the guardian ad litem should at a minimum observe the child with the caretaker.

(4) Assessing the needs of the child and the available resources within the family and community to meet the child's needs.

(5) Considering resources available through programs and processes, including special education, health care and health insurance, and victim's compensation.

(6) Ensuring that if the child is to testify, the child is prepared and the manner and circumstances of the child's testimony are designed to minimize any harm that might be caused by testifying.

(7) Advocating the position that serves the best interest of the child by:

(i) Petitioning the court for relief on behalf of the child and filing and responding to appropriate motions and pleadings;

(ii) Participating in depositions, discovery and pretrial conferences;

(iii) Participating in settlement negotiations to seek expeditious resolution of the case, keeping in mind the effect of continuances and delays on the child;

(iv) Making opening statements and closing arguments;

(v) Calling, examining and cross-examining witnesses, offering exhibits and introducing independent evidence in any proceeding;

(vi) Filing briefs and legal memoranda;

(vii) Preparing and submitting proposed findings of facts and conclusions of law;

(viii) Ensuring that written orders are promptly entered that accurately reflect the findings of the court;

(ix) Monitoring compliance with the orders of the court and filing motions and other pleadings and taking other actions to ensure services are being provided;

(x) Attending all staffings, reviews and hearings, including permanency plan staffings, foster care review board hearings, judicial reviews and the permanency hearing;

(xi) Attending treatment, school and placement meetings regarding the child as deemed necessary.

(8) Ensuring that the services and responsibilities listed in the permanency plan are in the child's best interests.

(9) Ensuring that particular attention is paid to maintaining and maximizing appropriate, non-detrimental contacts with family members and friends.

(10) Providing representation with respect to appellate review including:

(i) discussing appellate remedies with the child if the order does not serve the best interest of the child, or if the child objects to the court's order;

(ii) filing an appeal when appropriate; and

(iii) representing the child on appeal, whether that appeal is filed by or on behalf of the child or filed by another party.

(e) **Responsibilities and duties of a guardian ad litem when the child's best interests and the child's preferences are in conflict.**

(1) If the child asks the guardian ad litem to advocate a position that the guardian ad litem believes is not in the child's best interest, the guardian ad litem shall:

(i) Fully investigate all of the circumstances relevant to the child's position, marshal every reasonable argument that could be made in favor of the child's position, and identify all the factual support for the child's position;

(ii) Discuss fully with the child and make sure that the child understands the different options or positions that might be available, including the potential benefits of each option or position, the potential risks of each option or position, and the likelihood of prevailing on each option or position.

(2) If, after fully investigating and advising the child, the guardian ad litem is still in a position in which the child is urging the guardian ad litem to take a position that the guardian ad litem believes is contrary to the child's best interest, the guardian ad litem shall pursue one of the following options:

(i) Request that the court appoint another lawyer to serve as guardian ad litem, and then advocate for the child's position while the other lawyer advocates for the child's best interest.

(ii) Request that the court appoint another lawyer to represent the child in advocating the child's position, and then advocate the position that the guardian ad litem believes serves the best interests of the child.

(3) If, under the circumstance set forth in subsection (b), the guardian ad litem is of the opinion that he or she must advocate a position contrary to the child's wishes and the court has refused to provide a separate lawyer for the child to help the child advocate for the child's own wishes, the guardian ad litem should:

(i) subpoena any witnesses and ensure the production of documents and other evidence that might tend to support the child's position;

(ii) advise the court at the hearing of the wishes of the child and of the witnesses subpoenaed and other evidence available for the court to consider in support of the child's position.

(f) **Guardian ad litem to function as lawyer, not as a witness or special master.**

(1) A guardian ad litem may not be a witness or testify in any proceeding in which he or she serves as guardian ad litem, except in those extraordinary circumstances specified by Supreme Court Rule 8, §§ EC 5-9, 5-10 and DR 5-101.

(2) A guardian ad litem is not a special master, and should not submit a "report and recommendations" to the court.

(3) The guardian ad litem must present the results of his or her investigation and the conclusion regarding the child's best interest in the same manner as any other lawyer presents his or her case on behalf of a client: by calling, examining and cross examining witnesses, submitting and responding to other evidence in conformance with the rules of evidence, and making oral and written arguments based on the evidence that has been or is expected to be presented. [Adopted by order filed February 5, 2002.]

Rule 40A. Appointment of Guardians Ad Litem in Custody Proceedings.

Section 1. Definitions.

(a) "Custody proceeding" means a court proceeding, other than an abuse or neglect proceeding, in which legal or physical custody of, access to, or visitation or parenting time with a child is at issue, including but not limited to divorce, post divorce, paternity, domestic violence, contested adoptions, and contested private guardianship cases.

(b) "Abuse or neglect proceeding" means a court proceeding for protection of a child from abuse or neglect or a court proceeding in which termination of parental rights is at issue.

(c) "Guardian Ad Litem" means a licensed attorney appointed by the court to represent the best interests of a child or children in a custody proceeding.

Section 2. Applicability.

This Rule applies to all guardian ad litem appointments in custody proceedings pending on or filed after the effective date of this Rule. On or after the effective date of this Rule, licensed attorneys appointed as guardians ad litem under the prior Rule 40A may be re-appointed under the terms of this Rule.

Section 3. Guardian Ad Litem Appointments.

(a) Consistent with Tennessee Code Annotated section 36-4-132, in a custody proceeding the court may appoint a guardian ad litem when the court finds that the child's best interests are not adequately protected by the parties and that separate representation of the child's best interests is necessary. Such an appointment may be made at any stage of the proceeding.

(b) Courts should not routinely appoint guardians ad litem in custody proceedings. Rather, the court's discretion to appoint guardians ad litem shall be exercised sparingly. In most instances, the child's best interests will be adequately protected by the parties.

(c) In determining whether appointing a guardian ad litem is necessary, the court shall consider:

(1) the fundamental right of parents to the care, custody, and control of their children;

(2) the nature and adequacy of the evidence the parties likely will present;

(3) the court's need for additional information and/or assistance;

(4) the financial burden on the parties of appointing a guardian ad litem and the ability of the parties to pay reasonable fees to the guardian ad litem;

(5) the cost and availability of alternative methods of obtaining the information/evidence necessary to resolve the issues in the proceeding without appointing a guardian ad litem; and

(6) any alleged factors indicating a particularized need for the appointment of a guardian ad litem, including:

(i) the circumstances and needs of the child, including the child's age and developmental level;

(ii) any desire for representation or participation expressed by the child;

(iii) any inappropriate adult influence on or manipulation of the child;

(iv) the likelihood that the child will be called as a witness or be questioned by the court in chambers and the need to minimize harm to the child from the processes of litigation;

(v) any higher than normal level of acrimony indicating the parties' lack of objectivity concerning the needs and best interests of the child;

(vi) any interference, or threatened interference, with custody, access, visitation, or parenting time, including abduction or risk of abduction of the child;

(vii) the likelihood of a geographic relocation of the child that could substantially reduce the child's time with a parent, a sibling, or another individual with whom the child has a close relationship;

(viii) any conduct by a party or an individual with whom a party associates which raises serious concerns for the safety of the child during periods of custody, visitation, or parenting time with that party;

(ix) any special physical, educational, or mental-health needs of the child that require investigation or advocacy;

(x) any dispute as to paternity of the child; and

(xi) any other factors necessary to address the best interests of the child.

(d) If the court concludes that appointing a guardian ad litem is necessary, the court should endeavor to appoint a person with the knowledge, skill, experience, training, education and/or any other qualifications the court finds necessary that enables the guardian ad litem to conduct a thorough and impartial investigation and effectively represent the best interests of the child.

Section 4. Appointment Order.

(a) Appointment of a guardian ad litem shall be by written order of the court.

(b) In plain language understandable to non-lawyers, the order shall set forth:

(1) the reasons for the appointment, focusing upon the factors listed in Section 3(c) of this Rule;

(2) the specific duties to be performed by the guardian ad litem in the case;

(3) the deadlines for completion of these duties to the extent appropriate;

(4) the duration of the appointment; and

(5) the terms of compensation consistent with Section 11 of this Rule.

(c) The court shall provide in the appointment order as much detail and clarity as possible concerning the guardian ad litem's duties. Providing such specificity will assist the parties in understanding the guardian ad litem's role and will enable the court to exercise effective oversight of the guardian ad litem's role.

(d) There is no right to a peremptory challenge of a guardian ad litem. Allegations that a guardian ad litem appointment is unnecessary, that a particular appointee is unqualified or otherwise unsuitable, or that an appointee is or has become biased should be raised without delay and should be addressed by trial courts through motion practice. Any appeal from a trial court's decision on such a motion shall be prosecuted pursuant to Tennessee Rules of Appellate Procedure 9 and 10.

Section 5. Duration of Appointment.

Appointment of a guardian ad litem continues in effect only for the duration provided in the appointment order or any subsequent order. If no order specifies the duration of the appointment, the appointment shall

terminate automatically when the trial court order or judgment disposing of the custody or modification proceeding becomes final.

Section 6. Role of Guardian Ad Litem.

(a) The role of the guardian ad litem is to represent the child's best interests by gathering facts and presenting facts for the court's consideration subject to the Tennessee Rules of Evidence. (See Section 8 of this Rule.)

(b) The guardian ad litem shall not function as a special master for the court or perform any other judicial or quasi-judicial responsibilities.

Section 7. Access to Child and Information Relating to Child.

(a) Subject to subsections (b) and (c), when the court appoints a guardian ad litem in a custody proceeding, the court shall issue an order, with notice to all parties, authorizing the guardian ad litem to have access to:

(1) the child, without the presence of any other person unless otherwise ordered by the court, and

(2) confidential information regarding the child, including the child's educational, medical, and mental health records, any agency or court files involving allegations of abuse or neglect of the child, any delinquency records involving the child, and other information relevant to the issues in the proceeding.

(b) A child's record that is privileged or confidential under law other than this Rule may be released to a guardian ad litem only in accordance with that law, including any requirements in that law for notice and opportunity to object to release of records. Information that is privileged under the attorney-client relationship may not be disclosed except as otherwise permitted by law of this state other than this Rule.

(c) An order issued pursuant to subsection (a) must require that a guardian ad litem maintain the confidentiality of information released, except as necessary for the resolution of the issues in the proceeding. The court may impose in an order of access any other condition or limitation that is required by law, rules of professional conduct, the child's needs, or the circumstances of the proceeding.

Section 8. Duties/Rights of Guardian Ad Litem.

(a) The guardian ad litem shall satisfy the duties and responsibilities of the appointment in an unbiased, objective, and fair manner.

(b) A guardian ad litem shall:

(1) conduct an investigation to the extent that the guardian ad litem considers necessary to determine the best interests of the child, which can include, but is not limited, to ascertaining:

(i) the child's emotional needs, such as nurturance, trust, affection, security, achievement, and encouragement;

(ii) the child's social needs;

(iii) the child's educational needs;

(iv) the child's vulnerability and dependence upon others;

(v) the child's need for stability of placement;

(vi) the child's age and developmental level, including his or her sense of time;

(vii) the general preference of a child to live with known people, to continue normal activities, and to avoid moving;

(viii) the love, affection and emotional ties existing between the child and the parents;

(ix) the importance of continuity in the child's life;

(x) the home, school and community record of the child;

(xi) the willingness and ability of the proposed or potential caretakers to facilitate and encourage close and continuing relationships between the child and other persons in the child's life with whom the child has or desires to have a positive relationship, including siblings; and

(xii) the list of factors set forth in Tenn. Code Ann. § 36-6-106.

(2) obtain and review copies of the child's relevant medical, psychological, and school records as provided by Section 7.

(3) within a reasonable time after the appointment, interview:

(i) the child in a developmentally appropriate manner, if the child is four years of age or older;

(ii) each person who has significant knowledge of the child's history and condition, including any foster parent of the child; and

(iii) the parties to the suit;

(4) if the child is twelve (12) years of age or older, seek to elicit in a developmentally appropriate manner the reasonable preference of the child;

(5) consider the child's expressed objectives without being bound by those objectives;

(6) encourage settlement of the issues related to the child and the use of alternative forms of dispute resolution; and

(7) perform any specific task directed by the court.

(c) If the child asks the guardian ad litem to advocate a position that the guardian ad litem believes is not in the child's best interest, the guardian ad litem shall:

(1) fully investigate all of the circumstances relevant to the child's position, identify every reasonable argument that could be made in favor of the child's position, and identify all the factual support for the child's position;

(2) discuss fully with the child and make sure that the child understands the different options or positions that might be available, including the potential benefits of each option or position, the potential risks of each option or position, and the likelihood of prevailing on each option or position.

(3) if, after fully investigating and advising the child, the child continues to urge the guardian ad litem to take a position that the guardian ad litem believes is contrary to the child's best interest, the guardian shall take all reasonable steps to:

(i) subpoena any witnesses and ensure the production of documents and other evidence that might tend to support the child's position; and

(ii) advise the court at the hearing of the wishes of the child and of the witnesses subpoenaed and other evidence available for the court to consider in support

of the child's position.

Section 9. Participation in Proceeding. A guardian ad litem appointed in a custody proceeding is entitled to all rights and privileges accorded to an attorney representing a party, including but not limited to the right to:

(a) receive a copy of each pleading or other record filed with the court in the proceeding;

(b) receive notice of, attend, and participate in each hearing in the proceeding, including alternative dispute resolution proceedings, and take any action that may be taken by an attorney representing a party pursuant to the Rules of Civil Procedure.

Section 10. Expediting Custody Proceedings.

To the extent possible, courts shall expedite custody proceedings in which guardians ad litem have been appointed, using available technological and electronic means to speed the process and to minimize costs.

Section 11. Guardian Ad Litem Fees and Expenses.

(a) The guardian ad litem shall be compensated for fees and expenses in an amount the court determines is reasonable. In determining whether the guardian ad litem's fees and expenses are reasonable, the court shall consider the following factors:

(1) the time expended by the guardian;

(2) the contentiousness of the litigation;

(3) the complexity of the issues before the court;

(4) the expenses reasonably incurred by the guardian;

(5) the financial ability of each party to pay fees and costs;

(6) the fee customarily charged in the locality for similar services; and

(7) any other factors the court considers necessary.

(b) Concerning the allocation of the fee among the parties, the court may do one or more of the following:

(1) order a deposit to be made into an account designated by the court for the use and benefit of the guardian ad litem;

(2) before the final hearing, order an amount in addition to the amount ordered deposited under paragraph (1) to be paid into the account;

(3) equitably allocate fees and expenses among the parties; and

(4) reallocate the fees and expenses at the conclusion of the custody proceeding, in the court's discretion, if the initial allocation of guardian ad litem fees and/or expenses among the parties has become inequitable as a result of the income and financial resources available to the parties, the conduct of the parties during the custody proceeding, or any other similar reason. Any reallocation shall be included in the court's final order in the custody proceeding and shall be supported by findings of fact.

(c) The appointment order shall specify the hourly rate to be paid to the guardian ad litem. If an initial deposit is deemed appropriate by the trial court, the appointment order shall state the amount of deposit, the date of deposit, and the account or location in which the deposit shall be made. The order shall also state whether periodic payments may be drawn from the initial deposit.

(d) If an initial deposit is required and the trial court deems that periodic payments may be drawn from the initial deposit, the trial court shall:

(1) provide the manner in which withdrawals may be made;

(2) require notice to the parties of the withdrawal, including a statement of services rendered, supported by an affidavit; and

(3) provide a reasonable opportunity to object to the fees charged before the withdrawal is made.

(e) To receive payment under this section beyond the amount in the initial deposit, if any, the guardian ad litem must complete and file with the court a written claim for payment, whether interim or final, justifying the fees and expenses charged and supported by an affidavit. Any objection to the guardian ad litem's fee claim shall be filed within fifteen days after the claim is filed.

(f) Failure to object to a statement regarding periodic payments does not constitute a waiver of any objection to the reasonableness of the guardian ad litem's total fees. The guardian ad litem shall file a final written claim for payment within thirty days of the entry of the final order. Any objection must be filed within fifteen days after the guardian ad litem's final written claim for payment is filed.

(g) If no objection is timely filed, the court shall file a written order approving the claim, or portion thereof, determined to be reasonable and related to the duties of the guardian ad litem.

(h) If an objection is timely filed, the court shall conduct a hearing and thereafter file a written order denying the claim, or approving the claim, or portion thereof, determined to be reasonable and related to the duties of the guardian ad litem.

(i) The guardian ad litem must seek court approval before incurring extraordinary expenses, such as expert witness fees. Any order authorizing the guardian ad litem to hire expert witnesses must specify the hourly rate to be paid the expert witness, the maximum fee that may be incurred without further authorization from the court, how the fee will be allocated between the parties, and when payment is due.

Section 12. Appeals by Guardian Ad Litem.

The guardian ad litem shall not initiate an appeal. Notwithstanding the foregoing sentence, the guardian ad litem may appeal the trial court's ruling on any matter adjudicated under Section 4(d) and also may appeal the trial court's ruling following a hearing specified in Section 11(h). Upon appeal of the matter by one of the parties, however, the guardian ad litem shall have the right to receive notice of the appeal and may participate in the appeal as any other party, including but not limited to, filing briefs, motions and making oral arguments.

Section 13. Effective Date.

The original version of this rule was adopted as a provisional rule and governed all custody proceedings, as defined in Section 1(a) of the rule, from May 1, 2009, through August 31, 2011. This revised rule is adopted as a permanent rule. The revised rule shall take effect on September 1, 2011, and shall apply to all proceedings pending on or filed after the effective date. [As adopted by order filed July 12, 2011, effective September 1, 2011.]

TENNESSEE RULES OF APPELLATE PROCEDURE

[EFFECTIVE JULY 1, 1979]

TABLE OF CONTENTS

B. APPEAL AS OF RIGHT

Rule.
8A. Appeal as of Right in Termination of Parental Rights Cases.

B. APPEAL AS OF RIGHT

Rule 8A. Appeal as of Right in Termination of Parental Rights Cases. This rule shall govern any appeal as of right in a termination of parental rights proceeding. The other rules of appellate procedure also apply to such a appeal; however, when a provision of this rule conflicts with another rule of appellate procedure, the provision of this rule shall control.

(a) Appeal as of Right; Time for Filing Notice of Appeal. —

(1) It shall not be necessary for a party to file a motion to alter or amend the judgment or a motion for new trial in order to obtain appellate review of the judgment of the trial court.

(2) In addition to meeting the requirements of Rule 3(f) ("Content of the Notice of Appeal"), a notice of appeal in a termination of parental rights proceeding shall indicate that the appeal involves a termination of parental rights case.

(b) Stay or Injunction Pending Appeal. — Any party may obtain review of an order entered pursuant to Rule 62 of the Tennessee Rules of Civil Procedure or Rule 39(g)(4) of the Rules of Juvenile Procedure granting, denying, or altering the conditions of a stay of execution pending appeal, or granting, denying, or altering the conditions of additional or modified relief pending appeal; such appellate review shall be conducted pursuant to Rule 7 of the Rules of Appellate Procedure.

(c) Content and Preparation of the Record. — In addition to the papers excluded from the record pursuant to Rule 24(a), any portion of a juvenile court file of a child dependency, delinquency or status case that has not been properly admitted into evidence at the termination of parental rights trial shall be excluded from the record.

(1) Any transcript of the evidence or proceedings filed pursuant to Rule 24(b) shall be filed within 45 days after filing the notice of appeal. If the appellee has objections to the transcript as filed, the appellee shall file objections thereto with the clerk of the trial court within 10 days after service of notice of the filing of the transcript. Unless the time has been extended by order, if the appellant fails to file within 45 days from the filing of the notice of appeal either the transcript or statement of evidence or notice that no transcript or statement is to be filed, the clerk of the trial court shall provide written notice within 10 days to the clerk of the appellate court of the appellant's failure to comply with this subdivision, with a copy provided to counsel and pro se parties.

(2) Any statement of the evidence or proceedings filed pursuant to Rule 24(c) shall be filed within 45 days after filing the notice of appeal. If the appellee has objections to the statement as filed, the appellee shall file objections thereto with the clerk of the trial court within 10 days after service of the declaration and notice of the filing of the statement.

(3) If no transcript or statement of the evidence or proceedings is to be filed, the appellant shall, within 15 days after filing the notice of appeal, file with the clerk of the trial court and serve upon the appellee a notice that no transcript or statement is to be filed. If the appellee deems a transcript or statement of the evidence or proceedings to be necessary, the appellee shall, within 15 days after service of the appellant's notice, file with the clerk of the trial court and serve upon the appellant a notice that a transcript or statement is to be filed. The appellee shall prepare the transcript or statement at the appellee's own expense or apply to the trial court for an order requiring the appellant to assume the expense. Subdivisions (c)(1) and (c)(2) of this rule are applicable to the transcript or statement filed by the appellee under this subdivision, except that the appellee under this subdivision shall perform the duties assigned to the appellant in subdivisions (c)(1) and (c)(2) of this rule and the appellant under this subdivision shall perform the duties assigned to the appellee in such subdivisions.

(d) Approval of the Record by the Trial Judge or Chancellor. — After the expiration of the 10-day period for objections by the appellee, the trial judge shall approve the transcript or statement of the evidence and shall authenticate the exhibits. If not approved within 20 days after the expiration of the period for filing objections by the appellee, the transcript or statement of the evidence and the exhibits shall be deemed to have been approved and shall be so considered by the appellate court, except in cases where such approval did not occur by reason of the death or inability to act of the trial judge, which cases shall be governed by Rule 24(f).

(e) Completion and Transmission of the Record. — The record on appeal shall be assembled, numbered and completed by the clerk of the trial court and transmitted to the clerk of the appellate court within 5 days of the approval of the record by the trial judge or by operation of the automatic-approval provision of subdivision (d), whichever occurs first.

(f) Extension of Time for Completion of the Record. — If the record cannot be completed within the time permitted by subdivision (e) of this rule, the clerk of the trial court shall request an extension of time from the appellate court to which the appeal has been taken. The request shall set forth the reasons for the re-

quested extension and must be made within the time originally prescribed for completing the record or within an extension previously granted. Extensions of time for completion of the record in termination of parental rights cases are disfavored and will be granted by the appellate court only upon a particularized showing of good cause. Trial court clerks shall give priority to completion of the record in termination of parental rights cases over other types of cases. The time for completing the record shall not be extended to a day more than 60 days after the date of the filing of the transcript or statement of evidence or the appellant's notice that no transcript or statement is to be filed. In the event of the failure of the clerk of the trial court to complete the record within the time allowed, the clerk of the appellate court shall notify the trial court and take such other steps as may be directed by the appellate court.

(g) Filing and Service of Briefs. — The appellant shall serve and file a brief within 30 days after the date on which the record is filed with the clerk. The appellee shall serve and file a brief within 20 days after the appellant's brief is filed with the clerk. Reply briefs shall be served and filed within 14 days after filing of the preceding brief. All other matters regarding briefs of the appellant and appellee shall be governed by Rules 27, 28, 29, 30 and 32.

(h) Appeal by Permission from Court of Appeals to Supreme Court. — The provisions of Rule 11 control review by the Supreme Court in a termination of parental rights proceeding.

(i) Extension of Time. — Extensions of time in an appeal of a termination of parental rights proceeding are disfavored and will be granted by the appellate court only upon a particularized showing of good cause. [Adopted by order entered January 15, 2004, effective July 1, 2004.]

Compiler's Notes. The adoption of this rule, as promulgated and adopted by the Supreme Court in its order dated January 15, 2004, was ratified and approved by 2004 House Resolution 243 and Senate Resolution 121. The order promulgating the adoption of this rule provided that it take effect July 1, 2004.

United States Code Service

The following selected sections of the United States Code were obtained from the United States Code Service. This extracted data is current through Public Law 114-219.

TITLE 25

INDIANS

Chapter 21.

INDIAN CHILD WELFARE

Sec.
1901. Congressional findings
1902. Congressional declaration of policy
1903. Definitions

CHILD CUSTODY PROCEEDINGS

1911. Indian tribe jurisdiction over Indian child custody proceedings
1912. Pending court proceedings
1913. Parental rights; voluntary termination
1914. Petition to court of competent jurisdiction to invalidate action upon showing of certain violations
1915. Placement of Indian children
1916. Return of custody
1917. Tribal affiliation information and other information of protection of rights from tribal relationship; application of subject of adoptive placement; disclosure by court
1918. Reassumption of jurisdiction over child custody proceedings
1919. Agreements between States and Indian tribes
1920. Improper removal of child from custody; declination of jurisdiction; forthwith return of child: danger exception
1921. Higher State or Federal standard applicable to protect rights of parent or Indian custodian of Indian child
1922. Emergency removal or placement of child; termination; appropriate action
1923. Effective date

INDIAN CHILD AND FAMILY PROGRAMS

1931. Grants for on or near reservation programs and child welfare codes
1932. Grants for off-reservation programs for additional services
1933. Funds for on and off reservation programs
1934. "Indian" defined for certain purposes

RECORDKEEPING, INFORMATION AVAILABILITY, AND TIMETABLES

1951. Information availability to and disclosure by Secretary
1952. Rules and regulations

MISCELLANEOUS PROVISIONS

1961. Locally convenient day schools
1962. [Omitted]
1963. Severability of provisions

§ 1901. Congressional findings

Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds—

(1) that clause 3, section 8, article I of the United States Constitution [USCS Constitution, Art. I, § 8, cl 3] provides that "The Congress shall have Power . . . To regulate Commerce . . . with Indian tribes [Tribes]" and, through this and other constitutional authority, Congress has plenary power over Indian affairs;

(2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;

(3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;

(4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

(5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

(Nov. 8, 1978, P. L. 95-608, § 2, 92 Stat. 3069.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

The bracketed word "Tribes" has been inserted in para. (1) as the capitalization probably intended by Congress.

Short title:

Act Nov. 8, 1978, P. L. 95-608, § 1, 92 Stat. 3069, provided: "This Act [25 USCS §§ 1901 et seq.] may be cited as the 'Indian Child Welfare Act of 1978'.".

§ 1902. Congressional declaration of policy

The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

(Nov. 8, 1978, P. L. 95-608, § 3, 92 Stat. 3069.)

§ 1903. Definitions

For the purposes of this Act [25 USCS §§ 1901 et seq.], except as may be specifically provided otherwise, the term—

(1) "child custody proceeding" shall mean and include—

(i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(ii) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;

(iii) "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

(2) "extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;

(3) "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in section 7 of the Alaska Native Claims Settlement Act (85 Stat. 688, 689) [43 USCS § 1606];

(4) "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

(5) "Indian child's tribe" means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;

(6) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;

(7) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;

(8) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 3(c) of the Alaska Native Claims Settlement Act (85 Stat. 688, 689), as amended [43 USCS § 1602(c)];

(9) "parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established;

(10) "reservation" means Indian country as defined in section 1151 of title 18, United States Code and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;

(11) "Secretary" means the Secretary of the Interior; and

(12) "tribal court" means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

(Nov. 8, 1978, P. L. 95-608, § 4, 92 Stat. 3069.)

CHILD CUSTODY PROCEEDINGS

§ 1911. Indian tribe jurisdiction over Indian child custody proceedings

(a) Exclusive jurisdiction. An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(b) Transfer of proceedings; declination by tribal court. In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: *Provided*, that such transfer shall be subject to declination by the tribal court of such tribe.

(c) State court proceedings; intervention. In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian

child's tribe shall have a right to intervene at any point in the proceeding.

(d) Full faith and credit to public acts, records, and judicial proceedings of Indian tribes. The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

(Nov. 8, 1978, P. L. 95-608, Title I, § 101, 92 Stat. 3071.)

§ 1912. Pending court proceedings

(a) Notice; time for commencement of proceedings; additional time for preparation. In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: *Provided*, That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

(b) Appointment of counsel. In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to the Act of November 2, 1921 (42 Stat. 208; 25 U.S.C. 13).

(c) Examination of reports or other documents. Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

(d) Remedial services and rehabilitative programs; preventive measures. Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(e) Foster care placement orders; evidence; determination of damage to child. No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(f) Parental rights termination orders; evidence; determination of damage to child. No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(Nov. 8, 1978, P. L. 95-608, Title I, § 102, 92 Stat. 3071.)

§ 1913. Parental rights; voluntary termination

(a) Consent; record; certification matters; invalid consents. Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

(b) Foster care placement; withdrawal of consent. Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

(c) Voluntary termination of parental rights or adoptive placement; withdrawal of consent; return of custody. In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

(d) Collateral attack; vacation of decree and return of custody; limitations. After the entry of a final decree of adoption of an Indian child in any State court, the parent may withdraw consent thereto upon

the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted under State law.

(Nov. 8, 1978, P. L. 95-608, Title I, § 103, 92 Stat. 3072.)

§ 1914. Petition to court of competent jurisdiction to invalidate action upon showing of certain violations

Any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 101, 102, and 103 of this Act [25 USCS §§ 1911, 1912, and 1913].

(Nov. 8, 1978, P. L. 95-608, Title I, § 104, 92 Stat. 3072.)

§ 1915. Placement of Indian children

(a) Adoptive placements; preferences. In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with

(1) a member of the child's extended family;

(2) other members of the Indian child's tribe; or

(3) other Indian families.

(b) Foster care or preadoptive placements; criteria; preferences. Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with—

(i) a member of the Indian child's extended family;

(ii) a foster home licensed, approved, or specified by the Indian child's tribe;

(iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

(iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(c) Tribal resolution for different order of preference; personal preference considered; anonymity in application of preferences. In the case of a placement under subsection (a) or (b) of this section, if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section. Where appropriate, the preference of the Indian child or parent shall be considered: *Provided*, That where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(d) Social and cultural standards applicable. The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

(e) Record of placement; availability. A record of each such placement, under State law, of an Indian child shall be maintained by the State in which the placement was made, evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon the request of the Secretary or the Indian child's tribe.

(Nov. 8, 1978, P. L. 95-608, Title I, § 105, 92 Stat. 3073.)

§ 1916. Return of custody

(a) Petition; best interests of child. Notwithstanding State law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of section 102 of this Act [25 USCS § 1912], that such return of custody is not in the best interests of the child.

(b) Removal from foster care home; placement procedure. Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, such placement shall be in accordance with the provisions of this Act [25 USCS §§ 1901 et seq.], except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

(Nov. 8, 1978, P. L. 95-608, Title I, § 106, 92 Stat. 3073.)

§ 1917. Tribal affiliation information and other information of protection of rights from tribal relationship; application of subject of adoptive placement; disclosure by court

Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement, the court which entered the final decree shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

(Nov. 8, 1978, P. L. 95-608, Title I, § 107, 92 Stat. 3073.)

§ 1918. Reassumption of jurisdiction over child custody proceedings

(a) Petition; suitable plan; approval by Secretary. Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. Before any Indian tribe may reassume jurisdiction over Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.

(b) Criteria applicable to consideration by Secretary; partial retrocession.

(1) In considering the petition and feasibility of the plan of a tribe under subsection (a), the Secretary may consider, among other things:

(i) whether or not the tribe maintains a membership roll or alternative provision for clearly identifying the persons who will be affected by the reassumption of jurisdiction by the tribe;

(ii) the size of the reservation or former reservation area which will be affected by retrocession and reassumption of jurisdiction by the tribe;

(iii) the population base of the tribe, or distribution of the population in homogeneous communities or geographic areas; and

(iv) the feasibility of the plan in cases of multitribal occupation of a single reservation or geographic area.

(2) In those cases where the Secretary determines that the jurisdictional provisions of section 101(a) of this Act [25 USCS § 1911(a)] are not feasible, he is authorized to accept partial retrocession which will enable tribes to exercise referral jurisdiction as provided in section 101(b) of this Act [25 USCS § 1911(b)], or, where appropriate, will allow them to exercise exclusive jurisdiction as provided in section 101(a) [25 USCS § 1911(a)] over limited community or geographic areas without regard for the reservation status of the area affected.

(c) Approval of petition; publication in Federal Register; notice; reassumption period; correction of causes for disapproval. If the Secretary approves any petition under subsection (a), the Secretary shall publish notice of such approval in the Federal Register and shall notify the affected State or States of such approval. The Indian tribe concerned shall reassume jurisdiction sixty days after publication in the Federal Register of notice of approval. If the Secretary disapproves any petition under subsection (a), the Secretary shall provide such technical assistance as may be necessary to enable the tribe to correct any deficiency which the Secretary identified as a cause for disapproval.

(d) Pending actions or proceedings unaffected. Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction, except as may be provided pursuant to any agreement under section 109 of this Act [25 USCS § 1919].

(Nov. 8, 1978, P. L. 95-608, Title I, § 108, 92 Stat. 3074.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

The "Act of August 15, 1953", referred to in subsec. (a), is Act Aug. 15, 1953, ch 505, 67 Stat 588, as amended by Act April 11, 1968, P. L. 90-248, Title IV, 82 Stat. 79. For full classification of such Act, consult USCS Tables volumes.

§ 1919. Agreements between States and Indian tribes

(a) Subject coverage. States and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes.

(b) Revocation; notice; actions or proceedings unaffected. Such agreements may be revoked by either party upon one hundred and eighty days' written notice to the other party. Such revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise.

(Nov. 8, 1978, P. L. 95-608, Title I, § 109, 92 Stat. 3074.)

§ 1920. Improper removal of child from custody; declination of jurisdiction; forthwith return of child: danger exception

Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

(Nov. 8, 1978, P. L. 95-608, Title I, § 110, 92 Stat. 3075.)

§ 1921. Higher State or Federal standard applicable to protect rights of parent or Indian custodian of Indian child

In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this title [25 USCS §§ 1911–1923], the State or Federal court shall apply the State or Federal standard.

(Nov. 8, 1978, P. L. 95-608, Title I, § 111, 92 Stat. 3075.)

§ 1922. Emergency removal or placement of child; termination; appropriate action

Nothing in this title [25 USCS §§ 1911–1923] shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this title [25 USCS §§ 1911–1923], transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

(Nov. 8, 1978, P. L. 95-608, Title I, § 112, 92 Stat. 3075.)

§ 1923. Effective date

None of the provisions of this title [25 USCS §§ 1911–1923], except sections 101(a), 108, and 109 [25 USCS §§ 1911(a), 1918, and 1919], shall affect a proceeding under State law for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement which was initiated or completed prior to one hundred and eighty days after the enactment of this Act [enacted Nov. 8, 1978], but shall apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.

(Nov. 8, 1978, P. L. 95-608, Title I, § 113, 92 Stat. 3075.)

INDIAN CHILD AND FAMILY PROGRAMS

§ 1931. Grants for on or near reservation programs and child welfare codes

(a) Statement of purpose; scope of programs. The Secretary is authorized to make grants to Indian tribes and organizations in the establishment and operation of Indian child and family service programs on or near reservations and in the preparation and implementation of child welfare codes. The objective of every Indian child and family service program shall be to prevent the breakup of Indian families and, in particular, to insure that the permanent removal of an Indian child from the custody of his parent or Indian custodian shall be a last resort. Such child and family service programs may include, but are not limited to—

(1) a system for licensing or otherwise regulating Indian foster and adoptive homes;

(2) the operation and maintenance of facilities for the counseling and treatment of Indian families and for the temporary custody of Indian children;

(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care;

(4) home improvement programs;

(5) the employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters;

(6) education and training of Indians, including tribal court judges and staff, in skills relating to child and family assistance and service programs;

(7) a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as foster children, taking into account the appropriate State standards of support for maintenance and medical needs; and

(8) guidance, legal representation, and advice to Indian families involved in tribal, State, or Federal child custody proceedings.

(b) Non-Federal matching funds for related Social Security or other Federal financial assistance programs; assistance for such programs unaffected; State licensing or approval for qualification for assistance under federally assisted program. Funds appropriated for use by the Secretary in accordance with this section may be utilized as non-Federal matching share in connection with funds provided under titles IV-B and XX of the Social Security Act [42 USCS §§ 620 et seq. and 1397 et seq.] or under any other Federal financial assistance programs which contribute to the purpose for which such funds are authorized to be appropriated for use under this Act [25 USCS §§ 1901 et seq.]. The provision or possibility of assistance under this Act [25 USCS §§ 1901 et seq.] shall not be a basis for the denial or reduction of any assistance otherwise authorized under titles IV-B and XX of the Social Security Act [42 USCS §§ 620 et seq. and 1397 et seq.] or any other federally assisted program. For purposes of qualifying for assistance under a federally assisted program, licensing or approval of foster or adoptive homes or institutions by an Indian tribe shall be deemed equivalent to licensing or approval by a State.

(Nov. 8, 1978, P. L. 95-608, Title II, § 201, 92 Stat. 3075.)

§ 1932. Grants for off-reservation programs for additional services

The Secretary is also authorized to make grants to Indian organizations to establish and operate off-reservation Indian child and family service programs which may include, but are not limited to—

(1) a system for regulating, maintaining, and supporting Indian foster and adoptive homes, including a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as Indian foster children, taking into account the appropriate State standards of support for maintenance and medical needs;

(2) the operation and maintenance of facilities and services for counseling and treatment of Indian families and Indian foster and adoptive children;

(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care; and

(4) guidance, legal representation, and advice to Indian families involved in child custody proceedings.

(Nov. 8, 1978, P. L. 95-608, Title II, § 202, 92 Stat. 3076.)

§ 1933. Funds for on and off reservation programs

(a) Appropriated funds for similar programs of Department of Health and Human Services; appropriation in advance for payments. In the establishment, operation, and funding of Indian child and family service programs, both on and off reservation, the Secretary may enter into agreements with the Secretary of Health, Education, and Welfare [Secretary of Health and Human Services], and the latter Secretary is hereby authorized for such purposes to use funds appropriated for similar programs of the Department of Health, Education, and Welfare [Department of Health and Human Services]: *Provided*, That authority to make payments pursuant to such agreements shall be effective only to the extent and in such amounts as may be provided in advance by appropriation Acts.

(b) Appropriation authorization under 25 USCS § 13. Funds for the purposes of this Act [25 USCS §§ 1901 et seq.] may be appropriated pursuant to the provisions of the Act of November 2, 1921 (42 Stat. 208), as amended [25 USCS § 13].

(Nov. 8, 1978, P. L. 95-608, Title II, § 203, 92 Stat. 3076.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

The bracketed words "Secretary of Health and Human Services" and "Department of Health and Human Services" were inserted in subsec. (a) on authority of Act Oct. 17, 1979, P. L. 96-88, Title V, § 509, 93 Stat. 695, which appears as 20 USCS § 3508, and which redesignated the Secretary and Department of Health, Education, and Welfare as the Secretary and Department of Health and Human Services, respectively, and provided that any reference to the Secretary or Department of Health, Education, and Welfare, in any law in force on the effective date of such Act Oct. 17, 1979, shall be deemed to refer and apply to the Secretary or Department of Health and Human Services, respectively, except to the extent such reference is to a function or office transferred to the Secretary or Department of Education under such Act Oct. 17, 1979.

§ 1934. "Indian" defined for certain purposes

For the purposes of sections 202 and 203 of this title [25 USCS §§ 1932 and 1933], the term "Indian" shall include persons defined in section 4(c) of the Indian Health Care Improvement Act of 1976 (90 Stat. 1400, 1401) [25 USCS § 1603(c)].

(Nov. 8, 1978, P. L. 95-608, Title II, § 204, 92 Stat. 3077.)

RECORDKEEPING, INFORMATION AVAILABILITY, AND TIMETABLES

§ 1951. Information availability to and disclosure by Secretary

(a) Copy of final decree or order; other information; anonymity affidavit; exemption from Freedom of Information Act [5 USCS § 552]. Any State court entering a final decree or order in any Indian child adoptive placement after the date of enactment of this Act [enacted Nov. 8, 1978] shall provide the Secretary with a copy of such decree or order together with such other information as may be necessary to show—

(1) the name and tribal affiliation of the child;

(2) the names and addresses of the biological parents;

(3) the names and addresses of the adoptive parents; and

(4) the identity of any agency having files or information relating to such adoptive placement.

Where the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include such affidavit with the other information. The Secretary shall insure that the confidentiality of such information is maintained and such information shall not be subject to the Freedom of Information Act (5 U.S.C. 552), as amended.

(b) Disclosure of information for enrollment of Indian child in tribe or for determination of member rights or benefits; certification of entitlement to enrollment. Upon the request of the adopted Indian child over the age of eighteen, the adoptive or foster parents of an Indian child, or an Indian tribe, the Secretary shall disclose such information as may be necessary for the enrollment of an Indian child in the tribe in which the child may be eligible for enrollment or for determining any rights or benefits associated with that membership. Where the documents relating to such child contain an affidavit from the biological parent or parents requesting anonymity, the Secretary shall certify to the Indian child's tribe, where the information warrants, that the child's parentage and other circumstances of birth entitle the child to enrollment under the criteria established by such tribe.

(Nov. 8, 1978, P. L. 95-608, Title III, § 301, 92 Stat. 3077.)

§ 1952. Rules and regulations

Within one hundred and eighty days after the enactment of this Act [enacted Nov. 8, 1978], the Secretary shall promulgate such rules and regulations as may be necessary to carry out the provisions of this Act [25 USCS §§ 1901 et seq.].

(Nov. 8, 1978, P. L. 95-608, Title III, § 302, 92 Stat. 3077.)

MISCELLANEOUS PROVISIONS

§ 1961. Locally convenient day schools

(a) Sense of Congress. It is the sense of Congress that the absence of locally convenient day schools may contribute to the breakup of Indian families.

(b) Report to Congress; contents, etc. The Secretary is authorized and directed to prepare, in consultation with appropriate agencies in the Department of Health, Education, and Welfare [Department of Health and Human Services], a report on the feasibility of providing Indian children with schools located near their homes, and to submit such report to the Select Committee on Indian Affairs of the United States Senate [Committee on Indian Affairs of the Senate] and the Committee on Interior and Insular Affairs of the United States House of Representatives [Committee on Natural Resources of the House of Representatives] within two years from the date of this Act [enacted Nov. 8, 1978]. In developing this report the Secretary shall give particular consideration to the provision of educational facilities for children in the elementary grades.

(Nov. 8, 1978, P. L. 95-608, Title IV, § 401, 92 Stat. 3078.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

The bracketed words "Department of Health and Human Services" have been inserted in subsec. (b) on authority of Act Oct. 17, 1979, P. L. 96-88, Title V, § 509, 93 Stat. 695, which appears as 20 USCS § 3508, and which redesignated the Department of Health, Education, and Welfare as the Department of Health and Human Services and provided that any reference to the Department of Health, Education, and Welfare, in any law in force on the effective date of such Act Oct. 17, 1979, shall be deemed to refer and apply to the Department of Health and Human Services, except to the extent such reference is to a function or office transferred to the Department of Education under such Act Oct. 17, 1979.

The bracketed words "Committee on Indian Affairs of the Senate" have been inserted in this section on authority of § 25 of S. Res. No. 71 of Feb. 25, 1993.

The bracketed words "Committee on Natural Resources of the House of Representatives" have been inserted on authority of § 1(a) of Act June 3, 1995, P. L. 104-14, which appears as a note preceding 2 USCS § 21.

§ 1962. [Omitted]

HISTORY; ANCILLARY LAWS AND DIRECTIVES

This section (Act Nov. 8, 1978, P. L. 95-608, Title IV, § 402, 92 Stat. 3078), which provided for copies of Act Nov. 8, 1978 to be sent to certain officials, was omitted inasmuch as it was executed within 60 days of enactment of this section [enacted Nov. 8, 1978].

§ 1963. Severability of provisions

If any provision of this Act [25 USCS §§ 1901 et seq.] or the applicability thereof is held invalid, the remaining provisions of this Act [25 USCS §§ 1901 et seq.] shall not be affected thereby.

(Nov. 8, 1978, P. L. 95-608, Title IV, § 403, 92 Stat. 3078.)

Index

A

ABANDONED CHILDREN.
Abortion.
Infants prematurely born alive during abortion.
Declared abandoned for purposes of custody, §39-15-207.
Adoption.
Consent of parents, §36-1-110.
Defined, §36-1-102.
Determination, §36-1-110.
Baby drop off law, §36-1-142.
Child custody.
Residential time limited, §36-6-101.
Children's services department.
Duties, §34-1-103.
Foster care.
Ratification hearing.
Court's explanation of abandonment and consequences, JuvPro 401.
Infant voluntarily delivered to facility, §36-1-142.

ABDUCTION.
Adoption.
Natural parents illegally repossessing child, §36-1-123.
Child abduction prevention, §§36-6-601 to 36-6-612.
See CHILD ABDUCTION PREVENTION.

ABODE.
Residence generally.
See RESIDENCE.

ABORTION, §§39-15-201 to 39-15-210.
Abandonment.
Infants prematurely born alive during abortion.
Declared abandoned for purposes of custody, §39-15-207.
Acknowledgments.
Consent to abortion.
Signing consent form acknowledging, §39-15-202.
Actions.
Sign in physician office, clinic or other treatment facilities concerning prohibition on coerced abortion.
Civil penalties, §37-10-307.
Appeals.
Parental consent for abortion by minor, §37-10-304.
Waiver of parental consent, SupCt 24.
Child abuse and child neglect or endangerment.
Sexual abuse.
Abortion performed on minor less than 13.
Physician duties as to preservation of biological evidence, §39-15-210.
Compelling, coercing or exercising duress in order to obtain or procure, §39-15-201.
Confidentiality of information.
Pregnant woman's written consent to abortion, §39-15-202.

ABORTION —Cont'd
Confidentiality of information —Cont'd
Records and reports of abortion, §39-15-203.
Consent.
Abortion or miscarriage performed with pregnant woman's consent, §39-15-201.
Confidentiality of pregnant woman's consent, §39-15-202.
Copies of consent forms.
Providing pregnant woman, §39-15-202.
Parental consent for abortion by minor, §§37-10-301 to 37-10-308.
Pregnant woman's consent required, §39-15-202.
Truly informed consent, §39-15-202.
Criminal abortion, §39-15-201.
Definitions, §39-15-201.
Parental consent for abortion by minor, §37-10-302.
Physician, attending physicians, or referring physicians, §39-15-202.
Department of children's services.
Custody of infant prematurely born alive during abortion, §39-15-207.
Disposition of aborted fetus.
Purchase or sale of aborted fetus or tissue of aborted fetus.
Criminal offense, §39-15-208.
Fetuses.
Research, photography, sale and experimentation upon aborted fetuses, §39-15-208.
Hospitals.
Right of hospitals to refuse to accept abortion patients, §39-15-205.
Right to refuse to perform, §39-15-204.
Lawful abortions or attempts to procure miscarriages.
Circumstances, §39-15-201.
Medical records.
Parental consent for abortion by minor.
Retention of documentation required, §37-10-303.
Physicians.
Records to be kept, §39-15-203.
Miscarriages.
Attempts to procure miscarriages, §39-15-201.
Misdemeanors.
Waiting period required after physician provides required information.
Medical emergency exception, failure to note in medical records, §39-15-202.
Notice.
Information required to be furnished by physicians, §39-15-202.
Parental consent, §§37-10-301 to 37-10-308.
Anonymity of minor.
Court to ensure, §37-10-304.
Appeals, §37-10-304.
Applicability of provisions, §37-10-304.
Severability, §37-10-308.
Common law rights of parents.
Provisions not to be construed to limit, §37-10-307.

ABORTION —Cont'd
Parental consent —Cont'd
Definitions, §37-10-302.
Failure to obtain consent.
Effect on civil actions, §37-10-307.
Failure to retain required documentation, §37-10-303.
Findings of legislature, §37-10-301.
Impersonation of parent or legal guardian, §37-10-303.
Intent of legislature, §37-10-301.
Medical emergencies.
Exception to requirement, §37-10-305.
Pseudonym.
Minor may proceed under, §37-10-304.
Punitive damages.
Interference with family relations, §37-10-307.
Requirement.
Medical emergencies.
Exception to requirement, §37-10-305.
Waiver of requirement, §§37-10-303, 37-10-304.
Written consent, §37-10-303.
Retention of documentation.
Required, §37-10-303.
Severability of provisions, §37-10-308.
Violations of provisions, §37-10-306.
Effect on civil actions, §37-10-307.
Misdemeanors, §§37-10-303, 37-10-306.
Waiver of requirement, SupCt 24.
Court proceedings, §37-10-304.
Petition for, §37-10-303.
Written consent.
Required, §37-10-303.
Parental notice.
Performing abortions upon minors of less than eighteen years of age.
Notice to parents, §39-15-202.
Partial birth abortions, §39-15-209.
Photography.
Photographs of aborted fetuses, §39-15-208.
Physicians.
Information required to be furnished pregnant women, §39-15-202.
Records and reports, §39-15-203.
Right to refuse to perform abortion, §39-15-204.
Premature birth after abortion.
Right to medical treatment of infant.
Violation of section, §39-15-206.
Premature birth during abortion.
Custody of infant prematurely born alive, §39-15-207.
Rights to medical treatment of infants, §39-15-206.
Preservation of life or health of mother.
Lawful abortions or attempts to procure miscarriages, §39-15-201.
Rape of child.
Abortion performed on minor less than 13.
Physician duties as to preservation of biological evidence, §39-15-210.

ABORTION —Cont'd
Records.
Parental consent for abortion by minor.
Retention of documentation required, §37-10-303.
Physicians performing to keep, §39-15-203.
Refusal to accept abortion patients.
Right of hospitals, §39-15-205.
Research.
Medical experiments or research upon aborted fetuses, §39-15-208.
Residents.
Lawful abortions or attempts to procure miscarriages.
Evidence pregnant woman bona fide resident of state, §39-15-201.
Right of hospitals to refuse to accept abortion patients, §39-15-205.
Right to refuse to perform abortion, §39-15-204.
Waiting period required after physician provides required information.
Violation of subsection, §39-15-202.
Wrongful death.
Limitation on wrongful death actions, §39-15-206.

ACCOUNTS AND ACCOUNTING.
Conservators for persons with disabilities.
Accounting with court, §34-1-111.
Examination of annual accounting, §34-1-131.
Transfer of fiduciary relationship, §34-1-117.
Guardians for minors.
Accounting with court, §34-1-111.
Examination of annual accounting, §34-1-131.
Transfer of fiduciary relationship, §34-1-117.

ACTIONS.
Abortion.
Parental consent for abortion by minor.
Failure to obtain consent.
Effect on civil actions, §37-10-307.
Sign in physician office, clinic or other treatment facilities concerning prohibition on coerced abortion.
Civil penalties, §37-10-307.
Wrongful death actions.
Limitations on, §39-15-206.
Aid to dependent children.
Deserting spouse or parent, action against, §71-3-123.
Alienation of affections.
Tort action abolished, §36-3-701.
Compromise of matters in controversy.
Power of court to approve and confirm, §34-1-121.
Desertion and nonsupport.
Aid to dependent children.
Deserting spouse or parent, action against, §71-3-123.
Disabilities, persons with.
Compromise of matters in controversy.
Power of court to approve and confirm, §34-1-121.
Divorce.
General provisions, §§36-4-101 to 36-4-135.
See DIVORCE.
Emancipation of minor, §§29-31-101 to 29-31-105.

ACTIONS —Cont'd
Guardians.
Appointment for minors, §34-2-101.
Shoplifting.
Theft of retail merchandise by minor.
Civil liability of adult, parent or guardian, §39-14-144.
Paternity proceedings, §§36-2-305 to 36-2-308.
Removal of disability, §§29-31-101 to 29-31-105.
Shoplifting.
Theft of retail merchandise by minor.
Civil liability of adult, parent or guardian, §39-14-144.
Welfare.
Temporary assistance.
Electronic benefits transfer cards, prohibited purchases.
Action to suspend license of business entity violating provisions, §71-3-126.

ACTORS.
Child labor.
Protection of minor performers, §§50-5-201 to 50-5-222.
See CHILD LABOR.

ADMINISTRATIVE OFFICE OF THE COURTS.
Office to develop forms, §36-3-604.

ADMINISTRATIVE PROCEDURE.
Child support enforcement actions, §§36-5-801 to 36-5-816.
Appeal of administrative actions, §§36-5-1001 to 36-5-1006.
Lien enforcement, §36-5-905.

ADOLESCENTS AT RISK.
Model after school and/or summer programs.
Department of children's services to establish, §37-5-125.

ADOPTION.
Advance notice of release of records.
Advance notice registry, §36-1-304.
Definition of advance notice period, §36-1-302.
Purpose of provisions, §36-1-301.
Request for advance notice.
Persons entitled to file, §36-1-303.
Rules and regulations, §36-1-305.
Applicability of provisions, §36-1-107.
Baby selling, §§36-1-109, 37-5-401 to 37-5-406.
Biological family.
Illegally obtaining custody of child, §36-1-123.
Release of nonidentifying information concerning biological family, §36-1-133.
Bribes, §36-1-109.
Certificate of birth.
New certificate of birth.
Prerequisites, §68-3-310.
Child placement.
Entities authorized to place children for adoption, §36-1-108.
Foster care plans, §§37-2-401 to 37-2-418.
See FOSTER CARE.
Illegal payments, §36-1-109.
Interstate compact on placement of children, §§37-4-201 to 37-4-207.
Children's services department.
Information to be provided to adoptive family by department, §36-1-144.

ADOPTION —Cont'd
Children's services department —Cont'd
Post-adoption services and searches, §37-5-122.
Child support.
Obligor adopting another child considered change in circumstances, §36-5-101.
Compacts.
Child placement.
Interstate compact on placement of children, §§37-4-201 to 37-4-207.
Complaint for parentage.
Filing by person listed on putative father registry, §36-2-318.
Consent.
Parents.
Termination of parental rights, §36-1-111.
Consent of parents.
Pre-surrender request for home study or preliminary home study, §36-1-111.
Revocation, §36-1-112.
Under eighteen, §36-1-110.
Construction and interpretation, §36-1-101.
Contact veto registry, §36-1-128.
Access to records, §36-1-130.
Fees for registration, §36-1-141.
Notification made as part of search, contact or identifying request, §36-1-136.
Procedures for filing veto or giving consent, §36-1-129.
Records of deceased or disabled persons, §36-1-134.
Search of registry, §36-1-130.
Transmission of information between affected parties, §36-1-134.
Violations of veto, §36-1-132.
Custodial interference.
Biological parents illegally obtaining custody, §36-1-123.
Deceased persons.
Access to records, §36-1-134.
Definitions, §36-1-102.
Denial of paternity and notice by legal father, §36-1-111.
Disabled persons.
Access to records, §36-1-134.
Dismissal of adoption proceedings.
Disposition of child, §36-1-118.
Notice, §36-1-118.
Effect of adoption on relationship, §36-1-121.
False information related to information requests, providing, §36-1-139.
Fees.
Clerks of court, §8-21-401.
Searches, registration and copies, §36-1-141.
Felonies.
Payments in connection with placing child, §36-1-109.
Providing false information related to information requests, §36-1-139.
Unauthorized disclosure of records, §36-1-125.
Foreign adopted children.
Filing of decree and translation of decree, §36-1-106.
Readoption within state, §36-1-106.
Foster care plans, §§37-2-401 to 37-2-418.
See FOSTER CARE.

ADOPTION —Cont'd
Home study.
Pre-petition home study, §36-1-116.
Pre-surrender request, §36-1-111.
Immunities.
Good faith actions, §36-1-140.
Inheritance.
Effect of final order, §36-1-121.
Injunctions.
Placement in violation of provisions, §36-1-108.
Violations of contact veto, §36-1-132.
Interpreter for parent or guardian not fluent in English.
Provision prior to final hearing, §36-1-111.
Interstate child custody proceedings, §§36-6-201 to 36-6-243.
See INTERSTATE CHILD CUSTODY PROCEEDINGS.
Interstate compact on adoption and medical assistance, §§36-1-201 to 36-1-206.
Amount of assistance, §36-1-202.
Applicability of part, §36-1-204.
Compliance with federal law, §36-1-206.
Documentation of eligibility, §36-1-203.
Penalties, §36-1-205.
Text of compact, §36-1-201.
Interstate compact on placement of children, §§37-4-201 to 37-4-207.
Intervention.
Filing by person listed on putative father registry, §36-2-318.
Jurisdiction.
Termination of parental rights, §36-1-113.
Kidnapping.
Abduction by natural parents, §36-1-132.
Minor parents.
Consent, §36-1-110.
No contact orders.
Restraining order prohibiting contact or interference with child.
Validity after adoption finalized, §36-1-123.
Notice.
Advance notice of release of information, §§36-1-301 to 36-1-305.
Contact veto registry.
Notification made as part of search, contact or identifying request, §36-1-136.
Dismissal of adoption proceedings, §36-1-118.
Person entitled to notice, §36-1-111.
Order of adoption, final.
Binding effect, §36-1-122.
Certified copy authorized to be released, §36-1-120.
Child related to petitioner, §36-1-119.
Contents, §36-1-120.
Effect on relationship, §36-1-121.
Reports, §36-1-120.
When entered, §36-1-119.
Parentage orders entered subsequent to petitions, §36-2-307.
Parents.
Termination of parental rights.
Denial of paternity and notice by legal father, §36-1-111.
Payments in connection with placing child, §36-1-109.
Petition.
Parties, §36-1-115.
Pre-petition home study, §36-1-116.

ADOPTION —Cont'd
Placement.
Bribes, §36-1-109.
Entities authorized to place children for adoption, §36-1-108.
Foster care plans, §§37-2-401 to 37-2-418.
See FOSTER CARE.
Interstate compact on placement of children, §§37-4-201 to 37-4-207.
Payments in connection with, §36-1-109.
Post-adoption services and searches.
Children's services department, §37-5-122.
Goal of supporting permanency in adoption, §36-1-143.
Information to be provided to adoptive family by department, §36-1-144.
Prior adoptions and terminations of parental rights.
Validation, §36-1-103.
Protective orders.
Restraining order prohibiting contact or interference with child.
Validity after adoption finalized, §36-1-123.
Public officers and employees.
Violation of criminal provisions by state employees, §36-1-105.
Purpose of part, §36-1-101.
Putative father registry, §36-2-318.
Readoption, §36-1-106.
Records.
Access, §36-1-126.
Contact veto registry, §36-1-130.
Advance notice of release, §§36-1-301 to 36-1-305.
Availability to adopted and certain other persons, §36-1-127.
Certificates of birth.
New certificate of birth.
Prerequisites, §68-3-310.
Confidentiality of records, §36-1-125.
Court orders for release of information, §36-1-138.
Inability of department to verify adoptive status or relationships, §36-1-137.
Preservation, §36-1-126.
Providing false information related to information requests, §36-1-139.
Seals, §36-1-126.
Search of sealed or post-adoption records, §36-1-131.
Updated medical information, §36-1-135.
Relationship of parent and child.
Signing of final order salvages, §36-1-121.
Release of nonidentifying information concerning biological family, §36-1-133.
Restraining order prohibiting contact or interference with child.
Validity after adoption finalized, §36-1-123.
Sale or surrender of child for money or thing of value, §36-1-109.
Scope of provisions, §36-1-107.
Surrender of child.
Revocation of adoption.
Court revocation, §36-1-118.
Revocation of surrender, §36-1-112.
Termination of parental rights, §36-1-111.
Termination of parental rights, §36-1-113.
Consent of parents, §36-1-111.

ADOPTION —Cont'd
Termination of parental rights —Cont'd
Contested terminations, §36-1-124.
Denial of paternity and notice by legal father, §36-1-111.
Pre-surrender request for home study or preliminary home study, §36-1-111.
Putative father, §36-1-117.
Surrender, §36-1-111.
Trafficking in children, §§37-5-401 to 37-5-406.
Bond on importation of child, §37-5-403.
Consent required for importation of child, §37-5-401.
Consent to take child out of state, §37-5-404.
Exemption for relatives of child, §37-5-406.
Payments made in connection with child placement, §36-1-109.
Penalty for violations, §37-5-405.
Placement of imported child, §37-5-402.
Sale or surrender of child for money or thing of value, §36-1-109.
Unauthorized disclosure of records, §36-1-125.
Validation of prior acts, §36-1-103.
Venue, §36-1-114.
Waiver of interest.
Form, §36-1-111.
Termination of parental rights, §36-1-111.
Withholding of material information, §36-1-104.

ADULT ABUSE.
Family violence shelters and shelter services, §§71-6-201 to 71-6-208.

ADULTERY.
Defense to divorce, §36-4-112.

ADVANCE DIRECTIVES.
Health care decisions act.
Unemancipated minors, decisions for, §§34-6-401 to 34-6-406.
See HEALTH CARE DECISIONS.

ADVERTISING.
Child abuse and child neglect or endangerment.
Prevention.
Parental help line for child abuse prevention.
Promotion and publicizing, §37-10-501.
Poison control centers.
Holding self out as poison control center.
Prohibited activities, §68-141-103.

AEROSOL GASES.
Inhaling, selling, giving or possessing for unlawful purposes, §39-17-422.

AFDC.
Families first program.
See WELFARE.

AFFIDAVITS.
Child custody.
First pleading or affidavit.
Required information to establish jurisdiction, §§36-6-224, 36-6-232.
Delinquent and unruly children.
Post-commitment relief, §37-1-316.
Divorce.
Affidavits of proof not required, §36-4-116.

AFFIDAVITS —Cont'd
Health care decisions for unemancipated minors.
Affidavit of person standing in loco parentis, §34-6-402.
Juvenile law.
Post-commitment procedures, §37-1-316.
Mental health service recipients.
Commitment.
Testimony by certifying or examining professionals, §33-3-615.
Outpatient treatment.
Assisted outpatient treatment, pilot program, §33-6-624.
Transfers of service recipients.
Judicial review of transfer.
Examining professionals, testimony of, §33-3-709.
Paternity tests, §§24-7-112, 36-2-309.

AFTER SCHOOL AND/OR SUMMER PROGRAMS FOR YOUNG ADOLESCENTS AT RISK.
Department of children's services to establish, §37-5-125.

AGE.
Child labor.
Fourteen or fifteen years of age, §50-5-104.
Fourteen years old, less than, §50-5-105.
Sixteen or seventeen years of age, §50-5-105.
Drivers' licenses.
Learners' permits.
Eligibility, §55-50-311.
Education.
School age, §49-6-3001.
School age, §49-6-3001.

AGE OF CONSENT ACT, §39-13-506.

AGGRAVATED CHILD ABUSE AND CHILD NEGLECT OR ENDANGERMENT, §39-15-402.

AGRICULTURE.
Child labor.
Agricultural work, defined, §50-5-102.
Department of agriculture.
Tobacco.
Prevention of youth access to tobacco and vapor products.
Enforcement, §39-17-1509.

AIDS.
Centers of excellence, §68-10-118.
Criminal exposure to HIV, §39-13-109.
Emergency workers.
Exposure of law enforcement, emergency personnel, etc, to blood or fluids of arrested person.
Testing of suspects, §68-10-116.
Exposure to HIV, §68-10-117.
Firefighters.
Exposure of law enforcement, emergency personnel, etc, to blood or fluids of arrested person.
Testing of suspects, §68-10-116.
Pregnancy screening for HIV, §§68-5-701 to 68-5-705.
Quarantine or isolation, criminal offense, §39-13-108.
Testing of suspects.
Exposing laboratory workers or law enforcement officers to HIV or hepatitis B, §68-10-116.

AID TO DEPENDENT CHILDREN.
Child support.
Past-due support payments, §36-2-322.

AID TO DEPENDENT CHILDREN —Cont'd
Families first program.
See WELFARE.
Temporary assistance.
Generally, §§71-3-101 to 71-3-126.

ALCOHOL AND DRUG ABUSE.
Comprehensive alcohol, tobacco and drug prevention program, §§33-10-501 to 33-10-506.
Authority of commissioner, §33-10-506.
Creation of grant, §33-10-503.
Definitions, §33-10-502.
Duties of commissioner, §33-10-505.
Eligibility for grants, §33-10-504.
Qualifying programs, §33-10-504.
Short title, §33-10-501.
Mental health services for children.
Eligibility for services, §33-8-201.

ALCOHOLIC BEVERAGES.
Contributing to delinquency.
Adult furnishing prohibited substance or product to child causing child to cause death of another, §37-1-156.
Enforcement of laws.
Use of minors in aid of enforcement, §39-15-413.
Enticing child to purchase, §39-15-404.
Firearms and other weapons.
Unlawful sale of firearm or ammunition to intoxicated persons, §39-17-1303.
Mental health.
Supplying drugs, firearms, etc., to mental health service recipient, §33-3-904.
Motor vehicles.
Juvenile offenders, §§55-10-701 to 55-10-711.
Purchasing for child, §39-15-404.
Welfare.
Temporary assistance.
Electronic benefits transfer cards, prohibited purchases, §71-3-126.

ALIENATION OF AFFECTIONS.
Action abolished, §36-3-701.

ALIENS.
Illegal aliens.
Temporary assistance for dependent children.
Ineligibility, §71-3-104.

ALIMONY.
Attorneys' fees.
Recovery by plaintiff's spouse, §36-5-103.
Award of alimony, §36-5-121.
Decree.
Award of alimony, §36-5-121.
Portion of spouse's estate decreed to spouse entitled to alimony, §36-5-102.
Divorce generally.
See DIVORCE.
Enforcement of decree, §36-5-103.
False allegations of sexual abuse in furtherance of litigation, §36-5-122.
Income assignment, administrative order, §36-5-103.
Income withholding, §36-5-501.
Individual retirement account (IRA) balances.
Lump sum amount.
Treatment when considering right to receive support, §§36-5-101, 36-5-121.

ALIMONY —Cont'd
In futuro award, §36-5-121.
In solido alimony, §36-5-121.
Interstate family support act, §§36-5-2001 to 36-5-2903.
See SUPPORT AND MAINTENANCE.
Intestacy of plaintiff spouse, §36-5-105.
Lump sum alimony, §36-5-121.
Minor custodial parents, §36-5-102.
Parenting plans, §§36-6-401 to 36-6-414.
See PARENTING PLANS.
Rehabilitative alimony, §36-5-121.
Retirement or pension benefits.
Lump sum amount.
Treatment when considering right to receive support, §§36-5-101, 36-5-121.
Support and maintenance generally.
See SUPPORT AND MAINTENANCE.
Transitional alimony, §36-5-121.

ALLERGIES.
Food allergies.
Education guidelines for management, §49-50-1602.
Schools and education.
Food allergies.
Anaphylaxis treatment.
Emergency precautions to provide treatment, §49-50-1602.
Student treating, §49-50-1602.

ALTERNATIVE DISPUTE RESOLUTION.
Parenting plans.
Defined, §36-6-402.
Procedures and restrictions applicable to, §36-6-409.

ALTERNATIVE SCHOOLS FOR SUSPENDED OR EXPELLED STUDENTS.
Advisory council for alternative education, §49-6-3404.
Curriculum, §49-6-3402.
Mandated attendance pilot project, §49-6-3402.
Monitoring success of school program, §49-6-3405.
Small learning communities, §49-1-207.
Two-way communications systems required, §49-6-3402.
Violent felonies, students charged with or convicted.
Generally.
See SCHOOLS AND EDUCATION.

AMPHITHEATERS.
Smoking at outdoor amphitheater, prohibition.
Local government ordinances prohibiting, certain localities, §39-17-1551.

ANAPHYLAXIS.
Schools, emergency precautions for treatment, §49-50-1602.

ANIMALS.
Domestic abuse protection orders.
Protection of animals, §36-3-606.
Schools and education.
Use of animals for searches and seizures, §49-6-4208.

ANNULMENT OF MARRIAGE.
Affidavits.
Affidavits of proof not required, §36-4-116.
Decrees, §36-4-119.

ANNULMENT OF MARRIAGE —Cont'd
Divorce generally.
See DIVORCE.
Legitimacy of children not affected, §36-4-125.
Parenting plans, §§36-6-401 to 36-6-414.
See PARENTING PLANS.
Remarriage.
Right to remarry, §36-4-124.
Service of process, §36-4-108.
Visitation rights of stepparents, §36-6-303.

ANTENUPTIAL AGREEMENTS.
Enforcement, §36-3-501.

ANTI-SEIZURE MEDICATION.
School personnel administering to student, §49-50-1602.

APPEALS.
Abortion.
Parental consent for abortion by minor, §37-10-304.
Child care agencies.
License denial, revocation or suspension, §37-5-514.
Child support.
Actions appealable, §36-5-1001.
Administrative orders, §36-5-806.
Assignments of income, §36-5-501.
Costs and fees, §36-5-1005.
Employment report violation penalties, §36-5-1107.
Interference with administrative action pending appeal, §36-5-1004.
Judicial review of administrative actions, §36-5-1003.
Requests for hearings, §36-5-1001.
Rules and regulations, §36-5-1006.
Scope of administrative review, §36-5-1002.
Delinquent and unruly children, §37-1-159.
Dispositional proceedings.
Notice of right to appeal, JuvPro 211.
Post-commitment relief, §37-1-321.
Attorney general to represent state, §37-1-314.
Delayed appeal, §37-1-319.
Release of petitioner on bail or temporary custody, §37-1-322.
Dependent and neglected children.
Dispositional orders, §37-1-159.
Notice of right to appeal, JuvPro 308.
Desertion and nonsupport.
Nonsupport and flagrant nonsupport.
Appeals from final orders or decrees of juvenile courts, §39-15-103.
Divorce, §36-4-123.
Juvenile proceedings.
See JUVENILE PROCEEDINGS.
Mental health.
Children, services for.
Electroconvulsive therapy.
Court approval.
De novo, §33-8-313.
Commitment.
Appeals from commitment, §33-3-620.
Paternity proceedings, §36-2-315.
Health insurance coverage for child, §36-2-319.
Sexually transmitted diseases.
Arrest and temporary commitment for treatment.
Right of persons committed, §68-10-110.
Termination of parental rights, §37-1-159.
Appeal as of right, RAP 8A.

APPEARANCES.
Child custody.
Uniform deployed parents custody and visitation act.
Proceedings for temporary custody order, §36-7-304.
Divorce, §36-4-110.
Right to compel, §36-4-108.
Interstate child custody proceedings.
Special appearances, §36-6-212.
Juvenile proceedings.
Rules of juvenile procedure.
Attorney appearance, JuvPro 104.

APPRAISALS AND APPRAISERS.
Child support lien enforcement.
Exempt property, §36-5-906.

APPROPRIATIONS.
Child advocacy centers.
Generally, §9-4-213.
Receiving homes, §37-2-302.

ARBITRATION.
Parenting plans, dispute resolution.
Defined, §36-6-402.
Procedures and restrictions applicable to, §36-6-409.

ARREST.
Desertion and nonsupport.
Nonsupport and flagrant nonsupport.
Issuance of warrant, §39-15-104.
Domestic abuse, §36-3-619.
Violation of protection order, §§36-3-611, 36-3-612.
Juvenile courts.
Taking into custody, §§37-1-113, 37-1-115.
Sexually transmitted diseases.
Temporary commitment for treatment, §68-10-110.

ASSAULT.
Child abuse and child neglect or endangerment.
Lesser included offense of statutory assault, §39-15-401.
Criminal exposure to HIV, §39-13-109.
Domestic assault.
Shelby county.
Domestic violence court for Shelby county, §16-15-5014.
Female genital mutilation, §39-13-110.
Hepatitis B or Hepatitis C.
Criminal exposure, §39-13-109.
Mental health service recipients.
Confidentiality of records.
Felony involving bodily harm or sexual abuse.
Disclosure to law enforcement agency, §33-3-110.
School students or school employees.
Assault or injury to school student or school employee, §49-6-4006.
Communicating threat concerning school employee, §39-13-114.

ASSIGNMENTS.
Aid to dependent children.
Nontransferable, §71-3-121.
Protection of minor performers.
Contracts, §50-5-214.
Support and maintenance.
Assignment of income for support, §§36-5-501, 36-5-503.
Appeal of administrative actions, §§36-5-1001 to 36-5-1006.

ASTHMA.
Inhalers, possession by students, §49-50-1602.

ASYLUMS.
Orphan asylums, §§71-3-601 to 71-3-612.
See ORPHAN ASYLUMS.

AT-RISK ADOLESCENTS.
Model after school and/or summer programs.
Department of children's services to establish, §37-5-125.

ATTACHMENT.
Aid to dependent children.
Exemption, §71-3-121.
Child support.
Lien enforcement, §36-5-904.
Juvenile courts.
Summons and process.
Ineffectual summons, §37-1-122.

ATTORNEY AD LITEM.
Guardianships and conservatorships.
Appointment, §34-1-125.

ATTORNEY GENERAL.
Delinquent and unruly children.
Post-commitment relief.
Attorney general to represent state on appeals, §37-1-314.
Support and maintenance.
Uniform interstate family support act.
Duties of attorney general, §36-5-2308.

ATTORNEYS AT LAW.
Child sexual abuse.
Exceptions to privilege.
Inapplicability of exceptions, §37-1-614.
Conservators for disabled.
Attorney ad litem, §34-1-125.
Delinquent and unruly children.
Post-commitment relief.
Appointment of counsel, §37-1-320.
Record of counsel's consultations with petitioner, §37-1-317.
Right of indigent petitioner to counsel, §37-1-313.
Rights of children, notification and waiver, JuvPro 205.
Right to counsel, §37-1-126.
Post-commitment relief proceedings, §37-1-313.
Dependent children.
Right to counsel, §37-1-126.
Divorce proceedings.
Right to counsel, §36-4-108.
Guardians for minors.
Attorney ad litem appointment, §34-1-125.
Juvenile proceedings.
Right to counsel, §37-1-126.
Rules of juvenile procedure.
Appearance of attorney, JuvPro 104.
Right to attorney, JuvPro 118.
Mental health.
Children, services for.
Electroconvulsive therapy.
Appointment of or representation by attorney, §33-8-310.
Commitment, §33-3-608.
Inpatient treatment, §33-6-419.
Outpatient treatment, §33-6-618.
Residential service recipients.
Communication with attorney, §33-4-101.
Transfers of service recipients.
Judicial review of transfer, §33-3-704.
Special education.
Individualized education programs for disabled children.
Attorneys excluded from teams, §49-10-607.

ATTORNEYS AT LAW —Cont'd
Support and maintenance.
Uniform interstate family support act.
Employment of private counsel, §36-5-2309.

ATTORNEYS' FEES.
Alimony cases, §36-5-103.
Child custody.
Relocation by parent, proceedings, §36-6-108.
Uniform deployed parents custody and visitation act.
Remedies for bad faith acts or intentional noncompliance, §36-7-103.
Child support.
Appeal of administrative decisions, §36-5-1005.
Employment report violation appeals, §36-5-1107.
Conservators for persons with disabilities.
Charging of costs of proceedings, §34-1-114.
Payment by conservator, §34-1-113.
Delinquent and unruly children, §37-1-150.
Dependent and neglected children, §37-1-150.
Domestic abuse protection orders, §36-3-617.
Guardians for minors.
Charging of costs of proceedings, §34-1-114.
Payment by guardian, §34-1-113.
Interstate child custody proceedings.
Award to prevailing party, §36-6-236.
Interstate family support act, §36-5-2313.
Mental health service recipients.
Commitment.
Costs of proceedings, §33-3-503.
Paternity proceedings, §36-2-311.
Schools and education.
Assault or injury to student or employee or property of student or employee.
Civil cause of action, §49-6-4006.
Fraudulent enrollment of student in school district.
Civil action seeking restitution, §49-6-3003.
Sexual abuse.
False allegations of sexual abuse in furtherance of litigation, §§36-4-135, 36-5-122, 36-6-114.
Support and maintenance, §36-5-103.
Interstate family support act, §36-5-2313.

AUDIO RECORDINGS.
Juvenile proceedings.
Transfer hearings, §37-1-134.

AUDIOVISUAL TESTIMONY.
Juvenile proceedings.
Rules of juvenile procedure.
Audio-visual participation in proceedings, JuvPro 112.

AUDITS.
Child care agencies, §§71-3-502, 71-3-506.
Community service agencies.
Annual audit, §37-5-313.
State mental health facilities.
Employee as guardian or conservator.
Accountability for funds, §33-4-205.

AUTOMOBILES.
See MOTOR VEHICLES.

B

BABY DROP OFF LAW.
Voluntary delivery of infant to facility, §36-1-142.

BABY SELLING.
Payments in connection with placing child for adoption, §§36-1-109, 36-1-135.

BAIL AND RECOGNIZANCE.
Domestic violence, §36-3-615.
Juvenile law.
Post-commitment procedure, §37-1-322.

BANKRUPTCY AND INSOLVENCY.
Aid to dependent children.
Exemption from operation of bankruptcy and insolvency laws, §71-3-121.

BARBERS.
Youth development centers.
Instruction in barbering, §37-5-212.

BATTERY.
Sexual battery.
Aggravated sexual battery, §39-13-504.
Victim under thirteen years of age, §39-13-504.
Authority figures, §39-13-527.

BEEPERS.
School security.
Electronic pagers, possession by students.
Prima facie evidence of intent to use in violation of part, §49-6-4214.

BEJACH LAW.
Emancipation act, §§36-3-504, 36-3-505.

BIGAMY.
Criminal law and procedure, §39-15-301.

BILLS OF PARTICULARS.
Divorce, §36-4-106.

BIRTH.
Baby drop off law.
Voluntary delivery of infant to facility, §36-1-142.
Birth defects registry, §68-5-506.

BIRTH CONTROL.
Abortion, §§39-15-201 to 39-15-210.
See ABORTION.
Family planning act of 1971, §§68-34-101 to 68-34-111.
See FAMILY PLANNING ACT OF 1971.

BLACKJACKS.
School property.
Carrying weapons on school property, §39-17-1309.

BLIND PERSONS.
Aid to the blind.
Temporary assistance.
Not considered as resource in determining temporary assistance, §71-3-105.
Education, §49-6-3015.
Special education.
Children with physical or visual disabilities.
Department of education empowered to provide special schools, classes, etc, §68-12-109.

BLOODBORNE PATHOGENS.
Sharps injury prevention technology.
Diabetes, student management at schools, §49-50-1602.

BLOOD TESTS.
Paternity determinations, §§24-7-112, 36-2-309.
Costs of test admissible, §36-2-308.
Sexually transmitted diseases.
Confidentiality of records and information, §68-10-113.

BLUE BABIES.
Genetic testing.
Critical cyanotic congenital heart disease.
Screening of newborns, §68-5-507.

BOARDS AND COMMISSIONS.
Child abuse.
Severe child abuse.
Second look commission to study second or subsequent incidents of severe child abuse, §§37-3-801 to 37-3-815.
Child placement.
Advisory review boards.
Foster care plans, §§37-2-402, 37-2-406.
Foster care review boards.
Foster care plans, §37-2-406.
Children and youth.
Commission on children and youth, §§37-3-101 to 37-3-116.
Commission on children and youth.
See JUVENILE PROCEEDINGS.
Council of juvenile and family court judges, §§37-1-501 to 37-1-507.
See JUVENILE PROCEEDINGS.

BOATS.
Personal flotation devices, §69-9-225.

BODY PIERCING, §§62-38-301 to 62-38-310.
Administrative and regulatory action, §62-38-308.
Age for having procedure performed, §§62-38-304 to 62-38-306.
Business performing services.
Application for approval, §62-38-309.
Approval required, permit, §62-38-303.
Continuing requirements, §62-38-307.
Criminal penalties for violations, §62-38-310.
Inspection, §62-38-304.
Consent by parent, legal guardian or legal custodian, §62-38-305.
Definitions, §62-38-301.
Disinfecting and sterilizing invasive equipment, §62-38-302.
Technicians to perform, §62-38-307.
False information to obtain procedure.
Persons underage, §62-38-306.
Impersonating parent, legal guardian or legal custodian.
Persons underage, §62-38-306.
License required to perform procedure, §62-38-302.
Obtaining procedure underage, false information, §62-38-306.
Permits.
Business performing services, §§62-38-303, 62-38-309.
Temporary facility, §62-38-309.
Proof of age of patron.
Operator to require, §62-38-306.
Rules for enforcement, §62-38-308.
Sterilizing devices.
Testing, §62-38-307.
Time-limited establishments.
Operation in conjunction with specific event, §62-38-309.

BODY PIERCING —Cont'd
Trained technicians, §62-38-307.
Universal blood and body fluid precautions.
Rules to establish, §62-38-308.

BODY VEST.
Commission of certain offenses while wearing, §39-17-1323.

BOMB THREATS.
Suspension or expulsion of pupils, §49-6-3401.

BONDS, SURETY.
Adoption.
Importation of child, §37-5-403.
Child support.
Parent in arrears, §36-5-101.
Conservators for persons with disabilities, §34-1-105.
Standby fiduciary, §34-1-119.
Transfer of fiduciary relationship, §34-1-117.
Cost bonds.
Attorney opting to sign, filing in lieu of payment of clerk's fees, §8-21-401.
Divorce.
Costs.
Security for costs, §36-4-108.
Domestic abuse protection orders.
Arrest for violation of protection order, §36-3-612.
Bond not required, §36-3-607.
Violation of protection order.
Forfeiture procedures, §36-3-610.
Importation of children, §37-5-403.
Juvenile courts.
Release from detention.
Hearing, §37-1-117.
State mental health facilities.
Employee as guardian or conservator, §33-4-203.
Trafficking in children, §37-5-403.

BOOKS.
Child support lien enforcement.
Exemptions from sale, §36-5-906.

BOWIE KNIVES.
School property.
Carrying weapons on school property.
Affirmative defense, §39-17-1309.

BOY SCOUTS.
Child abuse and child neglect or endangerment.
Reports.
Authority figures at a community facilities.
Child sexual abuse, §37-1-605.

BRIBERY.
Adoption.
Charging or receiving anything of value, §36-1-109.

BULLIES.
Schools and education.
Bullying, cyber-bullying, harassment or intimidation, §§49-6-4501 to 49-6-4506.

BURDEN OF PROOF.
Child support.
Necessity of child support in excess of guidelines, §36-5-101.
Delinquent and unruly children.
Adjudicatory proceedings, JuvPro 210.
Dispositional proceedings, JuvPro 211.
Home placement.
Violation of supervision conditions, JuvPro 212.

BURDEN OF PROOF —Cont'd
Delinquent and unruly children —Cont'd
Probation.
Violation of conditions, JuvPro 212.
Dependent and neglected children.
Adjudicatory proceedings, JuvPro 307.
Dispositional proceedings, JuvPro 308.
Relative caregiver custody, child to remain in.
Change in circumstances, §37-1-183.
Guardians for minors.
Permanent guardianship.
Modification of order of visitation, §37-1-803.
Termination or modification, §37-1-806.
Mental health.
Outpatient treatment.
Assisted outpatient treatment, pilot program, §33-6-624.
Mandatory outpatient treatment.
Procedural rights under provisions, §33-6-618.
Support and maintenance.
Contesting registered orders, §36-5-3107.
Interstate family support act, §36-5-2607.

BURGLARY AND RELATED OFFENSES.
Motor vehicles.
Trespass by motor vehicles, §39-14-407.
Vandalism, §39-14-408.

C

CARDIAC ARREST.
Sudden cardiac arrest prevention act, §§68-6-101 to 68-6-104.
See SUDDEN CARDIAC ARREST PREVENTION.

CELLULAR TELEPHONES.
Operation of vehicle while using mobile telephone, §55-50-311.

CENTRAL REGISTRY FOR SEXUAL OFFENDERS, §38-6-110.

CERTIFICATES OF PUBLIC ADVANTAGE.
Community mental health centers.
Cooperative agreements, §33-2-704.
Application fees, §33-2-707.
Effect of grant or denial, §33-2-706.
Judicial review, §33-2-705.

CHANCROID.
Sexually transmitted diseases generally, §§68-10-101 to 68-10-118.
See SEXUALLY TRANSMITTED DISEASES.

CHANGE OF NAME.
Clerk's fees, §8-21-401.

CHANGE OF VENUE.
Paternity proceedings, §36-2-307.

CHILD ABDUCTION PREVENTION, §§36-6-601 to 36-6-612.
Abduction.
Defined, §36-6-602.
Child.
Defined, §36-6-602.
Child custody determinations.
Defined, §36-6-602.
Preventive measures.
Contents of prevention orders, §§36-6-601 to 36-6-612.

CHILD ABDUCTION PREVENTION —Cont'd
Child custody proceedings.
Defined, §36-6-602.
Courts.
Cooperation and communication among courts, §36-6-603.
Defined, §36-6-602.
Ordering preventive measures, §36-6-604.
Definitions, §36-6-602.
Electronic signatures.
Effect of provisions on electronic signatures in global and national commerce act, §36-6-612.
Jurisdiction.
Petitions, §36-6-605.
Petitions.
Contents, §36-6-606.
Defined, §36-6-602.
Jurisdiction, §36-6-605.
Physical custody of child.
Warrants for physical custody, §§36-6-608, 36-6-609.
Preventive measures.
Contents of prevention orders, §36-6-608.
Courts, parties and prosecutors seeking preventive measures, §36-6-604.
Duration of prevention orders, §36-6-610.
Records.
Defined, §36-6-602.
Risk factors for abduction.
Contents of petition, §36-6-606.
Listing, §36-6-607.
Short title of provisions, §36-6-601.
State.
Defined, §36-6-602.
Statutory construction.
Electronic signatures.
Effect of provisions on electronic signatures in global and national commerce act, §36-6-612.
Uniformity of application and construction, §36-6-611.
Travel documents.
Defined, §36-6-602.
Preventive measures.
Contents of prevention orders, §36-6-608.
Visitation.
Preventive measures.
Contents of prevention orders, §§36-6-601 to 36-6-612.
Warrants.
Physical custody of child, warrant for, §§36-6-608, 36-6-609.
Wrongful removal.
Defined, §36-6-602.
Wrongful retention.
Defined, §36-6-602.

CHILD ABUSE AGENCIES.
Child care agencies, juveniles, §§37-5-501 to 37-5-519.
See CHILD CARE AGENCIES, JUVENILES.

CHILD ABUSE AND CHILD NEGLECT OR ENDANGERMENT.
Aggravated child abuse, §39-15-402.
Assault.
Lesser included offense of statutory assault, §39-15-401.
Child abduction prevention.
Risk factors for abduction.
Listing, §36-6-607.

CHILD ABUSE AND CHILD NEGLECT OR ENDANGERMENT —Cont'd
Child care agencies.
Procedure upon allegations, §37-5-512.
Child care facilities.
Duty of workers to report child sexual abuse, §37-1-605.
Child custody.
Effect of abuse, neglect, etc., on custody or visitation, §36-6-112.
Parental allegations, §36-6-112.
Presumption of substantial risk of harm to child.
Parent indicted for aggravated child abuse or child sexual abuse, §36-6-112.
Child defined, §37-1-401.
Child sexual abuse, §§37-1-601 to 37-1-616.
False reporting, §37-1-413.
Churches.
Reports.
Duty of authority figure to report.
Child sexual abuse, §37-1-605.
Community facilities.
Reports.
Duty of authority figure to report.
Child sexual abuse, §37-1-605.
Contributing to neglect, §37-1-157.
Corporal punishment.
Administered to child by parent, guardian or custodian.
Issuance of arrest warrant or summons for institution of criminal charges, §39-15-401.
Criminal offense generally, §39-15-401.
Custody proceedings.
Mediation in cases involving domestic abuse, §36-6-107.
Day care facilities.
Duty of workers to report child sexual abuse, §37-1-605.
Deadly weapon used to accomplish act.
Aggravated child abuse and child neglect or endangerment, §39-15-402.
Definitions.
Child, §37-1-401.
Child sexual abuse, §37-1-602.
Crimes and offenses, §39-15-401.
Department, §37-1-401.
Report of harm, §37-1-401.
Department of children's services.
Defined, §37-1-401.
Sexual abuse, §37-1-611.
Disposition, §37-1-130.
Department of children's services, §37-2-205.
Fingerprints.
Persons working with children, §37-1-414.
Foster home investigation, §37-2-415.
Guardian ad litem.
Appointment, §37-1-149.
Compensation, §37-1-150.
Powers and duties, SupCt 40.
Sexual cases, §37-1-610.
Homicide.
Lesser included offense of homicide, §39-15-401.
Hospitals.
Personnel required to report child sexual abuse, §37-1-605.
Retention of custody of child, §37-1-404.
Human trafficking.
Reporting, §37-1-403.

CHILD ABUSE AND CHILD NEGLECT OR ENDANGERMENT —Cont'd
Immunity for making report, §37-1-410.
Interpreter for hearing-impaired child.
Investigator not to use member of child's family as interpreter, §37-1-406.
Interstate child custody proceedings.
Immunities and privileges.
Inapplicability, §36-6-234.
Investigations, §37-1-406.
Multi-level response system for children and families, §37-5-604.
Jurisdiction.
Juvenile courts, §39-15-401.
Mandatory reports.
Prosecution of violations, §37-1-103.
Temporary jurisdiction to issue temporary orders, §37-1-103.
Lesser included offense, §39-15-401.
Mental health service recipients.
Confidentiality of records.
Nondisclosure of child's records to person accused of abuse, §33-3-111.
Methamphetamine.
Manufacturing, delivering, selling or possession.
Exposing child to manufacturing process.
Aggravated child abuse and child neglect or endangerment, §39-15-402.
Multi-level response system for children and families, §§37-5-601 to 37-5-608.
Advisory boards, local, §37-5-607.
Advisory committee, §37-5-603.
Assessments, §37-5-604.
Consultation with families, §37-5-604.
Definitions, §37-5-601.
Demonstration program establishment, §37-5-603.
Independent local advisory board, §37-5-607.
Informational materials, §37-5-606.
Intervention, determination of appropriate levels, §37-5-604.
Investigatory duties, §37-5-604.
Purpose of provisions, §37-5-602.
Referral for community-based services, §37-5-604.
Reporting by department, §37-5-605.
Reporting by jurisdictions using, §37-1-406.
Rules and regulations, §37-5-608.
Screening of reports of harm, §37-5-604.
Staffing of program, §37-5-603.
Training of personnel, §37-5-606.
Parks and recreation.
Reports.
Duty of authority figure to report.
Child sexual abuse, §37-1-605.
Paternity proceedings.
Orders denying public access to victim information, §§36-2-311, 37-1-151.
Persons working with children.
Release of investigative and criminal records of applicants, §37-1-414.
Physical abuse alleged.
Referrals for investigation, §37-1-406.
Physicians and surgeons.
Duty to report child sexual abuse, §37-1-605.

CHILD ABUSE AND CHILD NEGLECT OR ENDANGERMENT —Cont'd
Physicians and surgeons —Cont'd
Privileged communications.
Child sexual abuse.
Exception to privilege, §37-1-614.
Retention of custody of child, §37-1-404.
Pregnancy.
Provision of information on reporting child sexual abuse.
Person making initial diagnosis of pregnancy to unemancipated minor, §37-1-403.
Prevention.
Parental help line for child abuse prevention.
Promotion and publicizing, §37-10-501.
Privileged communications.
Child abuse reporting.
Privileges inapplicable, §37-1-411.
Child sexual abuse.
Exception to certain privileges, §37-1-614.
Religious facilities.
Reports.
Duty of authority figure to report.
Child sexual abuse, §37-1-605.
Reporting.
Applicability of chapter, §37-1-402.
Child custody.
Retention by hospitals or physicians, §37-1-404.
Confidentiality of information, §37-1-409.
Court's powers, §37-1-412.
Definition of report of harm, §37-1-401.
Department of children's services.
Local director.
Reference of reported cases, §37-1-405.
Duty to report.
Any person with knowledge to report, §§37-1-402, 37-1-403.
Child sexual abuse, §§37-1-403, 37-1-605.
Evidence.
Privileges inapplicable, §37-1-411.
Examination of child, §37-1-406.
Health care providers.
Immunity for making report, §37-1-410.
Hospitals.
Duty of personnel to report child sexual abuse, §37-1-605.
Retention of custody of child, §37-1-404.
Immunity from liability, §37-1-410.
Investigations, §37-1-406.
Jurisdiction over prosecutions, §37-1-103.
Juvenile courts.
Powers, §37-1-412.
Liability for reporting abuse.
Immunity from civil or criminal liability, §37-1-410.
Multi-level response system, jurisdictions using, §37-1-406.
Notice to judge, §37-1-405.
Notification of report to parent or guardian, §37-1-403.
Sexual abuse, §37-1-605.
Organizations with responsibility for child's care.
Approved procedure for reporting.
Compliance with duty to report, §§37-1-402, 37-1-403.

CHILD ABUSE AND CHILD NEGLECT OR ENDANGERMENT —Cont'd
Reporting —Cont'd
Penalties.
Confidentiality violated, §37-1-409.
Failure to report, §37-1-412.
Child sexual abuse, §37-1-615.
False reporting of child sexual abuse or other injury, §37-1-413.
Violations of chapter, §37-1-412.
Physicians.
Duty to report child sexual abuse, §37-1-605.
Retention of custody of child, §37-1-404.
Purposes of chapter, §37-1-402.
Reference to local director, §37-1-405.
Rules and regulations.
Disclosure of information, §37-1-409.
Schools and education.
School grounds or school supervision, abuse occurring on or during, §49-6-1601.
Services provided, §37-1-406.
Termination of employment.
Damages, §37-1-410.
Violations of chapter.
Penalties, §37-1-412.
Schools and education.
Duty of personnel to report child sexual abuse, §37-1-605.
Reports.
School grounds or school supervision, abuse occurring on or during, §49-6-1601.
Second look commission to study second or subsequent incidents of severe child abuse, §§37-3-801 to 37-3-815.
Sentencing.
Juvenile courts.
Authority of judges, §39-15-401.
Serious bodily injury resulting.
Aggravated child abuse, §39-15-402.
Severe child abuse.
Defined, §§37-1-102, 37-3-802.
Second look commission to study second or subsequent incidents of severe child abuse, §§37-3-801 to 37-3-815.
Administrative attachment to commission on children and youth, §37-3-805.
Appropriate sampling.
Defined, §37-3-802.
Review, §37-3-806.
Authority, §37-3-803.
Compensation of commission members, §37-3-807.
Composition of commission, §37-3-804.
Confidential information.
Access by commission to information made confidential, §37-3-810.
Conflict of laws.
Investigation or reviews authorized by other provisions, §37-3-813.
Conflicts of interest.
Policies to avoid, §37-3-815.
Consultants, §37-3-811.
Criminal violations.
Information sharing with investigators, §37-3-814.
Definitions, §37-3-802.
Duties, §37-3-803.
Establishment of commission, §37-3-803.

CHILD ABUSE AND CHILD NEGLECT OR ENDANGERMENT —Cont'd
Severe child abuse —Cont'd
Second look commission to study second or subsequent incidents of severe child abuse —Cont'd
Findings and recommendations, §37-3-803.
Immunity from liability, §37-3-812.
Independence of commission, §37-3-805.
Meetings, §37-3-808.
Open meetings, §37-3-810.
Minutes of meetings, §37-3-808.
Profiled cases.
Defined, §37-3-802.
Review, §37-3-806.
Table of profiled cases, §37-3-806.
Reports to general assembly, §37-3-803.
Requests by commission.
Responses, §37-3-809.
Short title of provisions, §37-3-801.
Staff, §37-3-811.
Terms of members, §37-3-804.
Travel and other expense reimbursements, §37-3-807.
Voting members of commission, §37-3-807.
Sexual abuse.
Abortion performed on minor less than 13.
Physician duties as to preservation of biological evidence, §39-15-210.
Budgets.
Request, §37-1-603.
Child care agencies.
Procedure upon allegations, §37-5-512.
Child protective teams.
Composition, §37-1-607.
Coordination of services, §37-1-607.
Investigations, §37-1-607.
Recommendations, §37-1-607.
Child sexual abuse exception to privilege, §37-1-614.
Comprehensive state plan.
Development, §37-1-603.
Conduct constituting, §37-1-602.
Confidentiality of records and reports, §37-1-612.
Construction and interpretation of part, §37-1-601.
Costs and expenses of procedure.
Parental reimbursement, §37-1-610.
Reimbursement, §37-1-610.
Crimes against nature.
When child sexual abuse, §37-1-602.
Definitions, §37-1-602.
Department of children's services, §37-1-611.
Dissemination of information, §37-1-603.
Evidence.
Privileges inapplicable to child sexual abuse cases, §37-1-614.
Video recording of interview of child describing sexual conduct, §24-7-123.
Examinations of suspected abuse, §37-1-609.
Exploitation of children, §§39-17-1001 to 39-17-1008.
See SEXUAL EXPLOITATION OF CHILDREN.
Guardian ad litem.
Appointment, §37-1-610.

CHILD ABUSE AND CHILD NEGLECT OR ENDANGERMENT —Cont'd
Sexual abuse —Cont'd
Harm to child's health or welfare, §37-1-602.
Incest.
When child sexual abuse, §37-1-602.
Institutional abuse, §37-1-606.
Intent of legislature, §37-1-601.
Investigations, protective services and reports, §37-1-604.
Investigations, §§37-1-406, 37-1-605.
Child protective teams, §§37-1-606, 37-1-607.
Commencement, §37-1-606.
Confirmation of investigation, §37-1-612.
Intent of legislature, §37-1-604.
Multi-level response system, jurisdictions using, §37-1-406.
Notification of district attorney general, §37-1-405.
Obscenity.
Use of minor for obscene purposes.
When child sexual abuse, §37-1-602.
Photographs of suspected abuse, §37-1-609.
Prevention deemed priority of state, §37-1-601.
Privileged communications.
Evidentiary privileges inapplicable, §37-1-614.
Protective custody of children.
Authority to take child into custody, §37-1-608.
Protective services.
Intent of legislature, §37-1-604.
Purpose of part, §37-1-601.
Rape.
When child sexual abuse, §37-1-602.
Records, §37-1-612.
Reports.
Anonymity of abuse reporters, §37-1-612.
Confidentiality, §37-1-612.
Departmental availability for receiving, §37-1-606.
Duty to report, §§37-1-403, 37-1-605.
False reporting, §37-1-413.
Immunity from civil or criminal liability, §37-1-613.
Intent of legislature, §37-1-604.
Reference to local director, §37-1-405.
Required, §§37-1-403, 37-1-605.
School grounds or school supervision.
Abuse on or during, §49-6-1601.
Violations, §37-1-615.
Who may report, §§37-1-403, 37-1-605.
Rules and regulations.
Disclosure of information, §37-1-409.
Promulgation, §37-1-616.
Schools and education.
Reporting abuse occurring on school grounds or during school supervisions, §49-6-1601.
Sexual battery.
When child sexual abuse, §37-1-602.
Sexual conduct by children.
Promotional performances including.
When child sexual abuse, §37-1-602.
Video recordings.
Use, §37-1-609.
Witnesses.
Audio-visually recorded testimony, §24-7-117.

CHILD ABUSE AND CHILD NEGLECT OR ENDANGERMENT —Cont'd
Sexual exploitation of children, §§39-17-1001 to 39-17-1008.
See SEXUAL EXPLOITATION OF CHILDREN.
Sexual offenses.
Lesser included offense, §39-15-401.
Special advocates, §37-1-149.
Sports facilities.
Reports.
Duty of authority figure to report.
Child sexual abuse, §37-1-605.
Teachers.
Reports.
School grounds or school supervision, abuse occurring on or during, §49-6-1601.
Temporary orders.
Temporary jurisdiction to issue, §37-1-103.
Victims.
Contact by convict with victim.
Barring convict from contact, §39-15-401.
Aggravated child abuse, §39-15-402.
Visitation rights.
Mediation in cases involving abuse, §36-6-305.
Whistleblower protection.
Punitive damages, §37-1-410.
Witnesses.
Sexually abused children.
Audio-visually recorded testimony, §24-7-117.

CHILD ADVOCACY CENTERS.
Appropriations.
Generally, §9-4-213.
Child abuse and child neglect or endangerment.
Severe child abuse.
Second look commission to study second or subsequent incidents of severe child abuse.
Responses to requests by commission, §37-3-809.
Video recording of interview of child describing sexual conduct.
Persons authorized to conduct, §24-7-123.

CHILD CARE AGENCIES, JUVENILES, §§37-5-501 to 37-5-519.
Abuse.
Procedure upon allegations, §37-5-512.
Criminal history record checks.
License applications, §37-5-502.
Persons having access to children, §37-5-511.
Criminal offenses, §§37-5-507, 37-5-509, 37-5-513.
Definitions, §37-5-501.
Exemptions from licensing, §37-5-503.
Foster homes.
Selection and supervision, §37-5-506.
Grandfather clause.
Preexisting agencies subject to provisions, §37-5-504.
Individual plans for children, §37-5-517.
Injunctions.
Abuse, neglect or sexual abuse, §37-5-512.
Unlicensed operations, §37-5-508.
Inspections, §37-5-513.
Public agencies, §37-5-510.

CHILD CARE AGENCIES, JUVENILES —Cont'd
Licenses, §37-5-502.
Denial, §37-5-514.
Board of review for licensing actions, §§37-5-514, 37-5-515.
Exemptions, §37-5-503.
Licensing standards committees, §37-5-516.
Probation, §37-5-514.
Revocation or suspension, §37-5-514.
Board of review for licensing actions, §§37-5-514, 37-5-515.
Standards committees, §37-5-516.
Unlicensed acts.
Criminal penalties, §§37-5-507, 37-5-509.
Injunctions against unlicensed operations, §37-5-509.
Placement of children for care or adoption, §37-5-507.
Neglect.
Procedure upon allegations, §37-5-512.
Public agencies, §37-5-510.
Receiving children, §37-5-505.
Reports.
Annual reports, §§37-5-517, 37-5-518.
Departmental annual report, §37-5-519.
Public agencies.
Inspections and recommendations, §37-5-510.
Sexual abuse.
Procedure upon allegations, §37-5-512.

CHILD CARE AGENCIES, WELFARE, §§71-3-501 to 71-3-518.
Abuse or neglect of child or adult.
Submission of names to determine indicated perpetrators, §71-3-515.
Afterschool care services.
Licenses, §71-3-502.
Audits, §§71-3-502, 71-3-506.
Board of review, §71-3-510.
Child abuse and child neglect or endangerment.
Prevention.
Parental help line for child abuse prevention.
Promotion and publicizing, duties of licensed agencies, §37-10-501.
Contact information of parent, guardian and emergency personnel.
Multi-hazard plan to protect children in case of emergency, §71-3-517.
Criminal history record and other registry checks, §71-3-507.
Drop-in centers.
Defined, §71-3-501.
Licensing and fees, §71-3-502.
Restricted licenses, §71-3-516.
Drug testing policies to be established, §71-3-514.
Evaluations.
Report card system, §71-3-502.
Exemptions from licensure, §71-3-503.
Fines, §71-3-509.
Injunctions, §71-3-504.
Insurance, §71-3-502.
Kindergarten status, §71-3-512.
Licensing, §71-3-502.
Annual licenses, §71-3-502.
Applications, §71-3-502.
Board of review, §71-3-510.
Exemptions, §71-3-503.
Extended license, §71-3-502.
Fees, §71-3-502.

CHILD CARE AGENCIES, WELFARE —Cont'd
Licensing —Cont'd
Hearings for suspension or revocation, §71-3-509.
Mandatory report card system, §71-3-502.
Posting, §71-3-502.
Probation for violations, §71-3-509.
Public agencies, §71-3-506.
Restricted licenses, §71-3-502.
Drop-in centers, §71-3-516.
Revocation, §71-3-509.
Standards committee, §71-3-511.
Temporary licenses, §71-3-502.
Violations during licensing, §71-3-509.
Limitation of number of children, §71-3-502.
Military parent or guardian on active duty, child of.
Priority of placement on wait list, §71-3-518.
Motor vehicles used to transport children.
Color and marking requirements, §71-3-502.
Drug tests for employees providing transportation services, §71-3-502.
Safety monitoring system, §71-3-502.
Personal safety curriculum for providers, §71-3-502.
Plan for safety of children.
Department may require pending outcome of investigation, §71-3-508.
Probation, §71-3-509.
Public agencies, §71-3-506.
Records, §71-3-513.
Casual care operations, §71-3-503.
Regulations, §71-3-502.
Report card system, §71-3-502.
Sex offender registry checks for employees, §71-3-507.
Snow days.
Drop-in centers.
Appropriateness, certification, §71-3-516.
Standards committee, §71-3-511.
Submission of names to determine indicated perpetrators of child or adult abuse or neglect, §71-3-515.
Temporary licenses, §71-3-502.
Training for care givers, §71-3-502.
Violations, §§71-3-505, 71-3-509.
Vulnerable persons registry checks for employees, §71-3-507.

CHILD CARE CENTERS OR FACILITIES.
Child abuse and child neglect or endangerment.
Duty of workers to report child sexual abuse, §37-1-605.
Child care agencies, juveniles, §§37-5-501 to 37-5-519.
See CHILD CARE AGENCIES, JUVENILES.
Child care agencies, welfare, §§71-3-501 to 71-3-518.
See CHILD CARE AGENCIES, WELFARE.
Clean indoor air act, §§39-17-1601 to 39-17-1606.
Department of human services.
Market rate study and rate of reimbursement on behalf of low-income families, §71-1-130.
Immunization of children attending, §§49-6-5001, 49-6-5002.

CHILD CARE CENTERS OR FACILITIES —Cont'd
Low-income families.
Market rate study by department of human services and rate of reimbursement, §71-1-130.
Rate of reimbursement by department of human services, §71-1-130.

CHILD CURFEW ACT OF 1995, §§39-17-1701 to 39-17-1704.

CHILD CUSTODY.
Abandonment of child.
Residential time limited, §36-6-101.
Abduction prevention.
Child abduction prevention, §§36-6-601 to 36-6-612.
Abuse and neglect of child.
Mediation in cases involving domestic abuse, §§36-6-107, 36-6-305.
Retention of custody of child by hospital or physician, §37-1-404.
Attorneys' fees.
Relocation by parent, proceedings, §36-6-108.
Best interest of the child standard, §36-6-106.
Change in custody.
Residential parenting schedule.
Burden of proof, §36-6-101.
Schools or day care centers.
Requirements for officials to permit change in physical custody, §36-6-105.
Child abuse and child neglect or endangerment.
Effect of abuse, neglect, etc., on custody or visitation, §36-6-112.
Parental allegations, §36-6-112.
Presumption of substantial risk of harm to child.
Parent indicted for aggravated child abuse or child sexual abuse, §36-6-112.
Children born out of wedlock, §§36-2-303, 36-2-312.
Child support, standing to petition for.
Physical custody of child, §36-5-101.
Costs.
Intercounty enforcement and modification, §36-5-3009.
Relocation by parent, proceedings, §36-6-108.
Court considerations in awarding custody, §36-6-106.
Custodial interference, criminal offense, §39-13-306.
Decrees.
Stay, §36-6-111.
Support and custody decrees, §36-6-101.
Delinquent and unruly children.
Children's services departments (counties), §§37-2-205, 37-2-206.
Corrections department.
Post-commitment relief, §§37-1-301 to 37-1-322.
See DELINQUENT AND UNRULY CHILDREN.
Definitions, §37-1-102.
Duties of legal custodian, §37-1-140.
Liability for expenses.
Returning juvenile to custody of children's services department, §37-1-138.
Out-of-state custody and supervision, §37-1-143.

CHILD CUSTODY —Cont'd
Delinquent and unruly children —Cont'd
Part-commitment relief.
Temporary custody, §37-1-322.
Release to proper party, §37-1-115.
Taking into custody.
Grounds, §37-1-113.
Warrant for custody, §37-1-115.
Dependent and neglected children.
Children's services departments (counties), §§37-2-205, 37-2-206.
Definitions, §37-1-102.
Duties of legal custodian, §37-1-140.
Out-of-state custody and supervision, §37-1-143.
Prior adjudications, considerations in determining child's best interest, §36-6-106.
Release to proper party, §37-1-115.
Taking into custody.
Grounds, §37-1-113.
Warrant for custody, §37-1-115.
Disabilities, persons with.
Disability of parent creates no presumption, §36-6-106.
Domestic violence.
Effect of abuse, neglect, etc., on custody or visitation, §36-6-112.
Parental allegations, §36-6-112.
Protection order.
Awarding custody, establishing visitation, §36-3-606.
Drug abuse by parent, removal of child due to.
Requirements for return of child, §36-6-115.
Factors considered by court, §36-6-106.
Grandparents' visitation rights, §36-6-307.
Guardian ad litem.
Appointment of guardian ad litem in custody proceedings.
Applicability of rule, SupCt 40A.
Participation of guardian in custody proceedings, SupCt 40A.
High school graduation.
Proof of graduation to human services department or parents, §36-6-104.
Hospitals.
Child abuse and child neglect or endangerment.
Retention of custody by hospital, §37-1-404.
Noncustodial parent's right to notification of hospitalization, §36-6-101.
Illegitimate children, §§36-2-303, 36-2-312.
Indian child welfare.
Child custody proceedings, 25 USCS §§1911 to 1923.
See INDIAN CHILD WELFARE.
Injunctions.
Temporary injunctions in effect on filing of petition other than complaint for divorce or legal separation, §36-6-116.
Intercounty enforcement and modification, §§36-5-3001 to 36-5-3009.
Acceptance of transfer, §36-5-3008.
Applicability of provisions, §36-5-3001.
Authority for transfer of case, §36-5-3003.
Construction of provisions, §36-5-3001.
Contested transfers, §36-5-3007.

CHILD CUSTODY —Cont'd
Intercounty enforcement and modification —Cont'd
Costs and fees, §36-5-3009.
Definitions, §36-5-3002.
Procedure to transfer case, §36-5-3004.
Purpose of provisions, §36-5-3001.
Requests for transfer, §36-5-3004.
Requirements for transfer of case, §36-5-3003.
Transferee's duties, §36-5-3006.
Transferor's duties, §36-5-3005.
Interstate child custody proceedings, §§36-6-201 to 36-6-243.
See INTERSTATE CHILD CUSTODY PROCEEDINGS.
Joint custody.
Presumptions, §36-6-101.
Jurisdiction.
Juvenile courts, §37-1-104.
Uniform deployed parents custody and visitation act.
Child support, temporary order for, §36-7-309.
Permissible activities of court having jurisdiction, §36-7-104.
Temporary emergency jurisdiction under child custody jurisdiction and enforcement act, §36-7-104.
Kidnapping.
Custodial interference, §39-13-306.
Mediation in cases involving domestic abuse, §§36-6-107, 36-6-305.
Medical records of child, §36-6-103.
Right of noncustodial parent to receive copies, §36-6-101.
Mental health.
Temporary legal custody for children with mental illnesses, §§37-1-175 to 37-1-183.
Military personnel.
Uniform deployed parents custody and visitation act, §§36-7-101 to 36-7-503. See within this heading, "Uniform deployed parents custody and visitation act."
Modification.
Residential parenting schedule.
Burden of proof, §36-6-101.
Uniform deployed parents custody and visitation act.
Proceedings for temporary custody order.
Modification of grant of custodial responsibility, §36-7-310.
Temporary custody agreements, §36-7-203.
Noncustodial parent's rights, §36-6-110.
Notice.
Change in physical custody of child.
School officials to be given reasonable advance notice, §36-6-105.
Parental relocation, §36-6-108.
Shelter care.
Notice of hearing, §36-6-109.
Uniform deployed parents custody and visitation act.
Change of address of person with custodial responsibility during deployment, §36-7-106.
Notice of pending deployment, §36-7-105.
Parenting plans, §§36-6-401 to 36-6-414.
See PARENTING PLANS.
Physicians.
Child abuse and child neglect or endangerment.
Retention of custody of child by physician, §37-1-404.

CHILD CUSTODY —Cont'd
Pleadings.
First pleading or affidavit.
Required information to establish jurisdiction, §§36-6-224, 36-6-232.
Verified pleadings, §§36-6-224, 36-6-232.
Preference of child.
Factors considered by court, §36-6-106.
Presumptions.
Gender of party seeking custody, §36-6-101.
Joint custody, §36-6-101.
Parent convicted of certain criminal offenses, §36-6-101.
Protective custody.
Child abuse or neglect, §37-1-404.
Protective parent reform act, §36-6-112.
Records.
Medical records of child, §36-6-103.
Noncustodial parent's right to copies, §36-6-101.
Relocation by parent.
Notice, §36-6-108.
Report card.
Furnishing of copy to noncustodial parent, §§36-6-101, 36-6-104.
Residential parenting schedule.
Modification.
Burden of proof, §36-6-101.
Rights of noncustodial parent, §§36-6-101, 36-6-110.
Schools and education.
Change in physical custody of child.
Requirements for school officials to permit, §36-6-105.
Copies of report cards, school attendance, names of teachers, class schedules, standardized test scores and other records.
Furnishing to noncustodial or nonresident parent, §§36-6-101, 36-6-104.
Rights of noncustodial parent, §36-6-101.
Sexual abuse.
False allegations in furtherance of litigation, §36-6-114.
Shelter care hearing.
Notice, §36-6-109.
Stays.
Interlocutory or final judgments, §36-6-111.
Substance abuse by parent, removal of child due to.
Requirements for return of child, §36-6-115.
Temporary injunctions in effect on filing of petition other than complaint for divorce or legal separation, §36-6-116.
Tender years doctrine, §36-6-101.
Transfer of case to other county, §§36-5-3001 to 36-5-3009.
Uniform child custody jurisdiction and enforcement act, §§36-6-201 to 36-6-243.
See INTERSTATE CHILD CUSTODY PROCEEDINGS.
Uniform deployed parents custody and visitation act, §§36-7-101 to 36-7-503.
Application of act, §36-7-501.
Bad faith acts, remedies, §36-7-103.
Change of address of person with custodial responsibility during deployment, §36-7-106.
Citation of act, §36-7-101.

CHILD CUSTODY —Cont'd
Uniform deployed parents custody and visitation act —Cont'd
Confidential address or residence of person with custodial responsibility, §36-7-106.
Construction and application of act, §36-7-501.
Prior orders, validity not affected by act, §36-7-503.
Relation to electronic signatures in global and national commerce act, §36-7-502.
Definitions, §36-7-102.
Effect of past or future deployment, §36-7-107.
Grant of caretaking or decision-making authority to nonparent, §36-7-306.
Jurisdiction.
Child support, temporary order for, §36-7-309.
Permissible activities of court having jurisdiction, §36-7-104.
Temporary emergency jurisdiction under child custody jurisdiction and enforcement act, §36-7-104.
Notice of change of address of person with custodial responsibility during deployment, §36-7-106.
Notice of pending deployment, §36-7-105.
Past or future deployment not to be considered in proceedings, §36-7-107.
Prior orders, validity not affected by act, §36-7-503.
Proceedings for temporary custody order, §§36-7-301 to 36-7-310.
Authority of court to issue order generally, §36-7-302.
Child support, temporary order for, §36-7-309.
Contents of order, §36-7-308.
Definition of "close and substantial relationship," §36-7-301.
Electronic testimony or evidence in lieu of personal appearance, §36-7-304.
Enforcement of prior agreement, §36-7-305.
Expedited hearing, §36-7-303.
Filing of action in new proceeding, or motion in pending proceedings, §36-7-302.
Limited scope of authority granted by order, §36-7-307.
Modification of grant of custodial responsibility, §36-7-310.
Nonparent granted caretaking or decision-making authority, §36-7-306.
Prior order or written agreement, effect, §36-7-305.
Required contents of order, §36-7-308.
Standing to enforce order, §36-7-307.
Termination of grant of custodial responsibility, §36-7-310.
Termination of temporary order at end of deployment, §36-7-401.
Proposed plan for custodial responsibility during deployment, §36-7-105.
Relation of act to electronic signatures in global and national commerce act, §36-7-502.
Remedies for bad faith acts or intentional noncompliance, §36-7-103.

CHILD CUSTODY —Cont'd
Uniform deployed parents custody and visitation act —Cont'd
Residence of deploying parent not changed by reason of deployment, §36-7-104.
Temporary custody agreements.
Contents of agreement, §36-7-201.
Filing with court, §36-7-205.
Form of agreement, §36-7-201.
Limited scope of authority granted, §36-7-202.
Modification of agreement, §36-7-203.
Omission of items not to invalidate agreement, §36-7-201.
Power of attorney delegating custodial responsibility, §36-7-204.
Filing with court, §36-7-205.
Standing to enforce agreement, §36-7-202.
Termination of temporary order at end of deployment, §36-7-401.
Title of act, §36-7-101.
Visitation rights.
Custodial interference.
Detention of child beyond period of visitation, §39-13-306.
Denial for parent convicted of rape where child conceived from crime, §36-6-102.
Grandparents' rights, §§36-6-302, 36-6-306, 36-6-307.
Interstate child custody proceedings.
Temporary order of enforcement, §36-6-228.
Mediation in cases involving domestic abuse, §§36-6-107, 36-6-305.
Noncustodial parents, §36-6-301.
Rights generally, §36-6-101.
Nudist colonies.
Exposure of child to nudist colony prohibited, §36-6-304.
Parent visitation, §§36-6-501 to 36-6-511.
See CHILD VISITATION RIGHTS.
Paternity proceedings, §36-2-312.
Stepparents' rights, §36-6-303.
Supervised visitation.
Parent convicted of certain crimes, §36-6-101.

CHILD FATALITY REVIEW AND PREVENTION, §§68-142-101 to 68-142-111.
Immunity from liability, §68-142-110.
Local teams, §§68-142-106 to 68-142-108.
Composition, §68-142-106.
Confidentiality of records, §68-142-108.
Duties, §68-142-107.
Formation in each judicial district, §68-142-107.
Limitation on powers, §68-142-108.
Meetings, §68-142-106.
Powers, §68-142-108.
Vacancies, §68-142-106.
Other laws not precluded, §68-142-111.
Short title, §68-142-101.
State team, §§68-142-102 to 68-142-109.
Attachment to health department, §68-142-102.
Composition, §68-142-103.
Confidentiality of information, §68-142-108.
Consultant, §68-142-109.
Creation, §68-142-102.
Duties, §68-142-105.
Membership, §68-142-103.
Powers, §68-142-105.

CHILD FATALITY REVIEW AND PREVENTION —Cont'd
State team —Cont'd
Staff, §68-142-109.
Vacancies, §68-142-104.
Voting members, §68-142-104.

CHILDHOOD IMMUNIZATIONS.
Generally, §§37-10-401 to 37-10-403.
Hepatitis B protection by immunization, §49-6-5003.
School children, §§49-6-5001, 49-6-5002.

CHILD LABOR.
Church-related schools.
Exceptions to certain provisions for students enrolled with, §50-5-105.
Citation, §50-5-101.
Definitions, §50-5-102.
Exemptions.
Generally, §50-5-107.
Fourteen or fifteen years of age.
Employment, §50-5-104.
Fourteen years old, less than.
Allowable employment, §50-5-107.
Prohibition on employing, §50-5-103.
Performers.
Protection of minor performers, §§50-5-201 to 50-5-222.
Prohibited employment for minors, §50-5-106.
Exceptions.
Generally, §50-5-107.
Protection of minor performers, §§50-5-201 to 50-5-222.
Amendment or repeal of provisions, §50-5-202.
Applicability of provisions, §50-5-206.
Birth certificate of minor to be provided, §50-5-216.
Construction of provisions, §50-5-204.
Applicability, §50-5-206.
Effect of contract approval on other laws, §50-5-205.
Contracts.
Approval generally, §50-5-209.
Birth certificate of minor to be provided, §50-5-216.
Disaffirmance on ground of minority, §50-5-207.
Earnings, protection by court, §§50-5-221, 50-5-222.
Effect of approval on minor, §50-5-212.
Effect of approval on other laws, §50-5-205.
Eligible contracts, §50-5-213.
Modification or assignment, §50-5-214.
Revocation of approval, §50-5-212.
Definitions, §50-5-203.
Disaffirmance of approved contract on ground of minority, §50-5-207.
Earnings, protection by court, §50-5-221.
Trust requirements, §50-5-222.
Eligible activities for contracts, §50-5-213.
Guardian ad litem for child, §50-5-208.
Appointment, §50-5-215.
Documentation required, §50-5-216.
Legislative amendment or repeal of provisions, §50-5-202.
Orders.
Who may apply, §50-5-208.
Petition for contract approval, §50-5-209.
Actions taken by court, §50-5-220.
Contents, §50-5-216.

CHILD LABOR —Cont'd
Protection of minor performers —Cont'd
Petition for contract approval —Cont'd
Hearing on, §§50-5-211, 50-5-218.
Appearance of minor, §50-5-219.
Place of filing, §50-5-210.
Protection of earnings, §§50-5-221, 50-5-222.
Service, §50-5-217.
Title of provisions, §50-5-201.
Short title, §50-5-101.
Sixteen or seventeen years of age.
Employment, §50-5-105.
Consent by parent or guardian, §50-5-105.
Youth peddling.
Defined, §50-5-102.
Prohibited conduct, §50-5-106.

CHILD PASSENGER RESTRAINT SYSTEMS.
Violations of requirements, §55-9-602.

CHILD PLACEMENT.
Adoption.
Entities authorized to place children for adoption, §36-1-108.
Foster care plans, §§37-2-401 to 37-2-418.
See FOSTER CARE.
General provisions.
See ADOPTION.
Illegal payments, §36-1-109.
Interstate compact on adoption and medical assistance, §§36-1-201 to 36-1-206.
Advisory review boards.
Foster care plans, §37-2-402.
Agency.
Child welfare agency defined, §37-2-402.
Licensed child-placing agency.
Defined, §36-1-102.
Surrender, §36-1-111.
Compact.
Interstate compact on the placement of children, §§37-4-201 to 37-4-207.
Construction and interpretation.
Foster care plans, §37-2-401.
Definitions.
Foster care plans, §37-2-402.
Interstate compact on the placement of children, §37-4-202.
Foster care plans.
Compliance with federal regulations, §37-2-413.
Confidentiality of plans and records, §37-2-408.
Kinship foster care program, §37-2-414.
Construction of chapter, §37-2-401.
Contents, §37-2-403.
Damages.
Confidentiality of reports.
Violation, §37-2-411.
Definitions, §37-2-402.
Department of children's services.
Duties.
Generally, §37-2-407.
Extracurricular, enrichment, cultural and social activities.
Reasonable and prudent parent standard in determining child participation, §37-2-418.
Federal regulations.
Compliance, §37-2-413.
Fingerprints of prospective foster parents, §37-2-414.

CHILD PLACEMENT —Cont'd
Foster care plans —Cont'd
Foster care review boards.
Composition, §37-2-406.
Duties, §37-2-406.
Reports, §37-2-406.
Guidelines.
Adoption, §37-2-405.
Hearings.
Juvenile court judges, §37-2-409.
Notice to foster parent, adoptive parent or relative providing care, §37-2-416.
Rehearings, §37-2-410.
Independent living plan, §37-2-409.
Information available to foster parents, §37-2-415.
Injunctions.
Violation of confidentiality, §37-2-411.
Judge.
Juvenile courts.
Hearings, §37-2-409.
Kinship foster care program, §37-2-414.
Modification of orders, §37-2-410.
Reasonable and prudent parent standard.
Determining child participation in extracurricular, enrichment, cultural and social activities, §37-2-418.
Rehearing.
Modification of orders, §37-2-410.
Petition, §37-2-410.
Reports.
Confidentiality of reports.
Injunction and action for damages, §37-2-411.
Department of children's services.
Reports to juvenile courts, §37-2-404.
Foster care review boards, §§37-2-404, 37-2-406.
Review, §37-2-404.
Foster care review boards, §37-2-406.
Rights of foster parents, §37-2-415.
Smoke detectors required, §37-2-412.
Statement of responsibilities, §37-2-403.
Foster care review boards.
Foster care plans, §37-2-406.
Hearings.
Foster care plans, §37-2-409.
Notice to foster parent, adoptive parent or relative providing care, §37-2-416.
Rehearings, §37-2-410.
Indian child welfare.
Child custody proceedings, 25 USCS §1915.
Interstate compact on the placement of children, §§37-4-201 to 37-4-207.
Administrator, §37-4-203.
Agreements with foreign states.
Authorized, §37-4-205.
Courts.
Jurisdiction, §37-4-207.
Definitions, §37-4-202.
Determination of financial responsibility, §37-4-204.
Enactment, §37-4-201.
Financial responsibility.
Determination, §37-4-204.
Foreign states.
Agreements with.
Authorization, §37-4-205.
General provisions, §37-4-201.
Importation of dependent children law.
Inapplicability, §37-4-206.

CHILD PLACEMENT —Cont'd
Interstate compact on the placement of children —Cont'd
Jurisdiction.
Courts, §37-4-207.
Juvenile courts, §37-1-103.
Text, §37-4-201.
Jurisdiction.
Interstate compact on the placement of children.
Jurisdiction of courts, §37-4-207.
Medical and social history of child.
Compilation, §37-2-403.
Reports.
Violations of confidentiality, §37-2-411.
Smoke detectors.
Foster care plans.
Requirement of smoke detectors in foster care dwellings, §37-2-412.

CHILD PORNOGRAPHY.
Reporting child abuse and child neglect or endangerment, §37-1-403.

CHILD PROTECTION TEAMS.
Child abuse and child neglect or endangerment.
Severe child abuse.
Second look commission to study second or subsequent incidents of severe child abuse.
Responses to requests by commission, §37-3-809.
Sexual abuse.
Composition, investigations, §37-1-607.

CHILDREN'S CLEAN INDOOR AIR ACT, §§39-17-1601 to 39-17-1606.
Citations.
Violations of provisions, §39-17-1606.
Definitions, §39-17-1603.
Enforcement, §39-17-1606.
Legislative intent, §39-17-1602.
No smoking signs.
Posting, §39-17-1605.
Penalties for violations, §39-17-1606.
Places where smoking prohibited, §39-17-1604.
Purpose of act, §39-17-1602.
Title of act, §39-17-1601.

CHILDREN'S SERVICES DEPARTMENT, §§37-5-101 to 37-5-406.
Abandoned children.
Duties, §34-1-103.
Abandonment of infant.
Voluntary delivery of infant to facility.
Assumption of care, custody control, other duties, §36-1-142.
Abortion.
Infant prematurely born alive, custody, §39-15-207.
Accreditation.
Youth development centers, §37-5-113.
Authority, §37-5-106.
Baby drop off law.
Voluntary delivery of infant to facility.
Assumption of care, custody control, other duties, §36-1-142.
Child abuse and child neglect or endangerment.
Severe child abuse.
Second look commission to study second or subsequent incidents of severe child abuse.
Responses to requests by commission, §37-3-809.

CHILDREN'S SERVICES DEPARTMENT —Cont'd
Child care agencies, welfare, §§71-3-501 to 71-3-518.
See CHILD CARE AGENCIES, WELFARE.
Commissioner.
Administration of funds, §37-5-111.
Duties, §37-5-105.
Powers, §37-5-105.
Qualifications, §37-5-104.
Reports, §37-5-105.
Community service agencies.
Career employees.
Transfer into department, §37-5-317.
Counties with metropolitan form of government, §37-5-318.
Executive employees.
Transfer into department, §37-5-319.
Generally, §§37-5-301 to 37-5-319.
Confidentiality of information.
Departmental records, §37-5-107.
Conflicts of interest, §37-5-108.
Contracts, §37-5-110.
Creation, §37-5-101.
Custody of infant prematurely born alive during abortion, §39-15-207.
Death or near fatality of person in custody of department.
Reporting, §37-5-124.
Definitions, §37-5-103.
Deputy commissioner of juvenile justice, §37-5-101.
Discipline in special school districts of penal and reformatory institution.
Adoption of rules and regulations, §49-6-4403.
Discrimination.
Policy of nondiscrimination, §37-5-116.
Division of juvenile justice, §37-5-101.
Duties.
Abandoned children, §34-1-103.
Commissioner, §37-5-105.
Established, §37-5-101.
Evidence-based programs for prevention or care of delinquent juveniles, §37-5-121.
Fees.
Post-adoption services and searches, §37-5-122.
Funds.
Administration, §37-5-111.
Juvenile detention.
Schools and education.
Education of youth in facilities for detention or for youth at risk, §37-5-131.
Juvenile justice division, §37-5-101.
Juvenile proceedings.
Rules of juvenile proceedings.
Attendance of parties and other necessary persons.
Duties when department party, JuvPro 112.
Leases, §37-5-110.
Library regions.
Creation, §37-5-120.
Licensing, §37-5-109.
Professional or occupational licensing, certification or registration.
Notifications required, §37-5-127.
Mental health care for children, council on.
Assistance, §37-5-126.
Mental health service recipients.
Transfers of service recipients.
Correction department and children's service department, transfers from, §§33-3-401 to 33-3-412.

CHILDREN'S SERVICES DEPARTMENT —Cont'd
Model after school and/or summer programs for young adolescents at risk, §37-5-125.
Near fatality of person in custody of department.
Reporting, §37-5-124.
Nondiscrimination policy, §37-5-116.
Notification of release of juvenile adjudicated to have committed a delinquent act that would constitute a felony if committed by an adult, §37-5-123.
Oaths, §37-5-118.
Parenting plans.
Effect, §36-6-411.
Pilot programs.
Evidence-based programs for prevention or care of delinquent juveniles, §37-5-121.
Policy and protocol reviews.
New departmental policies, §37-5-129.
Procedures affecting children served by department, §37-5-128.
Post-adoption services and searches.
Goal of supporting permanency in adoption, §36-1-143.
Rules and regulations, §37-5-122.
Powers.
Administration of funds, §37-5-111.
Commissioner, §37-5-105.
Departmental powers, §37-5-106.
Project RAP.
Teenage pregnancy, §§71-3-701, 71-3-702.
Purpose, §37-5-102.
Qualifications of commissioner, §37-5-104.
Qualifications of youth service officers, §37-5-117.
Records.
Confidentiality, §37-5-107.
Review.
Governmental entity review, §37-5-115.
Policies and protocols.
New departmental policies, §37-5-129.
Procedures affecting children served by department, §37-5-128.
Rules and regulations, §37-5-112.
Post-adoption services and searches, §37-5-122.
Schools and education.
Cessation of operations of provider agency school.
Permanent education records, disposition, §37-5-130.
Guardian or custodian to notify school of child's criminal offenses, §49-6-3051.
Juvenile detention.
Education of youth in facilities for detention or for youth at risk, §37-5-131.
Statement of purpose, §37-5-102.
Sunset law, §37-5-115.
Trafficking in children, §§37-5-401 to 37-5-406.
Transfer from department of youth development, §37-5-114.
Voluntary delivery of infant to facility.
Assumption of care, custody control, other duties, §36-1-142.
Youth development centers, §§37-5-201 to 37-5-213.
Accreditation, §37-5-113.
Administration, §37-5-119.

CHILDREN'S SERVICES DEPARTMENT —Cont'd
Youth development centers —Cont'd
Barbers.
Instruction in barbering, §37-5-212.
Buildings and equipment, §37-5-210.
Coeducational programs, §37-5-201.
Commitment of children, §37-5-205.
Federal offenses, §37-5-207.
Forms, §37-5-208.
Procedure, §37-5-208.
Retention of those committed for penitentiary offenses, §37-5-206.
Education.
Development of youth, §37-5-204.
Escape, §37-5-206.
Established, §37-5-201.
GED courses, §37-5-213.
Products of youth centers, §37-5-211.
Records and accounts, §37-5-209.
Superintendent, §37-5-202.
Powers and duties, §37-5-203.
Transfer of children, §37-5-205.
Penitentiary, transfer to, §37-5-206.
Unneeded property.
Sale, §37-5-209.
Vocational and occupational training, §37-5-213.
Work opportunity programs, §37-5-204.
Youth development department.
Transfer of power, §37-5-114.
Youth service officers.
Qualifications, §37-5-117.

CHILD SEXUAL ABUSE.
See CHILD ABUSE AND CHILD NEGLECT OR ENDANGERMENT.

CHILD SUPPORT.
Actions by department of health and human services, §71-3-124.
Additional payments to reduce arrearages, §§36-5-804 to 36-5-806.
Scope of administrative review, §36-5-1002.
Adjustment, three year cycle.
Review for adjustment, §36-5-103.
Administrative enforcement actions generally, §§36-5-801 to 36-5-816.
Lien enforcement, §36-5-905.
Agreement between parties as to support.
Enforcement of license denial or revocation, §36-5-709.
Aid to dependent children.
Assignment of support rights to state, §71-3-124.
Past-due support payments, §36-2-322.
Amount, §36-5-101.
Appeals, §§36-5-1001 to 36-5-1006.
Actions appealable, §36-5-1001.
Administrative orders, §36-5-806.
Costs and fees, §36-5-1005.
Employment report violation penalties, §36-5-1107.
Interference with administrative action pending appeal, §36-5-1004.
Judicial review of administrative actions, §36-5-1003.
Requests for hearings, §36-5-1001.
Rules and regulations, §36-5-1006.
Scope of administrative review, §36-5-1002.
Arrearage generally, §36-5-101.
Authority of court to order, §36-5-101.
Automated child support enforcement system, §36-5-807.
Lien recording, §36-5-901.

CHILD SUPPORT —Cont'd
Bond set for parent in arrears, §36-5-101.
Changes in circumstances.
Requirements for updating, §36-5-101.
Clerks of court.
Assignments of income, §36-5-501.
Fee for handling support payments.
Liability, §36-5-111.
Immunity for release of abuse victim's personal information, §36-5-101.
Redirected payments to clerk, §§36-5-803, 36-5-805, 36-5-806.
Scope of administrative review, §36-5-1002.
Reimbursement of clerks for activities involving, §36-5-117.
Collection.
Centralized collection and disbursement unit.
Payments and identifying information required for support payments made to, §§36-5-101, 36-5-120.
Compliance with order.
Failure to comply, §36-5-104.
License denial or revocation, §36-5-707.
Compromise and settlement of arrearage balance, §36-5-101.
Continuation beyond minority of child, §36-5-101.
Cooperation of licensing authorities.
Denial or revocation of license, §36-5-709.
Criminal law and procedure.
Employment report disclosures, §36-5-1106.
Failure to comply with order, §36-5-104.
Nonsupport and flagrant nonsupport, §39-15-101.
Custody proceedings under uniform deployed parents custody and visitation act.
Child support, temporary order for, §36-7-309.
Customer service unit, §36-5-118.
Delinquencies.
Additional payments to reduce arrearages, §§36-5-804 to 36-5-806.
Liens for child support arrearages, §§36-5-901 to 36-5-912.
Payment plans, §36-5-113.
Reports pursuant to Fair Credit Reporting Act, §36-5-106.
Work requirements, §36-5-113.
Delinquent and unruly children.
Parents' liability for support, §37-1-151.
Department of children's services.
Incentive payments.
Social and recreational purposes.
Prohibition against department use of payments for, §36-5-107.
Dependent and neglected children.
Parents' liability for support, §37-1-151.
Desertion and nonsupport.
Generally, §§39-15-101 to 39-15-104.
Deviation from guidelines, §36-5-101.
Disabled persons.
Continuation beyond minority of child, §36-5-101.
Distribution of payments, §36-5-101.
Domestic abuse.
Confidentiality of victim's address, telephone number and location, §§36-5-101, 37-1-151.
Domestic abuse protection orders, §36-3-606.
Drivers' licenses.
License denial, revocation or restriction, §§36-5-701 to 36-5-714.

CHILD SUPPORT —Cont'd
Employment reports, §§36-5-1101 to 36-5-1108.
Definitions, §36-5-1101.
Disclosures, §36-5-1106.
Failure to report, §36-5-1107.
False or incomplete reports, §36-5-1107.
Multistate employers, §36-5-1103.
Requirements for employers, §36-5-1102.
Rulemaking authority, §36-5-1108.
Time for reports, §36-5-1104.
Use of information, §36-5-1106.
W-4 forms, §36-5-1105.
Evidence.
Payments, official records, §24-7-121.
Expedited process, §§36-5-401 to 36-5-406.
Clerk of court.
Powers and duties, §36-5-404.
Commencement of hearings and actions, §§36-5-402, 36-5-405.
Definitions, §36-5-401.
Forms.
Promulgation and approval, §36-5-406.
Procedural steps, §36-5-405.
Referees, §§36-5-402, 36-5-403.
Termination of hearings and actions, §36-5-402.
Fair Credit Reporting Act compliance, §36-5-106.
Federally required state collection and disbursement unit for, §36-5-114.
Establishment, §36-5-116.
Reimbursement of clerks of court for activities involving, §36-5-117.
Fees.
Clerks of court, §8-21-401.
Intercounty enforcement and modification, §36-5-3009.
Registration of orders, §36-5-3111.
Felonies.
Flagrant nonsupport, §39-15-101.
Full faith and credit of order, §36-5-809.
Liens from other states, §36-5-902.
Funds of minors under twenty thousand dollars.
Disposition, §34-1-104.
Guardians for minors.
Obligation of parents.
Funds of minor held by guardian not expended to relieve, §34-1-102.
Guidelines, §36-5-101.
Health insurance coverage.
Change in employment, §37-1-151.
Income withholding, §36-5-501.
Order providing for, §36-5-101.
Immunity.
Compliance with administrative requests, orders and subpoenas, §36-5-810.
Lien enforcement, §36-5-909.
Incentive payments.
Disposition, §36-5-107.
Social and recreational purposes.
Prohibition against agency use of payments for, §36-5-107.
Income assignments, §§36-5-501, 36-5-503.
Enforcement of decree, §36-5-103.
Termination, §36-5-503.
Income withholding to enforce support orders.
Bank account set up to comply with order, §36-5-501.

CHILD SUPPORT —Cont'd
Income withholding to enforce support orders —Cont'd
Health insurance coverage for child, §36-5-501.
Interstate family support act, §§36-5-2501 to 36-5-2507.
Individual retirement account (IRA) balances.
Lump sum amount.
Treatment when considering right to receive support, §§36-5-101, 36-5-121.
Inference of obligor's ability to pay, §36-5-104.
Information regarding parties, §37-1-151.
Intercounty enforcement and modification, §§36-5-3001 to 36-5-3009.
Acceptance of transfer, §36-5-3008.
Applicability of provisions, §36-5-3001.
Authority for transfer of case, §36-5-3003.
Construction of provisions, §36-5-3001.
Contest of transfer, §36-5-3007.
Costs and fees, §36-5-3009.
Definitions, §36-5-3002.
Enforcement without transfer of jurisdiction, §§36-5-3101 to 36-5-3111.
Procedure to transfer case, §36-5-3004.
Purpose of provisions, §36-5-3001.
Requests for transfer, §36-5-3004.
Requirements for transfer of case, §36-5-3003.
Transferee's duties, §36-5-3006.
Transferor's duties, §36-5-3005.
Interstate cases.
Administrative enforcement in, §36-5-1201.
Jurisdiction to modify, alter or enforce orders.
How determined, §36-5-101.
Interstate family support act, §§36-5-2001 to 36-5-2903.
See SUPPORT AND MAINTENANCE.
Judgments, orders or decrees.
Authority of court to enter, §36-5-101.
Enforcement of decree or orders generally, §36-5-103.
Intercounty enforcement and modification, §§36-5-3001 to 36-5-3009.
Lien enforcement, §36-5-905.
Modification of decree, §36-5-103.
License denial or revocation, §36-5-710.
Nonsupport and flagrant nonsupport.
Orders of protection and assistance, §39-15-102.
Paternity proceedings, §§36-2-310, 36-2-311.
Health insurance coverage for child, §36-2-319.
Time periods for enforcement, §36-2-321.
Portion of spouse's estate.
Decreed to spouse entitled to child support, §36-5-102.
Registration of orders, §§36-5-3101 to 36-5-3111.
Review and adjustment, §36-5-103.
Status and enforceability of order, §36-5-101.
Jurisdiction.
Administrative orders to determine continuing exclusive jurisdiction, §36-5-816.

CHILD SUPPORT —Cont'd
Jurisdiction —Cont'd
Interstate cases, determination, §36-5-101.
Juvenile court, §§37-1-103, 37-1-104.
Nonsupport and flagrant nonsupport, §39-15-102.
Statewide jurisdiction of department, §36-5-808.
Transfer of cases to other counties, §§36-5-3001 to 36-5-3009.
License denial or revocation, §§36-5-701 to 36-5-714.
Administrative hearing, §36-5-703.
Administrative order enforcement, §36-5-812.
Certification of noncompliance, §§36-5-703, 36-5-705.
Compliance with order of support, §36-5-707.
Cooperation with department, §36-5-709.
Definitions, §36-5-701.
Denial, suspension or revocation of license, §36-5-706.
Effect on ability to hold other licenses, §36-5-713.
Eligibility for restricted drivers' license when not in compliance with support order, §36-5-705.
Notice, §36-5-706.
Requirements for eligibility, §36-5-714.
Enforcement of orders, §36-5-702.
Information about applicants or licensees.
Transmittal of data by licensing authorities, §36-5-711.
Issuance of decisions, §36-5-704.
Juvenile proceedings, §37-1-151.
Modification of support orders, §36-5-710.
Notice of noncompliance, §36-5-702.
Paternity and legitimation, §36-2-320.
Refusal to reinstate or reissue, §36-5-706.
Reports, §36-5-712.
Rules, §36-5-708.
Stays of actions, §36-5-704.
Liens, §§36-5-901 to 36-5-912.
Access to records for enforcement.
Failure to pay assessment for noncompliance, §36-5-811.
Authorized, §36-5-901.
Cooperation by state and local agencies, §36-5-911.
Enforcement of liens, §§36-5-902, 36-5-904 to 36-5-906.
Control of seized or acquired property, §36-5-908.
Powers of department, §36-5-912.
Exemptions from sale, §36-5-906.
Financial institution defined, §36-5-910.
Full faith and credit to out-of-state liens, §36-5-902.
Immunity of state officers and employees, §36-5-909.
Notice of lien, §36-5-901.
Presumption as to ownership of property, §36-5-903.
Priority of liens, §36-5-901.
Recording of lien, §36-5-901.
Release of lien, §36-5-907.
Life insurance.
Directing parents to designate children as beneficiaries, §36-5-101.

CHILD SUPPORT —Cont'd
Military personnel.
Custody proceedings under uniform deployed parents custody and visitation act.
Child support, temporary order for, §36-7-309.
Modification of award.
Variance between guidelines and order, §36-5-101.
Nonsupport and flagrant nonsupport, §§39-15-101 to 39-15-104.
Appeals, §39-15-103.
Arrest.
Issuance of warrant, §39-15-104.
Court of appeals.
Appeals from final orders or decrees of juvenile courts, §39-15-103.
Criminal law and procedure, §39-15-101.
Definitions, §39-15-101.
Enforcement.
Generally, §39-15-104.
Flagrant nonsupport.
Extradition.
Duty of governor to demand return, §39-15-104.
Generally, §39-15-101.
Juvenile court.
Appeals from final orders or decrees, §39-15-103.
Jurisdiction, §39-15-102.
Misdemeanors.
Nonsupport, §39-15-101.
Orders of protection and assistance, §39-15-102.
Procedure generally, §39-15-104.
Sentencing, §39-15-102.
Notice of noncompliance.
License denial or revocation, §36-5-702.
Obligation of parents.
Continuance of responsibility until high school graduation of child, §34-1-102.
Out-of-state orders.
Administrative orders, §36-5-809.
Parenting plans, §§36-6-401 to 36-6-414.
See PARENTING PLANS.
Paternity proceedings, §36-2-311.
Filings required upon determination of paternity, §36-5-101.
Full faith and credit to determinations of other jurisdictions, §36-5-101.
Health insurance coverage for child, §36-2-319.
License revocation requests, §36-2-320.
Past-due support for children receiving assistance, §36-2-322.
Temporary orders of support, §36-2-310.
Time periods for enforcement of orders, §36-2-321.
Paternity tests, §§36-5-802, 36-5-805, 36-5-806.
Payment.
Additional payments to reduce arrearages, §§36-5-804 to 36-5-806.
Scope of administrative review, §36-5-1002.
Evidence, official records, §24-7-121.
Plans for payment, §36-5-113.
Redirected payments, §§36-5-803, 36-5-805, 36-5-806.
Scope of administrative review, §36-5-1002.
Where and to whom made, §36-5-101.
Records.
Access to records for enforcement, §36-5-801.
Noncompliance with request for information, §§36-5-811, 36-5-812.

CHILD SUPPORT —Cont'd
Records —Cont'd
Employment records, §§36-5-1101 to 36-5-1108.
Evidence.
Official records, §24-7-121.
Social security number records, §§36-5-1301, 36-5-1302.
Updating information of parties to administrative actions, §36-5-805.
Registration of orders, §§36-5-3101 to 36-5-3111.
Confirmed orders, §§36-5-3107, 36-5-3108.
Construction of provisions, §36-5-3101.
Contesting validity or enforcement of order, §§36-5-3106 to 36-5-3108.
Costs and fees, §36-5-3111.
Definitions, §36-5-3102.
Disbursement of collections, §36-5-3110.
Effect of registration of order, §36-5-3104.
Filing of orders, etc., §36-5-3103.
Interstate family support act, §§36-5-2601 to 36-5-2616.
See SUPPORT AND MAINTENANCE.
Notice requirements, §§36-5-3103, 36-5-3105.
Contesting validity or enforcement of registered order, §36-5-3106.
Payments received by issuing court, §36-5-3103.
Petitions seeking remedies, §36-5-3103.
Purpose of provisions, §36-5-3101.
Requests for registration, §36-5-3103.
Rights of department, §36-5-3109.
Responsibility of parents.
Continuance until high school graduation, §34-1-102.
Responsible teen parent pilot project, §36-5-112.
Restricted drivers' license.
License denial, revocation or restriction generally, §§36-5-701 to 36-5-714.
Retirement or pension benefits.
Lump sum amount.
Treatment when considering right to receive support, §§36-5-101, 36-5-121.
Retroactive support awards, §36-5-101.
Review and adjustment of orders, §36-5-103.
Satellite offices of department of human services, §36-5-119.
Service of process.
Enforcement actions by department, §36-5-807.
Most recent address sufficient, §§36-5-805, 37-1-151.
Settlement of arrearage balance, §36-5-101.
Social security number records, §§36-5-1301, 36-5-1302.
Standing to petition for, §36-5-101.
State registry of support cases, §36-5-115.
Reimbursement of clerks of court for activities involving, §36-5-117.
Statewide toll-free telephone line, §36-5-118.
Stays of actions.
License denial or revocation, §36-5-704.
Telephones.
Statewide toll-free telephone line, §36-5-118.

CHILD SUPPORT —Cont'd
Temporary assistance.
Support received by department passed on to recipient, §71-3-108.
Termination of support obligation.
Termination of parental rights having effect of terminating obligation of support.
Notice to petitioning parent, §36-1-113.
Title IV-D program, §36-5-101.
Token visitation.
Defined, §37-1-102.
Transfer of case to other county, §§36-5-3001 to 36-5-3009.
Enforcement without transfer of jurisdiction, §§36-5-3101 to 36-5-3111.
Transmittal of information.
Licensing authorities, §36-5-711.
Uniform deployed parents custody and visitation act.
Child support, temporary order for, §36-7-309.
Uniform interstate family support act, §§36-5-2001 to 36-5-2903.
Variance between guidelines and order.
Modification of award, §36-5-101.
Welfare.
Aid to dependent children.
Assignment of support rights to state, §71-3-124.
Past-due support payments, §36-2-322.
Support ordered for more than one child subject to Title IV-D, and at least one child is public charge, §36-5-101.
Temporary assistance.
Support received by department passed on to recipient, §71-3-108.
Willfully failed to visit.
Defined, §37-1-102.
Work requirements for persons owing support, §36-5-113.

CHILD VISITATION RIGHTS, §36-6-301.
Child custody proceedings.
Mediation in cases involving domestic abuse, §36-6-107.
Grandparents' rights, §§36-6-302, 36-6-306, 36-6-307.
Interstate child custody proceedings.
Temporary order of enforcement, §36-6-228.
Mediation in cases involving domestic abuse, §36-6-305.
Nudist colonies.
Exposure of child to nudist colony prohibited, §36-6-304.
Parent visitation, §§36-6-501 to 36-6-511.
Certification of noncompliance with visitation order to licensing authority, §§36-6-503 to 36-6-509, 36-6-511.
Cooperation of licensing authorities with court, §36-6-509.
Denial, suspension or revocation of license, §§36-6-507, 36-6-508.
Determination of contesting court's decision, §36-6-504.
Determination of noncompliance, §36-6-506.
Hearing, §§36-6-503 to 36-6-505.
Scope, §36-6-504.
Definitions, §36-6-501.

CHILD VISITATION RIGHTS —Cont'd
Parent visitation —Cont'd
Drivers' license of parent canceled, suspended or revoked.
Refusal to turn child over for visit, §36-6-502.
Licensing authorities.
Certification of noncompliance with visitation order to, §§36-6-503 to 36-6-509, 36-6-511.
Order of visitation.
Certification of noncompliance to licensing authority, §§36-6-503 to 36-6-509, 36-6-511.
Compliance with, §§36-6-502, 36-6-508.
Defined, §36-6-501.
Enforcement, §36-6-502.
Motion to modify, §36-6-510.
Paternity proceedings, §36-2-312.
Stepparents' rights, §36-6-303.
Supervised visitation.
Parent convicted of certain crimes, §36-6-101.

CHLAMYDIA.
Child abuse and child neglect or endangerment.
Reporting cases in children, §37-1-403.

CHLOROFLUOROCARBON GAS.
Inhaling, §39-17-422.

CHURCHES.
Child abuse and child neglect or endangerment.
Reports.
Authority figures at a community facilities.
Child sexual abuse, §37-1-605.

CIGARETTES AND CIGARS.
Children's clean indoor air act, §§39-17-1601 to 39-17-1606.
Criminal law and procedure.
Minors.
Prevention of access to tobacco and vapor products.
General provisions, §§39-17-1501 to 39-17-1551.
Electronic cigarettes.
Minors.
Prevention of access to tobacco and vapor products.
See TOBACCO.
Local government exemptions, §39-17-1551.
Police and other law enforcement officers.
Prevention of sales and access to.
Use of minors in aiding enforcement of laws, §39-15-413.
Sales.
Minors.
Prevention of access to tobacco and vapor products, §§39-17-1501 to 39-17-1551.
Sales to minors.
Prevention of access to tobacco and electronic cigarettes.
See TOBACCO.
Smoking paraphernalia.
Generally, §§39-15-407 to 39-15-414.
Vapor products.
Minors.
Prevention of access to tobacco and vapor products, §§39-17-1501 to 39-17-1551.
Welfare.
Temporary assistance.
Electronic benefits transfer cards, prohibited purchases, §71-3-126.

CIRCUIT COURTS.
Delinquent and unruly children.
Appeals made to, §37-1-159.
Dependent and neglected children.
Appeals to, §37-1-159.
Termination of parental rights.
Appeals to circuit court, §37-1-159, RAP 8A.

CIRCUMCISION OF FEMALE GENITALS.
Female genital mutilation, §39-13-110.

CIVIC CENTERS.
Carrying weapons in public parks, playgrounds, civic centers, etc., §39-17-1311.

CLEAN INDOOR AIR.
Children's clean indoor air act, §§39-17-1601 to 39-17-1606.

CLERGY.
Marriage.
Persons who may solemnize, §36-3-301.
Mental health service recipients.
Residential service recipients.
Communication with minister, §33-4-101.

CLERKS OF COURT.
Bonds, surety.
Cost bond.
Attorney opting to sign, filing in lieu of paying fees, §8-21-401.
Child support.
Assignments of income, §36-5-501.
Redirected payments to clerk, §§36-5-803, 36-5-805, 36-5-806.
Scope of administrative review, §36-5-1002.
Reimbursement of clerks for activities involving, §36-5-117.
Conservators for disabled.
Duties, §34-1-128.
Examination of annual accounting, §34-1-131.
Forms for inventory, receipts and expenditures.
Clerk may prescribe, §34-1-130.
Electronic filing and retrieval of court documents.
Fees.
Transaction or subscription basis, §8-21-401.
Fees.
Filing instruments.
Transaction fees or subscription fees, §8-21-401.
Guardian for minor.
Duties, §34-1-128.
Examination of annual accounting, §34-1-131.
Forms for inventory, receipts and expenditures.
Clerk may prescribe, §34-1-130.

CLINICAL PASTORAL THERAPISTS.
Confidentiality of information.
Mental health service recipients.
Exceptions, §33-3-114.

CLINICS.
Fertility clinics.
Parentage of children born of donated embryo transfer, §§36-2-401 to 36-2-403.

CLITORIS.
Circumcision, excision or infibulation.
Female genital mutilation, §39-13-110.

CLOSED CIRCUIT TELEVISION.
Child's testimony.
Evidence, §24-7-120.

CLOSED HEAD INJURIES.
Traumatic brain injury fund, §§68-55-401, 68-55-402.

CLOTHING.
Child support lien enforcement.
Exemptions from sale, §36-5-906.

COERCION.
Abortion.
Coercion of other person in order to obtain or procure abortion, §39-15-201.

COMMISSION ON CHILDREN AND YOUTH.
See JUVENILE PROCEEDINGS.

COMMUNITY MENTAL HEALTH CENTERS.
Cooperation among centers, §§33-2-701 to 33-2-709.
Cooperative agreements.
Certificate of public advantage, §33-2-704.
Application fees, §33-2-707.
Effect of grant or denial, §33-2-706.
Judicial review, §33-2-705.
Defined, §33-2-703.
Department review, §33-2-704.
Insurers.
No authority of center to act as insurer, §33-2-708.
Definitions, §33-2-703.
Intervenors.
Defined, §33-2-703.
Policy of state, §33-2-702.
Referrals to provider-owned facilities, §33-2-709.
Regulation to replace competition among centers, §33-2-702.
Short title of act, §33-2-701.
Defined, §33-2-703.
Insurers.
No authority of center to act as insurer, §33-2-708.

COMMUNITY SERVICE.
Child support.
Failure to comply with order, §36-5-104.
Delinquent and unruly children, §37-1-131.
Juvenile courts.
Juvenile traffic offenders, §37-1-146.

COMMUNITY SERVICE AGENCIES, §§37-5-302 to 37-5-319.
Board.
Creation, §37-5-305.
Powers, §37-5-306.
Budget.
Disposition of funds, §37-5-311.
Career service employees.
Transfer into department of children's services or department of health, §37-5-317.
Counties with metropolitan form of government, §37-5-318.
Commissioner.
Duties, §37-5-307.
Powers, §37-5-307.
Construction and interpretation, §37-5-315.
Defined, §37-5-303.
Employees.
Authority to hire, §37-5-308.

COMMUNITY SERVICE AGENCIES —Cont'd
Employees —Cont'd
Career service employees.
Transfer into department of children's services or department of health, §37-5-317.
Counties with metropolitan form of government, §37-5-318.
Executive employees.
Transfer into department of children's services, §37-5-319.
Participation in retirement system, §37-5-316.
State employees, §37-5-314.
Establishment, §37-5-304.
Executive employees.
Transfer into department of children's services, §37-5-319.
Legislative intent, §37-5-302.
Operational plan, §37-5-310.
Statewide community services agency.
Creation, §37-5-305.
Directors.
Composition of statewide board, §37-5-305.

COMPROMISE AND SETTLEMENT.
Child support.
Settlement of arrearage balance, §36-5-101.
Dependent and neglected children.
Agreed orders, JuvPro 309.
Disabilities, persons with as party to action or suit.
Power of court to approve and confirm, §34-1-121.
Husband and wife.
Creditors' rights, §36-3-502.
Minor party to action or suit.
Power of court to approve and confirm, §34-1-121.

COMPUTERS.
Child support lien recording, §36-5-901.
Schools and education.
Curriculum component on Internet safety, §49-1-221.
Internet use policy, §49-1-221.
Sexual exploitation of children.
Material defined.
Text or image on hard drive or disk, §39-17-1002.

CONFIDENTIALITY OF INFORMATION.
Abortion.
Pregnant woman's written consent to abortion, §39-15-202.
Records and reports of abortion, §39-15-203.
Adoption records, §36-1-111.
Unauthorized disclosure or records, §36-1-125.
Attorneys at law.
Child sexual abuse.
Exceptions to privilege.
Inapplicability of exceptions, §37-1-614.
Child abuse and child neglect or endangerment.
Child sexual abuse.
Exception to certain privileges, §37-1-614.
Reports, §37-1-409.

CONFIDENTIALITY OF INFORMATION —Cont'd
Child abuse and child neglect or endangerment —Cont'd
Severe child abuse.
Second look commission to study second or subsequent incidents of severe child abuse.
Access by commission to information made confidential, §37-3-810.
Child custody.
Uniform deployed parents custody and visitation act.
Confidential address or residence of person with custodial responsibility, §36-7-106.
Child fatality review and prevention, §68-142-108.
Children's services department.
Departmental records, §37-5-107.
Child sexual abuse.
Exception to certain privileges, §37-1-614.
Child support.
Domestic abuse victim's address, telephone number and location, §37-1-151.
Delinquent and unruly children.
Dispositional proceedings.
Confidentiality of assessment reports and materials, §37-1-136.
Notification and confidentiality provisions, §37-1-131.
Dependent and neglected children.
Dispositional proceedings.
Confidentiality of assessment reports and materials, §37-1-136.
Divorce.
Mediation, §36-4-130.
Fetal and infant mortality review (FIMR) act, §68-142-205.
Foster care plans, §37-2-408.
Kinship foster care program, §37-2-414.
HIV pregnancy screening, §68-5-703.
Husband and wife.
Child sexual abuse.
Exception to privilege, §37-1-614.
Interstate family support act, §36-5-2312.
Juvenile proceedings.
Court files and records, §37-1-153.
Dispositional proceedings.
Confidentiality of assessment reports and materials, §37-1-136.
Law enforcement records, §37-1-154.
Rules of juvenile procedure.
Proceedings, confidentiality, JuvPro 114.
Medical records.
Release of records by health care providers, §63-2-101.
Mental health.
Outpatient treatment.
Mandatory outpatient treatment.
Disclosure of patient information to carry out part, §33-6-601.
Mental health service recipients.
Confidentiality of records, §§33-3-103 to 33-3-116.
Permanency plan.
Foster care plans, §37-2-408.
Physicians and surgeons.
Child sexual abuse.
Exceptions to privilege, §37-1-614.
Poisons and poisoning.
Control centers.
Individuals to whom treatment provided, §68-141-105.

CONFIDENTIALITY OF INFORMATION —Cont'd
Pregnancy.
Serological tests, §68-5-604.
Rape.
Statutory rape reporting, §38-1-304.
Schools and education.
Criminal offenses of pupils.
Parents, guardians or custodians, notification to school of offenses, §49-6-3051.
Obesity, children at risk for.
Health report card, §49-6-1401.
Sexually transmitted diseases.
Records and information, §68-10-113.
Statutory rape reporting, §38-1-304.

CONFLICT OF LAWS.
Interstate family support act, §36-5-2303.
Paternity proceedings, §36-2-307.

CONFLICTS OF INTEREST.
Child abuse and child neglect or endangerment.
Severe child abuse.
Second look commission to study second or subsequent incidents of severe child abuse.
Policies to avoid conflicts, §37-3-815.
Children's services department, §37-5-108.
Mental health.
Commitment.
Professional involved in proceeding not to have interest or relationship, §33-3-125.
Department or service providers or facilities, §§33-2-1301 to 33-2-1304.
Residential service recipients.
Private facilities.
Commitment to private facilities, §33-4-107.

CONSENT.
Abortion.
Abortion or miscarriage performed with pregnant woman's consent, §39-15-201.
Confidentiality of pregnant woman's consent, §39-15-202.
Copies of consent forms.
Providing to pregnant woman, §39-15-202.
Parental consent for abortion by minor, §§37-10-301 to 37-10-308.
Pregnant woman's consent required, §39-15-202.
Truly informed consent, §39-15-202.
Adoption.
See ADOPTION.
Delinquent and unruly children.
Pretrial diversion, JuvPro 202.
Health care decisions act.
Unemancipated minors, decisions for, §§34-6-401 to 34-6-406.
See HEALTH CARE DECISIONS.
Marriage.
Jurisdiction over judicial consent proceedings, §37-1-104.
Parent, guardian, next of kin, agency or custodian, §36-3-106.
Mental health services for children.
Outpatient treatment of child sixteen or older.
Parental consent not required to treat, §33-8-202.

CONSENT —Cont'd
Pregnancy screening for HIV, §68-5-703.
Schools and education.
Universal mental health or socioemotional screening, §49-2-124.
Sexual offenses.
Aggravated sexual exploitation of children.
Consent not a defense, §39-17-1004.
Causing a minor to engage in sexual activity.
Consent not a defense, §39-13-529.
Especially aggravated sexual exploitation.
Consent not a defense, §39-17-1005.
Sexual exploitation of children.
Consent not a defense, §39-17-1003.

CONSERVATORS FOR MENTAL HEALTH SERVICES RECIPIENTS.
Involuntary admission, nonemergency.
Complaint for commitment.
Who may file, §33-6-504.
Residential service recipients.
Death of recipient.
Notice to family, guardian, court, etc., §33-4-109.
Rights afforded, inability to exercise.
Appointment of conservator, §33-4-110.
State mental health facilities.
Employee as guardian or conservator, §§33-4-201 to 33-4-210.

CONSERVATORS FOR PERSONS WITH DISABILITIES.
Abuse of duties, §34-1-123.
Accounting to court, §34-1-111.
Examination of annual accounting, §34-1-131.
Transfer of fiduciary relationship, §34-1-117.
Adult guardianship and protective proceeding jurisdiction act.
See GUARDIAN AND WARD.
Alternative to be imposed.
Least restrictive, §34-1-127.
Appointment.
Attorney ad litem, §34-1-125.
Eligible persons, §34-1-120.
Evidence, §34-1-109.
Guardian ad litem appointed on filing of petition, §34-1-107.
Hearings, §34-1-108.
Least restrictive alternative imposed, §34-1-127.
Letters of conservatorship, §34-1-129.
Liability for acts done pursuant to order, §34-1-109.
No fiduciary appointed in action for appointment.
Expunction of record, §34-1-124.
Petition, §34-1-106.
Prerequisites.
Finding of disablement and need of assistance, §34-1-126.
Standby fiduciary, §34-1-119.
When effective, §34-1-109.
When people may be appointed, §34-1-120.
Attorney ad litem.
Appointment, §34-1-125.
Attorneys' fees.
Charging of costs of proceedings, §34-1-114.
Payment by conservator, §34-1-113.

CONSERVATORS FOR PERSONS WITH DISABILITIES —Cont'd
Bonds, surety, §34-1-105.
Standby fiduciary, §34-1-119.
Transfer of fiduciary relationship, §34-1-117.
Clerks of court.
Duties, §34-1-128.
Examination of annual accounting, §34-1-131.
Forms for inventory, receipts and expenditures.
Clerk may prescribe, §34-1-130.
Compensation, §34-1-112.
Contempt.
Failure to account, §34-1-111.
Failure to file inventory of property, §34-1-110.
Costs.
Attorney ad litem, §34-1-125.
Charging of costs of proceedings, §34-1-114.
Payment of court costs by conservator, §34-1-113.
Courts.
Powers, §34-1-121.
Definitions, §34-1-101.
Disablement.
Finding prerequisite for appointment, §34-1-126.
Disposition of funds of disabled person under twenty thousand dollars, §34-1-104.
Distribution of property.
Receipt, §34-1-118.
Distributions to persons other than person with disability, §34-1-122.
District attorneys general.
Abuse, mismanagement or failure to perform.
Referral to office, §34-1-123.
Emergency guardian or conservator.
Appointment, §34-1-132.
Removal, §34-1-132.
Evidence.
Appointment.
Letters of conservatorship, §34-1-109.
Executors and administrators.
When personal representative may be appointed as conservator, §34-1-120.
Expedited limited healthcare fiduciaries.
Circumstances under which appointed, §34-1-133.
Expenditures to persons other than person with disability, §34-1-122.
Expunction of records.
No fiduciary appointed in action for appointment, §34-1-124.
Failure to perform duties, §34-1-123.
Finding of disablement.
Prerequisite for appointment, §34-1-126.
Forms.
Notice of hearing on petition for appointment, §34-1-108.
Forms for inventory, receipts and expenditures.
Clerk may prescribe, §34-1-130.
Funds of disabled person under twenty thousand dollars.
Disposition, §34-1-104.
Gift program authorization, §34-1-122.
Guardian ad litem.
Appointment on filing of petition for conservator, duties, report, §34-1-107.

CONSERVATORS FOR PERSONS WITH DISABILITIES —Cont'd
Guardian ad litem —Cont'd
Attorney ad litem appointment.
Recommendation of guardian ad litem, §34-1-125.
Fees.
Charging of costs of proceedings, §34-1-114.
Payment by conservator, §34-1-113.
Guardians for minors.
Disability of minor attaining 18 years of age.
Guardian automatically to continue as conservator, §34-2-106.
Generally.
See GUARDIANS FOR MINORS.
Hearings.
Appointment, §34-1-108.
Transfer of fiduciary relationship, §34-1-117.
Hospitalization of respondent.
Expedited limited healthcare fiduciaries.
Circumstances under which appointed, §34-1-133.
Income tax.
Payment of fees for preparation, §34-1-113.
Indexes.
Duties of court clerk to maintain, §34-1-128.
Interest.
Failure to account, §34-1-111.
Inventories.
Clerk may prescribe forms, §34-1-130.
List of property, §34-1-110.
Investments, §34-1-115.
Court approval to change nature of investments, waiver, §34-1-115.
Payment of management fees, §34-1-113.
Judgments and decrees.
Failure to account, §34-1-111.
Least restrictive alternative imposed, §34-1-127.
Letters of conservatorship.
Evidence of appointment, §34-1-109.
Issuance, §34-1-129.
Limited.
Fiduciary granted less than full authority, §34-1-129.
Liability for acts done pursuant to order appointing, §34-1-109.
Liability for failure to account, §34-1-111.
Management of property, §34-1-110.
Property management plan, §34-1-115.
Medical examinations.
Charging of costs, §34-1-114.
Mismanagement of duties, §34-1-123.
Motor vehicles.
Sale of person's property, §34-1-116.
Moving to another county, state or country.
Transfer of fiduciary relationship, §34-1-117.
Need of assistance.
Finding prerequisite for appointment, §34-1-126.
Neglect of duties, §34-1-123.
Notice.
Duty of court clerk to issue, §34-1-128.
Failure to account, §34-1-111.
Failure to file inventory of property, §34-1-110.
Hearings on petition for appointment, §34-1-108.

CONSERVATORS FOR PERSONS WITH DISABILITIES —Cont'd
Notice —Cont'd
Necessity for standby fiduciary to function, §34-1-119.
Petition for appointment, §34-1-106.
Oaths, §34-1-109.
Payments from property of person, §34-1-113.
Personal representatives.
When representative may be appointed as conservator, §34-1-120.
Petitions.
Appointment, §34-1-106.
Transfer of fiduciary relationship, §34-1-117.
Plan for property management, §34-1-115.
Powers of courts, §34-1-121.
Property management plan, §34-1-115.
Receipt for property distributed, §34-1-118.
Records.
Duties of court clerk, §34-1-128.
No fiduciary appointed in action for appointment.
Expunction of record, §34-1-124.
Removal.
Abuse, mismanagement or failure to perform, §34-1-123.
Reports.
Examination of annual accounting, §34-1-131.
Guardian ad litem appointed on filing of petition for conservator, §34-1-107.
Resignation, §34-1-117.
Revocation of authority.
Failure to account, §34-1-111.
Failure to file inventory of property, §34-1-110.
Sale of property, §34-1-116.
Service of process.
Hearings on petition for appointment, §34-1-108.
Petition for appointment, §34-1-106.
Social security number of respondent.
Given to fiduciary and clerk, placed in court record, use, §34-1-109.
Standby fiduciary.
Appointment, §34-1-119.
Charging of costs of proceedings, §34-1-114.
Summons and process.
Abuse, mismanagement or failure to perform.
Summons to appear, §34-1-123.
Duty of court clerk to issue summons, §34-1-128.
Time.
Accounting to court, §34-1-111.
Guardian ad litem appointed on filing of petition for conservator, §34-1-107.
Inventory filing, §34-1-110.
Investments, §34-1-115.
Transfer of fiduciary relationship, §34-1-117.
Uniform adult guardianship and protective proceeding jurisdiction act.
See GUARDIAN AND WARD.

CONTACT VETO REGISTRY.
Adoption, §36-1-128.
Fees for registration, §36-1-141.
Notification made as part of search, contact or identifying request, §36-1-136.

CONTACT VETO REGISTRY —Cont'd
Adoption —Cont'd
Procedures for filing veto or giving consent, §36-1-129.
Records of deceased or disabled persons, §36-1-134.
Search of registry, §36-1-130.
Transmission of information between affected parties, §36-1-134.

CONTAINERS.
School security.
Search of containers, §49-6-4205.

CONTEMPT.
Child care agencies.
Injunctions against unlicensed operations.
Refusal to obey inspection order, §37-5-508.
Child custody.
Sexual abuse.
False allegations of sexual abuse in furtherance of litigation, §36-6-114.
Child support.
Enforcement of administrative orders, §36-5-812.
Conservators for persons with disabilities.
Failure to account, §34-1-111.
Failure to file inventory of disabled person's property, §34-1-110.
Criminal law and procedure.
Juvenile records, unlawful disclosure.
Court files and records, §37-1-153.
Law enforcement record, §37-1-154.
Delinquent and unruly children.
Disobedience of orders or obstruction of proceedings, §37-1-158.
Parental penalties, §37-1-174.
Dependent and neglected children.
Disobedience of orders or obstruction of proceedings, §37-1-158.
Domestic abuse.
Violation of protection order, §§36-3-610, 36-3-612.
Guardians for minors.
Failure to file accounting with court, §34-1-111.
Failure to file inventory of minor's property, §34-1-110.
Juvenile courts and proceedings, §37-1-158.
Court files and records.
Unlawful disclosure, §37-1-153.
Law enforcement records.
Unlawful disclosure, §37-1-154.
Parental penalties, §37-1-174.
Sexual abuse.
False allegations of sexual abuse in furtherance of litigation, §§36-4-135, 36-5-122.

CONTINUANCES.
Mental health service recipients.
Commitment, §33-3-612.
Transfers of service recipients.
Judicial review of transfer.
Hearing, §33-3-703.

CONTRABAND.
School security.
Disposal of contraband, §49-6-4210.

CONTRACEPTIVES.
Family planning act of 1971, §§68-34-101 to 68-34-111.
See FAMILY PLANNING ACT OF 1971.

CONTRACTS.
Children's services department, §37-5-110.
Community service agencies.
Provision of indigent health care, §37-5-309.
In-home visitation programs.
Department of health requirements, §68-1-125.
Juvenile law.
Commission on children and youth.
Predecessor agencies.
Contracts continued in full force, §37-3-107.
Counties.
Contracts between counties, §37-1-208.
Marriage contracts.
Antenuptial agreements.
Enforcement, §36-3-501.
Breach of marriage contract, §§36-3-401 to 36-3-405.
Creditor's rights, §36-3-502.
Prenuptial agreements.
Enforcement, §36-3-501.
Mental health service recipients.
Specific rights preserved, §33-3-102.
Receiving homes.
Department of children's services.
Funding contracts, §37-2-312.
Tanning facilities.
Requirements, §68-117-104.

CONTRIBUTING TO DELINQUENCY OF A MINOR, §§37-1-104, 37-1-156.

CONTRIBUTING TO DEPENDENCY AND NEGLECT, §37-1-157.
Jurisdiction of courts, §37-1-104.

CONVENTIONS.
Tattooing, §62-38-205.

CORPORAL PUNISHMENT.
Child abuse and child neglect or endangerment.
Issuance of arrest warrant or summons for institution of criminal charges, §39-15-401.
Schools and education, §§49-6-4103 to 49-6-4107.
Arrest and prosecution for injury to student, §49-6-4105.
Authorization for punishment, §49-6-4103.
Rules and regulations for administering, §49-6-4104.
Special school districts.
Administration regulated, §49-6-4402.
Authorized, §49-6-4402.
Records required, §49-6-4403.
Remedies for excessive punishment, §49-6-4404.

CORRECTIONS.
Department of correction.
Mental health service recipients.
Correction department and children's service department, transfers from, §§33-3-401 to 33-3-412.
Special school district of penal and reformatory institutions.
Discipline in special school districts generally, §§49-6-4401 to 49-6-4404.
Youth investment, §§37-3-401 to 37-3-406.

COSTS.
Child custody.
Intercounty enforcement and modification, §36-5-3009.

COSTS —Cont'd
Child custody —Cont'd
Relocation by parent, proceedings, §36-6-108.
Sexual abuse.
False allegations of sexual abuse in furtherance of litigation, §36-6-114.
Uniform deployed parents custody and visitation act.
Remedies for bad faith acts or intentional noncompliance, §36-7-103.
Child sexual abuse proceedings, §37-1-610.
Child support.
Administrative enforcement, §36-5-813.
Appeal of administrative decisions, §36-5-1005.
Employment report violation appeals, §36-5-1107.
Intercounty enforcement and modification, §36-5-3009.
License denial or revocation, §36-5-704.
Order for license revocation, §36-5-101.
Registration of orders, §36-5-3111.
Conservators for persons with disabilities.
Attorney ad litem, §34-1-125.
Charging of costs of proceedings, §34-1-114.
Payment of court costs by conservator, §34-1-113.
Delinquent and unruly children, §37-1-150.
Expenses of returning juvenile to children's services department, §37-1-138.
Liability of parents, legal custodians or guardians, §37-1-150.
Post-commitment relief, §§37-1-316, 37-1-317.
Dependent and neglected children.
Liability of parents, legal custodians or guardians, §37-1-150.
Disabilities, persons with.
Children with physical disability, treatment.
Payment of costs, §68-12-104.
Divorce.
Expunction of divorce records upon reconciliation of parties, §36-4-127.
Generally, §36-4-122.
Security for costs, §36-4-108.
Domestic abuse protection orders, §36-3-617.
Guardians for minors.
Attorney ad litem, §34-1-125.
Charging of costs of proceedings, §34-1-114.
Payment of court costs by guardian, §34-1-113.
Interstate child custody proceedings.
Award of costs and fees, §36-6-236.
Enforcement under Hague Convention, §36-6-241.
Juvenile proceedings.
Care of child, §37-1-150.
Council of juvenile judges.
Meeting and training session, §37-1-505.
Reimbursement of costs for evaluations and examinations of juveniles charged as adults.
Establishment of program, §37-1-507.
Disbursements of money collected, §37-1-209.

COSTS —Cont'd
Juvenile proceedings —Cont'd
Post-commitment relief, §37-1-316.
Mental health.
Children, services for.
Electroconvulsive therapy.
Hearing, §33-8-312.
Commitment.
Costs of proceedings, §33-3-503.
Paternity tests, §24-7-112.
Admissibility of bills for test, §36-2-308.
Schools and education.
Fraudulent enrollment of student in school district.
Civil action seeking restitution, §49-6-3003.
Sexual abuse.
False allegations of sexual abuse in furtherance of litigation, §§36-4-135, 36-5-122.
Support and maintenance.
Interstate family support act, §36-5-2313.
Registration of orders, §36-5-3111.

COUNSELORS, MENTAL HEALTH.
Involuntary admission, emergency.
Role of mental health professionals, §33-6-427.
Suicide of service recipient.
Special liability rules, §33-3-201.

COUNTIES.
Amphitheaters.
Smoking at outdoor amphitheater, prohibition.
Local government ordinances prohibiting, certain localities, §39-17-1551.
Appropriations.
Departments and agencies.
Department of children's services, §37-2-208.
Child custody.
Intercounty enforcement and modification, §§36-5-3001 to 36-5-3009.
Children's services.
Department, §§37-2-201 to 37-2-208.
See CHILDREN'S SERVICES DEPARTMENT.
Child support.
Intercounty enforcement and modification, §§36-5-3001 to 36-5-3009.
Community service agencies, §§37-5-310 to 37-5-319.
See COMMUNITY SERVICE AGENCIES.
Department of children's services, §§37-2-201 to 37-2-208.
Allocation of resources for children in state custody, §37-2-205.
Citation, §37-2-201.
Delinquent children.
Disposition, §37-2-205.
Dependent children.
Disposition, §37-2-205.
Director.
Appointment, §37-2-203.
Establishment of department.
Authority, §37-2-202.
Facilities.
Use of facilities of another county, §37-2-207.
Funds.
Authority to appropriate, §37-2-208.
Homes.
Authority to establish and operate, §37-2-204.

COUNTIES —Cont'd
Department of children's services —Cont'd
Judgments and decrees.
Court orders.
Modification, §37-2-206.
Neglected children.
Disposition, §37-2-205.
Personnel.
Appointment, §37-2-203.
Qualifications.
Minimum qualifications to be met, §37-2-205.
Records.
Kept by department, §37-2-205.
Short title, §37-2-201.
Standards.
Minimum standards to be met, §37-2-205.
Unruly children.
Disposition, §37-2-205.
Juvenile courts.
Pooling of juvenile justice supplements.
Contracts among counties, §37-1-165.
Juvenile law.
Department of children's services, §§37-2-201 to 37-2-208.
See CHILDREN'S SERVICES DEPARTMENT.
Receiving homes.
General provisions, §§37-2-301 to 37-2-319.
See RECEIVING HOMES.
Marriages.
Persons who may solemnize, §36-3-301.
Violations of law.
Penalties, §36-3-111.
Ordinances.
Child curfew.
Applicability upon adoption of ordinance, §39-17-1703.
Authorization to adopt, §39-17-1704.
Outdoor amphitheaters.
Smoking at outdoor amphitheater, prohibition.
Local government ordinances prohibiting, certain localities, §39-17-1551.
Receiving homes.
General provisions, §§37-2-301 to 37-2-319.
See RECEIVING HOMES.
Smoking.
Preemption of tobacco regulations, §39-17-1551.
Swimming pools.
Smoking on grounds, prohibition.
Local government ordinances prohibiting, certain localities, §39-17-1551.
Tattooing.
Local regulations superseded, §62-38-210.

COURT OF APPEALS.
Desertion and nonsupport.
Nonsupport and flagrant support.
Appeals from final orders or decrees of juvenile courts, §39-15-103.

COURTS.
Child abduction prevention.
Cooperation and communication among courts, §36-6-603.
Definition of court, §36-6-602.
Ordering preventive measures, §36-6-604.
Conservators for persons with disabilities.
Powers, §34-1-121.

COURTS —Cont'd
Domestic violence court for Shelby county, §16-15-5014.
Guardians for minors.
Powers, §34-1-121.
Juvenile courts.
General provisions, §§37-1-101 to 37-1-507.
See JUVENILE PROCEEDINGS.
Mental health service recipients.
Residential service recipients.
Death of recipient.
Notice to family, guardian, court, etc., §33-4-109.
Teen court program of 2000, §§37-1-701 to 37-1-706.

COURTS OF GENERAL SESSIONS.
Contributing to the delinquency of a minor.
Concurrent jurisdiction with juvenile court, §37-1-104.
Contributing to the dependency of a minor.
Concurrent jurisdiction with juvenile court, §37-1-104.
Domestic violence court for Shelby county, §16-15-5014.
Judges.
Attendance.
Failure to attend.
Selection of special judge, §16-15-209.
Interchange, §17-2-208.
Marriage.
Persons who may solemnize, §36-3-301.
Jurisdiction.
Contributing to the dependency of a minor.
Concurrent jurisdiction with juvenile court, §37-1-104.
Juvenile courts.
Clerks, §37-1-210.
Jurisdiction of general sessions court, §37-1-203.
Procedure in general sessions court, §37-1-204.
Termination of parental rights.
Concurrent jurisdiction with juvenile court, §37-1-104.

COVERTURE.
Married women.
Disabilities removed, §36-3-504.

CRIMINAL FORFEITURE.
Conveyances used in robbery, theft or sexual offenses.
Sexual exploitation of children, §39-17-1008.

CRIMINAL HISTORY RECORDS CHECKS.
Access to records, §38-6-109.
Child care agencies, juveniles.
License applications, §37-5-502.
Persons having access to children, §37-5-511.
Child care agencies, welfare, §71-3-507.
Fees, §38-6-109.
Foster care plans.
Emergency home-care placements, §37-2-415.
Intellectual and developmental disabilities.
Department employees, volunteers and applicants, §33-2-1201.
Facilities employees, §33-2-1202.

CRIMINAL HISTORY RECORDS CHECKS —Cont'd
Mental health.
Department employees, volunteers and applicants, §33-2-1201.
Facility employees, §33-2-1202.
Procedure, §38-6-109.
Tennessee bureau of investigation.
Duties, §38-6-109.

CRIMINAL LAW AND PROCEDURE.
Abortion, §§39-15-201 to 39-15-210.
See ABORTION.
Adoption.
Payments in connection with placing child, §36-1-109.
Providing false information related to information requests, §36-1-139.
Unauthorized disclosure of records, §36-1-125.
Violation of provisions by state employees, §36-1-105.
Withholding of material information, §36-1-104.
Aerosol gases.
Inhaling, selling, giving or possessing for unlawful purposes, §39-17-422.
Aggravated child abuse and child neglect or endangerment, §39-15-402.
Aggravated statutory rape, §39-13-506.
AIDS.
Exposure to HIV, §39-13-109.
Quarantine and isolation, §39-13-108.
Alcoholic beverages.
Enforcement of laws.
Use of minors in aid of enforcement, §39-15-413.
Enticing child to purchase, §39-15-404.
Purchasing for child, §39-15-404.
Battery.
Sexual battery.
Aggravated sexual battery, §39-13-504.
Victim under thirteen years of age, §39-13-504.
Authority figure perpetrating, §39-13-527.
Bigamy, §39-15-301.
Birth defects registry, §68-5-506.
Blind persons.
Education.
Parents making false statements concerning blind children, §49-6-3015.
Boats.
Personal flotation devices for persons 12 years of age and under.
Violation of requirement, §69-9-225.
Body piercing, §62-38-310.
Body vest.
Commission of certain offenses while wearing, §39-17-1323.
Central registry for sexual offenders, §38-6-110.
Child abuse and child neglect or endangerment.
General provisions.
See CHILD ABUSE AND CHILD NEGLECT OR ENDANGERMENT.
Child care agencies, §§37-5-507, 37-5-509, 37-5-513, 71-3-505.
Child curfew, §39-17-1702.
Child custody.
Custodial interference, §39-13-306.
Child labor.
Fourteen years old, less than.
Employment, §50-5-103.

CRIMINAL LAW AND PROCEDURE —Cont'd
Child passenger restraint systems.
Violations of requirements, §55-9-602.
Children's clean indoor air act, §39-17-1606.
Child's testimony.
Closed circuit television, §24-7-120.
Child support.
Employment report disclosures, §36-5-1106.
Failure to comply with order, §36-5-104.
Nonsupport and flagrant nonsupport, §39-15-101.
Chlorofluorocarbon gas.
Inhaling, selling, giving or possessing for unlawful purposes, §39-17-422.
Cigarettes.
Minors.
Prevention of access to tobacco and vapor products.
General provisions, §§39-17-1501 to 39-17-1551.
See TOBACCO.
Smoking paraphernalia.
General provisions, §§39-15-407 to 39-15-414.
Coercion.
Sexual offenses.
Rape, §39-13-503.
Aggravated rape, §39-13-502.
Concealing runaway children.
Harboring, concealing or aiding in escape from lawful custody, §39-15-414.
Confidentiality of information.
Foster care plans, §37-2-408.
Kinship foster care program, §37-2-414.
Statutory rape reporting, §38-1-304.
Custodial interference, §39-13-306.
Defenses.
Hepatitis B or hepatitis C.
Criminal exposure to virus, §39-13-109.
Definitions.
Sexual battery, §39-13-504.
Delinquent and unruly children.
Appeals from orders of criminal court, §37-1-159.
Children found to be delinquent.
Exemption from operation of laws applicable to infamous crimes, §37-1-133.
Contributing to delinquency or unruly behavior, §37-1-156.
Dispositional proceedings.
Violation of confidentiality provisions, §37-1-131.
Assessment reports, §37-1-136.
Disposition of child tried in criminal courts, §37-1-134.
Parental liability for vandalism by child, §37-1-156.
Transfer of case to criminal court of competent jurisdiction, §37-1-134.
Department of human services.
Statutory rape reporting.
Application for public assistance indicates occurrence of statutory rape, §38-1-305.
Dependent and neglected children.
Contributing to dependency or neglect, §37-1-157.
Dispositional proceedings.
Confidentiality of assessment reports and materials, violations, §37-1-136.

CRIMINAL LAW AND PROCEDURE —Cont'd
Desertion and nonsupport.
Nonsupport and flagrant nonsupport, §39-15-101.
Discrimination.
Children born out of wedlock, §36-2-316.
Divorce.
Conviction of crime as grounds.
Proof required, §36-4-118.
Domestic violence.
Protection orders.
Firearm possession while order in effect, §36-3-604.
Disclosures required, §36-3-625.
Drugs.
Use in aid for enforcement of laws, §39-15-413.
Electronic cigarettes.
Minors.
Prevention of access to tobacco and vapor products, §§39-17-1501 to 39-17-1551.
See TOBACCO.
Enforcement of laws.
Use of minor in aid of enforcement, §39-15-413.
Explosives.
School property.
Carrying weapons on school property, §39-17-1309.
Expunction of records.
Juvenile records, §37-1-155.
Family, offenses against.
Abortion, §§39-15-201 to 39-15-210.
See ABORTION.
Bigamy, §39-15-301.
Incest, §39-15-302.
Nonsupport and flagrant nonsupport, §39-15-101.
Family planning.
Violations of chapter, §68-34-111.
Female genital mutilation.
Consent to procedure by minor or minor's parents.
Not defense, §39-13-110.
Firearms illegally possessed by minor.
Handguns, §39-17-1319.
Inaction by persons 18 or older, including parent or guardian, §39-17-1312.
Foster care plans.
Confidentiality of information.
Kinship foster care program, §37-2-414.
Revealing confidential information, §37-2-408.
Fraud.
Marriage.
Fraudulently signing or using false documents, §36-3-112.
Gasoline.
Inhaling, selling, giving or possessing for unlawful purposes, §39-17-422.
Hepatitis B or hepatitis C.
Exposure to virus, §39-13-109.
Husband and wife.
Bigamy, §39-15-301.
Nonsupport and flagrant nonsupport, §39-15-101.
Illegitimate children.
Discrimination against children born out of wedlock, §36-2-316.
Imitation firearms.
Displaying in threatening manner in public place, §39-17-1362.

CRIMINAL LAW AND PROCEDURE —Cont'd
Immunity.
Statutory rape reporting.
Persons filing reports, §38-1-306.
Incest, §39-15-302.
Inhaling intoxicating substances, §39-17-422.
Insanity defense.
Intellectual disabilities.
Forensic services for intellectually disabled.
Release or discharge of involuntarily committed offenders, §§33-5-409, 33-5-410.
Intellectual and developmental disabilities.
Forensic services for intellectually disabled.
Release or discharge of involuntarily committed offenders, §§33-5-409, 33-5-410.
Sentencing.
Credit on sentence for time in custody, §33-5-406.
Unlicensed facilities.
Operation prohibited, §33-2-405.
Juvenile courts.
Contributing to dependency, §37-1-157.
Dispositional proceedings.
Confidentiality of assessment reports and materials, violation, §37-1-136.
Interstate flight by juvenile felon, §37-1-160.
Transfer of criminal cases to juvenile courts, §37-1-109.
Juvenile records.
Court files and records, §37-1-153.
Expunction, §37-1-155.
Law enforcement records, §37-1-154.
Lotteries.
Use of minors to enforce prohibitions involving minors, §39-15-413.
Marriage.
Bigamy, §39-15-301.
County clerks.
Violation of law, §36-3-111.
Fraudulent signing or using false documents, §36-3-112.
Incapable persons.
Solemnization of marriage, §36-3-305.
Licenses.
Failure to return to clerks, §36-3-303.
Mental health.
Commitment.
False information, furnishing, §33-3-902.
Wrongful hospitalization or admission, §33-3-901.
Custodial interference, §39-13-306.
Escape from facility, aiding or abetting, §33-3-904.
Gifts, employees receiving from service recipients, §33-3-904.
Inciting to violence, §33-3-904.
Inpatient treatment.
Discharge from inpatient treatment.
Criminal or juvenile offenders.
Review procedures, §33-6-708.
Rape.
Aggravated rape.
Victim's mental defect or mental incapacitation known to defendant, §39-13-502.
Victim mentally defective, §39-13-503.

CRIMINAL LAW AND PROCEDURE —Cont'd
Mental health —Cont'd
Residential service recipients.
Certificate of need for commitment for care and treatment.
Execution of certificate without observation, §33-4-108.
Sex offenders, services for.
Post-plea treatment system, §§33-6-801 to 33-6-805.
Supplying drugs, firearms, etc., to recipient, §33-3-904.
Mental health and substance abuse facilities.
Unlicensed facilities.
Operation prohibited, §33-2-405.
Orders to cease providing services.
Violation of order, §33-2-417.
Mental health service recipients.
Confidentiality of records, §33-3-116.
Minors.
Sexual battery.
Aggravated sexual battery.
Victim less than thirteen years of age, §39-13-504.
Tobacco.
Prevention of access to tobacco and vapor products, §§39-17-1501 to 39-17-1551.
See TOBACCO.
Miscarriages.
Attempts to procure criminal miscarriage, §39-15-201.
Mitigated statutory rape, §39-13-506.
Motor vehicles.
Safety belt violations, §55-9-603.
Nonsupport and flagrant nonsupport, §39-15-101.
Offenses against the family.
Abortion, §§39-15-201 to 39-15-210.
See ABORTION.
Bigamy, §39-15-301.
Incest, §39-15-302.
Nonsupport and flagrant nonsupport, §39-15-101.
Orphan asylums.
Interference with children, §71-3-608.
Paint.
Inhaling, selling, giving or possessing for unlawful purposes, §39-17-422.
Parent and child.
Criminal offenses of child.
School notified by parent, guardian or custodian, §49-6-3051.
Custodial interference, §39-13-306.
Firearms illegally possessed by minor.
Inaction by persons 18 or older, including parents, §39-17-1312.
Incest, §39-15-302.
Providing handguns to juveniles, §39-17-1320.
Parks and recreation.
Firearm illegally possessed by minor on park or playground premises.
Inaction by persons 18 or older, including parent or guardian, §39-17-1312.
Physicians and surgeons.
Statutory rape reporting.
Pregnancy of child and alleged father four years older but not legal spouse of child, §§38-1-302, 38-1-303.
Pollution.
Vandalism, §39-14-408.
Pregnancy.
Abortion, §§39-15-201 to 39-15-210.
See ABORTION.

CRIMINAL LAW AND PROCEDURE —Cont'd
Pregnancy —Cont'd
Child abandonment.
Baby drop off law, §36-1-142.
Miscarriages.
Attempts to procure criminal miscarriage, §39-15-201.
Serological tests.
Violations of provisions, §68-5-607.
Providing handguns to juveniles, §39-17-1320.
Rape, §39-13-503.
Aggravated statutory rape, §39-13-506.
Minor victims, 12 years old or less.
Abortion performed on minor less than 13.
Physician duties as to preservation of biological evidence, §39-15-210.
Mitigated statutory rape, §39-13-506.
Rape of a child, §39-13-522.
Abortion performed on minor less than 13.
Physician duties as to preservation of biological evidence, §39-15-210.
Satellite-based monitoring program, §39-13-522.
Sentencing of child rapist, §39-13-522.
Sentence and punishment.
Child, rape of, §39-13-522.
Statutory rape, §39-13-506.
Aggravated statutory rape, §39-13-506.
Mitigated statutory rape, §39-13-506.
Pregnancy of child and alleged father four years older than victim, §§38-1-302, 38-1-303.
Reports, §§38-1-301 to 38-1-306.
Confidentiality of reports and identity of person filing, §38-1-304.
Confidentiality of reports and identity of person making, §38-1-304.
Department of children's services when public assistance application indicates occurrence, §38-1-305.
Department of human services to report when public assistance application indicates occurrence of statutory rape, §38-1-305.
Immunity from civil liability of persons making, §38-1-306.
Immunity of person filing, §38-1-306.
Pregnancy of child and alleged father four years older but not legal spouse of child, §38-1-302.
Contents, §38-1-303.
Purpose of provisions, §38-1-301.
Purposes of provisions, §38-1-301.
Victims at least thirteen but less than eighteen years of age, §39-13-506.
Receiving homes.
Violations of part, §37-2-319.
Records.
Expunction of records.
Juvenile cases, §37-1-155.
Juvenile proceedings.
Court files and records, §37-1-153.
Expunction, §37-1-155.
Law enforcement records, §37-1-154.
Juvenile records, §§37-1-153 to 37-1-155.

CRIMINAL LAW AND PROCEDURE —Cont'd
Runaway houses.
Violation of chapter, §37-2-507.
Sales.
Aborted fetuses, §39-15-208.
Glue, paint, gasoline, aerosol, gases, etc.
Inhaling, selling, giving or possession for unlawful purposes, §39-17-422.
Schools and education.
Age of pupil.
Parents providing false information, §49-6-3008.
Blind children.
Parents making false statement concerning, §49-6-3015.
Parent, guardian or custodian to notify school of child's criminal offenses, §49-6-3051.
School attendance.
Parents providing false information, §49-6-3008.
Violations of provisions, §49-6-3009.
Weapons.
Carrying on school property, §39-17-1309.
Minor illegally possessing firearm on school premises.
Inaction by persons 18 or older, including parent or guardian, §39-17-1312.
Sexual battery.
Aggravated sexual battery, §39-13-504.
Victim under thirteen years of age, §39-13-504.
Authority figure perpetrating, §39-13-527.
Sexual exploitation of children, §§39-17-1001 to 39-17-1008.
Sexually transmitted diseases.
Violations of chapter.
Each violation deemed a separate offense, §68-10-111.
Sexual offenses.
Central registry for sex offenders, §38-6-110.
Incest, §39-15-302.
Shoplifting.
Theft of retail merchandise by minor.
Civil liability of adult, parent or guardian, §39-14-144.
Smoking.
Minors.
Prevention of access to tobacco and vapor products, §§39-17-1501 to 39-17-1551.
See TOBACCO.
Smoking paraphernalia.
General provisions, §§39-15-407 to 39-15-414.
Statutory rape, §39-13-506.
Aggravated statutory rape, §39-13-506.
Mitigated statutory rape, §39-13-506.
Reporting, §§38-1-301 to 38-1-306.
Confidentiality of reports and identity of person filing, §38-1-304.
Department of human resources when public assistance application indicates occurrence, §38-1-305.
Immunity of person making report, §38-1-306.
Pregnancy of child and alleged father four years older but not legal spouse of victim, §§38-1-302, 38-1-303.
Purposes of provisions, §38-1-301.

CRIMINAL LAW AND PROCEDURE —Cont'd
Support and maintenance.
Employment report disclosures, §36-5-1106.
Nonsupport and flagrant nonsupport, §39-15-101.
Tanning facilities.
Violations of chapter, §68-117-105.
Tattooing, §§39-15-403, 62-38-207.
Minors, §62-38-211.
Possession of tattoo paraphernalia by unlicensed person, §62-38-212.
Tattooing without a permit, §62-38-208.
Temporary assistance for dependent children.
Conviction, guilty plea or plea of nolo contendere.
Eligibility for temporary assistance, §71-3-104.
Tennessee bureau of investigation.
Sexual offenses.
Central registry for sexual offenders, §38-6-110.
Tobacco.
Minors.
Prevention of access to tobacco and vapor products, §§39-17-1501 to 39-17-1551.
See TOBACCO.
Smoking paraphernalia.
General provisions, §§39-15-407 to 39-15-414.
Trafficking in children, §37-5-405.
Trespass.
Motor vehicles, §39-14-407.
University and postsecondary education.
Weapons.
Carrying weapons on school property, §39-17-1309.
Use of minors in aid of enforcement of laws, §39-15-413.
Vandalism, §39-14-408.
Retail merchandise, §39-14-408.
Vapor products.
Minors.
Prevention of access to tobacco and vapor products, §§39-17-1501 to 39-17-1551.
Warrantless arrest.
Domestic abuse protection order violations, §36-3-611.
Weapons.
Firearms illegally possessed by minor.
Handguns, §39-17-1319.
Inaction by persons 18 or older, including parent or guardian, §39-17-1312.
Providing handguns to juveniles, §39-17-1320.
Welfare.
Temporary assistance.
Conviction, guilty plea or plea of nolo contendere.
Eligibility for temporary assistance, §71-3-104.

CRIMINAL STREET GANGS.
Enhanced factors in sentencing.
Defendant member of gang, §40-35-121.

CRIPPLED AND DISABLED CHILDREN.
Children with physical disability, treatment, §§68-12-101 to 68-12-112.
See DISABILITIES, PERSONS WITH.

CRISIS INTERVENTION PROGRAMS.
Juvenile-family intervention programs, §§37-1-168, 37-1-169.

CURFEW, §§39-17-1701 to 39-17-1704.
Applicability.
Adoption of resolution or ordinance, §39-17-1703.
Authorization to adopt, §39-17-1704.
Exceptions, §39-17-1702.
Generally, §39-17-1702.
Ordinances.
Applicability upon adoption, §39-17-1703.
Penalties for violations, §39-17-1702.
Title of act.
Short title, §39-17-1701.
Violations.
Duties of apprehending officer, §39-17-1702.
Penalties, §39-17-1702.

CURRICULUM.
See SCHOOLS AND EDUCATION.

CUSTODIAL INTERFERENCE.
Defenses.
Voluntarily returning person taken before arrest or issuance of warrant, §39-13-306.
Defined, §39-13-306.
Felonies, §39-13-306.
Voluntarily returning person taken.
Defense to custodial interference.
Returning before arrest or issuance of warrant, §39-13-306.

CUSTODY.
Child custody.
Generally.
See CHILD CUSTODY.
Uniform child custody jurisdiction and enforcement act, §§36-6-201 to 36-6-243.
See INTERSTATE CHILD CUSTODY PROCEEDINGS.

CYBER-BULLYING.
Bullying, harassment or intimidation, §§49-6-4501 to 49-6-4506.

D

DAGGERS.
School property.
Carrying weapons on school property, §39-17-1309.

DAMAGES.
Delinquent and unruly children.
Recovery for property damaged by juvenile, §37-10-101.
Circumstances under which parent or guardian liable, §37-10-103.
Limitation on amount, §37-10-102.
Foster care plans.
Confidentiality of reports.
Violation, §37-2-411.
Marriage contracts.
Breach of marriage contract, §§36-3-401 to 36-3-405.
Punitive damages.
Juvenile abuse reports.
Whistleblowers, §37-1-410.
Juveniles.
Abortion consent.
Interference with family relations, §37-10-307.
Marriage contract breaches, §36-3-404.
Reports.
Child placement.
Violations of confidentiality, §37-2-411.

DAMAGES —Cont'd
Schools and education.
Assault or injury to student or employee or property of student or employee, §49-6-4006.
Theft.
Theft of retail merchandise by minor.
Civil liability of adult, parent or guardian, §39-14-144.

DANCERS.
Child labor.
Protection of minor performers, §§50-5-201 to 50-5-222.
See CHILD LABOR.

DARE.
Drug abuse resistance education.
See ALCOHOL AND DRUG ABUSE.

DAY CARE CENTERS.
Child care agencies, juveniles, §§37-5-501 to 37-5-519.
See CHILD CARE AGENCIES, JUVENILES.
Child care agencies, welfare, §§71-3-501 to 71-3-518.
See CHILD CARE AGENCIES, WELFARE.
Child custody.
Change in physical custody of child.
Requirements for officials to permit, §36-6-105.
Clean indoor air.
Children's clean indoor air act, §§39-17-1601 to 39-17-1606.
Department of human services.
Market rate study and rate of reimbursement, §71-1-130.

DEATH.
Child custody.
Noncustodial parent's right to notice of death of child, §36-6-101.
Children's services department.
Death or near fatality of person in custody of department.
Reporting, §37-5-124.
Domestic abuse.
Death review teams, §36-3-624.
Marriage dissolved by death.
Person reasonably believing.
Defense to prosecution for bigamy, §39-15-301.
Parent.
Devolution of guardianship of minor upon survivor, §34-1-102.

DEATH PENALTY.
Delinquent and unruly children, §37-1-134.

DEBTS.
Husband and wife.
Antenuptial debts of wife.
Nonliability of husband, §36-3-503.

DECEDENTS' ESTATES.
Adoption.
Effect of adoption on capacity to inherit, §36-1-121.
Alimony.
Intestacy of plaintiff spouse, §36-5-105.
Divorce.
Intestacy of plaintiff spouse, §36-5-105.
Illegitimate children.
Inheritance of child from father, §36-2-313.
State mental health facilities.
Charges for services.
Claims against service recipients and their estates, §33-2-1107.

DEEDS.
Adoption.
Limitations restricting conveyances to lawful heirs, issue, etc.
Effect of adoption, §36-1-126.

DEFAULT JUDGMENTS.
Paternity proceedings, §36-2-308.

DEFENSES.
AIDS.
Criminal exposure to HIV or hepatitis B or C virus, §39-13-109.
Alcoholic beverages.
Minors, enticing to purchase or purchasing for, §39-15-404.
Bigamy.
Marriage dissolved by death.
Person reasonably believing, §39-15-301.
Custodial interference.
Voluntarily returning person taken before arrest or issuance of warrant, §39-13-306.
Divorce proceedings.
See DIVORCE.
Domestic abuse protection orders.
Enforcement of foreign orders, §36-3-622.
Female genital mutilation.
Procedure performed on minor.
Minor or minors parents consent not defense, §39-13-110.
Firearms and other weapons.
Unlawful possession or carrying of weapon.
Handgun possession, §39-17-1319.
Unlawful sale of firearm, §39-17-1303.
Hepatitis B or hepatitis C.
Criminal exposure to virus, §39-13-109.
Interstate family support act.
Nonparentage as defense, §36-5-2315.
Kidnapping.
Custodial interference.
Voluntarily returning person taken before arrest or issuance of warrant, §39-13-306.
Motor vehicles.
Trespass by motor vehicles.
Failure to post signs or notice not defense, §39-14-407.
Pornographic material harmful to minors.
Sale, loan or exhibition of material to minors, §39-17-911.
Support and maintenance.
Contesting registered orders, §§36-5-2607, 36-5-3107.
Interstate family support act.
Contesting registered orders, §36-5-3107.
Nonparentage as defense, §36-5-2315.

DEFINED TERMS.
Abandoned.
Interstate child custody proceedings, §36-6-205.
Abandoned child.
Juvenile courts and proceedings, §37-1-102.
Abandonment.
Adoption, §36-1-102.
Foster care, §37-2-402.
Abandonment of an infant.
Adoption, §36-1-102.
Foster care, §37-2-402.
Abduction.
Child abduction prevention, §36-6-602.

DEFINED TERMS —Cont'd
Abortion.
Criminal code, §39-15-201.
Parental consent for abortion by minor, §37-10-302.
Abuse.
Children's services department, §37-5-103.
Domestic abuse, §36-3-601.
Juvenile courts and proceedings, §36-1-102.
Mental health, substance abuse and intellectual and developmental disabilities licensure law, §33-2-402.
Adjudication as mental defective or adjudicated as mental defective.
Mental health service recipients, §33-3-115.
Adjudication of delinquency.
Children's services department, §37-5-103.
Administrative hearing.
Juvenile courts and proceedings, §37-1-102.
Adopted person.
Adoption, §36-1-102.
Adoption, §36-1-102.
Adoption record.
Adoption, §36-1-102.
Adoptive parents.
Adoption, §36-1-102.
Adoptive placement.
Indian child welfare, 25 USCS §1903.
Adult behavioral health services for the seriously and persistently mentally ill.
Medical assistance, §71-5-103.
Adult emergency dental services.
Medical assistance, §71-5-103.
Adults.
Adoption, §36-1-102.
Children's services department, §37-5-103.
Domestic abuse, §36-3-601.
Juvenile courts and proceedings, §37-1-102.
Uniform deployed parents custody and visitation act, §36-7-102.
Adversary counsel.
Guardianships and conservatorships generally, §34-1-101.
Agencies.
Foster care, §37-2-402.
Age- or developmentally-appropriate.
Foster care plans, §37-2-418.
Aggravated child abuse and child neglect or endangerment, §39-15-402.
Aggravated circumstances.
Adoption, §36-1-102.
Aggravated rape, §39-13-502.
Aggravated sexual battery, §39-13-504.
Aggravated sexual exploitation of a minor, §39-17-1004.
Aggravated statutory rape, §39-13-506.
Agricultural work.
Child labor, §50-5-102.
Alcohol abuse.
Mental health, substance abuse and intellectual and developmental disabilities, §33-1-101.
Alcohol and drug prevention and/or treatment facility.
Mental health, substance abuse and intellectual and developmental disabilities facilities licensing, §33-2-402.

DEFINED TERMS —Cont'd
Alcohol and drug services.
Mental health, substance abuse and intellectual and developmental disabilities facilities licensing, §33-2-402.
Alcohol dependence.
Mental health, substance abuse and intellectual and developmental disabilities, §33-1-101.
Antibacterial.
Body piercing, §62-38-301.
Antibacterial solution.
Tattooing, §62-38-201.
AP.
Home schools, §49-6-3050.
Applicants.
Medical assistance, §71-5-103.
Application.
Interstate family support, convention support proceedings, §36-5-2701.
Appropriate authority in the receiving state.
Interstate compact on the placement of children, §37-4-202.
Appropriate public authorities.
Interstate compact on the placement of children, §37-4-202.
Appropriate sampling.
Severe child abuse, second look commission to study second or subsequent incidents of severe child abuse, §37-3-802.
Approval.
Body piercing, §62-38-301.
Approved laboratory.
Pregnancy serological tests, §68-5-601.
Approved smoke detector.
Foster care, §37-2-412.
Arrears.
Assignment of income for child support, §36-5-501.
Child support enforcement, §36-5-701.
Artistic or creative services.
Protection of minor performers, §50-5-203.
Assessment report.
Juvenile courts, §37-1-136.
Assistance.
Temporary assistance for dependent children, §71-3-103.
Attempt to procure a miscarriage.
Criminal code, §39-15-201.
Attorney ad litem.
Guardianships and conservatorships generally, §34-1-101.
Available suitable accommodations.
Mental health, substance abuse and intellectual and developmental disabilities, §33-1-101.
Beedies.
Prevention of youth access to tobacco and vapor products, §39-17-1503.
Bidis.
Prevention of youth access to tobacco and vapor products, §39-17-1503.
Bigamy.
Criminal code, §39-15-301.
Biological parents.
Adoption, §36-1-102.
Biological relative.
Adoption, §36-1-102.
Birth defects.
Genetic testing, §§68-5-501, 68-5-506.
Blind children.
Education, §49-6-3015.
Body piercing, §62-38-301.

DEFINED TERMS —Cont'd
Body piercing establishment, §62-38-301.
Body piercing establishment permit, §62-38-301.
Body piercing operator, §62-38-301.
Body piercing procedure, §62-38-301.
Body piercing service, §62-38-301.
Body piercing technician, §62-38-301.
Body piercing technician license, §62-38-301.
Body vest.
Criminal code, §39-17-1323.
Business days.
Child support, §36-5-1101.
Businesses.
Body piercing, §62-38-301.
Care givers.
Child care agencies, juveniles, §37-5-501.
Child care agencies, welfare, §71-3-501.
Child custody, §36-6-106.
Foster care plans, §37-2-418.
Juvenile courts and proceedings, §37-1-102.
Caretaker relative.
Temporary assistance for dependent children, §71-3-103.
Caretaking authority.
Uniform deployed parents custody and visitation act, §36-7-102.
Central authority.
Interstate family support, convention support proceedings, §36-5-2701.
Chartered child-placing agency.
Adoption, §36-1-102.
Chief officer.
Mental health, substance abuse and intellectual and developmental disabilities, §33-1-101.
Child abuse.
Severe child abuse, second look commission to study second or subsequent incidents of severe child abuse, §37-3-802.
Child abuse agency, §37-5-501.
Child abuse and child neglect or endangerment.
Criminal code, §39-15-401.
Child abuse prevention services.
Public welfare, §71-6-202.
Child born out of wedlock, §36-2-302.
Child care, §37-5-501.
Welfare, §§71-1-133, 71-3-501.
Child care agency.
Juveniles, §37-5-501.
Welfare, §§71-3-501, 71-3-502.
Child care center.
Welfare, §71-3-501.
Child caring agency.
Adoption, §36-1-102.
Child caring institution, §37-5-501.
Child-centered.
Commission on children and youth, §37-3-110.
Child custody determination.
Child abduction prevention, §36-6-602.
Interstate child custody proceedings, §36-6-205.
Child custody proceeding.
Child abduction prevention, §36-6-602.
Indian child welfare, 25 USCS §1903.
Interstate child custody proceedings, §36-6-205.
Child or children.
Adoption, §36-1-102.
Child abduction prevention, §36-6-602.

DEFINED TERMS —Cont'd
Child or children —Cont'd
Child care agencies, juveniles, §37-5-501.
Child care agencies, welfare, §71-3-501.
Children's services department, §37-5-103.
Clean indoor air act, §39-17-1603.
Expedited process for support, §36-5-401.
Interstate child custody proceedings, §36-6-205.
Juvenile courts and proceedings, §37-1-102.
Mandatory child abuse reports, §37-1-401.
Mental health, substance abuse and intellectual and developmental disabilities, §33-1-101.
Missing children recovery act, §37-10-201.
Nonsupport, §39-15-101.
Runaway children, interstate juvenile compact, §37-4-101.
Temporary assistance for dependent children, §71-3-103.
Uniform deployed parents custody and visitation act, §36-7-102.
Uniform interstate family support act, §36-5-2101.
Child placing agency, §37-5-501.
Child protection team.
Juvenile courts and proceedings.
Child sexual abuse, §37-1-602.
Child's county.
Intercounty enforcement and modification of support or custody, §36-5-3002.
Child sexual abuse.
Children's services department, §37-5-103.
Juvenile courts and proceedings, §37-1-602.
Child support order.
Uniform interstate family support act, §36-5-2101.
Child welfare agency.
Child sexual abuse, §37-1-602.
Child with physical disability.
Disabled children, treatment, §68-12-102.
Church-related schools.
Attendance, §49-6-3001.
Clerks.
Intercounty enforcement and modification of support or custody, §36-5-3002.
Registration of support orders, §36-5-3102.
Clients.
Tattooing, §62-38-201.
Close and substantial relationship.
Uniform deployed parents custody and visitation act, §36-7-301.
Closest relatives.
Guardianships and conservatorships generally, §34-1-101.
Commencement.
Interstate child custody proceedings, §36-6-205.
Commissioners.
Comprehensive alcohol, tobacco and drug prevention program, §33-10-502.
Mental health, substance abuse and intellectual and developmental disabilities, §33-1-101.

DEFINED TERMS —Cont'd
Commissioners —Cont'd
Mental health, substance abuse and intellectual and developmental disabilities licensure law, §33-2-402.
Communities.
Sexual exploitation of children, §39-17-1002.
Community.
Soliciting sexual exploitation of a minor, §39-13-529.
Community-based youth athletic activity.
Sudden cardiac arrest prevention, §68-6-102.
Community center.
Children's clean indoor air act, §39-17-1603.
Community mental health centers.
Cooperation among centers, §33-2-703.
Mental health, substance abuse and intellectual and developmental disabilities, §33-1-101.
Complete guardianship.
Adoption, §36-1-102.
Consent.
Adoption, §36-1-102.
Mental health, substance abuse and intellectual and developmental disabilities, §33-1-101.
Conservatorship.
Guardianships and conservatorships generally, §34-1-101.
Contraceptive procedures.
Family planning, §68-34-102.
Contraceptive supplies.
Family planning, §68-34-102.
Convention.
Uniform interstate family support act, §36-5-2101.
Convention support order.
Interstate family support, convention support proceedings, §36-5-2701.
Convictions.
Juvenile offender surcharges, §37-11-102.
Cooperative agreements.
Community mental health center cooperation, §33-2-703.
Corporate surety.
Guardianships and conservatorships generally, §34-1-101.
Councils.
Developmental disabilities services, family support, §33-5-201.
Counseling center.
Mental health service recipients, suicide liability, §33-3-201.
Counter.
Maintenance of smoking paraphernalia in area inaccessible to customers, §39-17-1511.
County office.
Medical assistance, §71-5-103.
Court order.
Juvenile courts and proceedings, §37-1-102.
Court report.
Adoption, §36-1-102.
Courts.
Adoption, §36-1-102.
Child abduction prevention, §36-6-602.
Domestic abuse, §36-3-601.
Foster care, §37-2-402.
Guardianships and conservatorships generally, §34-1-101.
Intercounty enforcement and modification of support or custody, §36-5-3002.

DEFINED TERMS —Cont'd
Courts —Cont'd
Interstate child custody proceedings, §36-6-205.
Paternity and legitimation, §36-2-302.
Registration of support orders, §36-5-3102.
Uniform deployed parents custody and visitation act, §36-7-102.
Crimes and offenses.
Handgun possession, §39-17-1319.
Rape of a child, §39-13-522.
Sexual exploitation of children, §39-17-1002.
Smoking paraphernalia, §39-15-407.
Tattooing of minors, §39-15-403.
Criminal gang, §40-35-121.
Schools and education, §49-6-4215.
Sentencing, §40-35-121.
Criminal gang members, §40-35-121.
Sentencing, §40-35-121.
Criminal gang offenses, §40-35-121.
Sentencing, §40-35-121.
Culturally competent.
Commission on children and youth, §37-3-110.
Custodial interference.
Criminal code, §39-13-306.
Custodial parent.
Transfer of support or custody cases, §36-5-3003.
Custodial responsibility.
Uniform deployed parents custody and visitation act, §36-7-102.
Custodians.
Juvenile courts and proceedings, §37-1-102.
Custody.
Juvenile courts and proceedings, §37-1-102.
Damages.
Vandalism, §39-14-408.
Dangerous weapons.
School security act, §49-6-4202.
Date of foster care placement, §37-2-402.
Day care center.
Children's clean indoor air act, §39-17-1603.
Decision-making authority.
Uniform deployed parents custody and visitation act, §36-7-102.
De-identified.
Medical records, §63-2-101.
Delinquent acts.
Juvenile courts and proceedings, §37-1-102.
Mentally ill and intellectually disabled persons.
Intellectually disabled offenders, §37-1-102.
Delinquent child.
Juvenile courts and proceedings, §37-1-102.
Mentally ill and intellectually disabled persons.
Intellectually disabled offenders, §37-1-102.
Demonstration sites.
Commission on children and youth, §37-3-110.
Dependent and neglected child.
Children's services department, §37-5-103.
Interstate compact on placement of children, §37-4-202.
Juvenile courts and proceedings, §37-1-102.

DEFINED TERMS —Cont'd
Dependent child.
Child care agencies, welfare.
Children of military parents or guardians on active duty, priority of placement on wait list, §71-3-518.
Temporary assistance for dependent children, §71-3-103.
Deploying parent.
Uniform deployed parents custody and visitation act, §36-7-102.
Deployment.
Uniform deployed parents custody and visitation act, §36-7-102.
Designated smoking area.
Children's clean indoor air act, §39-17-1603.
Detention center.
Child care agencies, §37-5-501.
Developmental center.
Mental health, substance abuse and intellectual and developmental disabilities, §33-1-101.
Developmental disability.
Mental health, substance abuse and intellectual and developmental disabilities, §33-1-101.
Director of schools.
Child labor, §50-5-102.
Directory of new hires.
Child support, §36-5-1101.
Direct request.
Interstate family support, convention support proceedings, §36-5-2701.
Disabilities.
Adoption, §36-1-102.
Disabled person.
Guardianships and conservatorships generally, §34-1-101.
Discharge.
Juvenile courts and proceedings, §37-1-102.
Disinfectant.
Tattooing, §62-38-201.
Disinfecting.
Body piercing, §62-38-301.
Dispute resolution.
Parenting plans, §36-6-402.
Disseminate.
Smoking paraphernalia, §39-15-407.
District juvenile court.
Juvenile court restructure act, §37-1-202.
Domestic abuse, §36-3-601.
Domestic abuse victim, §36-3-601.
Drop in center.
Welfare, §71-3-501.
Drug abuse.
Mental health, substance abuse and intellectual and developmental disabilities, §33-1-101.
Drug dependence.
Mental health, substance abuse and intellectual and developmental disabilities, §33-1-101.
Drug paraphernalia.
School security act, §49-6-4202.
Drugs.
School security act, §49-6-4202.
Duty of support.
Uniform interstate family support act, §36-5-2101.
Eligible person.
Adoption, §36-1-102.
Eligible postsecondary institutions.
Special education, individualized education accounts, §49-10-1402.

DEFINED TERMS —Cont'd
Eligible students.
Special education, individualized education accounts, §49-10-1402.
Emancipated minors.
Abortions, parental consent for abortion by minor, §37-10-302.
Embryo.
Parentage of children born of donated embryo transfer, §36-2-402.
Embryo parentage.
Parentage of children born of donated embryo transfer, §36-2-402.
Embryo relinquishment.
Parentage of children born of donated embryo transfer, §36-2-402.
Embryo transfer.
Parentage of children born of donated embryo transfer, §36-2-402.
Emergency respite admission.
Developmental disabilities, residential admission, §33-5-301.
Emergency situation.
Foster care plans, §37-2-415.
Employ.
Child labor, §50-5-102.
Employees.
Child support, §36-5-1101.
Employer, person, corporation or institution.
Assignments of income for child support, §36-5-501.
Employers.
Child labor, §50-5-102.
Child support, §36-5-1101.
Employment or gainful occupation.
Child labor, §50-5-102.
Especially aggravated exploitation of a minor.
Criminal code, §39-17-1005.
Evidence-based.
Evidence-based programs for prevention or care of delinquent juveniles, §37-5-121.
In-home visitation programs, §68-1-125.
Executive head.
Interstate compact on the placement of children, §37-4-202.
Extended family member.
Indian child welfare, 25 USCS §1903.
Facilities.
Mental health, substance abuse and intellectual and developmental disabilities facilities licensing, §33-2-402.
Families.
Developmental disabilities services, family support, §33-5-201.
Multi-level response system for children and families, §37-5-601.
Temporary assistance for dependent children, §71-3-103.
Family.
Commission on children and youth, §37-3-110.
Family boarding home or foster home.
Child care agencies, juvenile, §37-5-501.
Family child care home.
Child care agencies, welfare, §71-3-501.
Family-driven.
Commission on children and youth, §37-3-110.
Family member.
Domestic abuse, §71-6-202.
Uniform deployed parents custody and visitation act, §36-7-102.

DEFINED TERMS —Cont'd
Family preservation services, §37-3-602.
Family support.
Developmental disabilities services, family support, §33-5-201.
Family support program.
Developmental disabilities services, family support, §33-5-201.
Family support services, §37-3-602.
Family violence.
Public welfare, §71-6-202.
Father.
Paternity and legitimation, §36-2-302.
Fetal death.
Fetal and infant mortality review (FIMR) act, §68-142-203.
Fiduciaries.
Guardianships and conservatorships generally, §34-1-101.
Filing.
Child support liens, §36-5-901.
Intercounty enforcement and modification of support or custody, §36-5-3002.
Filing with the court.
Juvenile proceedings, rules of juvenile procedure, JuvPro 106.
FIMR.
Fetal and infant mortality review (FIMR) act, §68-142-203.
Final court report.
Adoption, §36-1-102.
Financial institutions.
Child support, §§36-5-814, 36-5-910.
Guardianships and conservatorships generally, §34-1-101.
Financially able.
Adoption, §36-1-102.
Firearms.
Domestic abuse, §36-3-601.
Fiscal impact.
Intellectual and developmental disabilities, services.
Fiscal impact of changes in regulation or policy, §33-5-108.
Flagrant nonsupport.
Criminal code, §39-15-101.
Foreign central authority.
Interstate family support, convention support proceedings, §36-5-2701.
Foreign country.
Uniform interstate family support act, §36-5-2101.
Foreign support agreement.
Interstate family support, convention support proceedings, §36-5-2701.
Foreign support order.
Uniform interstate family support act, §36-5-2101.
Foreign tribunal.
Uniform interstate family support act, §36-5-2101.
Forms.
Pregnancy serological tests, §68-5-601.
Sexually transmitted diseases, §68-10-101.
Foster care.
Adoption, §36-1-102.
Juvenile courts and proceedings, §37-1-102.
Foster care placement.
Indian child welfare, 25 USCS §1903.
Foster child or children.
Child care agencies, §37-5-501.
Foster parent, §37-2-414.
Adoption, §36-1-102.

DEFINED TERMS —Cont'd
Foster parent —Cont'd
Juvenile courts and proceedings, §37-1-102.
Genetic and metabolic screening.
Disease prevention, §68-5-501.
Genetic disorders.
Disease prevention, §68-5-501.
Germicidal solution.
Tattooing, §62-38-201.
Good cause.
Assignment of income for child support, §36-5-501.
Governor.
Interstate family support act, §36-5-2801.
Grandparent.
Visitation rights, §36-6-306.
Greenway.
Weapons, carrying on public parks, playgrounds, etc, §39-17-1311.
Group care home.
Child care agencies, juveniles, §37-5-501.
Children's clean indoor air act, §39-17-1603.
Group child care home.
Child care agencies, welfare, §71-3-501.
Guardian ad litem, §34-1-101.
Child sexual abuse, §37-1-602.
Guardian or co-guardian, §34-1-101.
Adoption, §36-1-102.
Children's services department, §37-5-103.
Guardianship.
Adoption, §36-1-102.
Handguns.
Possession by minor, §39-17-1319.
Health care.
Unemancipated minors, health care decisions for, §34-6-401.
Health care decision.
Unemancipated minors, health care decisions for, §34-6-401.
Health care institutions.
Unemancipated minors, health care decisions for, §34-6-401.
Health care providers.
Immunity for reporting child abuse, §37-1-410.
Medical records, §63-2-101.
Sudden cardiac arrest prevention, §68-6-102.
Unemancipated minors, health care decisions for, §34-6-401.
High-volume, automated administrative enforcement.
Child support, interstate cases, §36-5-1201.
HIV.
Criminal exposure to HIV or hepatitis B or C virus, §39-13-109.
Home-based and community-based services.
Medical aid, §71-5-103.
Home schools, §49-6-3050.
Attendance, §49-6-3001.
Home state.
Interstate child custody proceedings, §36-6-205.
Uniform interstate family support act, §36-5-2101.
Home study.
Adoption, §36-1-102.
Hospital.
Mental health, substance abuse and intellectual and developmental disabilities, §33-1-101.

DEFINED TERMS —Cont'd
IEA.
Special education, individualized education accounts, §49-10-1402.
Imitation firearm, §39-17-1362.
Imminent risk.
Children's services department, §37-5-103.
Imminent risk of placement, §37-3-602.
Incapacitated.
Medical records, §63-2-101.
Incest.
Criminal code, §39-15-302.
Income.
Uniform interstate family support act, §36-5-2101.
Income withholding order.
Uniform interstate family support act, §36-5-2101.
Indian.
Indian child welfare, 25 USCS §1903.
Indian child.
Indian child welfare, 25 USCS §1903.
Indian child's tribe.
Indian child welfare, 25 USCS §1903.
Indian custodian.
Indian child welfare, 25 USCS §1903.
Indian organization.
Indian child welfare, 25 USCS §1903.
Indian tribe.
Indian child welfare, 25 USCS §1903.
Indigent persons.
Mental health, substance abuse and intellectual and developmental disabilities, §33-1-101.
Individual party.
Child support, §36-5-101.
Infant death.
Fetal and infant mortality review (FIMR) act, §68-142-203.
In-home visitation, §68-1-125.
Initial determination.
Defined, §36-6-205.
Interstate child custody proceedings, §36-6-205.
Initiating tribunal.
Interstate family support act, §36-5-2101.
In loco parentis.
Unemancipated minors, health care decisions for, §34-6-401.
Institutional child sexual abuse, §37-1-602.
Intellectual disability.
Mental health, substance abuse and intellectual and developmental disabilities, §33-1-101.
Intervenor.
Community mental health center cooperation, §33-2-703.
Intimate contact with another.
Criminal exposure to HIV or hepatitis B or C virus, §39-13-109.
Intoxicated.
Unlawful sale, loan or gift of firearm, §39-17-1303.
Intravenous or intramuscular drug paraphernalia.
Criminal exposure to HIV or hepatitis B or C virus, §39-13-109.
Investigatory meetings.
Severe child abuse, second look commission to study second or subsequent incidents of severe child abuse, §37-3-802.
Isolation.
Mental health service recipients, §33-3-120.

DEFINED TERMS —Cont'd
Issuing county.
Intercounty enforcement and modification of support or custody, §36-5-3002.
Issuing court.
Intercounty enforcement and modification of support or custody, §36-5-3002.
Interstate child custody proceedings, §36-6-205.
Registration of support orders, §36-5-3102.
Issuing foreign country.
Interstate child custody proceedings, §36-5-2101.
Issuing state.
Interstate child custody proceedings, §36-6-205.
Uniform interstate family support act, §36-5-2101.
Issuing tribunal.
Uniform interstate family support act, §36-5-2101.
Judges.
Foster care, §37-2-402.
Juvenile court proceedings, §37-1-102.
Judicial commitment to a mental institution.
Mental health service recipients, §33-3-115.
Juvenile court.
Juvenile courts and proceedings, §37-1-102.
Juveniles.
Children's services department, §37-5-103.
Handgun possession, §39-17-1319.
Juvenile offender surcharges, §37-11-102.
Labor organization.
Child support, §36-5-1101.
Lacks capacity.
Mental health service recipients, decision making capacity of patients, §33-3-218.
Law enforcement officers.
Prevention of youth access to tobacco and vapor products, §39-17-1505.
Laws.
Uniform interstate family support act, §36-5-2101.
Legal custodian.
Children's services department, §37-5-103.
Legal embryo custodian.
Parentage of children born of donated embryo transfer, §36-2-402.
Legal parent.
Adoption, §36-1-102.
Legal relative.
Adoption, §36-1-102.
Legal representative.
Adoption, §36-1-102.
Legal transfer of rights to an embryo.
Parentage of children born of donated embryo transfer, §36-2-402.
Licensed child-placing agency.
Adoption, §36-1-102.
Licensed clinical social worker.
Adoption, §36-1-102.
Licensed physicians.
Mental health, substance abuse and intellectual and developmental disabilities, §33-1-101.
Licensees.
Child support enforcement, §36-5-701.

DEFINED TERMS —Cont'd
Licensees —Cont'd
Mental health, substance abuse and intellectual and developmental disabilities facilities licensing, §33-2-402.
Licenses.
Body piercing, §62-38-301.
Child support enforcement, §36-5-701.
Parent visitation, §36-6-501.
Tattooing, §62-38-201.
Licensing authority.
Child support enforcement, §36-5-701.
Parent visitation, §36-6-501.
Limited contact.
Uniform deployed parents custody and visitation act, §36-7-102.
Lineal ancestor.
Adoption, §36-1-102.
Lineal descendant.
Adoption, §36-1-102.
Linguistically competent.
Commission on children and youth, §37-3-110.
Liquid nicotine container.
Minors, prevention of access to tobacco and vapor products, §39-17-1512.
Maltreatment.
Multi-level response system for children and families, §37-5-601.
Marital property.
Divorce and annulment.
Distributions, §36-4-121.
Material.
Criminal code.
Sexual exploitation of children, §39-17-1002.
Soliciting sexual exploitation of a minor, §39-13-529.
Maternity home, §37-5-501.
Medical assistance.
Public welfare, §71-5-103.
Medical capability.
Mental health, substance abuse and intellectual and developmental disabilities, §33-1-101.
Medically needy.
Medical assistance, §71-5-103.
Medical records.
Healing arts practitioners, §63-2-101.
Mental health care.
Commission on children and youth, §37-3-110.
Mental health needs.
Commission on children and youth, §37-3-110.
Mental health screening.
Schools and education, universal mental health or socioemotional screening, §49-2-124.
Mental illness.
Mental health, substance abuse and intellectual and developmental disabilities, §33-1-101.
Mental injury.
Child sexual abuse, §37-1-602.
Mental retardation.
Mental health, substance abuse and intellectual and developmental disabilities, §33-1-101.
Merchandise.
Vandalism, §39-14-408.
Minors.
Abortions.
Parental consent for abortion by minor, §37-10-302.
Alcoholic beverages, enticing minor to purchase, §39-15-404.

DEFINED TERMS —Cont'd
Minors —Cont'd
Body piercing, §62-38-301.
Child labor, §50-5-102.
Guardianships and conservatorships generally, §34-1-101.
Protection of minor performers, §50-5-203.
Sexual exploitation of children, §39-17-1002.
Misappropriation of property.
Mental health, substance abuse and intellectual and developmental disabilities licensure law, §33-2-402.
Missing child.
Missing children recovery act, §37-10-201.
Mitigated statutory rape, §39-13-506.
Mobile dental services.
Medical assistance, §71-5-103.
Modification.
Interstate child custody proceedings, §36-6-205.
Mother.
Paternity and legitimation, §36-2-302.
Motor vehicles.
Criminal code.
Trespass by motor vehicle, §39-14-407.
Transporting and storing firearm or ammunition in permit holder's motor vehicle, §39-17-1313.
Museums.
Children's clean indoor air act, §39-17-1603.
Near fatality.
Children's services department, confidentiality of records, §37-5-107.
Children's services department, death or near fatality of persons involved with, §37-5-124.
Neglect.
Mental health, substance abuse and intellectual and developmental disabilities licensure law, §33-2-402.
Neglected.
Children's services department, §37-5-103.
Nonjudicial days.
Juvenile courts and proceedings, §37-1-102.
Nonparent.
Uniform deployed parents custody and visitation act, §36-7-102.
Non-public schools.
Attendance, §49-6-3001.
Nonrequesting party.
Registration of support orders, §36-5-3102.
Nonresidential office-based opiate treatment facility.
Mental health, substance abuse and intellectual and developmental disabilities licensure law, §33-2-402.
Nonresidential opioid treatment program.
Mental health, substance abuse and intellectual and developmental disabilities licensure law, §33-2-402.
Nonresidential substitution-based treatment center for opiate addiction.
Mental health, substance abuse and intellectual and developmental disabilities licensure law, §33-2-402.
Nonsupport.
Criminal code, §39-15-101.

DEFINED TERMS —Cont'd
Notice.
Termination of parental rights, §36-1-113.
Not in compliance with an order of support.
Child support enforcement, §36-5-701.
Not in compliance with an order of visitation.
Parent visitation, §36-6-501.
Obligee.
Child support enforcement, §36-5-701.
Registration of support orders, §36-5-3102.
Uniform interstate family support act, §36-5-2101.
Obligor.
Child support enforcement, §36-5-701.
Registration of support orders, §36-5-3102.
Uniform interstate family support act, §36-5-2101.
Obligor's county.
Intercounty enforcement and modification of support or custody, §36-5-3002.
Order of reference.
Adoption, §36-1-102.
Order of referral.
Children's services department, §37-5-103.
Order of support.
Child support enforcement, §36-5-701.
Expedited process for support, §36-5-401.
Order of visitation.
Parent visitation, §36-6-501.
Orders.
Child support, §36-5-101.
Organizations.
Mental health and intellectual and developmental disabilities facilities, employee background checks, §33-2-1202.
Other parent.
Uniform deployed parents custody and visitation act, §36-7-102.
Other person responsible for a child's care or welfare.
Child sexual abuse, §37-1-602.
Outside this state.
Uniform interstate family support act, §36-5-2101.
Overdue support.
Child support liens, §36-5-901.
Parental consent.
Adoption, §36-1-102.
Parental rights.
Adoption, §36-1-102.
Parenting responsibilities, §36-6-402.
Parenting schedule, §36-6-402.
Parents.
Adoption, §36-1-102.
Foster care, §37-2-402.
Indian child welfare, 25 USCS §1903.
Missing children recovery act, §37-10-201.
Paternity and legitimation, §36-2-302.
Special education, individualized education accounts, §49-10-1402.
Parking area.
Transporting and storing firearm or ammunition in permit holder's motor vehicle, §39-17-1313.
Partial-birth abortion, §39-15-209.
Partial guardianship.
Adoption, §36-1-102.

DEFINED TERMS —Cont'd
Participating schools.
Special education, individualized education accounts, §49-10-1402.
Participating students.
Special education, individualized education accounts, §49-10-1402.
Parties.
Child support, §36-5-101.
Passenger cars.
Child passenger restraint systems, §55-9-602.
Safety belts, §55-9-603.
Passenger motor vehicles.
Child restraint systems, §55-9-602.
Safety belts, §55-9-603.
Patently offensive.
Sexual exploitation of children, §39-17-1002.
Soliciting sexual exploitation of a minor, §39-13-529.
Patrons.
Body piercing, §62-38-301.
Pattern of criminal gang activity, §40-35-121.
Sentencing, §40-35-121.
Performance.
Sexual exploitation of children, §39-17-1002.
Perinatal.
Care of newborn infants, §68-1-801.
Permanency plan.
Foster care, §37-2-402.
Permanent parenting plan, §36-6-402.
Permits.
Tattooing, §62-38-201.
Person.
Guardianships and conservatorships generally, §34-1-101.
Interstate child custody proceedings, §36-6-205.
Prevention of youth access to tobacco and vapor products, §39-17-1503.
Sudden cardiac arrest prevention, §68-6-102.
Uniform interstate family support act, §36-5-2101.
Person acting as a parent.
Interstate child custody proceedings, §36-6-205.
Personal support services.
Mental health, substance abuse and intellectual and developmental disabilities facilities licensing, §33-2-402.
Personal support services agency.
Developmental disabilities facilities, §33-2-421.
Personal support services worker.
Developmental disabilities facilities, §33-2-421.
Person with a disability.
Guardianships and conservatorships generally, §34-1-101.
Petitioners.
Domestic abuse, §36-3-601.
Expedited process for support, §36-5-401.
Interstate child custody proceedings, §36-6-205.
Petitions.
Child abduction prevention, §36-6-602.
Physical custody.
Adoption, §36-1-102.
Interstate child custody proceedings, §36-6-205.
Physician.
Consent of pregnant women required prior to abortions, §39-15-202.

DEFINED TERMS —Cont'd
Physician —Cont'd
Family planning, §68-34-102.
Guardianships and conservatorships generally, §34-1-101.
Pilot program.
Evidence-based programs for prevention or care of delinquent juveniles, §37-5-121.
In-home visitation programs, §68-1-125.
Plan.
Foster care, §37-2-402.
Polluting.
Vandalism, §39-14-408.
Post-adoption record.
Adoption, §36-1-102.
Preadoptive placement.
Indian child welfare, 25 USCS §1903.
Preferred response.
Domestic abuse, §36-3-601.
Preliminary home study.
Adoption, §36-1-102.
Premises.
Body piercing, §62-38-301.
Previously determined.
Juvenile courts and proceedings.
Grounds for release, §37-1-312.
Primary residential parent.
Parenting plans, §36-6-402.
Principal.
School security act, §49-6-4202.
Principal place of employment.
Income assignments for child support, §36-5-501.
Prior convictions.
Criminal gang activity, §40-35-121.
Criminal gang offense, §40-35-121.
Private schools.
Attendance, §49-6-3001.
Probation.
Juvenile courts and proceedings, §37-1-102.
Profiled cases.
Severe child abuse, second look commission to study second or subsequent incidents of severe child abuse, §37-3-802.
Programs.
Special education, individualized education accounts, §49-10-1402.
Promote.
Sexual exploitation of children, §39-17-1002.
Proof of age.
Body piercing, §62-38-301.
Prevention of youth access to tobacco and vapor products, §39-17-1503.
Property management plan.
Guardianships and conservatorships generally, §34-1-101.
Prospective adoptive parents.
Adoption, §36-1-102.
Protective supervision.
Juvenile courts and proceedings, §37-1-102.
Prurient interest.
Sexual exploitation of children, §39-17-1002.
PSAT/NMSQT.
Home schools, §49-6-3050.
Psychologist.
Guardianships and conservatorships generally, §34-1-101.
Psychotropic medication.
Schools and education, universal mental health or socioemotional screening, §49-2-124.

DEFINED TERMS —Cont'd
Public places.
Imitation firearms, §39-17-1362.
Prevention of youth access to tobacco and vapor products, §39-17-1503.
Public schools.
Attendance, §49-6-3001.
Purchase.
Smoking paraphernalia, §39-15-407.
Putative father.
Adoption, §36-1-102.
Qualified mental health professional.
Mental health, substance abuse and intellectual and developmental disabilities, §33-1-101.
Qualifying period of armed conflict.
Child care agencies, welfare.
Children of military parents or guardians on active duty, priority of placement on wait list, §71-3-518.
Rape.
Criminal code, §39-13-503.
Rape of a child, §39-13-522.
Readoption.
Adoption, §36-1-102.
Reasonable and prudent parent standard.
Foster care plans, §37-2-418.
Reasonable efforts.
Commitment of child to department of children's services, §37-1-166.
Reasonably available.
Unemancipated minors, health care decisions for, §34-6-401.
Recipient.
Medical assistance, §71-5-103.
Recipient intended parent.
Parentage of children born of donated embryo transfer, §36-2-402.
Records.
Child abduction prevention, §36-6-602.
Interstate child custody proceedings, §36-6-213.
Uniform deployed parents custody and visitation act, §36-7-102.
Uniform interstate family support act, §36-5-2101.
Referees.
Expedited process for support, §36-5-401.
Register.
Uniform interstate family support act, §36-5-2101.
Registering court.
Registration of support orders, §36-5-3102.
Registering tribunal.
Uniform interstate family support act, §36-5-2101.
Registration.
Tattooing, §62-38-201.
Regular voluntary admission.
Developmental disabilities, residential admission, §33-5-301.
Related.
Adoption, §36-1-102.
Child care agencies, juvenile, §37-5-501.
Child care agencies, welfare, §71-3-501.
Report of harm.
Children's services department, §37-5-103.
Juvenile courts and proceedings.
Mandatory child abuse reports, §37-1-401.
Reports.
Foster care, §37-2-402.

DEFINED TERMS —Cont'd
Reputable and responsible character.
Mental health, substance abuse and intellectual and developmental disabilities facilities licensing, §33-2-402.
Request.
Intercounty enforcement and modification of support or custody, §36-5-3002.
Requesting party.
Intercounty enforcement and modification of support or custody, §36-5-3002.
Research-based.
Evidence-based programs for prevention or care of delinquent juveniles, §37-5-121.
In-home visitation programs, §68-1-125.
Reservation.
Indian child welfare, 25 USCS §1903.
Residential child care.
Child care agencies, juvenile, §37-5-501.
Residential schedule.
Parenting plans, §36-6-402.
Residential treatment facility.
Children's clean indoor air act, §39-17-1603.
Residents.
Medical assistance, §71-5-103.
Respite admission.
Developmental disabilities, residential admission, §33-5-301.
Respondent.
Domestic abuse, §36-3-601.
Expedited process for support, §36-5-401.
Guardianships and conservatorships generally, §34-1-101.
Interstate child custody proceedings, §36-6-205.
Responding state.
Uniform interstate family support act, §36-5-2101.
Responding tribunal.
Uniform interstate family support act, §36-5-2101.
Responsible party or parties.
Medical assistance, §71-5-103.
Responsible relatives.
Mental health, substance abuse and intellectual and developmental disabilities, §33-1-101.
Restitution.
Juvenile courts and proceedings, §37-1-102.
Restraint.
Mental health service recipients, §33-3-120.
Restricted license.
Child support enforcement, §36-5-701.
Retail establishment.
Maintenance of smoking paraphernalia in area inaccessible to customers, §39-17-1511.
Retail merchant.
Vandalism, §39-14-408.
Retail sales.
Vandalism, §39-14-408.
Return from deployment.
Uniform deployed parents custody and visitation act, §36-7-102.
Runaway.
Children's services department, §37-5-103.
Juvenile courts and proceedings, §36-1-102.
Runaway houses, §37-2-502.

DEFINED TERMS —Cont'd
Runaway houses, §37-1-502.
Sale at retail.
Vandalism, §39-14-408.
Sample.
Prevention of youth access to tobacco and vapor products, §39-17-1503.
Sampling.
Prevention of youth access to tobacco and vapor products, §39-17-1503.
Sanctuary.
Runaway houses, §37-2-502.
Sanitary.
Tattooing, §62-38-201.
School days.
Child labor, §50-5-102.
School grounds.
Children's clean indoor air act, §39-17-1603.
School hours.
Child labor, §50-5-102.
School principal.
School security act, §49-6-4202.
School resource officer.
School security act, §49-6-4202.
Schools.
Child abuse or child sexual abuse reporting, §49-6-1601.
Communicating threat concerning school employee, §39-13-114.
School security act, §49-6-4202.
School youth athletic activity.
Sudden cardiac arrest prevention, §68-6-102.
Sealed adoption record, §36-1-102.
Sealed record.
Adoption, §36-1-102.
Second or subsequent incident of severe child abuse.
Severe child abuse, second look commission to study second or subsequent incidents of severe child abuse, §37-3-802.
Self-employed.
Child labor, §50-5-102.
Separate property.
Distribution of marital property, §36-4-121.
Serious bodily injury to the child.
Child abuse and child neglect or endangerment, §39-15-402.
Serious emotional disturbance.
Mental health, substance abuse and intellectual and developmental disabilities, §33-1-101.
Service member.
Uniform deployed parents custody and visitation act, §36-7-102.
Service of process.
Intercounty enforcement and modification of support or custody, §36-5-3002.
Service recipient.
Mental health, substance abuse and intellectual and developmental disabilities, §33-1-101.
Services.
Mental health, substance abuse and intellectual and developmental disabilities facilities licensing, §33-2-402.
Welfare, §71-1-133.
Serving honorably.
Child care agencies, welfare.
Children of military parents or guardians on active duty, priority of placement on wait list, §71-3-518.

DEFINED TERMS —Cont'd
Severe child abuse.
Juvenile courts and proceedings, §37-1-102.
Second look commission to study second or subsequent incidents of severe child abuse, §37-3-802.
Severe child sexual abuse.
Termination of parental rights, grounds, §36-1-113.
Severe disability.
Developmental disabilities services, family support, §33-5-201.
Severe impairment.
Mental health services, §33-6-301.
Severely reduced.
Child custody, visitation rights, §36-6-306.
Severe reduction.
Child custody, visitation rights, §36-6-306.
Sex crime.
Mental health services, sex offenders, §33-6-801.
Sex offenders.
Mental health services, sex offenders, §33-6-801.
Sexual activity.
Sexual exploitation of children, §39-17-1002.
Soliciting sexual exploitation of a minor, §39-13-529.
Sexual assault victim.
Domestic abuse, §36-3-601.
Sexual conduct.
Child labor, §50-5-102.
Sexual exploitation of minor.
Criminal code, §39-17-1003.
Sexually transmitted diseases, §68-10-101.
Shelter.
Domestic abuse, §71-6-202.
Shelter services.
Domestic abuse, §71-6-202.
Short-term training admission.
Developmental disabilities, residential admission, §33-5-301.
Sibling.
Adoption, §36-1-102.
Sibling relationship.
Adoption, §36-1-102.
Sign.
Uniform deployed parents custody and visitation act, §36-7-102.
Single use.
Tattooing, §62-38-201.
Smoking.
Children's clean indoor air act, §39-17-1603.
Smoking paraphernalia.
Criminal code, §39-15-407.
Maintenance of smoking paraphernalia in area inaccessible to customers, §39-17-1511.
Socioemotional screening.
Schools and education, universal mental health or socioemotional screening, §49-2-124.
Special juvenile court.
Juvenile court restructure act, §37-1-202.
Spousal support order.
Uniform interstate family support act, §36-5-2101.
Stalking victim.
Domestic abuse, §36-3-601.
Standard serological test.
Pregnancy serological tests, §68-5-601.

DEFINED TERMS —Cont'd
State.
Child abduction prevention, §36-6-602.
Interstate child custody proceedings, §36-6-205.
Uniform deployed parents custody and visitation act, §36-7-102.
Uniform interstate family support act, §36-5-2101.
State family support council.
Developmental disabilities services, family support, §33-5-201.
Statutory rape.
Criminal code, §39-13-506.
Sterilization.
Body piercing, §62-38-301.
Tattooing, §62-38-201.
Sterilize.
Body piercing, §62-38-301.
Students.
School security act, §49-6-4202.
Substantial likelihood of serious harm.
Mental health services, involuntary admission to inpatient treatment, nonemergency, §33-6-501.
Support.
Expedited process for support, §36-5-401.
Mental health, substance abuse and intellectual and developmental disabilities, §33-1-101.
Nonsupport, §39-15-101.
Support enforcement agency.
Uniform interstate family support act, §36-5-2101.
Support order.
State registry of support cases, §36-5-115.
Uniform interstate family support act, §36-5-2101.
Surrender.
Adoption, §36-1-102.
Surrogate birth.
Adoption, §36-1-102.
Systems.
Child support enforcement, §36-5-801.
Tanning device.
Tanning facilities, §68-117-102.
Tanning facilities, §68-117-102.
Tattoo, §62-38-201.
Minors, §39-15-403.
Tattoo artist, §62-38-201.
Tattoo artist registration, §62-38-201.
Tattoo operator, §62-38-201.
Tattoo studio, §62-38-201.
Tattoo studio certificate, §62-38-201.
Temporary assistance.
Temporary assistance for dependent children, §71-3-103.
Temporary holding resource.
Child care agencies, §37-5-501.
Temporary parenting plan, §36-6-402.
Termination of parental rights.
Indian child welfare, 25 USCS §1903.
Tests.
Sexually transmitted diseases, §68-10-101.
Theory-based.
Evidence-based programs for prevention or care of delinquent juveniles, §37-5-121.
In-home visitation programs, §68-1-125.
Time-limited family reunification services, §37-3-602.
Title IV-D Agency.
Child support, §36-5-1101.

DEFINED TERMS —Cont'd
Title XIX.
Medical assistance, §71-5-103.
Tobacco products.
Prevention of youth access to tobacco and vapor products, §39-17-1503.
Token support.
Adoption, §36-1-102.
Foster care, §37-2-402.
Token visitation.
Adoption, §36-1-102.
Foster care, §37-2-402.
Transferee court.
Intercounty enforcement and modification of support or custody, §36-5-3002.
Transferor court.
Intercounty enforcement and modification of support or custody, §36-5-3002.
Transfers.
Intercounty enforcement and modification of support or custody, §36-5-3002.
Travel documents.
Child abduction prevention, §36-6-602.
Treatment resource.
Mental health, substance abuse and intellectual and developmental disabilities, §33-1-101.
Tribal court.
Indian child welfare, 25 USCS §1903.
Tribe.
Interstate child custody proceedings, §36-6-205.
Tribunal.
Uniform interstate family support act, §36-5-2101.
Uniformed services.
Uniform deployed parents custody and visitation act, §36-7-102.
United States central authority.
Interstate family support, convention support proceedings, §36-5-2701.
Universal mental health or socioemotional screening.
Schools and education, §49-2-124.
Universal precautions.
Body piercing, §62-38-301.
Tattooing, §62-38-201.
Unruly.
Children's services department, §37-5-103.
Unruly child.
Juvenile courts and proceedings, §37-1-102.
Vaginally delivers a living fetus before killing the fetus.
Partial birth abortion, §39-15-209.
Vandalism.
Criminal code, §39-14-408.
Vapor product.
Prevention of youth access to tobacco and vapor products, §39-17-1503.
Vendor.
Medical assistance, §71-5-103.
Violent crimes.
Juvenile offender surcharges, §37-11-102.
Visitors.
School security act, §49-6-4202.
Waived.
Juvenile courts and proceedings, §37-1-312.
Warrant.
Interstate child custody proceedings, §36-6-205.

DEFINED TERMS —Cont'd
Weapon of like kind.
Carrying weapons on school property, §39-17-1309.
Weapons.
Domestic abuse, §36-3-601.
School security, §49-6-4202.
Week.
Child labor, §50-5-102.
Welfare program.
Temporary assistance for dependent children, §71-3-108.
Willful failure to visit.
Adoption, §36-1-102.
Willfully failed to make reasonable payments towards such child's support.
Foster care, §37-2-402.
Willfully failed to support.
Adoption, §36-1-102.
Foster care, §37-2-402.
Willfully failed to visit.
Foster care, §37-2-402.
Withdrawal.
Elementary and secondary education, §49-6-3017.
Without corroborative proof or testimony.
Divorce.
Irreconcilable differences, §36-4-103.
Written consent.
Adoption, §36-1-102.
Wrongful removal.
Child abduction prevention, §36-6-602.
Wrongful retention.
Child abduction prevention, §36-6-602.
Youth development center.
Children's clean indoor air act, §39-17-1603.
Children's services department, §37-5-103.
Youth peddling.
Child labor, §50-5-102.
Zoo.
Children's clean indoor air act, §39-17-1603.

DELINQUENT AND UNRULY CHILDREN.
Abuse defined, §36-1-102.
Adjudicatory proceedings.
Confessions.
Use to support adjudication of delinquency, §37-1-127.
Evidence.
Exclusionary rules, §37-1-127.
Use of illegally seized or obtained evidence, §37-1-127.
Exemptions.
Civil and criminal disabilities, §37-1-133.
Findings of court, JuvPro 210.
Hearings.
Basic rights at hearing, §37-1-127.
Beginning adjudicatory hearings, JuvPro 210.
Conduct, §37-1-124.
Evidence, JuvPro 210.
Provisional hearings.
Where party served by publication, §37-1-125.
Scheduling, JuvPro 210.
Scope of hearing, JuvPro 210.
Time for hearing, §37-1-117.
Transfer to home county, JuvPro 210.
Informal adjustment without adjudication, §37-1-110.
Expunction of records following, §37-1-153.

DELINQUENT AND UNRULY CHILDREN —Cont'd
Adjudicatory proceedings —Cont'd
Order of adjudication.
Noncriminal in nature, §37-1-133.
Petitions.
Contents of petition, §37-1-120.
Who may make petition, §37-1-119.
Pretrial diversion, §37-1-110.
Right to counsel, §37-1-126.
Self-incrimination.
Privilege of child, §37-1-127.
Standard of proof, JuvPro 210.
Subpoenas, §37-1-118.
Summonses.
Attachment of persons where summons ineffectual, §37-1-122.
Transfer to home county, JuvPro 210.
Affidavits.
Post-commitment relief, §37-1-316.
Appeals, §37-1-159.
Dispositional proceedings.
Notice of right to appeal, JuvPro 211.
Post-commitment relief, §37-1-321.
Attorney general to represent state, §37-1-314.
Delayed appeal, §37-1-319.
Release of petitioner on bail or temporary custody, §37-1-322.
Applicability of provisions.
Interstate flight by juvenile felon, §37-1-160.
Attachment of persons.
Adjudicatory proceedings.
Attachment where summons ineffectual, §37-1-122.
Attorney general.
Post-commitment relief.
Attorney general to represent state on appeals, §37-1-314.
District attorney general to represent state, §37-1-314.
Attorneys at law.
Post-commitment relief.
Appointment of counsel, §37-1-320.
Record of counsel's consultations with petitioner, §37-1-317.
Right of indigent petitioner to counsel, §37-1-313.
Rights of children, notification and waiver, JuvPro 205.
Right to counsel, §37-1-126.
Post-commitment relief proceedings, §37-1-313.
Attorneys' fees, §37-1-150.
Audio recordings of transfer hearings, §37-1-134.
Capital punishment, §37-1-134.
Children's services, department.
Commitment to department.
Post-commitment relief, §§37-1-301 to 37-1-322.
Children's services departments (counties), §§37-2-205, 37-2-206.
Definitions, §37-1-102.
Duties of legal custodian, §37-1-140.
Liability for expenses.
Returning juvenile to custody of children's services department, §37-1-138.
Out-of-state custody and supervision, §37-1-143.
Post-commitment relief.
Temporary custody, §37-1-322.
Predisposition custody, §37-1-128.
Release to proper party, §37-1-115.
Taking into custody.
Grounds, §37-1-113.

DELINQUENT AND UNRULY CHILDREN —Cont'd
Capital punishment —Cont'd
Warrant for custody, §37-1-115.
Changed circumstances.
Modification of or relief from judgments or orders, JuvPro 213.
Child custody.
Uniform child custody jurisdiction and enforcement act, §§36-6-201 to 36-6-243.
See INTERSTATE CHILD CUSTODY PROCEEDINGS.
Children found to be delinquent.
Exemption from operation of laws applicable to infamous crimes, §37-1-133.
Children's services department.
Commitment, §37-1-137.
Post-commitment relief, §§37-1-301 to 37-1-322.
Division of juvenile justice, §37-5-101.
Children's services departments (counties), §§37-2-201 to 37-2-208.
Citation of provisions, §37-2-201.
Delinquent children.
Disposition, §37-2-205.
Director.
Appointment, §37-2-203.
Establishment.
Authority, §37-2-202.
Facilities.
Use of facilities of another county, §37-2-207.
Funds.
Authority to appropriate, §37-2-208.
Homes.
Authority to establish and operate, §37-2-204.
Judgments and decrees.
Court orders.
Modification, §37-2-206.
Personnel.
Appointment, §37-2-203.
Qualifications.
Minimum qualifications to be met, §37-2-205.
Recordkeeping, §37-2-205.
Standards.
Minimum standards to be met, §37-2-205.
Unruly children.
Disposition, §37-2-205.
Child support.
Parents' liability for support, §37-1-151.
Circuit courts.
Appeals made to, §37-1-159.
Clerical mistakes.
Modification of or relief from judgments or orders, JuvPro 213.
Commencement of juvenile proceedings.
Generally, §37-1-108.
Commitment to children's services department, §37-1-137.
Post-commitment relief, §§37-1-301 to 37-1-322.
Community service.
Dispositional orders, §37-1-131.
Confessions.
Strickland hearings, §37-1-115.
Use to support adjudication of delinquency, §37-1-127.
Confidentiality of proceedings, JuvPro 114.
Construction of juvenile title, §37-1-101.

DELINQUENT AND UNRULY CHILDREN —Cont'd
Contempt.
Disobedience of orders or obstruction of proceedings, §37-1-158.
Contributing to delinquency or unruly behavior, §37-1-156.
Jurisdiction, §37-1-104.
Costs, §37-1-150.
Expenses of returning juvenile to children's services department, §37-1-138.
Liability of parents, legal custodians or guardians, §37-1-150.
Post-commitment relief, §§37-1-316, 37-1-317.
Criminal law and procedure.
Confidentiality of assessment reports and materials, violations, §37-1-136.
Custody.
Detention or shelter care.
Hearing on detention.
Continued detention of child.
Determinations made by court, JuvPro 203.
Taking delinquent into custody, procedures, JuvPro 203.
Damages.
Recovery for property damaged by juvenile, §37-10-101.
Circumstances under which parent or guardian liable, §37-10-103.
Limitation on amount, §37-10-102.
Death penalty, §37-1-134.
Definitions.
Interstate compact on placement of children, §37-4-202.
Under juvenile title, §37-1-102.
Delinquent acts.
Defined, §37-1-102.
Handgun possession, §39-17-1319.
Delinquent child.
Defined, §37-1-102.
Depositions.
Post-commitment relief, §37-1-316.
Deputy commissioner of juvenile justice, §37-5-101.
Detention or shelter care.
Commitment of child to department's custody.
Required findings, §37-1-166.
Costs and expenses, §37-1-150.
Determination to commit or retain child within custody of department of children's services.
Removal for abusive parent or other party, §37-1-167.
Escape or attempted escape, §37-1-116.
Federal funds.
Use and disposition, §37-1-172.
Grounds, §37-1-114.
Hearing on detention.
Advisement of rights, JuvPro 203.
Determinations made by court, JuvPro 203.
Evidence, JuvPro 203.
Taking delinquent into custody, procedures, JuvPro 203.
Time limits.
Waiver, JuvPro 203.
Investigation upon detention, §37-1-117.
Place of detention, §37-1-116.
Presumptions, §37-1-171.
Prior to hearing on petition, §37-1-114.
Release on appearance bond, §37-1-117.
Release where detention unwarranted, §37-1-117.

DELINQUENT AND UNRULY CHILDREN —Cont'd
Detention or shelter care —Cont'd
Schools and education.
Education of youth in facilities for detention or for youth at risk, §37-5-131.
Secure detention.
Taking delinquent into custody, procedures, JuvPro 203.
Strickland hearings, §37-1-115.
Transitioning youth empowerment act of 2010, §37-2-417.
Written order of detention, §37-1-171.
Discovery, JuvPro 206.
Dispositional proceedings.
Appeals.
Notice of right to appeal, JuvPro 211.
Confidentiality of assessment reports and materials, §37-1-136.
Criminal court cases, §37-1-134.
Evidence, JuvPro 211.
Hearings, §37-1-129, JuvPro 211.
Home placement.
Violation of supervision conditions, JuvPro 212.
Mentally ill or intellectually disabled, §37-1-135.
Order of disposition.
Appeal from final order, §37-1-159.
Delinquent child, §37-1-131.
Restitution, §37-1-131.
Interlocutory order.
Where party served by publication, §37-1-125.
Noncriminal in nature, §37-1-133.
Temporary orders, JuvPro 211.
Unruly child, §37-1-132.
Guardian ad litem, entitlement to, §37-1-126.
Probation.
Violation of conditions, JuvPro 212.
Right to counsel.
Generally, §37-1-126.
Scheduling dispositional hearings, JuvPro 211.
Separate and distinct from adjudicatory hearing, JuvPro 211.
Standard of proof, JuvPro 211.
Subpoenas, §37-1-118.
Temporary orders, JuvPro 211.
Treatment and rehabilitation, §37-1-129.
District attorneys general.
Post-commitment relief.
Representation of state, §37-1-314.
Diversion programs.
Plea of guilty or no contest by child alleged to be delinquent or unruly.
Judicial diversion probation, §37-1-129.
Division of juvenile justice, §37-5-101.
Escape.
Place of detention, §37-1-116.
Evidence.
Exclusionary rules, §37-1-127.
Illegally seized or obtained evidence, §37-1-127.
Post-commitment relief, §37-1-316.
Use in courts other than juvenile court, §37-1-133.
Expenses for care of child, §37-1-150.
Family preservation services.
Generally, §§37-3-601 to 37-3-605.
Federal funds.
Disposition of federal funds for children in custody of department, §37-1-172.

DELINQUENT AND UNRULY CHILDREN —Cont'd
Fingerprints.
Destruction of fingerprints, §37-1-155.
Use of prints, §37-1-155.
Firearms and other weapons.
Handgun possession.
Delinquent act, §39-17-1319.
Fraud.
Relief from judgments or orders, JuvPro 213.
Guardian ad litem.
Appointment, §37-1-149.
Compensation, §37-1-150.
Right to guardian ad litem, §37-1-126.
Guardian and ward.
Property damaged by juvenile.
Circumstances under which guardian liable, §37-10-103.
Guilty pleas.
Disposition, agreement, JuvPro 209.
Factual basis for plea, JuvPro 209.
Inquiry by court of child, JuvPro 209.
Judicial diversion, JuvPro 209.
Voluntariness of plea.
Determination, JuvPro 209.
Habeas corpus.
Post-commitment relief.
Application for habeas corpus.
When allowed, §37-1-308.
Handgun possession.
Delinquent act, §39-17-1319.
Hearings.
Adjudicatory hearings, JuvPro 210.
Basic rights at hearing, §37-1-127.
Detention or shelter care.
Hearing on detention, JuvPro 203.
Dispositional hearings, JuvPro 211.
Rights of children, notification and waiver, JuvPro 205.
Right to counsel, §37-1-126.
Transfer from juvenile court, §37-1-134, JuvPro 208.
Home placement, §37-1-137.
Violation of supervision conditions.
Burden of proof, JuvPro 212.
Disposition, JuvPro 212.
Proceedings to establish, JuvPro 212.
Hospital emergency rooms.
Order for delinquent child to spend portion of community service in, §37-1-131.
Indigent persons.
Post-commitment relief.
Appointment of attorney for indigent, §37-1-320.
Right of indigents to counsel, §37-1-313.
Right of indigent child to counsel, §37-1-126.
Post-commitment relief proceedings, §37-1-313.
Informal adjustment without adjudication, §37-1-110, JuvPro 201.
Expunction of records following, §37-1-153.
Injunctive relief, authority of court to grant, §37-1-152.
Interstate compact on placement of children.
Generally, §§37-4-201 to 37-4-207.
Interstate juvenile compact.
Execution authorized, §37-4-101.
Jurisdiction of proceedings.
Juvenile courts, §37-1-103.
Text of compact, §37-4-101.
Investigations.
Children brought before court or delivered to detention facility, §37-1-117.

DELINQUENT AND UNRULY CHILDREN —Cont'd
Investigations —Cont'd
Initial and ongoing investigations, §37-1-128.
Joinder of parents or guardians in juvenile court actions, §37-1-170.
Judicial diversion.
Accepting guilty or no contest plea pursuant to diversion, JuvPro 209.
Jurisdiction, §37-1-103.
Contributing to delinquency or unruly behavior, §37-1-156.
Interstate compact on juveniles.
Jurisdiction of proceedings.
Juvenile court, §37-1-103.
Interstate compact on placement of children, §37-4-207.
Nonresident child.
Transfer from another state, §37-1-142.
Relief from judgments or orders.
Lack of jurisdiction, JuvPro 213.
Transfer of criminal cases from other courts, §37-1-109.
Transfer of jurisdiction to another state.
Where child changes state residence, §37-1-141.
Juvenile-family crisis intervention programs, §37-1-168.
Referrals by juvenile court, §37-1-169.
Juvenile justice division, §37-5-101.
Mental illness or intellectual disability.
Adjudicatory hearing.
Procedures at time of hearing, JuvPro 207.
Affirmative defenses.
Procedures at time of offense, JuvPro 207.
Competency hearings.
Inadmissibility of child's statements, JuvPro 207.
Dispositional proceedings, §37-1-135.
Evaluation and commitment, §37-1-128.
Offense.
Procedures at time of offense, JuvPro 207.
Modification of or relief from judgments or orders, JuvPro 213.
Newly discovered evidence.
Modification of or relief from judgments or orders, JuvPro 213.
No contest pleas.
Consent of court, JuvPro 209.
Disposition, agreement, JuvPro 209.
Judicial diversion, JuvPro 209.
Nonresidents.
Out-of-state custody and supervision, §37-1-143.
Out-of-state probation officers.
Powers, §37-1-145.
Supervision under out-of-state order, §37-1-144.
Transfer from another state, §37-1-142.
No release.
Taking delinquent into custody, procedures, JuvPro 203.
Orders.
Contempt for disobedience, §37-1-158.
Modification, §37-1-139.
Modification of or relief from judgments or orders, JuvPro 213.
Post-commitment relief.
Delayed appeal.
Order granting, §37-1-319.
Final order.
Service of copies, §37-1-318.

DELINQUENT AND UNRULY CHILDREN —Cont'd
Orders —Cont'd
Post-commitment relief —Cont'd
Interlocutory orders.
Issuance, §37-1-309.
Parental liability, §§37-1-150, 37-1-151.
Penalties for parents, §37-1-174.
Vandalism by child, §37-1-156.
Petitions.
Adjudicatory proceedings.
Contents of petition, §37-1-120.
Who may make petition, §37-1-119.
Photographs.
Destruction of photographs, §37-1-155.
Use of photographs, §37-1-155.
Physical and mental examinations, §37-1-128.
Costs and expenses, §37-1-150.
Placement of child.
Children's services, department.
Post-commitment relief, §§37-1-301 to 37-1-322.
Family preservation services, §§37-3-601 to 37-3-605.
Citation of provisions, §37-3-601.
Definitions, §37-3-602.
Implementation of statute, §37-3-605.
Program to provide, §37-3-603.
Interstate compact, §§37-4-201 to 37-4-207.
Agreements with foreign states.
Authorized, §37-4-205.
Compact administrator, §37-4-203.
Definitions, §37-4-202.
Financial responsibility for children placed.
Determination, §37-4-204.
Importation of dependent children law.
Inapplicable, §37-4-206.
Jurisdiction of court, §37-4-207.
Text of compact, §37-4-201.
Plea of guilty or no contest by child alleged to be delinquent or unruly.
Deferral of proceedings and placement on probation, §37-1-129.
Judicial diversion probation, §37-1-129.
Post-commitment relief, §§37-1-301 to 37-1-322.
Affidavits, §37-1-316.
Appeals, §37-1-321.
Attorney general to represent state, §37-1-314.
Delayed appeal, §37-1-319.
Release of petitioner on bail or temporary custody, §37-1-322.
Attorneys at law.
Appointment for indigent, §37-1-320.
Record of counsel's consultations with petitioner, §37-1-317.
Attorneys general.
Attorney general to represent state on appeal, §37-1-314.
District attorney general to represent state, §37-1-314.
Citation of part.
Short title, §37-1-301.
Costs, §§37-1-316, 37-1-317.
Depositions, §37-1-316.
Dismissal of petition.
Technical defects.
Not grounds for dismissal without opportunity to amend, §37-1-315.
District attorney general.
Representation of state on appeal, §37-1-314.

DELINQUENT AND UNRULY CHILDREN —Cont'd
Post-commitment relief —Cont'd
Granting of relief, §37-1-317.
Grounds for relief, §37-1-305.
Previously determined grounds, §37-1-312.
Waived grounds, §37-1-312.
Habeas corpus.
Petition, §37-1-308.
Hearing on petition, §37-1-309.
Appearance of petitioner, §37-1-310.
Designation of judge to hear and determine petition, §37-1-303.
Scope of hearing, §37-1-311.
Transportation of petitioner, §37-1-310.
Indigent children, §37-1-320.
Right to counsel, §37-1-313.
Orders.
Delayed appeal.
Order granting, §37-1-319.
Final orders, §37-1-317.
Service of copies, §37-1-318.
Interlocutory orders.
Issuance, §37-1-309.
Petition for habeas corpus, §37-1-308.
Petition for relief.
Action by court upon receipt of petition, §37-1-306.
Amendment of petition, §37-1-315.
Formal irregularities, §37-1-307.
Contents of petition, §37-1-304.
Dismissal of petition.
Failure to state proper claim for relief, §37-1-307.
Formal irregularities, §37-1-307.
Grounds, §37-1-309.
Filing of petition, §37-1-303.
Time for filing, §37-1-302.
Withdrawal of petition, §37-1-315.
Release of petitioner on bail or temporary custody, §37-1-322.
Rules of practice and procedure.
Promulgation by Supreme Court, §37-1-322.
Predisposition custody, §37-1-128.
Preliminary inquiry and informal adjustment.
Complaints.
Receipt of complaint, JuvPro 201.
Designated court officer.
Duties upon receipt of complaint, JuvPro 201.
Remediation of situation by informal adjustment, JuvPro 201.
Inappropriateness of informal adjustment, JuvPro 201.
Purpose, JuvPro 201.
Statements of child.
Inadmissible in subsequent proceedings, JuvPro 201.
Pretrial diversion, §37-1-110.
Agreement, JuvPro 202.
Consent, JuvPro 202.
Contents of agreement, JuvPro 202.
Duration of process, JuvPro 202.
Statements of child.
Inadmissibility in subsequent proceedings, JuvPro 202.
Violation, JuvPro 202.
Prevention, treatment or care of delinquent juveniles.
Evidence-based programs, pilot programs, §37-5-121.
Probation.
Defined, §37-1-102.
Dispositional orders, §37-1-131.

DELINQUENT AND UNRULY CHILDREN —Cont'd
Probation —Cont'd
Plea of guilty or no contest by child alleged to be delinquent or unruly.
Judicial diversion probation, §37-1-129.
Reporting of statistical data regarding child receiving probation services, §37-1-506.
Violation of conditions.
Burden of proof, JuvPro 212.
Disposition, JuvPro 212.
Proceedings to establish violation, JuvPro 212.
Probation officers.
Duties, §37-1-105.
Investigatory duties, §37-1-128.
Investigations, §37-1-128.
Out-of-state officers.
Powers, §37-1-145.
Powers, §37-1-105.
Nonresidents, §37-1-145.
Salaries, §37-1-105.
Property damaged by juvenile.
Recovery, §37-10-101.
Limitation on amount, §37-10-102.
Parent's or guardian's liability, §37-10-103.
Recordings.
Audio recordings of transfer hearings, §37-1-134.
Use of audio and video recordings, §37-1-155.
Records.
Abstract turned over to school of juvenile, §§37-1-153, 37-1-154.
Children's services departments (counties), §37-2-205.
Court files and records.
Inspection limited, §37-1-153.
Expunction, right to petition for, §37-1-153.
Law enforcement records.
Inspection limited, §37-1-154.
Post-commitment relief.
Counsel's consultations with petitioner, §37-1-317.
Release from custody.
Detention or shelter care.
Hearing on detention.
Determinations made by court, JuvPro 203.
Taking delinquent into custody, procedures, JuvPro 203.
Reports.
Appointment of counsel, §37-1-126.
Residence.
Change of residence to another state.
Transfer of jurisdiction, §37-1-141.
Nonresident child.
Transfer from another state, §37-1-142.
Restitution.
Ordering delinquent child to make restitution, §37-1-131.
Restraints on children in courtroom, JuvPro 204.
Rights of children.
Notification and waiver, JuvPro 205.
Right to counsel, §37-1-126.
Post-commitment relief proceedings.
Indigent petitioners, §37-1-313.
Rules and regulations.
Post-commitment relief.
Promulgation of procedural rules by Supreme Court, §37-1-322.

DELINQUENT AND UNRULY CHILDREN —Cont'd
Rules of juvenile procedure, JuvPro 201 to 213.
Adjudicatory hearings, JuvPro 210.
Attorneys.
Rights of children, notification and waiver, JuvPro 205.
Confidentiality of proceedings, JuvPro 114.
Custody.
Procedures upon taking delinquent child into custody, JuvPro 203.
Discovery, JuvPro 206.
Dispositional hearings, JuvPro 211.
Guilty plea, JuvPro 209.
Hearing.
Adjudicatory hearings, JuvPro 210.
Dispositional hearings, JuvPro 211.
Rights of children, notification and waiver, JuvPro 205.
Home placement supervision.
Violation of conditions, JuvPro 212.
Judicial diversion, JuvPro 209.
Mental condition of child, procedures, JuvPro 207.
Modification of or relief from judgments or orders, JuvPro 213.
No contest pleas, JuvPro 209.
Preliminary inquiry and informal adjustment, JuvPro 201.
Pretrial diversion in delinquent and unruly cases, JuvPro 202.
Probation.
Violation of conditions, JuvPro 212.
Restraints on children in courtroom, JuvPro 204.
Right of children, notification and waiver, JuvPro 205.
Transfer to criminal court.
Hearing on transfer, JuvPro 208.
Notice of intent to seek transfer of jurisdiction, JuvPro 208.
Runaway defined, §36-1-102.
Schools and education.
School assignment, educational plans, and limitations or conditions on attendance, §37-1-131.
Self-incrimination.
Basic rights at hearing, §37-1-127.
Sentencing, §37-1-137.
Service of process.
Post-commitment relief.
Copies of final judgment, §37-1-318.
Special advocates, §37-1-149.
State custody.
Transitioning youth empowerment act of 2010, §37-2-417.
Statements of child.
Mental illness or intellectual disability.
Competency hearings.
Inadmissibility of child's statements, JuvPro 207.
Preliminary inquiry and informal adjustment.
Inadmissible in subsequent proceedings, JuvPro 201.
Pretrial diversion.
Inadmissibility in subsequent proceedings, JuvPro 202.
Strickland hearings, §37-1-115.
Subpoenas.
Adjudicatory proceedings, §37-1-118.
Teen court program of 2000, §§37-1-701 to 37-1-706.
Time credits for good behavior, §37-1-137.

DELINQUENT AND UNRULY CHILDREN —Cont'd
Transfer of cases.
Criminal cases from other courts, §37-1-109.
From juvenile court, §37-1-134.
Hearing on transfer, JuvPro 208.
Notice of intent to seek transfer of jurisdiction to criminal court, JuvPro 208.
Transfer to another juvenile court within state, §37-1-112.
Transitioning youth empowerment act of 2010, §37-2-417.
Treatment or rehabilitation.
Dispositional hearing, §37-1-129.
Unruly child.
Defined, §37-1-102.
Venue, §37-1-111.
Victims of crime.
School assignment, educational plans, and limitations or conditions on attendance.
Separation from victim as factor considered, §37-1-131.
Youth investment programs, §§37-3-401 to 37-3-406.
Citation of provisions, §37-3-401.
Office of community contact.
Director, §37-3-402.
Authorized to apply for funds, §37-3-406.
Duties, §37-3-404.
Duties, §37-3-403.
Personnel, §37-3-402.
Volunteer's duties, §37-3-405.
Youth services officers.
Duties, §37-1-106.

DEPARTMENT OF CHILDREN'S SERVICES.
See CHILDREN'S SERVICES DEPARTMENT.

DEPARTMENT OF HUMAN SERVICES.
Child welfare agencies.
See CHILD CARE AGENCIES, WELFARE.

DEPENDENT AND NEGLECTED CHILDREN.
Abuse of children generally.
See CHILD ABUSE AND CHILD NEGLECT OR ENDANGERMENT.
Adjudicatory proceedings.
Commencement of hearing, JuvPro 307.
Dispositional hearing separate from adjudicatory hearing, JuvPro 308.
Evidence, JuvPro 307.
Findings of court, JuvPro 307.
Hearings, JuvPro 307.
Conduct, §37-1-124.
Provisional hearings.
Where party served by publication, §37-1-125.
Time for hearing, §37-1-117.
Informal adjustment without adjudication, §37-1-110.
Expunction of records following, §37-1-153.
Order of adjudication.
Noncriminal in nature, §37-1-133.
Petitions.
Contents of petition, §37-1-120.
Who may make petition, §37-1-119.
Scheduling hearings, JuvPro 307.
Scope of hearing, JuvPro 307.
Standard of proof, JuvPro 307.

DEPENDENT AND NEGLECTED CHILDREN —Cont'd
Adjudicatory proceedings —Cont'd
Status adjudication, JuvPro 307.
Subpoenas, §37-1-118.
Summonses.
Attachment of persons where summons ineffectual, §37-1-122.
Transfer to home county for disposition, JuvPro 307.
Agreed orders, JuvPro 309.
Aid to dependent children.
See WELFARE.
Appeals.
Dispositional orders, §37-1-159.
Notice of right to appeal, JuvPro 308.
Attachment of persons.
Adjudicatory proceedings.
Attachment where summons ineffectual, §37-1-122.
Attorneys at law.
Right to counsel.
Notification and waiver of rights, JuvPro 303.
Attorneys' fees, §37-1-150.
Child custody.
Children's services departments (counties), §§37-2-205, 37-2-206.
Definitions, §37-1-102.
Duties of legal custodian, §37-1-140.
Out-of-state custody and supervision, §37-1-143.
Predisposition custody, §37-1-128.
Release to proper party, §37-1-115.
Removal from custody of parent, guardian or legal custodian.
Child in need of immediate protection.
Further investigation and hearings, §37-1-117.
Taking into custody.
Grounds, §37-1-113.
Uniform child custody jurisdiction and enforcement act, §§36-6-201 to 36-6-243.
See INTERSTATE CHILD CUSTODY PROCEEDINGS.
Warrant for custody, §37-1-115.
Children's services departments (counties).
Citation of provisions, §37-2-201.
Director.
Appointment, §37-2-203.
Disposition of dependent children, §37-2-205.
Establishment.
Authority, §37-2-202.
Facilities.
Use of facilities of another county, §37-2-207.
Funds.
Authority to appropriate, §37-2-208.
Homes.
Authority to establish and operate, §37-2-204.
Judgments and decrees.
Court orders.
Modification, §37-2-206.
Neglected children.
Disposition, §37-2-205.
Personnel.
Appointment, §37-2-203.
Qualifications.
Minimum qualifications to be met, §37-2-205.
Recordkeeping, §37-2-205.
Standards.
Minimum standards to be met, §37-2-205.

DEPENDENT AND NEGLECTED CHILDREN —Cont'd
Children's testimony, JuvPro 306.
Child support.
Parents' liability for support, §37-1-151.
Child welfare agencies.
See CHILD CARE AGENCIES, WELFARE.
Circuit courts.
Appeals to, §37-1-159.
Clerical mistakes.
Modification of or relief from judgments or orders, JuvPro 310.
Commencement of juvenile proceedings.
Generally, §37-1-108.
Confidentiality of proceedings, JuvPro 114.
Construction of juvenile title, §37-1-101.
Contempt.
Disobedience of orders or obstruction of proceedings, §37-1-158.
Contributing to dependency or neglect.
Jurisdiction, §37-1-104.
Misdemeanor, §37-1-157.
Costs, §37-1-150.
Liability of parents, legal custodians or guardians, §37-1-150.
Criminal law and procedure.
Dispositional proceedings.
Confidentiality of assessment reports and materials, violations, §37-1-136.
Custody, taking child into.
Determinations made at preliminary hearing, JuvPro 302.
Evidence.
Preliminary hearings, JuvPro 302.
Guardian ad litem.
Appointment, JuvPro 302.
Notification of rights, JuvPro 303.
Preliminary hearing, JuvPro 302.
Orders.
No court order, JuvPro 302.
Protective custody order.
Findings, JuvPro 302.
Pursuant to court order, JuvPro 302.
Preliminary hearings, JuvPro 302.
Procedures upon taking child into custody, JuvPro 302.
Waiver of time limits.
Preliminary hearings, JuvPro 302.
Definitions.
Interstate compact on placement of children, §37-4-202.
Under juvenile title, §37-1-102.
Detention or shelter care.
Commitment of child to department's custody.
Required findings, §37-1-166.
Costs and expenses, §37-1-150.
Determination to commit or retain child within custody of department of children's services.
Removal from abusive parent or other party, §37-1-167.
Emergency temporary care, §37-1-128.
Escape or attempted escape, §37-1-116.
Federal funds.
Use and disposition, §37-1-172.
Foster care.
Generally, §§37-2-401 to 37-2-418.
See FOSTER CARE.
Grounds, §37-1-114.
Investigation upon detention, §37-1-117.
Place of detention, §37-1-116.

DEPENDENT AND NEGLECTED CHILDREN —Cont'd
Detention or shelter care —Cont'd
Presumptions, §37-1-171.
Prior to hearing on petition, §37-1-114.
Release on appearance bond, §37-1-117.
Release where detention unwarranted, §37-1-117.
Removal from custody of parent, guardian or legal custodian.
Child in need of immediate protection.
Further investigation and hearings, §37-1-117.
Schools and education.
Education of youth in facilities for detention or for youth at risk, §37-5-131.
Written order required, §37-1-171.
Discovery, JuvPro 305.
Dismissal of petition on finding that child not dependent or neglected, §37-1-129.
Dispositional proceedings.
Adjudicatory hearing separate from dispositional hearing, JuvPro 308.
Appeals.
Notice of right to appeal, JuvPro 308.
Confidentiality of assessment reports and materials, §37-1-136.
Evidence, JuvPro 308.
Hearings, §37-1-129, JuvPro 308.
Mentally ill and intellectually disabled persons, §37-1-135.
Order of disposition.
Appeal from final order, §37-1-159.
Children's services departments (counties).
Disposition to, §§37-2-205, 37-2-206.
Enumeration of permissible orders, §37-1-130.
Interlocutory order.
Where party served by publication, §37-1-125.
Noncriminal in nature, §37-1-133.
Temporary orders, JuvPro 308.
Placement of child, §37-1-130.
Scheduling hearings, JuvPro 308.
Standard of proof, JuvPro 308.
Subpoenas, §37-1-118.
Education.
Voluntary pre-K for Tennessee act of 2005.
At-risk children, enrollment, §49-6-104.
Escape.
Place of detention, §37-1-116.
Evidence.
Use in courts other than juvenile court, §37-1-133.
Expenses for care of child, §37-1-150.
Liability of parents, legal custodians or guardians, §37-1-150.
Parents' liability, §37-1-151.
Family preservation services.
Generally, §§37-3-601 to 37-3-605.
Federal funds.
Disposition of federal funds for children in custody of department, §37-1-172.
Foster care.
Generally, §§37-2-401 to 37-2-418.
See FOSTER CARE.
Fraud.
Modification of or relief from judgments or orders, JuvPro 310.
Guardian ad litem.
Appointment, §37-1-149.

DEPENDENT AND NEGLECTED CHILDREN —Cont'd
Guardian ad litem —Cont'd
Compensation, §37-1-150.
Powers and duties, SupCt 40.
Right to guardian ad litem, §37-1-126.
Hearings.
Dispositional hearings, §37-1-129, JuvPro 308.
Preliminary hearings, JuvPro 302.
Informal adjustment without adjudication, §37-1-110.
Expunction of records following, §37-1-153.
Initiation of cases, JuvPro 301.
Injunctive relief, authority of court to grant, §37-1-152.
Interstate compact on placement of children.
Generally, §§37-4-201 to 37-4-207.
Intervention.
Of right, intervention as of, JuvPro 304.
Permissive intervention, JuvPro 304.
Investigations.
Children brought before court or delivered to detention facility, §37-1-117.
Initial and ongoing investigations, §37-1-128.
Subsidized receiving homes, §37-2-317.
Joinder of parents or guardians in juvenile court actions, §37-1-170.
Judgments.
Modification of or relief from judgments or orders, JuvPro 310.
Jurisdiction, §37-1-103.
Contributing to dependency or neglect, §37-1-157.
Jurisdiction of courts, §37-1-104.
Interstate compact on placement of children, §37-4-207.
Modification of or relief from judgments or orders.
Lack of jurisdiction, JuvPro 310.
Nonresident child.
Transfer from another state, §37-1-142.
Temporary jurisdiction to issue temporary orders, §37-1-103.
Transfer of jurisdiction to another state.
Where child changes state residence, §37-1-141.
Juvenile-family crisis intervention programs, §37-1-168.
Referrals by juvenile court, §37-1-169.
Magistrates in juvenile proceedings.
Generally, §37-1-107.
Mental illness or intellectual disability.
Dispositional proceedings, §37-1-135.
Evaluation and commitment, §37-1-128.
Modification of or relief from judgments or orders, JuvPro 310.
Motions.
Discovery.
Contents of discovery-related motions, JuvPro 305.
Newly discovered evidence.
Modification of or relief from judgments or orders, JuvPro 310.
Nonresidents.
Out-of-state custody and supervision, §37-1-143.
Out-of-state probation officers.
Powers, §37-1-145.
Supervision under out-of-state order, §37-1-144.
Transfer from another state, §37-1-142.

DEPENDENT AND NEGLECTED CHILDREN —Cont'd
Notification and waiver of rights, JuvPro 303.
Orders.
Agreed orders, JuvPro 309.
Contempt for disobedience, §37-1-158.
Modification, §37-1-139.
Modification of or relief from judgments or orders, JuvPro 310.
Permissive intervention, JuvPro 304.
Petitions.
Adjudicatory proceedings.
Contents of petition, §37-1-120.
Who may make petition, §37-1-119.
Initiation of cases, JuvPro 301.
Physical and mental examinations, §37-1-128.
Costs and expenses, §37-1-150.
Placement of child.
Dispositional proceedings, §37-1-130.
Family preservation services, §§37-3-601 to 37-3-605.
Citation of provisions, §37-3-601.
Definitions, §37-3-602.
Program to provide services, §37-3-603.
Statute implementation, §37-3-605.
Interstate compact, §§37-4-201 to 37-4-207.
Agreements with foreign states.
Authorized, §37-4-205.
Compact administrator, §37-4-203.
Definitions, §37-4-202.
Financial responsibility for children placed.
Determination, §37-4-204.
Importation of dependent children law.
Inapplicable, §37-4-206.
Text of compact, §37-4-201.
Subsidized receiving homes.
Generally, §§37-2-301 to 37-2-319.
See RECEIVING HOMES.
Predisposition custody, §37-1-128.
Prevention services, reporting of statistical data regarding child receiving, §37-1-506.
Probation officers.
Duties, §37-1-105.
Out-of-state officers.
Powers, §37-1-145.
Records.
Abstract turned over to school of juvenile, §§37-1-153, 37-1-154.
Case records kept on children, §37-2-316.
Children's services departments (counties), §37-2-205.
Court files and records.
Inspection limited, §37-1-153.
Subsidized receiving homes.
Licenses, §37-2-308.
Relative caregiver custody, child to remain in, §37-1-183.
Removal from custody of parent, guardian or legal custodian.
Child in need of immediate protection.
Further investigation and hearings, §37-1-117.
Reports.
Child abuse and child neglect or endangerment, §§37-1-401 to 37-1-414.
See CHILD ABUSE AND CHILD NEGLECT OR ENDANGERMENT.

DEPENDENT AND NEGLECTED CHILDREN —Cont'd
Reports —Cont'd
Subsidized receiving homes.
Reports to department of children's services, §37-2-313.
Residence.
Change of residence to another state.
Transfer of jurisdiction, §37-1-141.
Nonresident child.
Transfer from another state, §37-1-142.
Right to counsel, §37-1-126.
Rules and regulations.
Subsidized receiving homes.
Department of children's services authority, §37-2-304.
Rules of juvenile procedure, JuvPro 301 to 310.
Agreed orders, JuvPro 309.
Confidentiality of proceedings, JuvPro 114.
Custody.
Procedures upon taking child into custody, JuvPro 302.
Discovery, JuvPro 305.
Hearings.
Adjudicatory hearings, JuvPro 307.
Dispositional hearings, JuvPro 308.
Initiation of cases, JuvPro 301.
Intervention, JuvPro 304.
Modification of or relief from judgments or orders, JuvPro 310.
Notification and waiver of rights, JuvPro 303.
Witnesses.
Children's testimony, JuvPro 306.
Schools and education.
Voluntary pre-K for Tennessee act of 2005.
At-risk children, enrollment, §49-6-104.
Sexual abuse, §§37-1-601 to 37-1-616.
See CHILD ABUSE AND CHILD NEGLECT OR ENDANGERMENT.
Special advocates, §37-1-149.
State custody.
Transitioning youth empowerment act of 2010, §37-2-417.
Subpoenas.
Adjudicatory proceedings, §37-1-118.
Subsidized receiving homes, §§37-2-301 to 37-2-319.
Appropriations, §37-2-302.
Authority to provide, §37-2-301.
Commitment of children.
Generally, §37-2-314.
Time, §37-2-315.
Contracts.
Department of children's services.
Funding contracts, §37-2-312.
Criminal law and procedure.
Violations of part, §37-2-319.
Department of children's services.
Contracts.
Funding contracts, §37-2-312.
Inspections, §37-2-305.
Investigations, §37-2-317.
Records.
Licenses, §37-2-308.
Reports to department, §37-2-313.
Rules and regulations, §37-2-304.
Fires and fire prevention.
Licensed home requirements, §37-2-306.
Funds.
Appropriations, §37-2-302.

DEPENDENT AND NEGLECTED CHILDREN —Cont'd
Subsidized receiving homes —Cont'd
Funds —Cont'd
Contracts with department of children's services, §37-2-312.
Licenses required, §37-2-311.
State's contribution, §37-2-303.
Health.
Licensed home requirements, §37-2-306.
Inspections, §37-2-305.
Investigations, §37-2-317.
Licenses, §37-2-305.
Contents, §37-2-307.
Display on premises, §37-2-309.
Prerequisite to receipt of children and subsidies, §37-2-311.
Records, §37-2-308.
Revocation.
Procedure, §37-2-310.
Limitations.
Number of children, §37-2-307.
Location of detention.
Licensed areas only, §37-2-318.
Misdemeanors.
Violations, §37-2-319.
Number of children.
Exceeding authorized number.
Prohibited, §37-2-318.
Limitations, §37-2-307.
Records.
Case records kept on children, §37-2-316.
Reports.
Quarterly reports by county to department of children's services, §37-2-313.
Rules and regulations.
Department of children's services authority, §37-2-304.
Time for commitment of children, §37-2-315.
Violations of chapter.
Penalties, §37-2-319.
Transfer of cases.
Transfer to another juvenile court within state, §37-1-112.
Transitioning youth empowerment act of 2010, §37-2-417.
Venue, §37-1-111.
Witnesses.
Children's testimony, JuvPro 306.

DEPENDENT CHILD ASSISTANCE.
Welfare.
See WELFARE.

DEPOSITIONS.
Delinquent and unruly children.
Post-commitment relief, §37-1-316.
Divorce proceedings, §36-4-115.
Interstate child custody proceedings.
Telephonic, video, etc., methods, §36-6-214.
Interstate family support act, §36-5-2316.
Juvenile law.
Post-commitment procedures, §37-1-316.
Mental health service recipients.
Commitment.
Testimony by certifying or examining professionals, §33-3-615.
Transfers of service recipients.
Judicial review of transfer.
Examining professionals, testimony of, §33-3-709.
Support and maintenance.
Interstate family support act, §36-5-2316.

DESCENT AND DISTRIBUTION.
Illegitimate children.
Inheritance of child from father, §36-2-313.

DESERTION AND NONSUPPORT, §§39-15-101 to 39-15-104.
Adoption of abandoned children, §§36-1-102, 36-1-110.
Aid to dependent children.
Deserting spouse or parent, action against, §71-3-123.
Enforcement of parents' support liability, §37-1-151.
Nonsupport and flagrant nonsupport, §§39-15-101 to 39-15-104.
Appeals, §39-15-103.
Arrest.
Issuance of warrant, §39-15-104.
Court of appeals.
Appeals from final orders or decrees of juvenile courts, §39-15-103.
Criminal law and procedure, §39-15-101.
Definitions, §39-15-101.
Enforcement generally, §39-15-104.
Execution.
Enforcement of orders or decrees, §39-15-104.
Extradition.
Flagrant nonsupport.
Duty of governor to demand return, §39-15-104.
Flagrant nonsupport, §39-15-101.
Governor.
Flagrant nonsupport.
Extradition.
Duty of governor to demand, §39-15-104.
Jurisdiction.
Juvenile courts, §39-15-102.
Juvenile courts.
Appeals from final orders or decrees, §39-15-103.
Jurisdiction, §39-15-102.
Misdemeanors.
Nonsupport, §39-15-101.
Orders of protection and assistance, §39-15-102.
Procedure generally, §39-15-104.
Sentencing, §39-15-102.
Support and maintenance generally.
See SUPPORT AND MAINTENANCE.

DIABETES.
Newborn infants.
Metabolic defects.
Blood glucose abnormalities, screening for, §68-5-405.
Students, permissible activities in management of disease at school, §49-50-1602.

DIPHTHERIA.
Responsibility of parents to have children immunized, §37-10-401.

DISABILITIES, PERSONS WITH.
Child custody.
Disability of parent creates no presumption, §36-6-106.
Children with physical disabilities, §§68-12-101 to 68-12-112.
Advisory committee for children's special services.
Appointment of members, §68-12-106.
Compensation, §68-12-106.
Created, §68-12-106.
Members, §68-12-106.
Terms of office, §68-12-106.

DISABILITIES, PERSONS WITH —Cont'd
Children with physical disabilities —Cont'd
After-care.
State after-care program, §68-12-101.
Appropriations, §68-12-111.
Clinics.
Public diagnostic and operative clinics.
Authorized, §68-12-101.
Costs.
Expenses of care and treatment.
Payment, §68-12-104.
Cystic fibrosis victims.
Funds.
Coverage extended to cystic fibrosis victims twenty-one years or older, §68-12-112.
Definitions, §68-12-102.
Department of health.
Powers and duties, §§68-12-106, 68-12-107.
Education.
Special schools and classes to be provided, §68-12-109.
Enumeration, §68-12-108.
Funds.
Special fund.
Collection and disbursement of money, §68-12-107.
Use of funds, §68-12-110.
Place of administering care and treatment, §68-12-105.
Procedure, §68-12-103.
Rights and duties granted, §68-12-103.
Child support.
Continuation beyond minority of child, §36-5-101.
Compromise in action or suit in which person with disability is party.
Power of court to approve and confirm, §34-1-121.
Criminal law and procedure.
Murder, first degree.
Aggravating factors justifying death penalty or life without parole, §39-13-109.
Cystic fibrosis victims.
Funds.
Coverage extended to cystic fibrosis victims twenty-one years or older, §68-12-112.
Funds of disabled persons under twenty thousand dollars.
Disposition, §34-1-104.
Schools and education.
Exceptional children and children with disabilities, §§49-10-601 to 49-10-1406.
See SPECIAL EDUCATION.

DISCIPLINE OF STUDENTS.
See SCHOOLS AND EDUCATION.

DISCOVERY.
Delinquent and unruly children, JuvPro 206.
Dependent and neglected children.
Discovery, JuvPro 305.
Interstate family support act, §36-5-2318.
Depositions, §36-5-2316.
Sexually transmitted diseases.
Confidentiality of records and information, §68-10-113.

DISCRIMINATION.
Children born out of wedlock, §36-2-316.

DISCRIMINATION —Cont'd
Children's services department.
Policy of nondiscrimination, §37-5-116.
Schools and education.
Discipline.
Codes of behavior and discipline.
Indecent clothing that disrupts learning environment prohibited.
Nondiscriminatory enforcement, §49-6-4009.

DISEASES.
Childhood immunizations.
Parent or guardian.
Failure to comply with provisions.
Immunity from liability, §37-10-403.
Religious tenets and practices.
Conflict with, §37-10-402.
Responsibility to have children immunized, §37-10-401.
School children, §§49-6-5001, 49-6-5002.
Hepatitis B protection, §49-6-5003.
Specific vaccines, §37-10-401.
Genetic testing, §§68-5-501 to 68-5-508.
Hepatitis.
Emergency workers.
Exposure to airborne or bloodborne diseases, §68-10-117.
Immunization, §49-6-5003.
Infants.
Eyes, treatment with prophylaxis, §68-5-202.
Genetic testing, §§68-5-501 to 68-5-508.
Metabolic defects.
Newborn testing, §§68-5-401 to 68-5-406.
Reports of certain symptoms.
Noncompliance deemed a misdemeanor.
Penalty, §68-5-202.
Required, §68-5-202.
Treatment specified at birth, §68-5-202.
Noncompliance deemed a misdemeanor.
Penalty, §68-5-202.
Metabolic defects.
Newborn testing, §§68-5-401 to 68-5-406.
Pregnancy.
Serological tests, §§68-5-601 to 68-5-607.
See PREGNANCY.
Schools and education.
Immunization of school children, §§49-6-5001, 49-6-5002.
Hepatitis B protection, §49-6-5003.
Waiving school term requirement, §49-6-3004.
Sexually transmitted diseases.
General provisions, §§68-10-101 to 68-10-118.
See SEXUALLY TRANSMITTED DISEASES.
Sharps injury prevention technology.
Diabetes, student management at schools, §49-50-1602.

DISMISSAL OF ACTIONS.
Interstate child custody proceedings.
Simultaneous proceedings, §36-6-221.
Mental health service recipients.
Commitment, §33-3-618.

DISORDERLY CONDUCT.
Discipline in special school districts.
Pupils accountable, §49-6-4401.

DISPOSITION OF FUNDS OF DISABLED PERSON UNDER $20,000, §34-1-104.

DISTRIBUTION OF MARITAL PROPERTY, §36-4-121.

DISTRICT ATTORNEYS GENERAL.
Child abuse and child neglect or endangerment.
Multi-level response system, jurisdictions using.
Assistance of district attorneys general, §37-1-406.
Sharing of information with district attorneys general, §37-1-409.
Conservators for disabled.
Abuse, mismanagement or failure to perform.
Referral to office, §34-1-123.
Delinquent and unruly children.
Post-commitment relief.
Representation of state, §37-1-314.
Guardians for minors.
Abuse, mismanagement or failure to perform.
Submittal of matter to office, §34-1-123.
Juvenile proceedings.
Rules of juvenile procedure.
Appearance of prosecuting attorney, JuvPro 104.
Pregnancy.
Serological tests.
Prosecution of violations, §68-5-607.

DIVORCE.
Adultery.
Defense, §36-4-112.
Affidavits.
Affidavits of proof not required, §36-4-116.
Alimony.
Attorneys' fees.
Recovery by plaintiff spouse, §36-5-103.
Award of alimony, §36-5-121.
Decedents' estates.
Intestacy of plaintiff spouse, §36-5-105.
Decree.
Award of alimony, §36-5-121.
Enforcement, §36-5-103.
Portion of spouse's estate decreed to spouse entitled to alimony, §36-5-102.
Enforcement of decree, §36-5-103.
Income assignment, administrative order, §36-5-103.
Income withholding, §36-5-501.
In futuro award, §36-5-121.
In solido alimony, §36-5-121.
Interstate family support act, §§36-5-2001 to 36-5-2903.
See SUPPORT AND MAINTENANCE.
Intestacy of plaintiff spouse, §36-5-105.
Lump sum or in solido alimony, §36-5-121.
Minor custodial parents, §36-5-102.
Parenting plans, §§36-6-401 to 36-6-414.
Rehabilitative alimony, §36-5-121.
Support and maintenance generally.
See SUPPORT AND MAINTENANCE.
Transitional alimony, §36-5-121.
Answers.
Bill of particulars, §36-4-110.
Right to compel answer, §36-4-108.

DIVORCE —Cont'd
Appeals.
Generally, §36-4-123.
Appearances, §36-4-110.
Right to compel, §36-4-108.
Attorneys' fees.
Alimony.
Recovery by plaintiff spouse, §36-5-103.
A vinculo.
Grounds, §§36-4-101, 36-4-103.
Bill of particulars, §36-4-106.
Answers, §36-4-110.
Right to compel answer, §36-4-108.
Verification, §36-4-107.
Bonds of matrimony.
Grounds, §§36-4-101, 36-4-103.
Bonds, surety.
Security for costs, §36-4-108.
Child custody.
Uniform child custody jurisdiction and enforcement act, §§36-6-201 to 36-6-243.
See INTERSTATE CHILD CUSTODY PROCEEDINGS.
Child support.
Generally.
See CHILD SUPPORT.
Confidentiality of information.
Mediation, §36-4-130.
Contribution of each party.
Equitable distribution of marital property, §36-4-121.
Costs.
Expunction of divorce records upon reconciliation of parties, §36-4-127.
Generally, §36-4-122.
Security, §36-4-108.
Creditor's rights.
Notice as to effect of decree, §36-4-134.
Crimes.
Conviction as ground.
Proof required, §36-4-118.
Decedents' estates.
Intestacy of plaintiff spouse, §36-5-105.
Decrees.
Alimony.
Enforcement, §36-5-103.
Portion of spouse's estate decreed to spouse entitled to alimony, §36-5-102.
Generally, §§36-4-119, 36-4-120.
Proof of facts required, §36-4-114.
Defense.
Admission of facts.
Proof required before decree given, §36-4-114.
Adultery, §36-4-112.
Answer.
Defense by answer, plea or demurrer, §36-4-110.
Compulsory appearance, §36-4-108.
Confession of facts.
Proof required as prerequisite to decree, §36-4-114.
Demurrer.
Answer, plea or demurrer, §36-4-110.
Failure to separate.
Not a defense, §36-4-111.
Plea.
Answer, plea or demurrer, §36-4-110.
Stipulated defense, §36-4-129.
Divorce a vinculo.
Grounds, §§36-4-101, 36-4-103.
Domestic abuse protection orders, §36-3-603.
Equitable distribution of marital property, §36-4-121.

DIVORCE —Cont'd
Evidence.
Depositions, §36-4-115.
Examination in open court, §36-4-115.
Financial matters.
Sworn statements, §36-4-116.
Proof of facts.
Conviction of crime, §36-4-118.
Prerequisite to decree, §36-4-114.
Spouse's refusal to remove to Tennessee, §36-4-117.
Expunction of records.
Reconciliation, §36-4-127.
Fees.
Clerk's fees, §8-21-401.
Financial matters.
Sworn statements, §36-4-116.
Five year absence, §36-3-102.
Grounds, §§36-4-101, 36-4-103.
Complaint to set forth, §36-4-106.
Proof when ground is conviction of crime, §36-4-118.
Proof when ground is spouse's refusal to remove to this state, §36-4-117.
Stipulated grounds, §36-4-129.
Guardian ad litem.
Appointment for minor children, §36-4-132.
Guardianship of property of minor child awarded to parent best serving welfare of minor, §34-1-102.
Hearings.
Trial at first term, §36-4-109.
Waiting period before hearing petition or complaint, §36-4-101.
Homemaking services.
Division of marital property.
Value of homemaking services, §36-4-121.
Income of parties.
Judge or chancellor may require sworn statement, §36-4-116.
Injunctions.
Temporary injunctions.
Issuance on filing and service of complaint, §36-4-106.
Insurance.
Notice of insurance termination.
Compliance required, §36-4-133.
Intestate succession.
Intestacy of plaintiff spouse, §36-5-105.
Irreconcilable differences.
Grounds, §36-4-103.
Procedure, §36-4-103.
Judgments and decrees.
Alimony.
Award of alimony, §36-5-121.
Enforcement, §36-5-103.
Portion of spouse's estate decreed to spouse entitled to alimony, §36-5-102.
Generally, §§36-4-119, 36-4-120.
Proof of facts required, §36-4-114.
Legal separation, §36-4-102.
Affidavits of proof not required, §36-4-116.
Contents of petition, §36-4-106.
Grounds.
Complaint to set forth, §36-4-106.
Stipulated grounds and/or defenses, §36-4-129.
Sworn statements concerning financial matters, §36-4-116.
Temporary injunctions.
Issued on filing and service of complaint, §36-4-106.

DIVORCE —Cont'd
Legitimacy of children.
Not affected by dissolution of marriage, §36-4-125.
Marital property.
Equitable distribution of marital property, §36-4-121.
Mediation.
Confidentiality of information and documents, §36-4-130.
Domestic abuse situations, §36-4-131.
Requirements, satisfaction of, §36-4-103.
Military service.
Affidavit swearing defendant not in military service.
When required, §36-4-106.
Nonresidents.
Residency requirements, §36-4-104.
Spouse's refusal to remove to Tennessee.
Proof required, §36-4-117.
Parenting plans, §§36-6-401 to 36-6-414.
See PARENTING PLANS.
Petition.
Contents, §36-4-106.
Verification, §36-4-107.
Property of litigants.
Decreed to plaintiff spouse, §36-5-102.
Distribution of marital property, §36-4-121.
Jointly-owned property, §36-4-121.
Protective orders, §36-3-603.
Equitable distribution of marital property, attribution of certain debts to abuser only, §36-4-121.
Reconciliation.
Expunction of divorce records, §36-4-127.
Suspension of proceedings to effect, §36-4-126.
Records.
Expunction upon reconciliation, §36-4-127.
Social security numbers on records, §36-5-1302.
Remarriage.
Right to remarry, §36-4-124.
Residence.
Requirements, §36-4-104.
Spouse's refusal to remove to Tennessee.
Proof required, §36-4-117.
Second marriage prohibited, §36-3-102.
Separate property.
Equitable distribution of marital property, §36-4-121.
Separation of spouses.
Failure to separate not a defense, §36-4-111.
Sexual abuse.
False allegations in furtherance of litigation, §36-4-135.
Stipulations.
Grounds or defenses, §36-4-129.
Support and maintenance.
General provisions.
See SUPPORT AND MAINTENANCE.
Suspension of proceedings.
Reconciliation, §36-4-126.
Temporary injunctions.
Issuance on filing and service of complaint, §36-4-106.
Trial.
First term if subpoena served or publication completed, §36-4-109.
Issues, §36-4-113.
Jury trial, §36-4-113.
New trial, §36-4-113.

DIVORCE —Cont'd
Venue, §36-4-105.
Domestic abuse protection orders, §36-3-602.
Waiting period before hearing petition or complaint, §36-4-101.
Witnesses.
Affidavits of proof not required, §36-4-116.

DOGS.
Schools and education.
Drug searches, §49-6-4208.

DOMESTIC ABUSE.
Applicability of provisions, §36-3-602.
Arrest, §36-3-619.
Violation of protection order, §§36-3-611, 36-3-612.
Bail of arrested person, §36-3-615.
Child abduction prevention.
Risk factors for abduction.
Listing, §36-6-607.
Child abuse and child neglect or endangerment.
See CHILD ABUSE AND CHILD NEGLECT OR ENDANGERMENT.
Child custody.
Effect of abuse, neglect, etc., on custody or visitation, §36-6-112.
Mediation in cases involving abuse, §36-6-107.
Parental allegations, §36-6-112.
Confidentiality of records, §36-3-623.
Confidentiality of victim's address, telephone number and location, §36-5-805.
Child support proceedings, §§36-5-101, 37-1-151.
Death review teams, §36-3-624.
Definitions, §36-3-601.
Family violence shelters and shelter services, §§71-6-201 to 71-6-208.
Administration of program, §71-6-203.
Confidentiality of records, §36-3-623.
Definitions, §71-6-202.
Funding, §67-4-411.
Prerequisites for receiving funds, §§71-6-204, 71-6-205.
Intent of legislation, §71-6-207.
Location of shelters privileged, §71-6-208.
Program established, §71-6-201.
Service of process or papers.
Proceedings involving shelter or persons staying at shelter, §71-6-208.
Firearms and other weapons.
Possession of weapon by alleged abuser.
Seizure, §36-3-620.
Forms, §36-3-604.
Funds.
Domestic violence community education fund, §36-3-616.
Interstate child custody proceedings.
Immunities and privileges.
Inapplicability, §36-6-234.
Leaving residence not to effect right of relief, §36-3-613.
Mediation in divorce cases, §36-4-131.
Notice.
Bail of arrested person, §36-3-615.
Legal rights of victim, §36-3-619.
Paternity contested, §36-3-614.
Paternity proceedings.
Orders denying public access to victim information, §36-2-311.
Police and other law enforcement officers, §§36-3-618 to 36-3-620.
Duties upon issuance of protection order, §36-3-609.

DOMESTIC ABUSE —Cont'd
Police and other law enforcement officers —Cont'd
Notice to victims of legal rights, §36-3-619.
Protection orders, §§36-3-601 to 36-3-612.
Animals, protecting, §36-3-606.
Arrest upon violation of order, §§36-3-611, 36-3-612.
Notice to victim of arrestee's eligibility for release on bond, §36-3-615.
Assessment of costs and fees against petitioner.
Prohibition, exception, §36-3-617.
Assistance to victims, §36-3-617.
Bond not required, §36-3-607.
Breach of lease or rental agreement for residential property.
Payment of costs, expenses and fees by respondent, §36-3-606.
Child custody or visitation rights.
Awarding, §36-3-606.
Contacting petitioner, prohibiting, §36-3-606.
Contempt hearings for violations of order, §36-3-612.
Contents, §36-3-606.
Copies of order to be issued, §36-3-609.
Costs, §36-3-617.
Counseling.
Directing respondent to attend, §36-3-606.
Court in which respondent and petitioner are parties, copies of order to be provided to.
Notice to judge, §36-3-609.
Divorce actions, §36-3-603.
Equitable distribution of marital property, attribution of certain debts to abuser only, §36-4-121.
Duration, §36-3-608.
Divorce actions, §36-3-603.
Effective date, §36-3-609.
Ex parte order of protection, §36-3-605.
Issuance on sworn petition of law enforcement officer of immediate and present danger of abuse, §36-3-619.
Extension, §36-3-605.
Fees.
Clerks of court, §8-21-401.
Firearm possession while order in effect, §36-3-604.
Disclosures required, §36-3-625.
Forms, §36-3-604.
Issuance, §36-3-605.
Modification, §§36-3-605, 36-3-608.
National crime information center order of protection file.
Entry of orders into, time, §36-3-609.
Out-of-state protection orders, §36-3-622.
Petition for orders of protection, §36-3-602.
Protections included in orders, §36-3-606.
Scope, §36-3-606.
Service, §36-3-609.
Parents of minor petitioner, §§36-3-602, 36-3-605.
Petition for relief, §36-3-602.
Respondent, service on, §36-3-605.
Shelby county.
Domestic violence court for Shelby county, §16-15-5014.

DOMESTIC ABUSE —Cont'd
Protection orders —Cont'd
Signature of parent on minor's petition, §36-3-602.
Stalking petitioner, prohibiting, §36-3-606.
Temporary order, circumstances for issuing at initial appearance by respondent, §36-3-602.
Unemancipated minor, petition on behalf of, §36-3-602.
Vacation of residence by respondent, §36-3-606.
Violation of orders, §§36-3-610 to 36-3-612.
Rape crisis centers.
Confidentiality of records, §36-3-623.
Shelby county.
Domestic violence court for Shelby county, §16-15-5014.
Use of force, effect on right to relief, §36-3-613.
Venue.
Protection orders, §36-3-602.
Visitation rights.
Mediation in cases involving abuse, §36-6-305.
Weapons in possession of alleged abuser seized, §36-3-620.

DOMESTIC RELATIONS.
Adoption of children.
Interstate compact on adoption and medical assistance, §§36-1-201 to 36-1-206.
Antenuptial agreements.
Enforcement, §36-3-501.
Child custody.
Uniform child custody jurisdiction and enforcement act, §§36-6-201 to 36-6-243.
See INTERSTATE CHILD CUSTODY PROCEEDINGS.
Child support.
See CHILD SUPPORT.
Desertion and nonsupport, §§39-15-101 to 39-15-104.
Domestic abuse, §§36-3-601 to 36-3-625.
See DOMESTIC ABUSE.
Interstate family support act, §§36-5-2701 to 36-5-2903.
See SUPPORT AND MAINTENANCE.
Jurisdiction.
Child abuse and child neglect or endangerment.
Juvenile courts, §39-15-401.
Kidnapping.
Custodial interference, §39-13-306.
Legitimacy.
Donated embryo transfer, parentage of children, §§36-2-401 to 36-2-403.
Generally, §§36-2-301 to 36-2-322.
See LEGITIMACY.
Parenting plans, §§36-6-401 to 36-6-414.
See PARENTING PLANS.
Paternity, §§36-2-301 to 36-2-322.
See PATERNITY.
Schools and education.
Curriculum.
Domestic violence awareness education programs, §49-6-1035.

DOMESTIC VIOLENCE COMMUNITY EDUCATION FUND, §36-3-616.

DOMICILE.
Residence.
See RESIDENCE.

DONATED EMBRYO TRANSFER.
Parentage of children born.
Definitions, §36-2-402.
Establishing parentage, §36-2-403.
Legislative intent, single means of establishing parentage, §36-2-401.
Relinquishment of rights and responsibilities, §36-2-403.

DRIVERS' LICENSES.
Age.
Intermediate licenses, §55-50-311.
Learners' permits.
Eligibility, §55-50-311.
Applications.
Social security numbers, §36-5-1301.
Child support enforcement.
Denial or revocation of license, §§36-5-701 to 36-5-714.
Administrative order enforcement, §36-5-812.
Juvenile proceedings, §37-1-151.
Paternity and legitimation, §36-2-320.
Drug-free youths.
Juvenile offenders, §§55-10-701 to 55-10-711.
See MOTOR VEHICLES.
Education.
Minors withdrawn from secondary school.
Denial of motor vehicle license or permit, §49-6-3017.
Fees.
Restricted licenses.
Child support enforcement.
Eligibility for restricted drivers' license when not in compliance with support order, §36-5-714.
Intermediate licenses, §55-50-311.
Learner's permit, §55-50-311.
Liability for property damage and personal injury.
As result of actions of minor, §55-50-311.
Restricted licenses.
Child support enforcement, §§36-5-701 to 36-5-714.
Eligibility for restricted drivers' license when not in compliance with support order, §36-5-705.
Fee for license, §36-5-714.
Notice, §36-5-706.
Schools and education.
Minors withdrawn from secondary school.
Denial of motor vehicle license or permit, §49-6-3017.
Sexual or violent offender identification, §55-50-353.
Social security numbers.
Required of applicant for license, §36-5-1301.

DRIVING WHILE INTOXICATED OR DRUGGED.
Penalties.
Persons 16 or over but under 21, §55-10-415.
Tests for alcoholic or drug content of blood.
Child care services, welfare.
Employees providing transportation services, §71-3-502.
Underage driving while impaired, §55-10-415.

DROP-IN CENTERS.
Child care agencies, welfare, generally, §§71-3-501 to 71-3-518.
See CHILD CARE AGENCIES, WELFARE.

DROPOUT PREVENTION, §49-1-520.
See SCHOOLS AND EDUCATION.

DRUG-FREE YOUTHS.
Motor vehicles.
Juvenile offenders, §§55-10-701 to 55-10-711.
See MOTOR VEHICLES.

DRUGS.
Child care agencies, welfare.
Drug testing policies to be established, §71-3-514.
Child custody.
Drug abuse by parent, removal of child due to.
Requirements for return of child, §36-6-115.
Contributing to delinquency.
Adult furnishing prohibited substance or product to child causing child to cause death of another, §37-1-156.
DARE.
Drug abuse resistance education.
See ALCOHOL AND DRUG ABUSE.
Drug control act.
Cough medicine.
Dextromethorphan, sale to person under 18 prohibited, §39-17-440.
Definitions.
Glue, paint, gasoline, aerosol, gases, etc.
Inhaling, selling, giving or possessing for unlawful purposes, §39-17-422.
Dextromethorphan, sale to person under 18 prohibited, §39-17-440.
Drug-free youths.
Motor vehicles.
Juvenile offenders, §§55-10-701 to 55-10-711.
See MOTOR VEHICLES.
Drug tests.
Child care services, welfare.
Employees providing transportation services, §71-3-502.
Public schools drug testing.
Random drug testing or testing due to reasonable suspicion, §49-6-4213.
Enforcement of laws.
Use of minors in aid of enforcement, §39-15-413.
Glue sniffing, §39-17-422.
Mental health service recipients.
Restraint.
Use of drugs to effect restraint, §33-3-120.
Supplying drugs, firearms, etc. to recipient.
Felony, §33-3-904.
Opiates.
Mental health and substance abuse facilities.
Licensing of facilities and services.
Exemptions for certain opiate treatment facilities, §33-2-403.
Schools and education.
Codes of behavior and discipline.
Topics addressed by codes, §49-6-4003.
Random drug testing or testing due to reasonable suspicion, §49-6-4213.
Searches and seizures.
Disposal of contraband, §49-6-4210.
Lockers, §49-6-4204.
Persons and containers, §49-6-4205.
Report of reasonable suspicion by principal to law enforcement officers, §49-6-4209.

DRUGS —Cont'd
Schools and education —Cont'd
Searches and seizures —Cont'd
Use of animals, §49-6-4208.
Use of devices designed to indicate presence of drugs, §49-6-4207.
Use of minor in aid for enforcement of laws, §39-15-413.
Welfare.
Temporary assistance for dependent children.
Drug convictions.
Exemption of individual from federal prohibition against eligibility for program, §71-3-104.

DURESS.
Abortion.
Exercising duress with regard to other persons in order to obtain or procure, §39-15-201.

E

EARS.
Body piercing generally, §§62-38-301 to 62-38-310.
See BODY PIERCING.

E-CIGARETTES.
Prevention of youth access to tobacco and vapor products, §§39-17-1501 to 39-17-1551.
See TOBACCO.

EDUCATION.
Drug abuse resistance education.
See ALCOHOL AND DRUG ABUSE.
Generally.
See SCHOOLS AND EDUCATION.
School security act, §§49-6-4201 to 49-6-4219.
Teachers.
See TEACHERS.

ELECTROCONVULSIVE THERAPY.
Provisions governing use on children, §§33-8-301 to 33-8-316.

ELECTRONIC CIGARETTES.
Prevention of youth access to tobacco and vapor products, §§39-17-1501 to 39-17-1551.
See TOBACCO.

ELECTRONIC FILING.
Clerks of court.
Fees for electronic filing and retrieval of court documents.
Transaction or subscription basis, §8-21-401.
Juvenile proceedings.
Rules of juvenile procedure.
Filing and service of pleadings, JuvPro 106.

ELECTRONIC PAGERS.
Possession in school by students.
Prima facie evidence of intent to use in violation of part, §49-6-4214.

ELECTRONIC SIGNATURES.
Juvenile proceedings.
Rules of juvenile procedure.
Filing and service of pleadings, JuvPro 106.

ELECTROSHOCK THERAPY.
Children, use on.
Provisions governing use on children, §§33-8-301 to 33-8-316.

ELEMENTARY SCHOOLS.
Juvenile offender act.
Informing pupils of provisions, §49-6-451.

E-MAIL.
Children's services department.
Professional licensing, certification and registration.
Notifications by electronic mail, §37-5-127.
Juvenile proceedings.
Rules of juvenile procedure.
Filing and service of pleadings, JuvPro 106.
Solicitation of minors, §39-13-528.
Causing a minor to engage in sexual activity, §39-13-529.

EMANCIPATION OF MINORS.
Mental health services for children.
Emancipated children, §33-8-104.
Removal of disability, §§29-31-101 to 29-31-105.
Applications, §29-31-102.
Appearance to resist application, §29-31-102.
Process, §29-31-102.
Chancery courts.
Power to remove, §29-31-101.
Decree, §29-31-104.
Scope of decree, §29-31-105.
Defendants, §29-31-102.
Not required, §29-31-103.
Hearing, §29-31-104.
Mental health.
Children, services for.
Emancipated children, §33-8-104.
Minimum age, §29-31-104.
Power to remove, §29-31-101.

EMERGENCIES.
Child care agencies, welfare.
Multi-hazard plan to protect children in case of emergency, §71-3-517.
Guardians for minors.
Emergency guardian or conservator, §34-1-132.
Mental health.
Inpatient treatment.
Involuntary admission, emergency, §§33-6-401 to 33-6-427.
Services for children.
Electroconvulsive therapy.
Finding of emergency, §33-8-305.
Transfers of service recipients.
Correction department and children's service department, transfers from.
Emergency residential care and treatment, §§33-3-403, 33-3-412.
Schools and education.
Universal mental health or socioemotional screening.
When permitted, §49-2-124.
Waiving school term requirement, §49-6-3004.
Welfare.
Diversion grants.
Temporary assistance, in lieu of, §71-3-109.

EMERGENCY HOSPITAL SERVICES.
Delinquent children.
Community service performed in hospital emergency room, §37-1-131.

EMERGENCY MEDICAL SERVICES.
AIDS.
Exposure of law enforcement, emergency personnel, etc, to blood or fluids of arrested person.
Testing of suspects, §68-10-116.
Hepatitis.
Exposure of law enforcement, emergency personnel, etc, to blood or fluids of arrested person.
Testing of suspects, §68-10-116.
Interstate child custody proceedings.
Inapplicability of act, §36-6-206.
Technicians.
AIDS.
Exposure of law enforcement, emergency personnel, etc, to blood or fluids of arrested person.
Testing of suspects, §68-10-116.
Exposure to airborne or bloodborne diseases, §68-10-117.
Hepatitis.
Exposure of law enforcement, emergency personnel, etc, to blood or fluids of arrested person.
Testing of suspects, §68-10-116.

EMPLOYERS AND EMPLOYEES.
Child support.
Employment records for use in enforcement, §§36-5-1101 to 36-5-1108.
Fetal and infant mortality review (FIMR) act.
Employment of persons authorized, §68-142-206.
Firearms and other weapons.
Handguns carried by employees.
School property.
Concealed weapons, employees authorized to carry in distressed rural counties.
Applicability, §39-17-1309.
Protection of minor performers, §§50-5-201 to 50-5-222.
See CHILD LABOR.
Welfare.
Temporary assistance eligibility.
Work or employment requirement, §71-3-104.

ENHANCEMENT FACTORS IN SENTENCING.
Criminal gang offenses, §40-35-121.

ENTERTAINMENT.
Child labor.
Protection of minor performers, §§50-5-201 to 50-5-222.
See CHILD LABOR.

EPILEPSY.
Anti-seizure medication, administering to student, §49-50-1602.

EPINEPHRINE.
Schools.
Emergency precautions to provide treatment, §49-50-1602.
Students, self-administration of medication, §49-50-1602.

EQUITABLE DISTRIBUTION OF MARITAL PROPERTY, §36-4-121.

ESCAPE.
Delinquent and unruly children.
Place of detention, §37-1-116.
Dependent and neglected children.
Place of detention, §37-1-116.

ESCAPE —Cont'd
Juvenile courts.
Detention of children.
Escape or attempted escape, §37-1-116.
Interstate flight by juvenile felon, §37-1-160.
Mental health service recipients.
Aiding or abetting, §33-3-904.
Residential service recipients.
Unauthorized leave from facilities, §33-4-106.
Transfers of service recipients.
Correction department and children's service department, transfers from.
Runaways from department of mental health and developmental disabilities department facilities.
Custodian upon return, §33-3-411.
Runaway children.
Harboring, concealing or aiding in escape from lawful custody, §39-15-414.
Youth development centers, §37-5-206.

ESTATES.
Paternity proceedings.
Inheritance of child from father, §36-2-313.
Tenancies by entirety.
Unaffected by removal of coverture from married women, §36-3-505.

EVIDENCE.
Audio-visually recorded testimony.
Child sexual abuse proceedings, §24-7-117.
Best evidence rule.
Interstate child custody proceedings.
Electronic transmission from another state, §36-6-214.
Character evidence.
Other crimes, wrongs or acts.
Admissibility, §24-7-125.
Child abuse.
Privileges inapplicable, §37-1-411.
Sexual abuse proceedings, §37-1-614.
Video recording of interview of child describing sexual conduct, §24-7-123.
Child custody.
Intercounty enforcement and modification, §36-5-3006.
Child passenger restraint systems.
Failure to use, §55-9-602.
Child rape victims.
Video recording of interview of child describing sexual conduct, §24-7-123.
Child's testimony.
Closed circuit television, §24-7-120.
Video recording of interview of child describing sexual conduct, §24-7-123.
Child support.
Appeal of administrative actions, §36-5-1002.
Intercounty enforcement and modification, §36-5-3006.
Payments, official records, §24-7-121.
Closed circuit television.
Child's testimony, §24-7-120.
Conservators for persons with disabilities.
Appointment.
Letters of conservatorship, §34-1-109.

EVIDENCE —Cont'd
Delinquent and unruly children.
Exclusionary rules, §37-1-127.
Illegally seized or obtained evidence, §37-1-127.
Post-commitment relief, §37-1-316.
Use in courts other than juvenile court, §37-1-133.
Dependent and neglected children.
Use in courts other than juvenile court, §37-1-133.
Domestic abuse.
Rape crisis centers and family violence shelters.
Conditions for release of records, §36-3-623.
Guardians for minors.
Letters of guardianship as evidence of appointment, §34-1-109.
Interstate child custody proceedings.
Documentary evidence.
Effect of electronic submission, §36-6-214.
Evidentiary effect, §36-6-210.
Holding hearings or obtaining evidence for other states, §36-6-215.
Request for evidentiary hearing in or evidence from another state, §36-6-215.
Juvenile courts.
Post-commitment procedures, §37-1-316.
Right of parties, §37-1-127.
Marriage contracts.
Breach of marriage contract.
Proof of contract, §§36-3-401, 36-3-402.
Mental health service recipients.
Commitment, §33-3-612.
Clear and convincing requisite for commitment, §33-3-617.
Transfers of service recipients.
Judicial review of transfer, §33-3-707.
Preponderance, §33-3-710.
Motor vehicles.
Child passenger restraint systems.
Failure to use, §55-9-602.
Paternity tests, §§24-7-112, 36-2-309.
Costs of test, §36-2-308.
Rape.
Domestic abuse cases.
Records from rape crisis centers or family violence shelters, §36-3-623.
Records.
Domestic abuse cases.
Records from rape crisis centers or family violence shelters, §36-3-623.
Relevant evidence.
Character.
Other crimes, wrongs or acts.
Admissibility, §24-7-125.
Schools and education.
Electronic pagers.
Possession by students.
Prima facie evidence of intent to use in violation of part, §49-6-4214.
Sexually transmitted diseases.
Confidentiality of records and information, §68-10-113.
Knowledge of governmental persons regarding records, §68-10-114.
Support and maintenance.
See SUPPORT AND MAINTENANCE.
Video recording of interview of child describing sexual conduct, §24-7-123.

EXAMINATIONS.
Schools and education.
Discipline in special school districts.
Pupil's right to physical examination, §49-6-4404.

EXCISION OF FEMALE GENITALS.
Female genital mutilation, §39-13-110.

EXECUTIONS.
Child support.
Lien enforcement.
Exemptions from sales, §36-5-906.
Desertion and nonsupport.
Nonsupport and flagrant nonsupport.
Enforcement of orders and decrees, §39-15-104.
Juvenile courts.
Liability of parents to support child, §37-1-151.
Welfare.
Aid to dependent children.
Exemption, §71-3-121.

EXECUTORS AND ADMINISTRATORS.
Conservators for persons with disabilities.
When personal representative may be appointed as conservator, §34-1-120.
Guardians.
When personal representatives may be appointed as guardian, §34-1-120.

EXPLOSIVES.
Weapons.
Carrying weapons on school property, §39-17-1309.

EXPUNCTION OF RECORDS.
Conservators for disabled.
No fiduciary appointed in action for appointment, §34-1-124.
Delinquent and unruly children, §37-1-153.
Divorce.
Reconciliation, §36-4-127.
Guardians for minors.
No fiduciary appointed in action for appointment, §34-1-124.
Juvenile proceedings, §37-1-155.

EXTRADITION.
Desertion and nonsupport.
Nonsupport and flagrant nonsupport.
Duty of governor to demand return of person charged with flagrant nonsupport, §39-15-104.
Support and maintenance.
Interstate family support act, §§36-5-2801, 36-5-2802.

EYES.
Newborn infants.
Treatment specified at birth, §68-5-202.
Schools and education.
Promotion of eye care awareness, §49-6-5004.

F

FACSIMILE FILING OF PAPERS.
Juvenile proceedings.
Rules of juvenile procedure.
Filing and service of pleadings, JuvPro 106.

FACSIMILE TRANSMISSIONS.
Child support.
Documents submitted in administrative appeals, §36-5-1002.

FACSIMILE TRANSMISSIONS —Cont'd
Child support —Cont'd
Release of lien, §36-5-907.
Mental health proceedings.
Telefax transmission of pleadings and certificates, §33-3-506.

FAIR CREDIT REPORTING ACT.
Child support delinquency reports, §36-5-106.

FALSE IDENTIFICATION.
Tattooing.
Minors, false identification or statement of age to obtain tattoo, §62-38-211.

FAMILIES FIRST PROGRAM.
See WELFARE.

FAMILY BOARDING HOMES.
Child care agencies, juveniles, §§37-5-501 to 37-5-519.
See CHILD CARE AGENCIES, JUVENILES.
Child care agencies, welfare, §§71-3-501 to 71-3-518.
See CHILD CARE AGENCIES, WELFARE.

FAMILY CHILD CARE HOMES.
Child care agencies, juveniles, §§37-5-501 to 37-5-519.
See CHILD CARE AGENCIES, JUVENILES.
Child care agencies, welfare, §§71-3-501 to 71-3-518.
See CHILD CARE AGENCIES, WELFARE.

FAMILY DAY-CARE HOMES.
Department of human services.
Market rate study and rate of reimbursement, §71-1-130.

FAMILY PLANNING ACT OF 1971, §§68-34-101 to 68-34-111.
Citation, §68-34-101.
Commissioner.
Defined, §68-34-102.
Contraceptives.
Availability, §68-34-104.
Information, §68-34-104.
Procedures.
Defined, §68-34-102.
Funds, §68-34-104.
Religious beliefs, §68-34-104.
Supplies.
Defined, §68-34-102.
Funds, §68-34-104.
Supplies and information, §68-34-107.
Definitions, §68-34-102.
Department.
Defined, §68-34-102.
Funds.
Contraceptives.
Procedures and supplies, §68-34-104.
Disposition of funds, §68-34-105.
Interference with family relations.
Punitive damages, §37-10-307.
Legislative determination, §68-34-110.
Penalties.
Criminal penalties, §68-34-111.
Physicians and surgeons.
Defined, §68-34-102.
Sterilization.
Liability for sterilization, §68-34-109.
Policy of chapter, §§68-34-103, 68-34-110.
Rules and regulations.
Authority of commissioner to promulgate, §68-34-106.

FAMILY PLANNING ACT OF 1971 —Cont'd
Short title, §68-34-101.
Sterilization.
Availability of sterilization, §68-34-108.
Physicians and surgeons.
Liability for sterilization, §68-34-109.

FAMILY PRESERVATION SERVICES, §§37-3-601 to 37-3-605.
Citation of provisions, §37-3-601.
Definitions, §37-3-602.
Program to provide, §37-3-603.
Statute implementation, §37-3-605.

FAMILY PURPOSE DOCTRINE.
Learners' permits.
Accompanying driver liable, §55-50-311.

FAMILY RESOURCE CENTERS.
Establishment by local education agency, §49-2-115.

FAMILY VIOLENCE SHELTERS AND SHELTER SERVICES, §§71-6-201 to 71-6-208.
See DOMESTIC ABUSE.

FEDERAL AID.
Delinquent and unruly children.
Disposition of federal funds for children in custody of department, §37-1-172.
Dependent and neglected children.
Disposition of federal funds for children in custody of department, §37-1-172.

FEES.
Adoption.
Searches, registration and copies, §36-1-141.
Child care agencies, welfare.
Licenses, §71-3-502.
Child placement.
Foster care plans.
Emergency home-care placements.
Criminal background checks, §37-2-415.
Children's services department.
Post-adoption services and searches, §37-5-122.
Clerks of court, §8-21-401.
Cost bond.
Attorney opting to sign, filing in lieu of payment of fees, §8-21-401.
Criminal background checks, §38-6-109.
Drivers' licenses.
Child support enforcement.
Eligibility for restricted drivers' license when not in compliance with support order, §36-5-714.
Electronic filing.
Clerks of court.
Fees for electronic filing and retrieval of court documents.
Transaction or subscription basis, §8-21-401.
Foster care plans.
Emergency home-care placements.
Criminal background checks, §37-2-415.
Juvenile proceedings.
Appointment of counsel, §37-1-126.
Marriage licenses, §36-6-413.
Mental health facilities.
Licensing of facilities and services.
Inspections, §33-2-413.
Support and maintenance.
Interstate family support act, §36-5-2313.

FEES —Cont'd
Tattooing studio.
Permit fees, §62-38-202.
Temporary studio location, §62-38-205.

FEMALE GENITAL MUTILATIONS, §39-13-110.

FERTILITY CLINICS.
Parentage of children born of donated embryo transfer, §§36-2-401 to 36-2-403.

FETAL AND INFANT MORTALITY REVIEW (FIMR) ACT, §§68-142-201 to 68-142-209.
Authority to create program, §68-142-202.
Confidentiality of information, §68-142-205.
Definitions, §68-142-203.
Effect on death investigations under other laws, §68-142-208.
Employment of persons, §68-142-206.
Funding for program, §68-142-209.
Immunity from liability, §68-142-207.
Intent of program, §68-142-202.
Other laws, effect, §68-142-208.
Prerequisite of funding, §68-142-209.
Rules promulgation, §68-142-204.
Statement of understanding and adherence to confidentiality, §68-142-205.
Title of act, §68-142-201.

FETUSES.
Abortion.
General provisions, §§39-15-201 to 39-15-210.
See ABORTION.
Research, photography, sale and experimentation upon aborted fetuses, §39-15-208.

FIDUCIARIES.
Expedited limited healthcare fiduciaries, §34-1-133.
Mental health service recipients.
Acting for recipient.
Evidence of fiduciary status, §33-3-102.
Confidentiality of information.
Consent to disclosure, §33-3-104.

FINDINGS OF FACT BY COURTS.
Dependent and neglected children.
Adjudicatory proceedings, JuvPro 307.

FINES.
Abortion.
Parental consent for abortion by minors.
Failure to obtain or retain required documentation, §37-10-303.
Boats.
Personal flotation devices for persons 12 years of age and under.
Violations of requirement, §69-9-225.
Child care agencies, welfare, §§71-3-503, 71-3-509.
Child curfew, §39-17-1702.
Child passenger restraints, §55-9-602.
Children's clean indoor air act, §39-17-1606.
Child support.
Access to records for enforcement, §§36-5-811, 36-5-812.
Assignments of income.
Disciplinary actions against employees, §36-5-501.
Delinquent and unruly children.
Parental penalties, §37-1-174.

FINES —Cont'd
Domestic abuse.
Violation of protection order.
Financial penalty, §36-3-610.
Drivers' licenses.
Learner's permits.
Operation of vehicle while using mobile telephone, §55-50-311.
Intellectual and developmental disabilities facilities.
Licensing of facilities and services.
Amount of civil penalties, §33-2-409.
Discipline of licensees, §33-2-407.
Sanctions against licensed entities.
Types, §33-2-408.
Juvenile courts.
Disbursement of money, §37-1-209.
Juvenile traffic offenders, §37-1-146.
Parental penalties, §37-1-174.
Mental health facilities.
Conflicts of interest.
Disclosure of interest in facilities.
Failure to disclose, §33-2-1302.
Licensing of facilities and services.
Amount of civil penalties, §33-2-409.
Discipline of licensees, §33-2-407.
Sanctions against licensed entities.
Types, §33-2-408.
Service recipient protection trust fund.
Disposition of civil penalties, §33-2-410.
Motor vehicle equipment.
Child passenger restraints, §55-9-602.
Motor vehicles.
Safety belt violations, §55-9-603.
Rape.
Child, rape of.
Physician duty as to preservation of biological evidence, §39-15-210.
Sexual offenses.
Child, rape of.
Physician duty as to preservation of biological evidence, §39-15-210.
Tanning facilities.
Violations of chapter, §68-117-105.
Tattooing without a permit, §62-38-208.
Tobacco.
Retail tobacco store.
Maintenance of smoking paraphernalia in area inaccessible to customers, §39-17-1511.
Welfare.
Child care services fraud, §71-1-133.
Temporary assistance.
Electronic benefits transfer cards, prohibited purchases, §71-3-126.

FINGERPRINTS.
Child abuse and child neglect or endangerment.
Persons working with children.
Applicants, §37-1-414.
Child fingerprint cards, §§37-10-206, 37-10-207.
Delinquent and unruly children.
Destruction of fingerprints, §37-1-155.
Use of prints, §37-1-155.
Foster care plans.
Prospective kinship foster parents, §37-2-414.
Intellectual and developmental disabilities.
Facilities employees, §33-2-1202.
Mental health.
Department employees, volunteers and applicants, §33-2-1201.

FINGERPRINTS —Cont'd
Mental health —Cont'd
Facilities employees, §33-2-1202.

FIREARMS AND OTHER WEAPONS.
Alcoholic beverages.
Unlawful sale of firearm or ammunition to intoxicated persons, §39-17-1303.
Carrying.
School property.
Concealed weapons, employees authorized to carry in distressed rural counties.
Applicability, §39-17-1309.
Private or parochial schools, handgun carry policy.
Applicability, §39-17-1309.
University and postsecondary education.
Handgun carry policy of private institutions of higher education.
Applicability, §39-17-1309.
Unlawful carrying.
School principals to report suspicion of, §49-6-4209.
Child abuse and child neglect or endangerment.
Aggravated child abuse and child neglect or endangerment.
Deadly weapon used to accomplish act, §39-15-402.
Contributing to delinquency.
Adult furnishing prohibited substance or product to child causing child to cause death of another, §37-1-156.
Defenses.
Unlawful sales of firearms, §39-17-1303.
Definitions.
Carrying weapons on school property, §39-17-1309.
Handgun possession, §39-17-1319.
Imitation firearms, §39-17-1362.
Domestic abuse.
Protection orders.
Firearm possession while order in effect, §36-3-604.
Disclosures required, §36-3-625.
Seizure by law enforcement officer when in possession of alleged abuser, §36-3-620.
Employers and employees.
Handguns carried by employees.
School property.
Concealed weapons, employees authorized to carry in distressed rural counties.
Applicability, §39-17-1309.
Firearms illegally possessed by minor.
Handguns, §39-17-1319.
Inaction by persons 18 or older, including parent or guardian, §39-17-1312.
Guardians for minors.
Minors illegally possessing firearm.
Inaction by persons 18 or older, including parent or guardian, §39-17-1312.
Providing handguns to juveniles, §39-17-1320.
Handguns.
Possession, §39-17-1319.
Providing to juveniles, §39-17-1320.
School property.
Concealed weapons, employees authorized to carry in distressed rural counties.
Applicability, §39-17-1309.

FIREARMS AND OTHER WEAPONS —Cont'd
Handguns —Cont'd
School property —Cont'd
Private or parochial schools, handgun carry policy.
Applicability, §39-17-1309.
University and postsecondary education.
Handgun carry policy of private institutions of higher education.
Applicability, §39-17-1309.
Illegal possession of firearms.
Handguns, §39-17-1319.
Inaction by persons 18 or older, including parent or guardian, §39-17-1312.
Imitation firearms.
Displaying in threatening manner in public place, §39-17-1362.
Mental health service recipients.
Supplying drugs, firearms, etc to recipient.
Felony, §33-3-904.
Motor vehicles.
Transporting and storing firearm or ammunition in permit holder's motor vehicle, §39-17-1313.
Parent and child.
Minors illegally possessing firearms.
Inaction by persons 18 or older, including parents, §39-17-1312.
Providing handguns to juveniles, §39-17-1320.
Parks and recreation.
Carrying weapons on public parks, playgrounds, civic centers, etc., §39-17-1311.
Exceptions, §39-17-1311.
Minor illegally possessing firearm on public park or playground premises.
Inaction by persons 18 or older, including parent or guardian, §39-17-1312.
Parks, playgrounds or civic centers.
Minor illegally possessing firearm on premises.
Inaction by persons 18 or older, including parent or guardian, §39-17-1312.
Possession.
Unlawful possession of weapon.
Handguns, §39-17-1319.
School principals to report suspicion of, §49-6-4209.
Providing handguns to juveniles, §39-17-1320.
Sales.
Unlawful sale of firearms, §39-17-1303.
Defenses, §39-17-1303.
Schools and education.
Carrying weapons on school property, §39-17-1309.
Concealed weapons, employees authorized to carry in distressed rural counties.
Applicability, §39-17-1309.
Display of warning signs, §39-17-1309.
Expulsion of student, §49-6-3401.
Principal to report suspicion of, §49-6-4209.
Private or parochial schools, handgun carry policy.
Applicability, §39-17-1309.
Minor illegally possessing firearm on premises.
Expulsion from school, §49-6-3401.

FIREARMS AND OTHER WEAPONS —Cont'd
Schools and education —Cont'd
Minor illegally possessing firearm on premises —Cont'd
Inaction by persons 18 or older, including parent or guardian, §39-17-1312.
Private or parochial schools, handgun carry policy.
Applicability, §39-17-1309.
Tennessee bureau of investigation.
Protection order entered into national crime information center.
Time for providing notification to agency entering protection order, §38-6-109.
University and postsecondary education.
Carrying weapons on school property, §39-17-1309.
Handgun carry policy of private institutions of higher education.
Applicability, §39-17-1309.

FIREFIGHTERS.
AIDS.
Exposure of law enforcement, emergency personnel, etc, to blood or fluids of arrested person.
Testing of suspects, §68-10-116.
Exposure to airborne or bloodborne diseases, §68-10-117.
Hepatitis.
Exposure of law enforcement, emergency personnel, etc, to blood or fluids of arrested person.
Testing of suspects, §68-10-116.

FIRES AND FIRE PREVENTION.
Receiving homes.
Licensed home requirements, §37-2-306.

FOOD ALLERGIES.
Allergies.
Schools.
Emergency precautions to provide treatment, §49-50-1602.
Guidelines for management, §49-50-1602.
Student self-injection, §49-50-1602.
Anaphylaxis, student self-administration of medication, §49-50-1602.

FOOD STAMPS.
Temporary assistance for dependent children.
Continuance of food stamp assistance, §71-3-104.
Standard of need cost.
Deduction from cost, §71-3-105.

FORCE.
Domestic abuse.
Use of force, effect on right to relief, §36-3-613.
Schools and education.
Discipline.
Reasonable force.
Teachers, principals, employees or bus drivers, authority as to, §49-6-4107.

FOREIGN COUNTRIES.
Interstate child custody proceedings.
Violation of fundamental human rights.
Inapplicability of act, §36-6-208.

FOREIGN JUDGMENTS.
Interstate child custody proceedings.
Foreign decrees.
See INTERSTATE CHILD CUSTODY PROCEEDINGS.

FORFEITURES.
Child support lien enforcement, §§36-5-904 to 36-5-906.

FORMS.
Adoption.
Denial of paternity and notice by legal father, §36-1-111.
Surrender of child, §36-1-111.
Revocation of surrender, §36-1-112.
Conservators for disabled.
Notice of hearing on petition for appointment, §34-1-108.
Domestic abuse, §36-3-604.
Missing children recovery.
Reports, §37-10-205.
Parenting plans.
Use by parties.
Requirements, §36-6-406.
Protection orders in domestic abuse cases, §36-3-604.
Support and maintenance.
Approval, §36-5-406.
Clerks of court.
Powers and duties, §36-5-404.
Promulgation, §36-5-406.

FORUM NON CONVENIENS.
Interstate child custody proceedings.
Declining jurisdiction, §36-6-222.

FOSTER CARE, §§37-2-401 to 37-2-418.
Bifurcated permanency hearing and ratification hearing, JuvPro 404.
Compliance with federal regulations, §37-2-413.
Confidentiality of information, §37-2-408.
Kinship foster care program, §37-2-414.
Construction and interpretation, §37-2-401.
Contents, §37-2-403.
Crimes and offenses.
Revealing confidential information, §37-2-408.
Kinship foster care program, §37-2-414.
Damages.
Confidentiality of reports.
Violation, §37-2-411.
Definitions, §37-2-402.
Department of children's services.
Duties.
Generally, §37-2-407.
Dispute resolution, §37-2-415.
Extension of foster care services, §§37-2-601 to 37-2-605.
Advisory council.
Duties, §37-2-601.
Established, §37-2-601.
Applicants for assistance.
Determination whether applicant ever in custody, §37-2-602.
Assistance resource centers, §37-2-603.
Construction of provisions, §37-2-605.
Foster children, preparing for independent living, §37-2-604.
Permanency hearing, JuvPro 404.
Resource centers, §37-2-603.
Sharing of information by state agencies, §37-2-602.
Extracurricular, enrichment, cultural and social activities.
Reasonable and prudent parent standard in determining child participation, §37-2-418.
Federal regulations.
Compliance, §37-2-413.

FOSTER CARE —Cont'd
Fingerprints of prospective foster parents, §37-2-414.
Foster care review boards.
Composition, §37-2-406.
Duties, §37-2-406.
Guidelines.
Adoption, §37-2-405.
Hearings.
Juvenile court judges, §37-2-409.
Notice to foster parent, adoptive parent or relative providing care, §37-2-416.
Permanency hearings, JuvPro 404.
Ratification hearings, JuvPro 401.
Rehearings, §37-2-410.
Information available to foster parents, §37-2-415.
Injunctions.
Violation of confidentiality, §37-2-411.
Juvenile courts.
Judge.
Hearings, §37-2-409.
Kinship foster care program, §37-2-414.
Medical and social history of child.
Compilation, §37-2-403.
Orders.
Modification of orders, §37-2-410.
Permanency plans.
Agreement on plan provisions.
Effect on ratification hearing, JuvPro 401.
Contents, §37-2-403.
Hearings.
Bifurcated permanency hearing and ratification hearing, JuvPro 404.
Extension of foster care planned, JuvPro 404.
Purpose, JuvPro 404.
Reasonable efforts findings, JuvPro 404.
Release from foster care for youth 17 or older.
Issues addressed, JuvPro 404.
Timing, JuvPro 404.
Review of previous orders and recommendations, JuvPro 404.
Testimony, JuvPro 404.
Modification of plan, JuvPro 401.
Progress reviews.
Periodic progress reviews, JuvPro 402.
Ratification hearings, JuvPro 401.
Bifurcated permanency hearing and ratification hearing, JuvPro 404.
Reasonable efforts findings, JuvPro 404.
Review board.
Foster care review board.
Attendance of members, JuvPro 403.
Child's statements, inadmissibility, JuvPro 403.
Conduct and process for review, JuvPro 403.
Direct referral, JuvPro 403.
Documentation, JuvPro 403.
Judicial or magistrate review, JuvPro 403.
Notice, JuvPro 403.
Quorum, JuvPro 403.
Recommendations, JuvPro 403.
Judicial or magistrate review, JuvPro 403.
Scheduling, JuvPro 403.
Summary form.
Filing with clerk, JuvPro 403.

FOSTER CARE —Cont'd
Permanency plans —Cont'd
Review board recommendations, JuvPro 401.
Review of plan, JuvPro 401.
Rules of juvenile procedure, foster care proceedings generally, JuvPro 401 to 404.
Progress reviews.
Periodic progress reviews, JuvPro 402.
Ratification hearings.
Abandonment.
Court's explanation of abandonment and consequences, JuvPro 401.
Agreement as to permanency plan, JuvPro 401.
Bifurcated permanency hearing and ratification hearing, JuvPro 404.
Evidentiary hearing, JuvPro 401.
Findings by court, JuvPro 401.
Modification of permanency plan, JuvPro 401.
Notification of parties, JuvPro 401.
Orders of court, JuvPro 401.
Purpose, JuvPro 401.
Review board recommendations, JuvPro 401.
Review of permanency plan, JuvPro 401.
Temporary orders, JuvPro 401.
Reasonable and prudent parent standard.
Determining child participation in extracurricular, enrichment, cultural and social activities, §37-2-418.
Release from foster care for youth 17 or older.
Permanency hearings.
Issues addressed, JuvPro 404.
Timing, JuvPro 404.
Reports.
Confidentiality.
Injunction and action for damages, §37-2-411.
Department of children's services.
Reports to juvenile courts, §37-2-404.
Foster care review boards, §§37-2-404, 37-2-406.
Review, §37-2-404.
Review board.
Foster care review board, JuvPro 403.
Rights of foster parents, §37-2-415.
Rules of juvenile procedure, JuvPro 401 to 404.
Permanency hearings, JuvPro 404.
Progress reviews.
Periodic progress reviews, JuvPro 402.
Ratification hearings, JuvPro 401.
Review board.
Foster care review board, JuvPro 403.
Smoke detectors.
Required, §37-2-412.
Statement of child.
Permanency plans.
Foster care review board.
Inadmissibility of child's statements in other proceedings, JuvPro 403.
Statement of responsibility, §37-2-403.
Teenage children.
Project RAP, §§71-3-701, 71-3-702.

FOSTER HOMES.
Child care agencies, juveniles, §§37-5-501 to 37-5-519.
See CHILD CARE AGENCIES, JUVENILES.

FRAUD.
Delinquent and unruly children.
Relief from judgments or orders, JuvPro 213.
Dependent and neglected children.
Modification of or relief from judgments or orders, JuvPro 310.
Marriage.
Documents, §36-3-112.
Signature, §36-3-112.
Schools and education.
Enrollment of out-of-district pupil.
Fraudulent representation of pupil's domicile address.
Restitution liability of parent, guardian or other custodian, §49-6-3003.
Welfare.
Aid to dependent children.
Fraudulent receipt of temporary assistance, §71-3-120.
Child care services, §71-1-133.

FULL FAITH AND CREDIT.
Child support orders, §§36-5-701 to 36-5-714.
Liens for enforcement, §36-5-902.
Paternity determinations of other jurisdictions, §36-5-101.
Status and enforceability of order, §36-5-101.
Domestic abuse.
Out-of-state protection orders, §36-3-622.
Interstate child custody proceedings.
Foreign decrees, §36-6-237.

FUNDS.
Disabled persons or minors under $20,000.
Disposition, §34-1-104.
Guardian ad litem.
Appointment in distribution proceeding, §34-1-104.
Domestic violence community education fund, §36-3-616.
Mental health facilities.
Licensing of facilities and services.
Service recipient protection trust fund, §33-2-410.
Traumatic brain injury fund, §§68-55-401, 68-55-402.

G

GANGS.
Enhanced factor in sentencing.
Defendant member of street gang, §40-35-121.
Schools and education.
Gang activities on school property, §49-6-4215.

GARNISHMENT.
Child support income assignments.
Appeal of administrative actions, §§36-5-1001 to 36-5-1006.
Wages.
Assignment of income for child support, §§36-5-501, 36-5-503.
Support and maintenance.
Interstate family support act, §§36-5-2501 to 36-5-2507.
Welfare.
Exemptions.
Aid to dependent children, §71-3-121.

GASOLINE.
Inhaling, selling, giving or possessing for unlawful purposes, §39-17-422.

GAY MARRIAGE.
Not recognized, §36-3-113.

GENERAL ASSEMBLY.
Marriage solemnization, §36-3-301.
Mental health and intellectual and developmental disabilities.
Programs dependent on general assembly funding, §33-1-204.
Pages.
School attendance, §49-6-3018.

GENETIC TESTING, §§68-5-501 to 68-5-508.
Advisory committee, §68-5-503.
Birth defects.
Defined, §68-5-501.
Registry, §68-5-506.
Definitions, §68-5-501.
Department of health.
Commissioner.
Defined, §68-5-501.
Interstate agreements, §68-5-505.
Defined, §68-5-501.
Duties, §68-5-504.
Establishment of genetics program, §68-5-502.
Rules and regulations, §68-5-504.
Establishment of genetics program, §68-5-502.
Functions of program, §68-5-504.
Genetic and metabolic screening.
Defined, §68-5-501.
Genetic disorders.
Defined, §68-5-501.
Heart disease.
Critical cyanotic congenital heart disease.
Newborn screening, §68-5-507.
Interstate agreements, §68-5-505.
Paternity tests, §§24-7-112, 36-2-309.
Administrative orders.
Scope of administrative review, §36-5-1002.
Admissibility of costs of test, §36-2-308.
Child support enforcement, §§36-5-802, 36-5-805, 36-5-806.
Protection order pending outcome of tests, §36-3-614.
Rules and regulations.
Department of health, §68-5-504.

GENITAL MUTILATION.
Female genital mutilation, §39-13-110.

GIFTS.
Conservators for persons with disabilities.
Gift program authorization, §34-1-122.
Mental health service recipients.
Employees receiving gifts from service recipients.
Misdemeanor, §33-3-904.

GIRL SCOUTS.
Child abuse and child neglect or endangerment.
Reports.
Authority figures at a community facilities.
Child sexual abuse, §37-1-605.

GLUCAGON.
Health care procedures for students.
Glucagon administration by teachers, §49-50-1602.

GLUE.
Inhaling, §39-17-422.

GONORRHEA.
Sexually transmitted diseases generally, §§68-10-101 to 68-10-118.
See SEXUALLY TRANSMITTED DISEASES.

GOOD SAMARITAN LAW.
Exposure of good Samaritan to airborne or bloodborne diseases, §68-10-117.

GOVERNOR.
Commissions.
Commission on children and youth.
Appointment of members, §37-3-102.
Desertion and nonsupport.
Nonsupport and flagrant nonsupport.
Extradition.
Duty to demand return of persons charged with flagrant nonsupport, §39-15-104.
Marriage.
Persons who may solemnize, §36-3-301.

GRANDPARENTS.
Child visitation rights, §§36-6-302, 36-6-306, 36-6-307.
Incest, §39-15-302.

GRANTS.
Comprehensive alcohol, tobacco and drug prevention program, §§33-10-501 to 33-10-506.
Indian child welfare.
Child and family programs, 25 USCS §§1931 to 1934.

GROUP CHILD CARE HOMES.
Child care agencies, juveniles, §§37-5-501 to 37-5-519.
See CHILD CARE AGENCIES, JUVENILES.
Child care agencies, welfare, §§71-3-501 to 71-3-518.
See CHILD CARE AGENCIES, WELFARE.
Department of human services.
Market rate study and rate of reimbursement, §71-1-130.
Licenses.
Children's services department, §37-5-109.

GUARDIAN AD LITEM.
Child abuse and child neglect or endangerment.
Appointment, §37-1-149.
Compensation, §37-1-150.
Powers and duties, SupCt 40.
Sexual abuse cases, §37-1-610.
Child custody.
Appointment of guardian ad litem in custody proceedings.
Applicability of rule, SupCt 40A.
Participation of guardian in custody proceedings, SupCt 40A.
Child labor.
Protection of minor performers, §50-5-208.
Appointment, §50-5-215.
Documentation required, §50-5-216.
Conservators for persons with disabilities.
Appointment on filing of petition for conservator, duties, report, §34-1-107.
Attorney ad litem appointment.
Recommendation of guardian ad litem, §34-1-125.
Fee.
Charging of costs of proceedings, §34-1-114.

GUARDIAN AD LITEM —Cont'd
Conservators for persons with disabilities —Cont'd
Fee —Cont'd
Payment by conservator, §34-1-113.
Delinquent and unruly children.
Appointment, §37-1-149.
Compensation, §37-1-150.
Right to guardian ad litem, §37-1-126.
Rules of juvenile procedure generally.
See JUVENILE PROCEEDINGS.
Dependent and neglected children.
Appointment, §37-1-149.
Compensation, §37-1-150.
Custody, taking child into.
Appointment, JuvPro 302.
Powers and duties, SupCt 40.
Right to guardian ad litem, §37-1-126.
Divorce.
Appointment for minor children, §36-4-132.
Funds of persons with disabilities or minors under twenty thousand dollars.
Appointment in distribution proceeding, §34-1-104.
Guardians for minors.
Appointment on filing of petition for appointment of guardian, duties, report, §34-1-107.
Attorney ad litem appointment.
Recommendation of guardian ad litem, §34-1-125.
Fee.
Charging of costs of proceedings, §34-1-114.
Payments by guardian, §34-1-113.
Protection of minor performers, §50-5-208.
Appointment, §50-5-215.
Documentation required, §50-5-216.
Reports.
Appointment on filing of petition for guardianship or conservatorship, §34-1-107.
Rules of juvenile procedure.
See JUVENILE PROCEEDINGS.

GUARDIAN AND WARD.
Adult guardianship and protective proceedings.
Definitions, §34-1-101.
County courts.
Sale of property of persons under disability, §34-1-116.
Delinquent and unruly children.
Property damaged by juvenile.
Circumstances under which guardian liable, §37-10-103.
Dependent and neglected children.
Guardian ad litem.
Appointment, §37-1-149.
Compensation, §37-1-150.
Fees.
Clerks of court, §8-21-401.
Guardian ad litem.
General provisions.
See GUARDIAN AD LITEM.
Liability of parents and guardians for acts of juveniles, §§37-10-101 to 37-10-103.
Marriage.
Consent of guardian, §36-3-106.
Medical records of child.
Furnishing to guardian, §36-6-103.
Mental health.
Children, services for.
Outpatient treatment.
Participation of parent, guardian, etc., §33-8-203.

GUARDIAN AND WARD —Cont'd
Mental health —Cont'd
Inpatient treatment.
Involuntary admission, nonemergency.
Complaint for commitment.
Who may file, §33-6-504.
Voluntary admission.
Release of child.
Notifications, §33-6-208.
Residential service recipients.
Death of recipient.
Notice to family, guardian, court, etc., §33-4-109.
Notice of admission to family or guardian, §33-4-103.
Sale of property of persons under disability, §34-1-116.
Permanent guardians for minors, §§37-1-801 to 37-1-807.
See GUARDIANS FOR MINORS.
Power of attorney.
Power of attorney for care of minor child.
Effect of order appointing legal guardian, §34-6-306.
Schools and education.
Criminal offenses of child.
Parent, guardian or custodian to notify school, §49-6-3051.
Exceptional and disabled children.
Guardian's right to review of decision concerning special education services for the child, §49-10-601.
Right to enforce provisions for educational services, §49-10-602.
Pupils.
Surveys, analyses or evaluations.
Access of parent or guardian prior to administration, §49-2-211.
Shoplifting.
Theft of retail merchandise by minor.
Civil liability of adult, parent or guardian, §39-14-144.
State mental health facilities.
Employee as guardian or conservator, §§33-4-201 to 33-4-210.
Theft.
Theft of retail merchandise by minor.
Civil liability of adult, parent or guardian, §39-14-144.

GUARDIANS FOR MINORS.
Abandonment of child.
Duties of children's services department, §34-1-103.
Abuse of duties, §34-1-123.
Accounting to court, §34-1-111.
Examination of annual accounting, §34-1-131.
Termination upon minor reaching 18 years of age, §34-2-106.
Transfer of fiduciary relationship, §34-1-117.
Appointment.
Actions, §34-2-101.
Attorney ad litem, §34-1-125.
Evidence, §34-1-109.
Guardian ad litem appointed to represent respondent, §34-1-107.
Hearings, §34-1-108.
Letters of guardianship.
Issuance, §34-1-129.
Liability for acts done pursuant to order, §34-1-109.
No fiduciary appointed in action for appointment.
Expunction of record, §34-1-124.

GUARDIANS FOR MINORS —Cont'd
Appointment —Cont'd
Petition, §34-1-106.
Content requirements, §34-2-104.
Sworn, §34-2-104.
Who may file, §34-2-102.
Priority of persons to be considered, §34-2-103.
Standby fiduciary, §34-1-119.
Venue of actions, §34-2-101.
When effective, §34-1-109.
When people may be appointed, §34-1-120.
Who may file petitions, §34-2-102.
Attorney ad litem.
Appointment, §34-1-125.
Attorneys' fees.
Charging of costs of proceedings, §34-1-114.
Payment by guardian, §34-1-113.
Bonds, surety, §34-1-105.
Standby fiduciary, §34-1-119.
Transfer of fiduciary relationship, §34-1-117.
Children's services department.
Duties when no natural guardian or child abandoned, §34-1-103.
Child support.
Obligation of parents.
Funds of minor held by guardian not expended to relieve, §34-1-102.
Clerks of court.
Duties, §34-1-128.
Examination of annual accounting, §34-1-131.
Forms for inventory, receipts and expenditures.
Clerk may prescribe, §34-1-130.
Compensation, §34-1-112.
Conservators for disabled.
Disability of minor attaining 18 years of age.
Guardian automatically to continue as conservator, §34-2-106.
Contempt.
Failure to file accounting with court, §34-1-111.
Failure to file inventory of minor's property, §34-1-110.
Continuation of guardianship, §34-2-106.
Costs.
Attorney ad litem, §34-1-125.
Charging of costs of proceedings, §34-1-114.
Payment of court costs by guardian, §34-1-113.
Courts.
Powers, §34-1-121.
Definitions, §34-1-101.
Disability of minor attaining 18 years of age.
Guardian automatically to continue as conservator, §34-2-106.
Disposition of funds under twenty thousand dollars, §34-1-104.
Distribution of assets.
Termination of guardianship, §34-2-106.
Distribution of property.
Receipt, §34-1-118.
To persons other than minor, §34-1-122.
District attorneys general.
Abuse, mismanagement or failure to perform.
Submission of matter to office, §34-1-123.
Divorce.
Award of guardianship of property of minor child, §34-1-102.

GUARDIANS FOR MINORS —Cont'd
18 years of age.
Termination or continuation of guardianship upon minor reaching, §34-2-106.
Eligible persons, §34-1-120.
Emergency guardian or conservator.
Appointment, §34-1-132.
Removal, §34-1-132.
Evidence.
Letters of guardianship as evidence of appointment, §34-1-109.
Executors and administrators.
When personal representatives may be appointed as guardian, §34-1-120.
Expenditures to persons other than minor, §34-1-122.
Expunction of records.
No fiduciary appointed in action for appointment, §34-1-124.
Failure to perform duties, §34-1-123.
Fees.
Clerks of court, §8-21-401.
Final accounting, §34-2-106.
Firearms and other weapons.
Minors illegally possessing firearm.
Inaction by persons 18 or older, including guardian, §39-17-1312.
Providing handguns to juveniles, §39-17-1320.
Forms for inventory, receipts and expenditures.
Clerk may prescribe, §34-1-130.
Funds of minor under twenty thousand dollars.
Disposition, §34-1-104.
Guardian ad litem.
Appointment on filing of petition for appointment of guardian, duties, report, §34-1-107.
Attorney ad litem appointment.
Recommendation of guardian ad litem, §34-1-125.
Fee.
Charging of costs of proceedings, §34-1-114.
Payments by guardian, §34-1-113.
Hearings.
Appointment, §34-1-108.
Transfer of fiduciary relationship, §34-1-117.
Hospitalization of respondent.
Expedited limited healthcare fiduciaries.
Circumstances under which appointed, §34-1-133.
Income tax.
Payment of fees for income tax preparation by guardian, §34-1-113.
Indexes.
Duties of court clerk to maintain, §34-1-128.
Interest.
Failure to account, §34-1-111.
Inventories.
Clerk may prescribe forms, §34-1-130.
Filing list of property of minor, §34-1-110.
Investments, §34-1-115.
Court approval to change nature of investments, waiver, §34-1-115.
Payment of management fees by guardian, §34-1-113.
Judgments and decrees.
Failure to account, §34-1-111.
Juvenile courts.
Actions for appointment of guardian of person only, §34-2-101.

GUARDIANS FOR MINORS —Cont'd
Letters of guardianship.
Evidence of appointment, §34-1-109.
Issuance, §34-1-124.
Limited.
Fiduciary granted less than full authority, §34-1-129.
Liability for acts done pursuant to order of appointment, §34-1-109.
Liability for failure to account, §34-1-111.
Life-threatening situations.
Hearings on petition for appointment, §34-1-108.
Management of property, §34-1-110.
Order of court.
Where guardian needed, §34-2-105.
Petitions for appointment.
Content requirements, §34-2-104.
Plan for property management, §34-1-115.
Medical examinations.
Charging of costs of proceedings, §34-1-114.
Mismanagement of duties, §34-1-123.
Motor vehicles.
Sale of minor's property, §34-1-116.
Moving to another county, state or country.
Transfer of fiduciary relationship, §34-1-117.
Natural guardian.
Children's services department duties when no natural guardian, §34-1-103.
Funds of minor under $20,000.
Delivery to, §34-1-104.
Parents as joint and equal guardians, §34-1-102.
Neglect of duties, §34-1-123.
Notice.
Duty of court clerk to issue, §34-1-128.
Failure to file accounting with court, §34-1-111.
Failure to file inventory of minor's property, §34-1-110.
Hearings on petition for appointment, §34-1-108.
Necessity for standby fiduciary to function, §34-1-119.
Petition for appointment, §34-1-106.
Oaths, §34-1-109.
Petitions for appointment to be sworn, §34-2-104.
Orders of court.
Permanent guardianship orders, §37-1-803.
Where guardian needed, §34-2-105.
Parents as joint and equal natural guardians, §34-1-102.
Payments from property of minor, §34-1-113.
Permanent guardianship, §§37-1-801 to 37-1-807.
Best interests of child, factors, §37-1-802.
Custody of child, §37-1-804.
Effect on parent-child relationship, §37-1-803.
Financial support of child, §37-1-807.
Jurisdiction retained by court, §37-1-805.
Modification, §37-1-806.
Power to appoint, §37-1-801.
Prerequisites, §37-1-802.
Rights and responsibilities of guardian, §37-1-804.

GUARDIANS FOR MINORS —Cont'd
Permanent guardianship —Cont'd
Taxation, how child to be claimed as dependent, §37-1-807.
Termination, §37-1-806.
Visitation to be specified in order, §37-1-803.
Who may be guardian, §37-1-802.
Personal representatives.
When appointed as guardian, §34-1-120.
Petitions.
Appointment, §34-1-106.
Content requirements, §34-2-104.
Sworn, §34-2-104.
Who may file, §34-2-102.
Transfer of fiduciary relationship, §34-1-117.
Plan for property management, §34-1-115.
Powers of courts, §34-1-121.
Priorities.
Persons to be considered for appointment, §34-2-103.
Probate matters.
Actions for appointment of guardian of person or property or both.
Brought in court exercising probate jurisdiction, §34-2-101.
Property management plan, §34-1-115.
Receipt for property distributed, §34-1-118.
Records.
Duties of court clerk, §34-1-128.
No fiduciary appointed in action for appointment.
Expunction of record, §34-1-124.
Removal.
Abuse, neglect, mismanagement or failure to perform, §34-1-123.
Reports.
Examination of annual accounting, §34-1-131.
Guardian ad litem on filing of petition for appointment of guardian, §34-1-107.
Resignation, §34-1-117.
Revocation of authority.
Failure to file accounting with court, §34-1-111.
Failure to file inventory, §34-1-110.
Sale of property, §34-1-116.
Service of process.
Petition for appointment, §34-1-106.
Social security number of respondent.
Given to fiduciary and clerk, placed in court record, use, §34-1-109.
Standby fiduciary.
Appointment, §34-1-119.
Summons and process.
Abuse, mismanagement or failure to perform.
Summons to appear, §34-1-123.
Duty of court clerk to issue summons, §34-1-128.
Termination.
Minor reaching 18 years of age, §34-2-106.
Time.
Accounting to court, §34-1-111.
Termination upon minor reaching 18 years of age, §34-2-106.
Guardian ad litem appointed on filing of petition for guardian, §34-1-107.
Hearings on petition for appointment, §34-1-108.
Inventory filing, §34-1-110.
Investments, §34-1-115.

GUARDIANS FOR MINORS —Cont'd
Transfer of fiduciary relationship, §34-1-117.
Venue.
Actions for appointment, §34-2-101.
Weapons.
Minors illegally possessing firearm.
Inaction by persons 18 or older, including guardian, §39-17-1312.
Providing handguns to juveniles, §39-17-1320.
Where guardian needed.
Court order, §34-2-105.

GUILTY PLEAS.
Delinquent and unruly children, JuvPro 209.
Mental health.
Sex offenders, services for.
Post-plea treatment system, §33-6-805.

H

HABEAS CORPUS.
Delinquent and unruly children.
Post-commitment relief.
Application for habeas corpus.
When allowed, §37-1-308.
Exhaustion of remedies.
Juvenile law.
When application for writ allowed, §37-1-308.
Mental health service recipients, §§33-3-801 to 33-3-804.
Discharge.
Order of discharge, §33-3-804.
Disposition of case.
Authorized dispositions, §33-3-803.
Mental condition of person seeking release.
Determination, §33-3-802.
Right to file writ, §33-3-801.

HAGUE CONVENTION.
Interstate child custody proceedings.
Enforcement of international orders, §36-6-226.
Law enforcement powers, §36-6-240.
Powers of prosecutors and public officials, §36-6-239.

HALEY'S LAW, §39-15-402.

HANDGUN CARRY PERMITS.
Rules and regulations, §39-17-1360.

HANDICAPPED PERSONS.
See DISABILITIES, PERSONS WITH.

HAWK BILL KNIVES.
School property.
Carrying weapons on school property, §39-17-1309.

HEADSTART.
Community-based early childhood education and pre-kindergarten pilot programs, §49-6-101.

HEALTH.
Comprehensive alcohol, tobacco and drug prevention program, §§33-10-501 to 33-10-506.
Department of health.
AIDS centers of excellence, §68-10-118.
Birth defects registry, §68-5-506.
Community service agency employees.
Career employees, transfer into department, §37-5-317.

HEALTH —Cont'd
Department of health —Cont'd
Disabilities, persons with.
Children with physical disabilities, treatment, §§68-12-101 to 68-12-112.
Genetic testing, §§68-5-501 to 68-5-508.
Handicapped persons.
Children with physical disability, treatment, §§68-12-101 to 68-12-112.
In-home visitation programs.
Reports regarding, §68-1-125.
Obesity, children at risk for, §§49-6-1401 to 49-6-1405.
Pregnancy.
Serological tests, §§68-5-601 to 68-5-607.
See PREGNANCY.
Reports.
In-home visitation programs, §68-1-125.
Family planning act of 1971, §§68-34-101 to 68-34-111.
See FAMILY PLANNING ACT OF 1971.
Genetic testing, §§68-5-501 to 68-5-508.
Health care decisions act.
Unemancipated minors, decisions for, §§34-6-401 to 34-6-406.
See HEALTH CARE DECISIONS.
In-home visitation programs.
Department of health reports, §68-1-125.
Metabolic defects.
Newborn testing, §§68-5-401 to 68-5-406.
Newborn infants.
Baby drop off law, §36-1-142.
Genetic testing, §§68-5-501 to 68-5-508.
Metabolic defects.
Newborn testing, §§68-5-401 to 68-5-406.
Perinatal care.
Advisory committee, §68-1-803.
Terms of members, §68-1-803.
Travel expenses, §68-1-803.
Definitions, §68-1-801.
Development of plan for care, §§68-1-802, 68-1-804.
Pregnancy.
Serological tests, §§68-5-601 to 68-5-607.
See PREGNANCY.
Receiving homes.
Licensed home requirements, §37-2-306.
Reports.
Department of health.
In-home visitation programs, §68-1-125.
Serological tests.
Pregnancy, §§68-5-601 to 68-5-607.
See PREGNANCY.
Sexually transmitted diseases, §§68-10-101 to 68-10-118.
See SEXUALLY TRANSMITTED DISEASES.
Traumatic brain injuries.
Traumatic brain injury fund, §§68-55-401, 68-55-402.

HEALTH CARE DECISIONS.
Unemancipated minors, decisions for, §§34-6-401 to 34-6-406.
Definitions, §34-6-401.
Health care provider immunity, §34-6-406.
In loco parentis.
Effect of standing, §34-6-404.

HEALTH CARE DECISIONS —Cont'd
Unemancipated minors, decisions for —Cont'd
In loco parentis —Cont'd
Immunity for lawful provision of consent, §34-6-405.
Persons eligible to act, §34-6-402.
Procedures for which consent not permitted, §34-6-403.
Scope of authority, §§34-6-403, 34-6-404.
Scope of authority of decision-maker, §34-6-403.
Who may make, §34-6-402.

HEALTH INSURANCE.
Child support.
Appeal of administrative actions, §§36-5-1001 to 36-5-1006.
Change in parent's employment, §37-1-151.
Income withholding orders, §36-5-501.
Order providing for health insurance, §36-5-101.
Illegitimate children, §36-2-319.

HEALTHY START PILOT PROJECTS, §§37-3-701 to 37-3-703.
Established, §37-3-703.
Legislative findings, §37-3-702.
Objectives, §37-3-703.
Short title, §37-3-701.

HEARING LOSS, EARLY DETECTION.
Schools and education.
Hearing examination of pupils, §49-6-5004.

HEARINGS.
Adult abuse, §36-3-605.
Child custody.
Uniform deployed parents custody and visitation act.
Proceedings for temporary custody order.
Expedited hearing, §36-7-303.
Generally, §§36-7-301 to 36-7-310.
Child placement.
Foster care plans, §37-2-409.
Notice to foster parent, adoptive parent or relative providing care, §37-2-416.
Rehearings, §37-2-410.
Child support.
Administrative hearing to support license denial or revocation, §36-5-703.
Conservators for persons with disabilities.
Appointment, §34-1-108.
Transfer of fiduciary relationship, §34-1-117.
Delinquent and unruly children.
See DELINQUENT AND UNRULY CHILDREN.
Divorce.
Trial at first term, §36-4-109.
Domestic abuse, §36-3-605.
Foster care plans.
Juvenile court judges, §37-2-409.
Notice to foster parent, adoptive parent or relative providing care, §37-2-416.
Rehearings, §37-2-410.
Guardians for minors.
Appointment, §34-1-108.
Transfer of fiduciary relationship, §34-1-117.

HEARINGS —Cont'd
Juvenile proceedings generally.
See JUVENILE PROCEEDINGS.
Protection of minor performers.
Contract approval petition, §§50-5-211, 50-5-218.
Actions taken by court, §50-5-220.
Appearance of minor, §50-5-219.
Removal of disability, §29-31-104.
Sexually transmitted diseases.
Arrest and temporary commitment.
Right of persons committed, §68-10-110.
Support and maintenance.
See SUPPORT AND MAINTENANCE.

HEPATITIS.
Criminal exposure to HIV or hepatitis B or C virus, §39-13-109.
Emergency workers.
Exposure of law enforcement, emergency personnel, etc, to blood or fluids of arrested person.
Testing of suspects, §68-10-116.
Exposure to airborne or bloodborne diseases, §68-10-117.
Hepatitis B protection by immunization, §49-6-5003.
Exposure of law enforcement or crime laboratory personnel.
Testing of suspects, §68-10-116.
Firefighters.
Exposure of law enforcement, emergency personnel, etc, to blood or fluids of arrested person.
Testing of suspects, §68-10-116.
Pregnancy.
Serological test, §§68-5-601 to 68-5-607.
See PREGNANCY.
Vaccinations.
Hepatitis B protection by immunization, §49-6-5003.

HIGH SCHOOLS.
Dropout prevention.
Model program, §49-1-520.
Model teen learning centers.
See SCHOOLS AND EDUCATION.
Graduation.
Child custody.
Proof of graduation to human services department or parents, §36-6-104.
Juvenile offender act.
Informing pupils of provisions, §49-6-451.

HIV.
Pregnancy screening, §§68-5-701 to 68-5-705.

HOLIDAYS.
Schools and education, §49-6-3016.
Teachers, §49-6-3016.

HOME CARE ORGANIZATIONS.
Mental health facilities.
Licensing of facilities and services.
Dual licensing under mental health provisions and health facilities provisions not required, §33-2-420.
Duties and responsibilities of personal support services agencies, §33-2-421.

HOMELESS CHILDREN.
Immunization, §49-6-5001.

HOME PLACEMENT.
Commitment of delinquent children to department of children's services.
Sentencing alternative, §37-1-137.

HOME SCHOOLING, §§49-6-3001, 49-6-3050.
Compulsory attendance.
Exclusion from compulsory attendance, §49-6-3005.

HOMICIDE.
Child abuse and child neglect or endangerment.
Lesser included offense of homicide, §39-15-401.
Mental health.
Involuntary admission, nonemergency.
Substantial likelihood of serious harm, §33-6-501.
Murder.
Random murder for no obvious reason.
Aggravating factors justifying death penalty or life without parole, §39-13-109.

HOMOSEXUAL MARRIAGE.
Not recognized, §36-3-113.

HOSPITALS.
Abortion, §§39-15-201 to 39-15-210.
See ABORTION.
Baby drop off law.
Infants voluntarily delivered to facility.
Duties upon, §36-1-142.
Child abuse and child neglect or endangerment.
Reporting.
Approved procedure for reporting in place.
Compliance with duty to report, §37-1-403.
Duty of personnel to report.
Child sexual abuse, §37-1-605.
Immunity, §37-1-410.
Retention of custody by hospitals, §37-1-404.
Child custody.
Noncustodial parent's right to notice of hospitalization of child, §36-6-101.
Infants voluntarily delivered to facility.
Duties upon, §36-1-142.
Medical records.
Release of medical records, §63-2-101.
Definitions, §63-2-101.
Mental health and substance abuse facilities.
Licensing of facilities and services.
Exemptions, §33-2-403.
Newborn infants.
Baby drop off law, §36-1-142.
Schools and education.
Attendance.
Hospital or homebound instruction.
No penalty for period of, §49-6-3002.
Voluntary delivery of infant to facility.
Duties upon, §36-1-142.

HUMAN SERVICES DEPARTMENT.
Families first program.
See WELFARE.
Receiving homes, §§37-2-301 to 37-2-319.
See RECEIVING HOMES.
Statutory rape reporting.
Application for public assistance indicates occurrence of statutory rape, §38-1-305.

HUMAN TRAFFICKING.
Children, trafficking in.
Payments made in connection with child placement, §36-1-109.

HUMAN TRAFFICKING —Cont'd
Children, trafficking in —Cont'd
Sale or surrender of child for money or thing of value, §36-1-109.
Reporting child abuse and child neglect or endangerment, §37-1-403.

HUSBAND AND WIFE.
Abandonment of spouse or child, §§39-15-101 to 39-15-104.
See DESERTION AND NONSUPPORT.
Absent spouse.
Remarriage after two years.
Return of spouse, §36-4-128.
Abuse.
Child sexual abuse.
Confidentiality of information.
Exception to privilege, §37-1-615.
Domestic abuse generally, §§36-3-601 to 36-3-625.
See DOMESTIC ABUSE.
Antenuptial agreements.
Enforcement, §36-3-501.
Antenuptial debts of wife.
Nonliability of husband, §36-3-503.
Bigamy, §39-15-301.
Confidentiality of information.
Child sexual abuse.
Exception to privilege, §37-1-614.
Contracts.
Antenuptial agreements.
Enforcement, §36-3-501.
Breach of marriage contract, §§36-3-401 to 36-3-405.
Creditor's rights, §36-3-502.
Prenuptial agreements.
Enforcement, §36-3-501.
Coverture.
Married women.
Disabilities removed from married women, §36-3-504.
Tenancies by entirety.
Unaffected by removal of coverture, §36-3-505.
Creditor's rights.
Marriage contracts or settlements, §36-3-502.
Criminal law and procedure.
Bigamy, §39-15-301.
Nonsupport and flagrant nonsupport, §39-15-101.
Debts of wife.
Antenuptial debts.
Nonliability of husband, §36-3-503.
Desertion and nonsupport.
Generally, §§39-15-101 to 39-15-104.
Domestic abuse, §§36-3-601 to 36-3-625.
See DOMESTIC ABUSE.
Interstate child custody proceedings.
Spousal privilege.
Inapplicability, §36-6-234.
Legal separation, §36-4-102.
Affidavits of proof not required, §36-4-116.
Contents of petition, §36-4-106.
Stipulated grounds and/or defenses, §36-4-129.
Sworn statements concerning financial matters, §36-4-116.
Limitation of actions.
Married women.
Applicability of statutes, §36-3-504.
Marriage generally.
See MARRIAGE.
Mental health.
Inpatient treatment.
Involuntary admission, nonemergency.
Complaint for commitment.
Who may file, §33-6-504.

HUSBAND AND WIFE —Cont'd
Misdemeanors.
Bigamy, §39-15-301.
Prenuptial agreements.
Enforcement, §36-3-501.
Privileged communications.
Child sexual abuse.
Exception to privilege, §37-1-614.
Interstate family support act, §36-5-2316.
Separation of spouses.
Divorce actions.
Failure to separate not a defense, §36-4-111.
Settlements.
Creditor's rights, §36-3-502.
Spousal abuse, §§36-3-601 to 36-3-625.
See DOMESTIC ABUSE.
Spousal privilege.
Interstate child custody proceedings.
Inapplicability, §36-6-234.
Interstate family support act, §36-5-2316.
Support and maintenance.
Generally.
See SUPPORT AND MAINTENANCE.
Tenancies by entirety.
Unaffected by removal of coverture from married women, §36-3-505.
Witnesses.
Spousal privilege.
Interstate family support act, §36-5-2316.

HYPOGLYCEMIA.
Teachers.
Health care procedures for students.
Glucagon administration, §49-50-1602.

HYPOTHYROIDISM.
Genetic testing, §§68-5-501 to 68-5-508.
Newborn testing, §§68-5-401 to 68-5-406.

I

ICE PICKS.
School property.
Carrying weapons on school property, §39-17-1309.

ILLEGAL ALIENS.
Temporary assistance for dependent children.
Ineligibility, §71-3-104.

ILLEGITIMACY.
Legitimacy proceedings, §§36-2-301 to 36-2-322.
See LEGITIMACY.

IMMUNITY.
Child abuse.
Reports of child abuse.
Criminal and civil liability, §37-1-410.
Severe child abuse.
Second look commission to study second or subsequent incidents of severe child abuse.
Immunity from liability, §37-3-812.
Child fatality review and prevention, §68-142-110.
Child passenger restraint systems.
Installers or inspectors of systems, §55-9-602.
Child support.
Compliance with administrative requests, orders and subpoenas, §36-5-810.

IMMUNITY —Cont'd
Child support —Cont'd
Lien enforcement, §36-5-909.
Release of abuse victim's personal information, §36-5-101.
Criminal law and procedure.
Statutory rape reporting.
Persons filing reports, §38-1-306.
Delinquent and unruly children.
Community service, §37-1-131.
Domestic abuse protection orders.
Reliance upon foreign order, §36-3-622.
Emergency communications districts.
Judges sitting specially or by interchange, §16-1-114.
Fetal and infant mortality review (FIMR) act, §68-142-207.
Firearms and other weapons.
Transporting and storing firearm or ammunition in permit holder's motor vehicle.
Immunity of business entities from damages arising from possession, §39-17-1313.
Health care decisions.
Unemancipated minors, decisions for.
Health care provider immunity, §34-6-406.
In loco parentis, immunity of person consenting as, §34-6-405.
Hospitals.
Child abuse reporting by health care providers, §37-1-410.
Interstate family support act, §36-5-2314.
Family relationships, §36-5-2316.
Income-withholding order compliance, §36-5-2504.
Juvenile proceedings.
Community service for delinquent children, §37-1-131.
Mental health.
Inpatient treatment.
Involuntary admission, emergency.
Examination to determine whether to admit.
Immunity of hospital, treatment resource or health care provider, §33-6-407.
Transportation.
Inpatient treatment.
Restraints deemed not necessary by physicians, psychologists, etc, §33-6-901.
Motor vehicles.
Child passenger restraint systems.
Installers or inspectors of systems, §55-9-602.
Paternity tests, §36-2-309.
Poisons and poisoning.
Control centers.
Limitation of liability, §68-141-107.
Power of attorney for care of minor child.
Reliance on power, §34-6-308.
Statutory rape reporting.
Persons filing reports, §38-1-306.
Support and maintenance.
Interstate family support act, §36-5-2314.
Family relationships, §36-5-2316.
Income-withholding order compliance, §36-5-2504.
Teen court.
Participants, §37-1-705.

IMMUNIZATION, §§37-10-401 to 37-10-403.
Hepatitis B protection, §49-6-5003.

IMMUNIZATION —Cont'd
Medical records, §63-2-101.
School children, §§49-6-5001 to 49-6-5005.

IMPUTED NEGLIGENCE.
Family purpose doctrine.
Motor vehicles, §55-50-311.

INCEST.
Child sexual abuse.
When conduct constitutes, §37-1-602.
Defined, §39-15-302.
Felonies.
Class C felony, §39-15-302.
Incestuous marriage, §36-3-101.

INCOME TAX.
Conservators for persons with disabilities.
Payment of fees for preparation, §34-1-113.
Guardians for minors.
Payment of fees for income tax preparation by guardian, §34-1-113.
Permanent guardianship.
How child to be claimed as dependent for tax purposes, §37-1-807.

INCOME WITHHOLDING.
Child support.
See CHILD SUPPORT.
Support and maintenance.
See SUPPORT AND MAINTENANCE.

INDEMNIFICATION.
School security.
Indemnification of principals and teachers from judgment against them, §49-6-4211.

INDEXES.
Conservators for disabled.
Duties of court clerk to maintain, §34-1-128.
Guardians for minors.
Duties of court clerk to maintain, §34-1-128.

INDIAN CHILD WELFARE.
Child and family programs, 25 USCS §§1931 to 1934.
Child custody proceedings, 25 USCS §§1911 to 1923.
Agreements between tribes and states, 25 USCS §1919.
Effective date of provisions, 25 USCS §1923.
Emergency removal or placement, 25 USCS §1922.
Higher standard of protection applicable, 25 USCS §1921.
Improper removal from custody, 25 USCS §1920.
Invalidation of court actions, 25 USCS §1914.
Jurisdiction of tribe, 25 USCS §1911.
Reassumption of jurisdiction, 25 USCS §1918.
Pending proceedings involving Indian child, 25 USCS §1912.
Placement of children, 25 USCS §1915.
Return of custody, 25 USCS §1916.
Tribal affiliation information, 25 USCS §1917.
Voluntary termination of parental rights, 25 USCS §1913.
Congressional findings and declaration, 25 USCS §§1901, 1902.
Definitions, 25 USCS §1903.

INDIAN CHILD WELFARE —Cont'd
Grant programs, 25 USCS §§1931 to 1934.
Information, access to and protection of, 25 USCS §1951.
Interstate child custody proceedings.
Inapplicability of act, §36-6-207.
Tribe, defined, §36-6-205.
Rules and regulations, 25 USCS §1952.
Schools and education.
Locally convenient day schools, 25 USCS §1961.
Severability of provisions, 25 USCS §1963.

INDIGENT PERSONS.
Appointment of counsel, SupCt 13.
Community service agencies, §§37-5-301 to 37-5-319.
See COMMUNITY SERVICE AGENCIES.
Delinquent and unruly children.
Post-commitment relief.
Appointment of attorney for indigent, §37-1-320.
Right of indigents to counsel, §37-1-313.
Right of indigent child to counsel, §37-1-126.
Post-commitment relief proceedings, §37-1-313.
Juvenile law.
Post-commitment procedures.
Generally, §37-1-320.
Mental health.
Commitment.
Costs of proceedings, §33-3-503.
Outpatient treatment.
Mandatory outpatient treatment.
Payment for services, §33-6-607.
State mental health facilities.
Charges for services.
Exemptions from liability, §33-2-1109.
Indigency determinations, §33-2-1102.

INDIVIDUAL RETIREMENT ACCOUNTS.
Child support or alimony.
Lump sum award of balances.
Treatment when considering right to receive, §§36-5-101, 36-5-121.

INFANTS.
Alcoholic beverages.
Motor vehicles.
Juvenile offenders, §§55-10-701 to 55-10-711.
See MOTOR VEHICLES.
Baby drop off law, §36-1-142.
Child care agencies, juveniles, §§37-5-501 to 37-5-519.
See CHILD CARE AGENCIES, JUVENILES.
Child care agencies, welfare, §§71-3-501 to 71-3-518.
See CHILD CARE AGENCIES, WELFARE.
Child custody.
Uniform child custody jurisdiction and enforcement act, §§36-6-201 to 36-6-243.
See INTERSTATE CHILD CUSTODY PROCEEDINGS.
Child placement.
Interstate compact on placement of children, §§37-4-201 to 37-4-207.
See CHILD PLACEMENT.
Children with physical disability, treatment, §§68-12-101 to 68-12-112.

INFANTS —Cont'd
Commission on children and youth, §§37-3-101 to 37-3-116.
See JUVENILE PROCEEDINGS.
Curfew.
Child curfew, §§39-17-1701 to 39-17-1704.
See CURFEW.
Donated embryo transfer, parentage of children, §§36-2-401 to 36-2-403.
Emancipation of minors.
Removal of disability, §§29-31-101 to 29-31-105.
Genetic testing, §§68-5-501 to 68-5-508.
Illegitimacy.
Legitimacy proceedings, §§36-2-301 to 36-2-322.
See LEGITIMACY.
Mentally ill.
Genetic testing, §§68-5-501 to 68-5-508.
Newborn testing.
Defects resulting in mental retardation, §§68-5-401 to 68-5-406.
Metabolic defects.
Newborn testing, §§68-5-401 to 68-5-406.
Missing children recovery, §§37-10-201 to 37-10-209.
See MISSING CHILDREN RECOVERY.
Newborn infants.
Genetic testing, §§68-5-501 to 68-5-508.
Metabolic defects.
Newborn testing, §§68-5-401 to 68-5-406.
Perinatal care, §§68-1-801 to 68-1-804.
Orphan asylums.
General provisions, §§71-3-601 to 71-3-612.
See ORPHAN ASYLUMS.
Paternity, §§36-2-301 to 36-2-322.
See PATERNITY.
Perinatal care, §§68-1-801 to 68-1-804.
Pregnancy.
Abortion.
Parental consent for abortion by minor, §§37-10-301 to 37-10-308.
See ABORTION.
Teenage pregnancy, §§37-3-501 to 37-3-521.
See TEENAGE PREGNANCY.
Runaways, §§37-2-501 to 37-2-507.
See RUNAWAY CHILDREN.
Sexual abuse, §§37-1-601 to 37-1-616.
See CHILD ABUSE AND CHILD NEGLECT OR ENDANGERMENT.
Teenage children.
Pregnancy, §§37-3-501 to 37-3-521.
See TEENAGE PREGNANCY.
Welfare.
Orphan asylums, §§71-3-601 to 71-3-612.
See ORPHAN ASYLUMS.
Youth investments, §§37-3-401 to 37-3-406.

INFIBULATION OF FEMALES' GENITALS.
Female genital mutilation, §39-13-110.

INHALERS.
Asthma inhalers.
Possession by students, §49-50-1602.

INHALING INTOXICATING SUBSTANCES, §39-17-422.

IN-HOME VISITATION PROGRAMS.
Department of health requirements, §68-1-125.

INJUNCTIONS.
Adoption.
Placement in violation of provisions, §36-1-108.
Restraining order prohibiting contact or interference with child.
Validity after adoption finalized, §36-1-123.
Violations of contact veto, §36-1-132.
Child care agencies, §71-3-504.
Abuse, neglect or sexual abuse, §37-5-512.
Unlicensed operations, §37-5-508.
Child custody.
Temporary injunctions in effect on filing of petition other than complaint for divorce or legal separation, §36-6-116.
Child placement.
Foster care plans.
Confidentiality of reports.
Violations, §37-2-411.
Child support.
Interference with administrative action pending appeal, §36-5-1004.
Delinquent and unruly children.
Authority of court to grant injunctive relief, §37-1-152.
Dependent and neglected children.
Authority of court to grant injunctive relief, §37-1-152.
Divorce or legal separation.
Temporary injunctions issued on filing and serving complaint, §36-4-106.
Foster care plans.
Violation of confidentiality, §37-2-411.
Interstate child custody proceedings.
Enforcement proceedings, §36-6-221.
Juvenile proceedings.
Rules of juvenile procedure, JuvPro 108.
Mental health and substance abuse facilities.
Licensing of facilities and services.
Unlicensed services, §33-2-412.
Sexual exploitation of children, §39-17-1006.
Termination of parental rights.
Appeal as of right.
Stay or injunction pending appeal, RAP 8A.

INJURIES.
Child custody.
Noncustodial parent's right to notice of injury, §36-6-101.

INOCULATION, §§37-10-401 to 37-10-403.
Hepatitis B protection by immunization act.
Protection for young Tennesseans, §49-6-5003.
School children, §§49-6-5001, 49-6-5002.

INSPECTIONS.
Body piercing.
Business performing services, §62-38-304.
Child care agencies, §§37-5-513, 71-3-508.
Public agencies, §37-5-510.
Mental health facilities.
Licensing of facilities and services, §33-2-413.
Receiving homes, §37-2-305.
Schools and education.
Attendance of pupils.
Inspection of places of employment.
Certificate of attendance, §49-6-3008.

INSPECTIONS —Cont'd
Schools and education —Cont'd
Attendance of pupils —Cont'd
Inspection of places of employment —Cont'd
Proof of age, §49-6-3008.
Work permits, §49-6-3008.
Tattooing, §62-38-203.

INSULIN.
Students, permissible activities in management of disease at school, §49-50-1602.

INSURANCE.
Child care agencies, §71-3-502.
Divorce.
Notice of insurance termination.
Compliance required, §36-4-133.

INSURANCE COMPANIES.
Community mental health centers.
Certificate of public advantage.
No authority of center to act as insurer granted by provisions, §33-2-708.

INTELLECTUAL AND DEVELOPMENTAL DISABILITIES.
Admissions.
Residential admission, §§33-5-301 to 33-5-304.
Children, mental health services for, §§33-8-101 to 33-8-316.
See MENTAL HEALTH.
Community service system, §§33-2-101 to 33-2-106.
Definitions, §33-1-101.
Delinquent and unruly children.
Disposition, §37-1-135.
Evaluation and commitment, §37-1-128.
Department of intellectual and developmental disabilities.
Responsibilities.
Effect of reassignment of responsibility for services, §33-1-204.
Services needs, information to be provided to department, §33-5-212.
Dependent and neglected children.
Disposition, §37-1-135.
Evaluation and commitment, §37-1-128.
Facilities.
See INTELLECTUAL AND DEVELOPMENTAL DISABILITIES FACILITIES.
Family support, §§33-5-201 to 33-5-212.
Administration of program, §33-5-211.
Adults with disabilities.
Families of, §33-5-207.
Annual benefit level.
Establishment, §33-5-211.
Appropriations for family support.
Department policies and procedures, §33-5-209.
Child care.
Scope of services, §33-5-205.
Clothing and supplies.
Scope of services, §33-5-205.
Contracting agency.
Coordination of services, §33-5-206.
Duties, §33-5-204.
Coordination of services, §33-5-206.
Counseling.
Scope of services, §33-5-205.
Definitions, §33-5-201.
Families of adults with disabilities, §33-5-207.
Focus of programs, §33-5-203.

INTELLECTUAL AND DEVELOPMENTAL DISABILITIES —Cont'd
Family support —Cont'd
Health-related costs.
Scope of services, §33-5-205.
Homemaker services.
Scope of services, §33-5-205.
Legislative intent, §33-5-202.
Modifications of vehicles and homes.
Scope of services, §33-5-205.
Nursing and nurses aid services.
Scope of services, §33-5-205.
Nutrition.
Scope of services, §33-5-205.
Personal assistance services.
Scope of services, §33-5-205.
Primary focus of programs, §33-5-203.
Programs.
Administration of program, §33-5-211.
Definition of family support program, §33-5-201.
Primary focus of programs, §33-5-203.
Principles for developing, §33-5-202.
Scope of family support services, §33-5-205.
Respite care.
Scope of services, §33-5-205.
Scope of services, §33-5-205.
Services needs, information to be provided to department, §33-5-212.
Specialized equipment.
Scope of services, §33-5-205.
State family support council.
Appointment, §33-5-208.
Composition, §33-5-208.
Defined, §33-5-201.
Department cooperation with council, §33-5-209.
Duties, §33-5-210.
Meetings, §33-5-210.
Policies.
Adoption, §33-5-209.
Procedures.
Adoption, §33-5-209.
Removal of member, §33-5-210.
State policy, §33-5-202.
Transportation.
Scope of services, §33-5-205.
Forensic services for persons with intellectual disabilities, §§33-5-401 to 33-5-410.
Commitment.
Accommodations for admittees, §33-5-405.
Certificates of need for training and treatment, §33-5-404.
Court order as transfer to custody of commissioner, §33-5-407.
Criminal involvement.
Discharge proceedings for involuntarily committed, §33-5-410.
Periodic evaluation of admittee, §33-5-408.
Prerequisites to involuntary commitment, §33-5-403.
Procedure, §33-5-402.
Release, §33-5-409.
Criminal involvement.
Credit on sentence for time in custody, §33-5-406.
Discharge proceedings for involuntarily committed, §33-5-410.
Release of intellectually disabled offenders, §33-5-409.
Rehabilitation, §33-5-401.

INTELLECTUAL AND DEVELOPMENTAL DISABILITIES —Cont'd
Forensic services for persons with intellectual disabilities —Cont'd
Training, §33-5-401.
Genetic testing, §§68-5-501 to 68-5-508.
Juvenile proceedings.
Jurisdiction.
Concurrent jurisdiction, §37-1-104.
Mandatory community-based services.
Contest of plan, §33-5-505.
Mental health service recipients, §§33-3-101 to 33-3-904.
See MENTAL HEALTH SERVICE RECIPIENTS.
Newborn testing.
Metabolic defects, §§68-5-401 to 68-5-406.
Offenders and delinquents.
Disposition of intellectually disabled child, §37-1-135.
Policies, §§33-1-201 to 33-1-204.
Principles, §§33-1-201 to 33-1-204.
Residential admission, §§33-5-301 to 33-5-304.
Appropriateness of admission.
Departmental review, §33-5-304.
Definitions, §33-5-301.
Discharge.
Requests for discharge, §33-5-303.
Evaluation.
Periodic evaluation of admittee, §33-5-302.
Parental requests for discharge, §33-5-303.
Periodic evaluation of admittee, §33-5-302.
Representative requests for discharge, §33-5-303.
Review of admission.
Departmental review, §33-5-304.
Respite admission.
Residential admission generally, §§33-5-301 to 33-5-304.
Services.
Entitlement not created, §33-1-204.
Family support, §§33-5-201 to 33-5-212.
Forensic services for persons with intellectual disabilities, §§33-5-401 to 33-5-410.
Information to be provided to department regarding needs, §33-5-212.
Licenses.
Facilities and services licensure, §§33-2-401 to 33-2-421.
See INTELLECTUAL AND DEVELOPMENTAL DISABILITIES FACILITIES.
Medical assistance programs and services, eligibility, §33-5-111.
Recipients.
Generally, §§33-3-101 to 33-3-904.
See MENTAL HEALTH SERVICE RECIPIENTS.
Residential admission, §§33-5-301 to 33-5-304.
System of services, §§33-5-101 to 33-5-112.
Adult-onset developmental disabilities.
Eligibility for service, §33-5-104.
Applicable provisions, §33-5-101.
Application process, §33-5-106.
Effective date of provisions, §33-5-102.

INTELLECTUAL AND DEVELOPMENTAL DISABILITIES —Cont'd
Services —Cont'd
System of services —Cont'd
Eligibility for service.
Adult-onset developmental disability, §33-5-104.
Factors considered, §33-5-105.
Mental illness or serious emotional disturbance as basis of disability, §33-5-103.
Factors considered in eligibility assessments, §33-5-105.
Fiscal impact of changes in regulation or policy, §33-5-108.
Joint study committee regarding issues related to services, §33-5-109.
Mental illness as basis of disability, §33-5-103.
Non-residential services.
Types of services available, §33-5-107.
Regulatory or policy changes.
Fiscal impact evaluation, §33-5-108.
Serious emotional disturbance as basis of disability, §33-5-103.
Service recipients.
Task force to review regulations of residential and day provider agencies, §33-5-110.
Status of application.
Periodically notified as to, §33-5-106.
Types of services available, §33-5-107.
Who may apply, §33-5-106.
Wait-listed persons, enrollment in self-determination waiver, §33-5-112.
Support.
Family support, §§33-5-201 to 33-5-212.
TennCare services.
Eligibility criteria for medical assistance programs and services, §33-5-111.
Wait-listed persons, enrollment in self-determination waiver, §33-5-112.
Training admission.
Short-term training admission.
Defined, §33-5-301.
Residential admission generally, §§33-5-301 to 33-5-304.
Values, §§33-1-201 to 33-1-204.
Voluntary admission.
Residential admission generally, §§33-5-301 to 33-5-304.

INTELLECTUAL AND DEVELOPMENTAL DISABILITIES FACILITIES.
Beds in ICF/MR facilities.
Number and certain exemptions from certificate of need requirements, §71-5-105.
Decision making capacity of patients.
Lacking capacity.
Defined, §33-3-218.
Employees.
Background checks and fingerprinting, §33-2-1202.
Sexual relations with service recipients.
Discharge, §33-3-903.
Habeas corpus, §§33-3-801 to 33-3-804.
Licensing of facilities and services, §§33-2-401 to 33-2-421.
Administrative procedure.
Denial of license, §33-2-406.

INTELLECTUAL AND DEVELOPMENTAL DISABILITIES FACILITIES —Cont'd
Licensing of facilities and services —Cont'd
Administrative procedure —Cont'd
Sanctions against licensed entities, §33-2-408.
Suspension or revocation of license, §33-2-407.
Application for licensure, §33-2-406.
Assistance to applicants.
Provision by department, §33-2-414.
Citation of provisions, §33-2-401.
Conflicts of interest, §§33-2-1301 to 33-2-1304.
Definitions, §33-2-402.
Denial of licensing.
Assistance to service recipients.
Provision by department, §33-2-414.
Procedure, §33-2-406.
Exemptions from licensing, §33-2-403.
Facilities.
Defined, §33-2-402.
Felony conviction.
Presumption as to reputable and responsible character, §33-2-406.
Fines, §33-2-407.
Amount of civil penalties, §33-2-409.
Service recipient protection trust fund.
Disposition of civil penalties, §33-2-410.
Types of sanctions against licensed entities, §33-2-408.
Fiscal impact of changes in regulation or policy, §33-5-108.
Inspections, §33-2-413.
Licensees.
Defined, §33-2-402.
Life safety inspections, §33-2-413.
Personal support services.
Application for licensure, §33-2-406.
Conflicts of interest, §§33-2-1301 to 33-2-1304.
Defined, §33-2-402.
Dual licensing under this chapter and under provisions covering home care organizations, §33-2-420.
Duties and responsibilities of personal support services agencies, §33-2-421.
Providing service without license.
Orders to cease, §33-2-417.
Unlicensed operation, §33-2-405.
Provisional licenses, §33-2-415.
Reports of abuse, dereliction or deficiency, §33-2-416.
Reputable and responsible character.
Defined, §33-2-402.
Felony conviction, presumption, §33-2-406.
Required for licensing, renewal, etc., §33-2-406.
Residential facilities, §33-2-418.
Review panel.
Exemptions from licensing reviewed, §33-2-403.
Rulemaking.
Department rules for licensure, §33-2-404.
Sanctions against licensed entities.
Administrative procedure, §33-2-408.
Service recipient protection trust fund.
Disposition of civil penalties, §33-2-410.

INTELLECTUAL AND DEVELOPMENTAL DISABILITIES FACILITIES —Cont'd
Licensing of facilities and services —Cont'd
Sanctions against licensed entities —Cont'd
Types, §33-2-408.
Service recipient protection trust fund, §33-2-410.
Services.
Defined, §33-2-402.
Short title, §33-2-401.
Surveyors.
Notice to licensee of violations, §33-2-411.
Suspension or revocation, §33-2-407.
Assistance to service recipients.
Provision by department, §33-2-414.
Providing unlicensed services, §33-2-412.
Unlicensed facilities.
Injunctions against providing unlicensed services, §33-2-412.
Operation prohibited, §33-2-405.
Orders to cease providing services, §33-2-417.
Religious expression, right of service recipients, §33-3-126.
Residential admission.
Forensic services for intellectually disabled.
Accommodations for admittees, §33-5-405.
Certificates of need for training and treatment, §33-5-404.
Court order as transfer to custody of commissioner, §33-5-407.
Criminal involvement.
Discharge proceedings for involuntarily committed, §33-5-410.
Periodic evaluation of admittee, §33-5-408.
Prerequisites to involuntary commitment, §33-5-403.
Procedure for commitment, §33-5-402.
Release, §33-5-409.
Service recipients.
Habeas corpus, §§33-3-801 to 33-3-804.
Task force to review regulations of residential and day provider agencies, §33-5-110.
Transfers from correction department and children's service department, §§33-3-401 to 33-3-412.
Sexual relations with service recipients.
Employees of facility or service provider.
Discharge, §33-3-903.
Transfers of service recipients from correction department and children's service department, §§33-3-401 to 33-3-412.
Adult inmates, §33-3-402.
Appropriateness of transfer.
Determination, §33-3-408.
Approval or disapproval of transfer, §33-3-406.
Determination of appropriateness of transfer, §33-3-408.
Emergency residential care and treatment, §33-3-403.
Youth development center, persons in, §33-3-412.

INTELLECTUAL AND DEVELOPMENTAL DISABILITIES FACILITIES —Cont'd
Transfers of service recipients from correction department and children's service department —Cont'd
Private facilities.
Return of transferee from private facility, §33-3-410.
Public facilities.
Return of transferee from public facility, §33-3-409.
Return of transferee from private facility, §33-3-410.
Return of transferee from public facility, §33-3-409.
Runaways from department of mental health and developmental disabilities department facilities.
Custodian upon return, §33-3-410.
Time for transfer, §33-3-407.
Transfer committees.
Appointment, §33-3-404.
Approval or disapproval of transfer, §33-3-406.
Internal operation, §33-3-405.
Officers, §33-3-405.
When transfer made, §33-3-407.
Youth development centers.
Emergency residential care and treatment for persons in, §33-3-412.
Minors transferred from, §33-3-401.

INTEREST.
Conservators for persons with disabilities.
Failure to account, §34-1-111.
Guardians for minors.
Failure to account, §34-1-111.

INTERNET.
Children's services department.
Professional licensing, certification and registration.
Information, availability, §37-5-127.
Child support lien notices, §36-5-901.
Criminal information center.
Tennessee bureau of investigation, §38-6-116.
Schools and education.
Curriculum component on Internet safety, §49-1-221.
Internet use policy, §49-1-221.
Sexual offenses.
Solicitation of minors, §39-13-528.
Causing a minor to engage in sexual activity, §39-13-529.

INTERPRETERS.
Adoption.
Interpreter for parent or guardian not fluent in English.
Provision prior to final hearing, §36-1-111.
Child abuse and child neglect or endangerment.
Investigator not to use member of child's family as interpreter for hearing-impaired child, §37-1-406.

INTERSTATE CHILD CUSTODY PROCEEDINGS, §§36-6-201 to 36-6-243.
Adoption.
Applicability to proceedings, §36-6-206.
Affidavits.
Required jurisdictional information, §36-6-224.
Enforcement petitions, §36-6-232.

INTERSTATE CHILD CUSTODY PROCEEDINGS —Cont'd
Affidavits —Cont'd
Required jurisdictional information —Cont'd
Service of petition and order, §36-6-233.
Verified first pleadings, §36-6-224.
Ancillary proceedings.
Decline of jurisdiction, §36-6-222.
Appearances.
Order to appear before court, §36-6-225.
Payment of out-of-state expenses, §36-6-225.
Appellate review.
Final order, §36-6-238.
Attorneys' fees.
Award to prevailing party, §36-6-236.
Child abuse and domestic violence.
Appearances.
Order to ensure safety of party, §36-6-225.
Grant of relief, §36-6-234.
Immunities and privileges.
Inapplicability, §36-6-234.
Child-custody determinations.
Binding effect of state court decisions, §36-6-209.
Continuing jurisdiction of state courts, §36-6-217.
Defined, §36-6-205.
Duty to enforce foreign decrees, §36-6-227.
Enforcement under Hague Convention, §36-6-226.
Foreign decrees.
Human rights exception, §36-6-208.
Jurisdiction to modify, §36-6-218.
Recognition, §36-6-208.
Jurisdictional basis for custody determination, §36-6-216.
Notice and opportunity to be heard, §36-6-220.
Personal jurisdiction as prerequisite of jurisdiction, §36-6-216.
Petition for enforcement, §36-6-232.
Stay of enforcement pending appeal, §36-6-238.
Temporary emergency jurisdiction, §36-6-219.
Child placement.
Conditional placement, §36-6-235.
Order for immediate physical custody, §36-6-234.
Physical custody, defined, §36-6-205.
Warrant for physical custody, §36-6-235.
Warrant, defined, §36-6-205.
Child visitation.
Temporary order of enforcement, §36-6-228.
Citation of act, §36-6-201.
Communications among court and other parties, §36-6-213.
Construction of act.
Actions commenced before June 14, 1999, §36-6-243.
Adoption.
Applicability to proceedings, §36-6-206.
Emergency care proceedings.
Applicability, §36-6-206.
Liberal construction, §36-6-202.
Native American children.
Inapplicability of act, §36-6-207.
Official comments.
Evidentiary use, §36-6-203.
Inclusion in act, §36-6-204.
Severability of act, §36-6-243.

INTERSTATE CHILD CUSTODY PROCEEDINGS —Cont'd
Construction of act —Cont'd
Uniformity among states, §36-6-242.
Costs.
Award of costs and fees, §36-6-236.
Enforcement under Hague Convention, §36-6-241.
Definitions, §36-6-205.
Record, §36-6-213.
Depositions.
Preservation of witness testimony, §36-6-214.
Dismissal of actions.
Simultaneous proceedings, §36-6-221.
Emergency care proceedings.
Applicability of act, §36-6-206.
Evidence.
Documentary evidence.
Effect of electronic submission, §36-6-214.
Holding hearings or obtaining evidence for other states, §36-6-215.
Request for evidentiary hearing in or evidence from another state, §36-6-215.
Expeditious handling.
Jurisdictional questions, §36-6-210.
Foreign decrees.
Full faith and credit, §36-6-237.
Recognition and enforcement, §36-6-227.
Recognition of child-custody determinations, §36-6-208.
State jurisdiction to modify, §36-6-218.
Forum non conveniens, §36-6-222.
Hague Convention.
Enforcement of international orders, §36-6-226.
Law enforcement powers, §36-6-240.
Powers of prosecutors and public officials, §36-6-239.
Immunities and privileges.
Inapplicability, §36-6-234.
Immunity from jurisdiction.
Special appearance, §36-6-212.
Inconvenient forum, §36-6-222.
Inferences.
Assertion by party, evidentiary effect, §36-6-234.
Injunctive relief.
Enforcement proceedings, §36-6-221.
International orders.
Enforcement under the Hague Convention, §36-6-226.
Intervention, §36-6-220.
Joinder of parties, §36-6-220.
Jurisdiction.
Continuing jurisdiction of state courts, §36-6-217.
Declining jurisdiction, §§36-6-222, 36-6-223.
Exclusive jurisdictional basis, §36-6-216.
Pleading requirements, §36-6-224.
Priority of jurisdictional issues, §36-6-210.
Temporary emergency jurisdiction, §36-6-219.
Uniform deployed parents custody and visitation act, §36-7-104.
Legislative intent, §36-6-202.
Native American children.
Inapplicability of act, §36-6-207.
Notice.
Exercise of jurisdiction, §36-6-211.
Official comments.
Evidentiary use, §36-6-203.
Inclusion in act, §36-6-204.

INTERSTATE CHILD CUSTODY PROCEEDINGS —Cont'd
Orders.
Appearance of parties, §36-6-225.
Full faith and credit of foreign orders, §36-6-237.
International orders.
Enforcement under the Hague Convention, §36-6-226.
Petition for enforcement, §36-6-233.
Temporary order of enforcement, §36-6-228.
Parties.
Appearances.
Order to appear before court, §36-6-225.
Assertion of privilege against self-incrimination.
Evidentiary effect, §36-6-234.
Communication among courts and parties, §§36-6-213, 36-6-215.
Foreign courts, §36-6-215.
Special appearances, §36-6-212.
Unjustifiable conduct of party.
Decline of jurisdiction, §36-6-223.
Pleadings.
Petition for enforcement, §36-6-232.
Required jurisdictional information, §36-6-224.
Verified first pleading, §36-6-224.
Police and other law enforcement officers.
Powers under Hague Conventions, §36-6-240.
Proceeding commenced in other states, §36-6-221.
Prosecutors.
Enforcement powers under Hague Conventions, §36-6-239.
Public officers and employees.
Enforcement powers under Hague Conventions, §36-6-239.
Public policy, §36-6-202.
Record of proceedings.
Communication among courts and parties, §36-6-213.
Registration of foreign decrees, §36-6-229.
Contesting validity of registered decree, §36-6-229.
Duties of registering court, §36-6-229.
Enforcement of registered decree, §36-6-230.
Modification proceedings pending in another state, §36-6-231.
Order for respondent to appear, §36-6-233.
Service of petition and order, §36-6-233.
Verification and contents of petition for enforcement, §36-6-232.
Modification of registered decree, §§36-6-230, 36-6-231.
Sealing records, §36-6-224.
Short title, §36-6-201.
Simultaneous proceedings, §36-6-221.
Special appearances, §36-6-212.
Spousal privileges.
Inapplicability, §36-6-234.
Stays.
Enforcement of child-custody determination pending appeal, §36-6-238.
Simultaneous proceedings, §36-6-221.
Telephone depositions, §36-6-214.
Unjustifiable conduct of party.
Decline of jurisdiction, §36-6-223.
Video depositions, §36-6-214.

INTERSTATE CHILD CUSTODY PROCEEDINGS —Cont'd
Witnesses.
Preservation of testimony, §36-6-214.

INTERSTATE COMPACTS.
Interstate compact on adoption and medical assistance, §§36-1-201 to 36-1-206.
Interstate compacts on placement of children, §§37-4-201 to 37-4-207.

INTERSTATE FAMILY SUPPORT ACT, §§36-5-2001 to 36-5-2903.
See SUPPORT AND MAINTENANCE.

INTERVENTION.
Adoption.
Filing by person listed on putative father registry, §36-2-318.
Dependent and neglected children.
Rules of juvenile procedure, JuvPro 304.
Interstate child custody proceedings.
Choice of law, §36-6-220.
Termination of parental rights.
Filing by person listed on putative father registry, §36-2-318.

INTESTATE SUCCESSION.
Divorce.
Intestacy of plaintiff spouse, §36-5-105.

INVENTORIES.
Conservators for persons with disabilities.
Clerk may prescribe forms, §34-1-130.
List of disabled person's property, §34-1-110.
Guardians for minors.
Clerk may prescribe forms, §34-1-130.
Filing list of property of minor, §34-1-110.

INVESTIGATIONS.
Child abuse.
Multi-level response system, jurisdictions using, §§37-1-406, 37-5-604.
Reports, §37-1-406.
Child care agencies.
Abuse, neglect or sexual abuse allegations, §37-5-512.
Complaints against licensees, §37-5-514.
Delinquent and unruly children.
Children brought before court or delivered to detention facility, §37-1-117.
Initial and ongoing investigations, §37-1-128.
Dependent and neglected children.
Children brought before court or delivered to detention facility, §37-1-117.
Initial and ongoing investigations, §37-1-128.
Subsidized receiving homes, §37-2-317.
Mental health facilities.
Reports of abuse, dereliction or deficiency.
Department investigation, §33-2-416.
Receiving homes.
Department of children's services, §37-2-317.
Sexually transmitted diseases.
Sources of infection to be investigated, §68-10-104.

INVESTMENTS.
Conservators for persons with disabilities.
Court approval to change nature of investments, waiver, §34-1-115.

INVESTMENTS —Cont'd
Conservators for persons with disabilities —Cont'd
Payment of management fees, §34-1-113.
Guardians for minors.
Court approval to change nature of investments, waiver, §34-1-115.
Payment of management fees by guardian, §34-1-113.

J

JEWELRY.
Body piercing, §§62-38-301 to 62-38-310.
See BODY PIERCING.

JOINDER.
Interstate child custody proceedings.
Choice of law, §36-6-220.
Juvenile proceedings.
Parents and guardians, §37-1-170.

JUDGES.
Attendance at court.
Selection of special judge, §17-2-122.
Child abuse and child neglect or endangerment.
Duty to report, §37-1-403.
Child sexual abuse, §37-1-605.
Council of juvenile and family court judges, §§37-1-501 to 37-1-507.
Immunity.
Judges sitting specially or by interchange, §16-1-114.
Interchange.
Courts of general sessions, §17-2-208.
Immunity, §16-1-114.
Juvenile court judges generally.
See JUVENILE PROCEEDINGS.
Marriage.
Solemnization of marriage, §36-3-101.
Special judges.
Appointment.
Regular judge unable to attend, §17-2-122.
Immunity, §16-1-114.
Judicial appointment, §17-2-109.
Substitute judges.
Immunity, §16-1-114.

JUDGMENTS AND DECREES.
Annulment of marriage.
Generally, §36-4-119.
Child custody.
Stay, §36-6-111.
Support and custody decrees, §36-6-101.
Child support.
Income assignments generally, §§36-5-501, 36-5-503.
Appeal of administrative actions, §§36-5-1001 to 36-5-1006.
Intercounty enforcement and modification, §§36-5-3001 to 36-5-3009.
Portion of spouse's estate.
Decreed to spouse entitled to child support, §36-5-102.
Registration of orders, §§36-5-3101 to 36-5-3111.
Review and adjustment of orders, §36-5-103.
Conservators for persons with disabilities.
Failure to account, §34-1-111.
Default judgments.
Paternity proceedings, §36-2-308.

JUDGMENTS AND DECREES —Cont'd
Dependent and neglected children.
Modification of or relief from judgments or orders, JuvPro 310.
Divorce.
Alimony.
Enforcement, §36-5-103.
Portion of spouse's estate decreed to spouse entitled to alimony, §36-5-102.
Generally, §§36-4-119, 36-4-120.
Proof of facts required, §36-4-114.
Guardians for minors.
Failure to account, §34-1-111.
Juvenile proceedings generally.
See JUVENILE PROCEEDINGS.
Removal of disability, §§29-31-104, 29-31-105.
Support and maintenance.
Registration of orders, §§36-5-3101 to 36-5-3111.

JUDICIAL COMMISSIONERS.
Marriage.
Persons who may solemnize marriage, §36-3-301.

JUDICIAL DIVERSION.
Delinquent and unruly children.
Accepting guilty or no contest plea pursuant to diversion, JuvPro 209.

JURISDICTION.
Adoption.
Termination of parental rights, §36-1-113.
Child abduction prevention.
Petitions, §36-6-605.
Child abuse and child neglect or endangerment.
Juvenile courts, §39-15-401.
Mandatory reports.
Prosecution of violations, §37-1-103.
Child custody.
Indian child welfare, 25 USCS §1911.
Reassumption of jurisdiction, 25 USCS §1918.
Required information to establish jurisdiction.
First pleading or affidavit, §§36-6-224, 36-6-232.
Uniform deployed parents custody and visitation act.
Child support, temporary order for, §36-7-309.
Permissible activities of court having jurisdiction, §36-7-104.
Temporary emergency jurisdiction under child custody jurisdiction and enforcement act, §36-7-104.
Child placement.
Interstate compact on the placement of children.
Jurisdiction of courts, §37-4-207.
Child support.
Administrative orders to determine continuing exclusive jurisdiction, §36-5-816.
Interstate cases, determination, §36-5-101.
Juvenile court, §37-1-104.
Statewide jurisdiction of department, §36-5-808.
Transfer of cases to other counties, §§36-5-3001 to 36-5-3009.
Delinquent and unruly children, §37-1-103.
Contributing to delinquency or unruly behavior, §37-1-156.

JURISDICTION —Cont'd
Delinquent and unruly children —Cont'd
Interstate compact on juveniles, §37-1-103.
Interstate compact on placement of children, §37-4-207.
Nonresident child.
Transfer from another state, §37-1-142.
Relief from judgments or orders.
Lack of jurisdiction, JuvPro 213.
Transfer of criminal cases from other courts, §37-1-109.
Transfer of jurisdiction to another state.
Where child changes state residence, §37-1-141.
Dependent and neglected children, §37-1-103.
Contributing to dependency or neglect, §37-1-157.
Jurisdiction of courts, §37-1-104.
Interstate compact on placement of children, §37-4-207.
Modification of or relief from judgments or orders.
Lack of jurisdiction, JuvPro 310.
Nonresident child.
Transfer from another state, §37-1-142.
Transfer of jurisdiction to another state.
Where child changes state residence, §37-1-141.
Desertion and nonsupport.
Nonsupport and flagrant nonsupport.
Juvenile courts, §39-15-102.
Guardian and ward.
Minors, guardians for.
Permanent guardianship.
Jurisdiction retained by court, §37-1-805.
Interstate child custody proceedings.
Continuing jurisdiction of state courts, §36-6-217.
Exclusive jurisdictional basis, §36-6-216.
Immunity from jurisdiction for unrelated matters, §36-6-212.
Pleading requirements, §36-6-224.
Priority of jurisdictional issues, §36-6-210.
Juvenile courts.
Exclusive original jurisdiction, §37-1-103.
Juvenile proceedings.
See JUVENILE PROCEEDINGS.
Legitimation proceedings.
Juvenile courts, §37-1-103.
Paternity proceedings.
Establishment of paternity of children born out of wedlock, §37-1-103.
Mental health.
Commitment, §33-3-603.
Juvenile proceedings.
Concurrent jurisdiction, §37-1-104.
Paternity proceedings, §36-2-307.
Juvenile courts, §§37-1-103, 37-1-104.
Schools and education.
Attendance of pupils.
Violations, §49-6-3010.
Support and maintenance.
Child support.
Statewide jurisdiction of department, §36-5-808.
Enforcement without transfer of jurisdiction, §§36-5-3101 to 36-5-3111.
Intercounty enforcement and modification of child support, §§36-5-3001 to 36-5-3009.
See CHILD SUPPORT.

JURISDICTION —Cont'd
Support and maintenance —Cont'd
Interstate family support act.
Modifying child-support order of another state, §§36-5-2611, 36-5-2613.
Nonresidents.
Bases of jurisdiction, §36-5-2201.
Duration of jurisdiction, §36-5-2202.
Personal jurisdiction under other provisions.
Applicable provisions, §36-5-2210.
Participation by petitioner in proceeding, §36-5-2314.
Proceedings involving two or more states, §§36-5-2203 to 36-5-2206.
Reconciliation of multiple orders, §§36-5-2207 to 36-5-2209.
Nonsupport and flagrant nonsupport.
Juvenile courts, §39-15-102.
Termination of parental rights, §37-1-104.
Adoption, §36-1-113.

JURY.
Demand for trial by jury.
Mental health service recipients.
Commitment, §33-3-609.
Transfers of service recipients.
Judicial review of transfer, §33-3-705.

JUVENILE COURTS SYSTEM RESTRUCTURING.
Restructure act of 1982, §§37-1-201 to 37-1-214.
See JUVENILE PROCEEDINGS.

JUVENILE-FAMILY CRISIS INTERVENTION PROGRAMS, §§37-1-168, 37-1-169.

JUVENILE OFFENDER SURCHARGES, §§37-11-101 to 37-11-103.
Definitions, §37-11-102.
Disposition of juvenile fines, §37-11-103.
Intent of legislature, §37-11-101.
Legislative findings, §37-11-101.
Youthful offender system fund, §37-11-103.

JUVENILE POST-COMMITMENT PROCEEDINGS, §§37-1-301 to 37-1-322.
See JUVENILE PROCEEDINGS.

JUVENILE PROCEEDINGS.
Abandoned child.
Receiving homes, §§37-2-301 to 37-2-319.
See RECEIVING HOMES.
Adjudications.
Delinquency adjudications.
Civil and criminal disabilities.
Exemptions, §37-1-133.
Administrative hearing.
Defined, §37-1-102.
Adoption of children.
Generally.
See ADOPTION.
Adult.
Defined, §37-1-102.
Treatment as adult offender, §37-1-134.
Advice.
Counsel and advice without adjudication, §37-1-110.
Affidavits.
Post-commitment procedures, §37-1-316.

JUVENILE PROCEEDINGS —Cont'd
Appeals, §37-1-159.
Post-commitment procedures, §§37-1-317, 37-1-319, 37-1-321.
Applicability of chapter.
Interstate flight by juvenile felon, §37-1-160.
Uniformity, §37-1-101.
Arrest.
Grounds for taking into custody, §37-1-113.
Attachment.
Summons and process.
Ineffectual summons, §37-1-122.
Attorneys at law.
Right to counsel, §37-1-126.
Attorneys, court appointed, SupCt 13.
Audio recordings of transfer hearings, §37-1-134.
Bonds, surety.
Release from detention.
Hearing, §37-1-117.
Capital punishment, §37-1-134.
Child.
Defined, §37-1-102.
Child abuse and child neglect or endangerment.
Dependent and neglected children.
General provisions.
See DEPENDENT AND NEGLECTED CHILDREN.
General provisions.
See CHILD ABUSE AND CHILD NEGLECT OR ENDANGERMENT.
Receiving homes, §§37-2-301 to 37-2-319.
See RECEIVING HOMES.
Severe child abuse.
Second look commission to study second or subsequent incidents of severe child abuse.
Responses to requests by commission by juvenile court officer or investigator, §37-3-809.
Child custody.
General provisions.
See CHILD CUSTODY.
Predisposition custody, §37-1-128.
Uniform child custody jurisdiction and enforcement act, §§36-6-201 to 36-6-243.
See INTERSTATE CHILD CUSTODY PROCEEDINGS.
Youth investment programs, §§37-3-401 to 37-3-406.
Child placement.
Foster care plans, §§37-2-401 to 37-2-418.
See FOSTER CARE.
Children's services department.
Commitment to department's custody, §37-1-137.
Disposition of federal funds for children in custody of department, §37-1-172.
Presumption for commitment, §37-1-171.
Required findings, §37-1-166.
Written order required, §37-1-171.
Counties, §§37-2-201 to 37-2-208.
Child support.
See CHILD SUPPORT.
Clerks of court.
General sessions courts, §37-1-210.
Special juvenile courts, §37-1-211.

JUVENILE PROCEEDINGS —Cont'd
Commencement of proceedings, §37-1-108.
Accepted jurisdiction, §37-1-141.
Accepted supervision, §37-1-143.
Traffic offenses.
Juvenile traffic offenders, §37-1-146.
Transfer from other courts, §37-1-109.
Commission on children and youth, §§37-3-101 to 37-3-116.
Ad hoc committees, §37-3-102.
Administration of commission, §37-3-104.
Appointment of members, §37-3-102.
Children's services commission.
Contracts.
Continued in full force, §37-3-107.
References to.
Deemed references to commission on children and youth, §37-3-107.
Transfer of personnel and equipment, §37-3-109.
Citation, §37-3-101.
Contracts.
Predecessor agencies.
Contracts continued in full force, §37-3-107.
Council on children's mental health care.
Assistance from children's services department, §37-5-126.
Budget submission, §37-3-115.
Duties, §§37-3-113, 37-3-114.
Meetings, §37-3-111.
Members, §37-3-111.
Plan for a statewide system of care, §37-3-112.
Report and budget, §37-3-115.
Submission, §37-3-115.
Reports.
Plan for a statewide system of care, §37-3-115.
Resource mapping of funding sources, §37-3-116.
Resource mapping of funding sources, §37-3-116.
Created, §37-3-102.
Definitions, §37-3-110.
Duties, §37-3-103.
Executive director.
Appointment, §37-3-104.
Personnel.
Employment, §37-3-105.
Powers and duties generally, §37-3-104.
Qualifications, §37-3-104.
Expenses of members, §37-3-102.
Governor.
Appointment of members, §37-3-102.
Juvenile justice commission.
Termination, §37-3-109.
Transfer of personnel and equipment, §37-3-109.
Members, §37-3-102.
Office, §37-3-102.
Office of child development.
Contracts.
Continued in full force, §37-3-107.
References to.
Deemed references to commission on children and youth, §37-3-107.
Powers, §37-3-103.
Regional councils, §37-3-106.
Duties, §37-3-106.
Rules and regulations, §37-3-103.
Predecessor agencies, §37-3-107.

JUVENILE PROCEEDINGS —Cont'd
Commission on children and youth —Cont'd
Short title, §37-3-101.
Staff.
Employment of personnel by executive director, §37-3-105.
Travel reimbursement, §37-3-105.
Subcommittees, §37-3-102.
Teenage pregnancy.
Similar programs or services operating within state.
Notification, §37-3-506.
Transfer of functions, §37-3-109.
Commitment.
Children's services department, §37-1-137.
Disposition of federal funds for children in custody of department, §37-1-172.
Presumptions, §37-1-171.
Required findings, §37-1-166.
Written order required, §37-1-171.
Mental illness or intellectual disability.
Evaluation and commitment, §37-1-128.
Post-commitment procedures, §§37-1-301 to 37-1-322.
Community service.
Delinquent children, §37-1-131.
Juvenile traffic offenders, §37-1-146.
Compensation.
Probation officers, §37-1-105.
Confessions.
Rights of parties, §37-1-127.
Strickland hearings, §37-1-115.
Construction, §37-1-101.
Contempt, §37-1-158.
Continuing jurisdiction after jurisdiction acquired, §37-1-103.
Contracts.
Commission on children and youth.
Predecessor agencies.
Contracts continued in full force, §37-3-107.
Counties.
Contracts between counties, §37-1-208.
Contributing to dependency, §37-1-157.
Concurrent jurisdiction with general sessions court, §37-1-104.
Contributing to neglect, §37-1-157.
Contributing to the delinquency of a minor, §37-1-156.
Concurrent jurisdiction with general sessions court, §37-1-104.
Costs.
Care of child, §37-1-150.
Council of juvenile and family court judges.
Annual meeting and training session, §37-1-505.
Reimbursement of costs for evaluations and examinations of juveniles charged as adults.
Establishment of program, §37-1-507.
Disbursements of moneys collected, §37-1-209.
Post-commitment relief, §37-1-316.
Council of juvenile and family court judges, §§37-1-501 to 37-1-507.
Annual meeting.
Subject matter, §37-1-504.
Training session.
Expenses, §37-1-505.
Bylaws, §37-1-502.

JUVENILE PROCEEDINGS —Cont'd
Council of juvenile and family court judges —Cont'd
Costs.
Annual meeting and training session, §37-1-505.
Creation, §37-1-501.
Executive secretary of council, §37-1-503.
Membership, §37-1-501.
Officers, §37-1-502.
Recommendations to supreme court, §37-1-502.
Reimbursement of costs for evaluations and examinations of juveniles charged as adults.
Establishment of program, §37-1-507.
Rules and regulations, §37-1-502.
Statistical data.
Collection and publication, §37-1-506.
Counsel and advice without adjudication, §37-1-110.
Counties.
Contracts between counties, §37-1-208.
Department of children's services, §§37-2-201 to 37-2-208.
Pooling of juvenile justice supplements.
Contracts among counties, §37-1-165.
Receiving homes.
General provisions, §§37-2-301 to 37-2-319.
See RECEIVING HOMES.
Court files and records, §37-1-153.
Court of record, §37-1-159.
Court personnel, §37-1-206.
Courts of general sessions.
Clerks, §37-1-210.
Jurisdiction of general sessions court, §37-1-203.
Procedure in general sessions court, §37-1-204.
Criminal law and procedure.
Confidentiality of assessment reports and materials, violations, §37-1-136.
Contributing to dependency, §37-1-157.
Interstate flight by juvenile felon, §37-1-160.
Transfer of criminal cases to juvenile courts, §37-1-109.
Treatment as adult in criminal court, §37-1-134.
Custodian.
Defined, §37-1-102.
Legal custodian.
Defined, §37-1-140.
Custody case pending in another court of state.
Transfer of case to court in which case pending, §37-1-112.
Damages.
Liability of parents and guardians for acts of juveniles, §§37-10-101, 37-10-102.
Death penalty, §37-1-134.
Definitions, §37-1-102.
Delinquent and unruly children.
See DELINQUENT AND UNRULY CHILDREN.
Department of children's services.
Counties, §§37-2-201 to 37-2-208.
Determinations committing or retaining child within custody.
Removal from abusive parent or other party, §37-1-167.
Transitioning youth empowerment act of 2010.
Authority of department to develop plan, §37-2-417.

JUVENILE PROCEEDINGS —Cont'd
Depositions.
Post-commitment procedures, §37-1-316.
Desertion and nonsupport.
Enforcement of parents' support liability, §37-1-151.
Nonsupport and flagrant nonsupport.
Appeals from final orders or decrees, §39-15-103.
Jurisdiction, §39-15-102.
Detention of children.
Delinquent and unruly children.
Detention or shelter care.
See DELINQUENT AND UNRULY CHILDREN.
Dependent and neglected children.
Detention or shelter care.
See DEPENDENT AND NEGLECTED CHILDREN.
Schools and education.
Education of youth in facilities for detention or for youth at risk, §37-5-131.
Transitioning youth empowerment act of 2010, §37-2-417.
Determinate sentences, §37-1-137.
Disabilities.
Delinquency adjudications.
Civil and criminal disabilities.
Exemption, §37-1-133.
Disbursement of moneys, §37-1-209.
Discharge.
Commitment to children's services department, §37-1-137.
Defined, §37-1-102.
Informal counsel and advice without adjudication, §37-1-110.
Expunction of records following, §37-1-153.
Release from detention, §37-1-117.
Disposition of child.
Confidentiality of assessment reports and materials, §37-1-136.
Delinquent and unruly children.
Dispositional proceedings.
See DELINQUENT AND UNRULY CHILDREN.
Dependent and neglected children.
Dispositional proceedings.
See DEPENDENT AND NEGLECTED CHILDREN.
Juvenile records task force, §37-1-182.
Mentally ill or intellectually disabled child, §37-1-135.
Treatment as adult in criminal court, §37-1-134.
District attorneys general.
Post-commitment procedure, §37-1-314.
Emergency temporary care.
Duty of court upon filing of petition, §37-1-128.
Escape.
Detained children, §37-1-116.
Interstate flight by juvenile felon, §37-1-160.
Evidence.
Dependent and neglected children.
Use in court other than juvenile courts, §37-1-133.
Post-commitment, §37-1-316.
Rights of parties, §37-1-127.
Executions.
Liability of parents to support child, §37-1-151.
Expenses.
Liability for expenses of return to custody, §37-1-138.

JUVENILE PROCEEDINGS —Cont'd
Expunction of records, §37-1-155.
Fingerprints, §37-1-155.
Fees.
Clerks of court, §8-21-401.
Felonies.
Interstate flight by juvenile felon, §37-1-160.
Fines.
Disbursement of money, §37-1-209.
Juvenile traffic offenders, §37-1-146.
Fingerprints and photographs, §37-1-155.
Juvenile records task force, §37-1-182.
Foster care, extension of services, §§37-2-601 to 37-2-605.
Advisory council.
Duties, §37-2-601.
Established, §37-2-601.
Applicants for assistance.
Determination whether applicant ever in custody, §37-2-602.
Assistance resource centers, §37-2-603.
Construction of provisions, §37-2-605.
Foster children, preparing for independent living, §37-2-604.
Resource centers, §37-2-603.
Sharing of information by state agencies, §37-2-602.
Foster care proceedings generally, JuvPro 401 to 404.
Good behavior time credits, §37-1-137.
Guardian ad litem.
Appointment, §37-1-149.
Guardian and ward.
Examination of child.
Court may order, §37-1-128.
General provisions.
See GUARDIAN AND WARD.
Liability of parents and guardians for acts of juveniles, §§37-10-101 to 37-10-103.
Minors, guardians for.
Permanent guardianship, §§37-1-801 to 37-1-807.
See GUARDIANS FOR MINORS.
Habeas corpus.
Exhaustion of remedies.
When application for writ allowed, §37-1-308.
Hearings.
Administrative hearings.
Basic rights of parties, §37-1-127.
Defined, §37-1-102.
Basic rights of parties, §37-1-127.
Commitment to children's services department, §37-1-137.
Conduct, §37-1-124.
Detention of children.
Preliminary hearing, §37-1-117.
Release from detention.
Bonds, surety, §37-1-117.
Removal of child from custody of parent, guardian or legal custodian.
Child in need of immediate protection.
Further investigation and hearings, §37-1-117.
Service of process.
Provisional hearing, §37-1-125.
Teenage pregnancy.
Informal, §37-3-504.
Witnesses.
Rights of parties, §37-1-127.
Home placement.
Defined, §37-1-102.
Sentencing alternative, §37-1-137.

JUVENILE PROCEEDINGS —Cont'd
Improvement of services.
Supplement to be provided by state, §37-1-162.
Indigent persons.
Post-commitment procedures, §37-1-320.
Injunctions.
Authority of court to grant injunctive relief, §37-1-152.
Interstate compact on juveniles.
Execution authorized, §37-4-101.
Jurisdiction of juvenile courts, §37-1-103.
Text, §37-4-101.
Investigations.
Probation officers, §37-1-128.
Removal of child from custody of parent, guardian or legal custodian.
Child in need of immediate protection.
Further investigation and hearings, §37-1-117.
Joinder.
Parents and guardians, §37-1-170.
Judges.
Compensation of judge pro tempore, §37-1-214.
Foster care plans.
Hearings, §37-2-409.
Special juvenile courts, §37-1-207.
Judgments and decrees.
Child placement.
Foster care plans, §§37-2-401 to 37-2-418.
See FOSTER CARE.
Modification, §37-1-139.
Department of children's services.
Authority to modify, §37-2-206.
Noncriminal.
Order of adjudication, §37-1-133.
Nonresidents.
Supervision under out-of-state order, §37-1-144.
Transfer from another state, §37-1-142.
Order of adjudication.
Noncriminal, §37-1-133.
Post-commitment procedures, §§37-1-309, 37-1-317, 37-1-318.
Jurisdiction.
Accepted jurisdiction, §37-1-141.
Child abuse and child neglect or endangerment, §39-15-401.
Concurrent jurisdiction, §37-1-104.
Contributing to dependency, §37-1-157.
Concurrent jurisdiction with general sessions court, §37-1-104.
Contributing to neglect, §37-1-157.
Contributing to the delinquency of a minor, §37-1-156.
Concurrent jurisdiction with general sessions court, §37-1-104.
Generally, §37-1-103.
General sessions court, §37-1-203.
Concurrent jurisdiction with, §37-1-104.
Interstate compact on juveniles.
Jurisdiction of juvenile courts, §37-1-103.
Nonsupport and flagrant nonsupport, §39-15-102.
Parenting plans.
Juvenile court jurisdiction not affected, §36-6-411.
Temporary jurisdiction to issue temporary orders, §37-1-103.
Termination of parental rights.
Concurrent jurisdiction with general sessions court, §37-1-104.

JUVENILE PROCEEDINGS —Cont'd
Juvenile courts system restructuring.
Restructure act of 1982, §§37-1-201 to 37-1-214.
Clerks of court.
General sessions court, §37-1-210.
Special juvenile courts, §37-1-211.
Contracts between counties, §37-1-208.
Court personnel, §37-1-206.
Definitions, §37-1-202.
Disbursements of moneys, §37-1-209.
Fines.
Disbursements of moneys, §37-1-209.
General sessions court.
Clerks, §37-1-210.
Jurisdiction, §37-1-203.
Maintenance of separate juvenile court docket, §37-1-204.
Procedure, §37-1-204.
Judge.
Compensation of judges pro tempore, §37-1-214.
Jurisdiction.
General sessions court, §37-1-203.
Legislative intent, §37-1-201.
Referees.
Appointment, §37-1-206.
Rules and regulations.
Authority of judge, §37-1-212.
Sheriffs.
Deputies, §37-1-213.
Short title, §37-1-201.
Signs identifying court, §37-1-206.
Special districts juvenile courts.
Created, §37-1-205.
Funds for operation, §37-1-205.
Special juvenile court.
Clerks, §37-1-211.
Court of record, §37-1-207.
Defined, §37-1-202.
Judges, §37-1-207.
Title and style, §37-1-207.
Juvenile records task force, §37-1-182.
Legal custodian.
Duties, §37-1-140.
Liability of parents and guardians for acts of juveniles, §§37-10-101 to 37-10-103.
Amount of recovery.
Limitation, §37-10-102.
Circumstances under which parent or guardian liable, §37-10-103.
Personal injury.
Recovery against parents or guardian, §37-10-101.
Property damage.
Recovery against parents or guardians, §37-10-101.
Magistrates.
Compensation, §37-1-107.
De novo hearing by judge of juvenile court after entry of magistrate's order.
Request for, §37-1-107.
Findings, §37-1-107.
Preliminary matters.
Nonreviewable, §37-1-107.
Orders, effect and finality, §37-1-107.
Powers, §37-1-107.
Rehearing, §37-1-107.
Saving clause, §37-1-107.
Mental health.
Children, services for.
Electroconvulsive therapy.
Proceedings in juvenile court, §33-8-307.

JUVENILE PROCEEDINGS —Cont'd
Mental health —Cont'd
Disposition of child, §37-1-135.
Evaluation and commitment for mental illness or intellectual disability, §37-1-128.
Examination of child, §37-1-128.
Inpatient treatment.
Discharge from inpatient treatment.
Criminal or juvenile offenders.
Review procedures, §33-6-708.
Temporary legal custody for children with mental illnesses, §§37-1-175 to 37-1-183.
Authorized, §37-1-175.
Directing person filed for commitment, §37-1-177.
Discharge, §37-1-178.
Hearing to review custody, §§37-1-179, 37-1-180.
Judges to conduct proceedings, §37-1-181.
Juvenile records task force, §37-1-182.
Least drastic alternative care, training or treatment, §37-1-176.
Reporting status of child no longer meets commitment standards, §37-1-179.
Misdemeanors.
Confidentiality of assessment reports and materials, violations, §37-1-136.
Contributing to dependency, §37-1-157.
Contributing to the delinquency of a minor, §37-1-156.
Modification.
Judgments and decrees, §37-1-139.
Department of children's services.
Authority to modify, §37-2-206.
Motor vehicles.
Juvenile traffic offenders.
See MOTOR VEHICLES.
Nonjudicial days.
Defined, §37-1-102.
Nonresidents.
Child moving to another state, §37-1-141.
Probation officers.
Powers, §37-1-145.
Supervision.
Generally, §37-1-143.
Out-of-state order, §37-1-144.
Transfer from another state.
Order, §37-1-142.
Notice.
Termination of parental rights, §37-1-147.
Orders of court.
Temporary orders.
Temporary jurisdiction to issue, §37-1-103.
Parent and child.
Liability of parents and guardians for acts of juveniles, §§37-10-101 to 37-10-103.
Penalties for parents, §37-1-174.
Parenting plans.
Juvenile court jurisdiction not affected, §36-6-411.
Penalties.
Contributing to delinquency, §37-1-156.
Contributing to dependency, §37-1-157.
Contributing to neglect, §37-1-157.
Parents, §37-1-174.
Permanent guardianship, §§37-1-801 to 37-1-807.
See GUARDIANS FOR MINORS.
Petitions.
Contents, §37-1-120.

JUVENILE PROCEEDINGS —Cont'd
Petitions —Cont'd
Termination of parental rights, §37-1-146.
Who may make, §37-1-119.
Photographs, §37-1-155.
Physicians and surgeons.
Examination of child, §37-1-128.
Post-commitment procedures, §§37-1-301 to 37-1-322.
Affidavits, §37-1-316.
Appeals.
Constitutional or statutory rights.
Judgments and decrees.
Vacation or delay of appeal, §37-1-317.
Costs, §37-1-317.
Delayed appeal.
Grounds for granting, §37-1-319.
Denial of relief, §37-1-321.
Finality of order, §37-1-319.
Bail.
Release of petitioner, §37-1-322.
Citation, §37-1-301.
Constitutional rights of juveniles.
Denial.
Effect, §37-1-317.
Relief granted, §37-1-305.
Costs.
Appeals, §37-1-317.
Attorney general, §37-1-314.
Custody.
Temporary custody, §37-1-322.
Denial of relief.
Appeals, §37-1-321.
Depositions, §37-1-316.
Designation of chancellor or judge, §37-1-303.
District attorney general.
Assistance, §37-1-314.
Expenses.
Reimbursement, §37-1-314.
Records and transcripts.
Access of district attorney general, §37-1-314.
Representation of state, §37-1-314.
Documents.
Furnished to indigent petitioner, §37-1-313.
Evidence, §37-1-316.
Habeas corpus.
When application for writ allowed, §37-1-308.
Hearings.
Appearance of petitioner, §37-1-310.
Chancellor.
Designation, §37-1-303.
Generally, §37-1-309.
Judge.
Designation, §37-1-303.
Scope, §37-1-311.
Indigent persons.
Generally, §37-1-320.
Judge.
Designation to hear petition, §37-1-303.
Judgments and decrees.
Copies of final judgment, §37-1-318.
Issuance, §37-1-309.
Vacation for denial of constitutional or statutory rights, §37-1-317.
Oral testimony, §37-1-316.
Petitioner.
Appearance at hearing, §37-1-310.
Transportation, §37-1-310.
Petition for relief.
Amendments, §§37-1-307, 37-1-315.
Contents, §37-1-304.

JUVENILE PROCEEDINGS —Cont'd
Post-commitment procedures —Cont'd
Petition for relief —Cont'd
Court action upon receipt, §37-1-306.
Dismissal.
Grounds, §37-1-309.
Filing, §37-1-303.
Form.
Failure to follow form.
Amendments, §37-1-307.
Generally, §37-1-302.
Habeas corpus.
When application for habeas corpus allowed, §37-1-308.
Hearings, §37-1-309.
Withdrawal, §37-1-315.
Records.
Counsel's consultations with petitioner, §37-1-317.
Furnished to indigent petitioner, §37-1-313.
Relief.
Denial of relief.
Finality of order, §37-1-321.
Previously determined.
Defined, §37-1-312.
Waived.
Defined, §37-1-312.
Res judicata, §37-1-319.
Rights of juveniles.
Abridgement.
Relief granted, §37-1-305.
Denial.
Effect, §37-1-317.
Rules and regulations.
Promulgation by supreme court, §37-1-322.
Short title, §37-1-301.
Statutory rights of juveniles.
Denial.
Effect, §37-1-317.
Relief granted, §37-1-305.
Predisposition custody, §36-1-128.
Pregnancy.
Teenage pregnancy, §§37-3-501 to 37-3-521.
Protective supervision.
Defined, §37-1-102.
Receiving homes.
General provisions, §§37-2-301 to 37-2-319.
See RECEIVING HOMES.
Recordings.
Audio recordings of transfer hearings, §37-1-134.
Records.
Confidentiality.
Court files and records, §37-1-153.
Law enforcement records, §37-1-154.
Court files and records.
Inspection limited, §37-1-153.
Department of children's services, §37-2-205.
Expunction, §37-1-155.
Fingerprints, §37-1-155.
Right to petition for, §37-1-153.
Fingerprints, §37-1-155.
Law enforcement records.
Inspection limited, §37-1-154.
Photographs, §37-1-155.
Post-commitment procedures, §§37-1-313, 37-1-317.
Referees.
Appointment, §37-1-206.
Reimbursement account, §37-1-161.
Release.
From custody, §37-1-115.
From detention, §37-1-117.

JUVENILE PROCEEDINGS —Cont'd
Release —Cont'd
Notification of release of juvenile adjudicated to have committed a delinquent act that would constitute a felony if committed by an adult.
Department of children's services, §37-5-123.
Reports.
Appointment of counsel, §37-1-126.
Child abuse and child neglect or endangerment, §37-1-412.
Teenage pregnancy.
State reports.
Availability, §37-3-503.
Residents.
Child intending to reside in another state, §37-1-141.
Interstate flight by juvenile felon, §37-1-160.
Res judicata.
Post-commitment procedure, §37-1-319.
Restitution.
Defined, §37-1-102.
Delinquent children, §37-1-131.
Return to custody.
Liability for expenses, §37-1-138.
Right to counsel, §37-1-126.
Rules and regulations.
Authority of judge to make and promulgate, §37-1-212.
Commission on children and youth, §37-3-103.
Predecessor agencies, §37-3-107.
Council of juvenile and family court judges, §37-1-502.
Parent and child.
Termination of parental rights, §37-1-147.
Post-commitment procedures.
Promulgation by supreme court, §37-1-322.
Rules of juvenile procedure.
Answer, JuvPro 105.
Appeals.
Attorneys.
Right to attorney, JuvPro 118.
Fees.
Perfection of appeal, JuvPro 118.
Filing of appeal, JuvPro 118.
Indigent status, JuvPro 118.
Notice of appeal.
Perfection of appeal, JuvPro 118.
Notification by judge of right to appeal, JuvPro 118.
Parties to appeal, JuvPro 118.
Perfection of appeal, JuvPro 118.
Record on appeal, JuvPro 118.
Statutory provision applicable to appeals, JuvPro 118.
Trigger to right to appeal, JuvPro 118.
Appearance of attorney, JuvPro 104.
Appearance of child.
Order to appear and bring child to hearing.
Summons contents, JuvPro 103.
Attachment of children, orders.
Failure of child to appear, JuvPro 109.
Grounds, JuvPro 109.
Terms of order, JuvPro 109.
Attendance of parties and other necessary persons, JuvPro 112.
Attorneys at law.
Appeals.
Right to attorney, JuvPro 118.

JUVENILE PROCEEDINGS —Cont'd
Rules of juvenile procedure —Cont'd
Attorneys at law —Cont'd
Appearance of attorney, JuvPro 104.
Audio-visual participation in proceedings, JuvPro 112.
Children's services department.
Attendance of parties and other necessary persons.
Duty of department when party, JuvPro 112.
Clerks.
Entry of orders.
Duties of clerk, JuvPro 117.
Computation of time, JuvPro 110.
Confidentiality of information.
Delinquent and unruly proceedings, JuvPro 114.
Dependent and neglect proceedings, JuvPro 114.
Construction and interpretation, JuvPro 101.
Custody.
Predisposition custody, §37-1-128.
Delinquent and unruly children.
Confidentiality of proceedings, JuvPro 114.
Generally, JuvPro 201 to 213.
Dependent and neglected children.
Confidentiality of proceedings, JuvPro 114.
Generally, JuvPro 301 to 310.
Dispositional orders.
Injunctions issued as part of order.
Form in which injunctive relief granted, JuvPro 108.
Non-parties, relief against, JuvPro 108.
Requirements, JuvPro 108.
Terms and contents, JuvPro 108.
Email.
Service of pleadings, JuvPro 106.
Exclusions from rules, JuvPro 101.
Ex parte restraining orders.
Injunctive relief, form in which granted, JuvPro 108.
Non-parties, relief against, JuvPro 108.
Requirements, JuvPro 108.
Terms and contents, JuvPro 108.
Extension of time, JuvPro 110.
Filing and service of pleadings.
Appeals.
Filing of appeal, JuvPro 118.
Court, filing with, JuvPro 106.
Electronic filing, signing or verification, JuvPro 106.
Facsimile filing, JuvPro 106.
Manner of service, JuvPro 106.
Proof of service, JuvPro 106.
When service required, JuvPro 106.
Foster care proceedings generally, JuvPro 401 to 404.
Hearings.
Recording hearings, JuvPro 115.
Injunctive relief.
How obtained, JuvPro 108.
Motion, petition or court's initiative, JuvPro 108.
Non-parties, relief against, JuvPro 108.
Terms and contents, JuvPro 108.
Motions.
Responsive pleadings and motions, JuvPro 105.
Necessary persons.
Attendance of parties and other necessary persons, JuvPro 112.

JUVENILE PROCEEDINGS —Cont'd
Rules of juvenile procedure —Cont'd
No contact orders.
Form in which injunctive relief granted, JuvPro 108.
Orders of court.
Attachment of children, JuvPro 109.
Entry of orders, JuvPro 117.
Scheduling orders, JuvPro 111.
Parties.
Appeals.
Parties to appeal, JuvPro 118.
Attendance of parties and other necessary persons, JuvPro 112.
Pendency of matter.
Injunction issued during pendency.
Form in which injunctive relief granted, JuvPro 108.
Non-parties, relief against, JuvPro 108.
Requirements, JuvPro 108.
Terms and contents, JuvPro 108.
Pleadings.
Filing, JuvPro 106.
Responsive pleadings and motions, JuvPro 105.
Service, JuvPro 106.
Preponderance of the evidence.
Standard of proof, JuvPro 116.
Prosecuting attorney.
Appearance by, JuvPro 104.
Purpose of rules, JuvPro 101.
Recording hearings, JuvPro 115.
Sanctions.
Scheduling conferences and orders, JuvPro 111.
Scheduling.
Conference, JuvPro 111.
Orders, JuvPro 111.
Sanctions, JuvPro 111.
Scope of rules, JuvPro 101.
Service of process.
Pleadings, JuvPro 106.
Subpoenas, JuvPro 107.
Summons, JuvPro 103.
Situations not covered by rules, JuvPro 101.
Standard of proof, JuvPro 116.
Subpoenas.
Form, JuvPro 107.
Issuance, JuvPro 107.
Persons, JuvPro 107.
Production of documents and things, JuvPro 107.
Service, JuvPro 107.
Summons and process.
Contents of summons, JuvPro 103.
Service of summons, JuvPro 103.
Time.
Computation of time, JuvPro 110.
Extension of time, JuvPro 110.
Specific provisions excepted from general computation and extension provisions, JuvPro 110.
Title of rules, JuvPro 101.
Schools and education.
Informing pupils of juvenile offender act provisions, §49-6-451.
Sentence credits, §37-1-137.
Sentencing, §37-1-137.
Service of process.
Provisional hearing.
Interlocutory order, §37-1-125.
Severe child abuse.
Defined, §37-1-102.
Shelter care.
Defined, §37-1-102.

JUVENILE PROCEEDINGS —Cont'd
Sheriffs.
Deputies, §37-1-213.
Signs.
Identifying court as juvenile court, §37-1-206.
Special acts, §37-1-101.
Special advocate.
Appointment, §37-1-149.
Special juvenile courts.
Clerks, §37-1-211.
Court of record, §37-1-207.
Defined, §37-1-202.
Judges, §37-1-207.
Special district juvenile courts.
Creation, §37-1-205.
Funds for operation, §37-1-205.
Title and style, §37-1-207.
State custody.
Transitioning youth empowerment act of 2010, §37-2-417.
Statistical data.
Report to secretary of council, §37-1-506.
Strickland hearings, §37-1-115.
Subpoenas, §37-1-118.
Summons and process.
Ineffectual summons.
Attachment, §37-1-122.
Service of process.
Provisional hearing.
Interlocutory order, §37-1-125.
Termination of parental rights, §37-1-147.
Supreme court.
Promulgation of rules, §37-1-322.
Teachers.
Informing pupils of juvenile offender act provisions, §49-6-451.
Teenage pregnancy, §§37-3-501 to 37-3-521.
Bibliography of resources, §37-3-502.
Commission on children and youth.
Similar programs or services operating within state.
Notification, §37-3-506.
Department of health.
Duties, §§37-3-501 to 37-3-504.
Hearings.
Information concerning, §37-3-504.
Informational clearinghouse, §37-3-501.
Counseling services.
Clearinghouse not to provide, §37-3-507.
Purpose, §37-3-507.
Meetings.
Information concerning, §37-3-504.
Potential at-risk first time teen parents.
Targeting, §37-3-521.
Preschool parenting learning centers for teen parents, §49-1-206.
Programs.
Information on programs and services, §37-3-502.
Similar programs operating within state.
Notification, §37-3-506.
Reports.
State reports.
Availability, §37-3-503.
Research information.
Collection and maintenance, §37-3-503.
Second or subsequent pregnancies.
Informational services regarding, §37-3-521.
Services.
Information on programs and services, §37-3-502.

JUVENILE PROCEEDINGS —Cont'd
Teenage pregnancy —Cont'd
Services —Cont'd
Similar services operating within state.
Notification, §37-3-506.
Toll-free telephone service, §37-3-501.
Statistical information.
Collection and maintenance, §37-3-503.
Toll-free telephone service for inquiries, §37-3-501.
Workshops.
Information concerning, §37-3-504.
Teen court program of 2000, §§37-1-701 to 37-1-706.
Temporary orders.
Temporary jurisdiction to issue, §37-1-103.
Time credit for good behavior, §37-1-137.
Torts.
Liability of parent and guardian for acts of juveniles, §§37-10-101 to 37-10-103.
Transfers.
Criminal cases from other courts, §37-1-109.
Transfer of jurisdiction to another state.
Residence change, §37-1-141.
Transfer to another juvenile court within state, §37-1-112.
Transfer to criminal court.
Treatment as adult in criminal court, §37-1-134.
Transitioning youth empowerment act of 2010, §37-2-417.
Treatment as adult criminal, §37-1-134.
Uniformity.
Applicability of chapter, §37-1-101.
Unruly child.
Defined, §37-1-102.
Disposition, §37-1-132.
Attorney, right to, §37-1-126.
Department of children's services, §37-2-205.
Guardian ad litem, entitlement to, §37-1-126.
Venue.
Commencement of proceedings in county where acts occurred, §37-1-111.
Venue.
Generally, §37-1-111.
Termination of parental rights, §37-1-111.
Unruly child.
Commencement of proceedings in county where acts occurred, §37-1-111.
Warrants.
Taking into custody, §37-1-115.
Witnesses.
Rights of parties, §37-1-127.
Youth investment programs, §§37-3-401 to 37-3-406.
Youth services officer.
Duties, §37-1-106.
Establishment of title, §37-1-106.
Salary, §37-1-106.

K

KETONE.
Inhaling glue, paint, etc., §39-17-422.

KIDNAPPING.
Adoption.
Abduction by natural parents, §36-1-123.
Child custody.
Child abduction prevention, §§36-6-601 to 36-6-612.
Custodial interference, §39-13-306.

KINDERGARTENS.
Child care agencies.
Kindergarten status lacking, §71-3-512.
Immunization of school children, §§49-6-5001 to 49-6-5005.
Voluntary pre-K for Tennessee act of 2005.
Pre-kindergarten programs, §§49-6-102 to 49-6-110.
See SCHOOLS AND EDUCATION.

KINSHIP FOSTER CARE PROGRAM, §37-2-414.

KNIVES.
Carrying weapons on school property, §39-17-1309.
Principal to report suspicion of, §49-6-4209.

L

LABOR.
Protection of minor performers, §§50-5-201 to 50-5-222.
See CHILD LABOR.
Welfare.
Temporary assistance.
Eligibility for temporary assistance, §71-3-104.

LABORATORIES.
Exposure of crime laboratory employees to HIV or hepatitis B.
Testing of suspects, §68-10-116.

LABRET.
Body piercing, §§62-38-301 to 62-38-310.
See BODY PIERCING.

LAW ENFORCEMENT OFFICERS.
See POLICE AND OTHER LAW ENFORCEMENT OFFICERS.

LEARNER'S PERMIT, §55-50-311.

LEASES.
Children's services department, §37-5-110.

LEGAL SEPARATION, §36-4-102.
Affidavits of proof not required, §36-4-116.
Contents of petition, §36-4-106.
Stipulated grounds and/or defenses, §36-4-129.
Sworn statements concerning financial matters, §36-4-116.

LEGITIMACY, §§36-2-301 to 36-2-322.
Actions to establish parentage, §§36-2-305 to 36-2-308.
Agreements to establish parentage, §36-2-305.
Annulment of marriage.
Legitimacy not affected by annulment, §36-4-125.
Appeals, §36-2-315.
Health insurance coverage for child, §36-2-319.
Birth certificates, §36-2-313.
Complaints to establish parentage, §36-2-305.

LEGITIMACY —Cont'd
Custody of child born out of wedlock, §§36-2-303, 36-2-312.
Definitions, §36-2-302.
Discrimination against children born out of wedlock, §36-2-316.
Divorce.
Legitimacy not affected by divorce, §36-4-125.
Domestic abuse.
Paternity contested, §36-3-614.
Employment reports, §§36-5-1101 to 36-5-1108.
Failure to contest paternity, §36-3-614.
Health insurance coverage for child, §36-2-319.
Information regarding parties, §37-1-151.
Inheritance of child from father, §36-2-313.
Interstate family support act.
Proceedings to determine parentage, §36-5-2701.
Jurisdiction, §36-2-307.
Juvenile courts, §37-1-103.
License revocation requests, §36-2-320.
Orders of parentage, §36-2-311.
Information to commissioner of health, §36-2-313.
Presumption of parentage, §§24-7-112, 36-2-304.
Protection orders, §§36-2-305, 36-2-311.
Purpose of chapter, §36-2-301.
Putative father registry, §36-2-318.
References to illegitimacy in official records, etc., §36-2-317.
Social security numbers on records, §36-5-1302.
Statute of limitations for parentage proceedings, §36-2-306.
Support orders, §§36-2-310, 36-2-311.
Past-due support for children receiving assistance, §36-2-322.
Time periods for enforcement, §36-2-321.
Tests to determine parentage, §§24-7-112, 36-2-309.
Administrative orders.
Scope of administrative review, §36-5-1002.
Admissibility of costs for test, §36-2-308.
Child support enforcement, §§36-5-802, 36-5-805, 36-5-806.
Protection order pending outcome of tests, §36-3-614.
Venue of parentage proceedings, §36-2-307.
Visitation rights, §36-2-312.
Voluntary acknowledgment of paternity, §24-7-113.
Warrant for apprehension of defendant, §36-2-305.

LIBRARIES.
Children's services department.
Library regions, §37-5-120.
Youth development centers.
Library regions, §37-5-120.

LICENSES.
Body piercing procedure.
Required to perform, §62-38-302.
Child care agencies, juveniles.
See CHILD CARE AGENCIES, JUVENILES.
Children's services department, §37-5-109.
Notifications required, §37-5-127.

LICENSES —Cont'd
Child support enforcement.
Denial, revocation or suspension of license, §§36-5-701 to 36-5-714.
Administrative order enforcement, §36-5-812.
Juvenile proceedings, §37-1-151.
Paternity and legitimation, §36-2-320.
Child visitation rights.
Certification of noncompliance with visitation order to licensing authority, §§36-6-503 to 36-6-509, 36-6-511.
Child welfare agencies.
See CHILD CARE AGENCIES, WELFARE.
Developmental disabilities.
Facilities and services licensure, §§33-2-401 to 33-2-421.
See MENTAL HEALTH FACILITIES.
Group homes.
Children's services department, §37-5-109.
Intellectual and developmental disabilities.
Facilities and services licensure, §§33-2-401 to 33-2-421.
Marriage licenses.
See MARRIAGE.
Mental health.
Facilities and services licensure, §§33-2-401 to 33-2-421.
See MENTAL HEALTH FACILITIES.
Receiving homes, §§37-2-305, 37-2-307 to 37-2-311.
Social security numbers on applications, §36-5-1301.
Tattoo artists, §62-38-204.
Tattooing operators, §62-38-204.
Tattooing studio, §62-38-202.

LIENS.
Child support, §§36-5-901 to 36-5-912.
Access to records for enforcement.
Failure to pay assessment for noncompliance, §36-5-811.
Appeal of administrative actions, §§36-5-1001 to 36-5-1006.
Authorized, §36-5-901.
Cooperation by state and local agencies, §36-5-911.
Enforcement of liens, §§36-5-902, 36-5-904 to 36-5-906.
Control of seized or acquired property, §36-5-908.
Powers of department, §36-5-912.
Exemptions from sale, §36-5-906.
Financial institution defined, §36-5-910.
Full faith and credit to out-of-state liens, §36-5-902.
Immunity of state officers and employees, §36-5-909.
Notice of lien, §36-5-901.
Presumption as to ownership of property, §36-5-903.
Priority of liens, §36-5-901.
Recording of lien, §36-5-901.
Release of lien, §36-5-907.

LIFE INSURANCE.
Child support.
Directing parents to designate children as beneficiaries, §36-5-101.

LIMITATION OF ACTIONS.
Aid to dependent children.
Fraudulent receipt of temporary assistance, §71-3-120.
Child support judgments, §36-5-103.

LIMITATION OF ACTIONS —Cont'd
Fraud.
Education.
Fraudulent enrollment of student in school district.
Civil action seeking restitution, §49-6-3003.
Married women.
Applicability of statutes, §36-3-504.
Paternity proceedings, §36-2-306.
Schools and education.
Fraudulent enrollment of student in school district.
Civil action seeking restitution, §49-6-3003.
Six year.
Education.
Fraudulent enrollment of student in school district.
Civil action seeking restitution, §49-6-3003.

LITERACY INITIATIVE.
See SCHOOLS AND EDUCATION.

LITIGATION TAXES.
Child support.
Assignment of income for support, §36-5-501.
Employment report violation appeals, §36-5-1107.

LIVING WILLS.
Health care decisions act.
Unemancipated minors, decisions for, §§34-6-401 to 34-6-406.
See HEALTH CARE DECISIONS.

LOANS.
Pornographic material harmful to minors, §39-17-911.

LOBOTOMIES.
Prohibited on children, §33-8-315.

LOCAL GOVERNMENTS.
Smoking.
Preemption of tobacco regulations, §39-17-1551.

LOTTERIES.
Child support liens.
Attaching lottery winnings, §36-5-904.
Criminal law and procedure.
Education, lottery for, criminal provisions.
Use of minors to enforce prohibitions involving minors, §39-15-413.
Pre-kindergarten programs.
Funding, §49-6-110.
Use of minors to enforce prohibitions involving minors, §39-15-413.

M

MAIL.
Aid to dependent children.
Service of process.
Action against spouse or parent, §71-3-123.
Child custody.
Noncustodial parent's right to send mail, §36-6-101.
Mental health service recipients.
Residential service recipients.
Rules governing mail, §33-4-101.

MALICIOUS DESTRUCTION OF PROPERTY.
Vandalism, §39-14-408.

MARITAL AND FAMILY THERAPISTS.
Mental health.
Inpatient treatment.
Involuntary admission, emergency.
Role of mental health professionals, §33-6-427.

MARRIAGE.
Age.
Incapable persons.
Solemnization of marriage, §36-3-305.
Minimum age, §36-3-105.
Oath as to age.
Parent, guardian, etc., §36-3-106.
Waiver of requirements, §36-3-107.
Antenuptial agreements.
Enforcement, §36-3-501.
Bigamy, §39-15-301.
Civil War marriages.
Validated, §36-3-308.
Consent.
Jurisdiction of judicial consent proceedings, §§37-1-103, 37-1-104.
Parent, guardian, next of kin, agency or custodian, §36-3-106.
Consummation by ceremony.
Not invalidated by failure to comply with law, §36-3-306.
Contracts.
Antenuptial agreements.
Enforcement, §36-3-501.
Breach of marriage contract.
Damages.
Considerations for determining, §36-3-403.
Measure of damages.
Defendant over sixty years of age, §36-3-404.
Joinder with other actions.
Prohibited, §36-3-405.
Proof of contract.
Corroboration.
Plaintiff's testimony, §36-3-402.
Generally, §36-3-401.
Plaintiff's testimony, §36-3-402.
Creditor's rights, §36-3-502.
Prenuptial agreements.
Enforcement, §36-3-501.
County clerks.
Violations of law.
Penalties, §36-3-111.
Criminal law and procedure.
Bigamy, §39-15-301.
County clerks.
Violation of law, §36-3-111.
Fraudulent signing or using false documents, §36-3-112.
Incapable persons.
Solemnization of marriage, §36-3-305.
Licenses.
Failure to return to clerks, §36-3-303.
Damages.
Breach of marriage contract, §§36-3-403, 36-3-404.
Dissolution.
Divorce.
See DIVORCE.
Drunks.
Issuance of license prohibited, §36-3-109.
Evidence.
Contracts.
Breach of marriage contract.
Proof of contract, §§36-3-401, 36-3-402.
Failure to comply with law.
Effect, §36-3-306.

MARRIAGE —Cont'd
Formula not required, §36-3-302.
Fraud.
Documents, §36-3-112.
Signature, §36-3-112.
Guardian and ward.
Consent of guardian, §36-3-106.
Imbeciles.
Issuance of license prohibited, §36-3-109.
Incapacity.
Solemnization, §36-3-305.
Incestuous marriage, §36-3-101.
Criminal offense of incest, §39-15-302.
Judicial commissioner.
Persons who may solemnize marriage, §36-3-301.
Judicial consent.
Jurisdiction of proceedings, §§37-1-103, 37-1-104.
Legally recognized marriages, §36-3-113.
Licenses.
Conditions precedent to issue, §36-3-104.
Fees, §36-6-413.
Issuance.
Conditions precedent, §36-3-104.
Contest of issuance.
Procedure, §36-3-110.
Drunks, §36-3-109.
Imbeciles, §36-3-109.
Insane persons, §36-3-109.
Minimum age, §36-3-105.
Names.
Effect of nickname, §36-3-307.
Privilege tax, §67-4-505.
Tax for license issued, §67-4-411.
Required, §36-3-103.
Return to clerk.
Form, §36-3-304.
Penalty for failure to return, §36-3-303.
Social security numbers on applications, §36-5-1301.
Mentally ill.
Issuance of license prohibited, §36-3-109.
Solemnization of marriage, §36-3-305.
Minimum age, §36-3-105.
Misdemeanors.
Bigamy, §39-15-301.
County clerk violating law, §36-3-111.
Fraudulently signing or using false documents, §36-3-112.
Incapable persons.
Solemnization of marriage, §36-3-305.
Licenses.
Failure to return to clerk, §36-3-303.
Names.
Nickname in license.
Effect, §36-3-307.
Noncompliance with law.
Effect, §36-3-306.
Parents.
Consent of parent, §36-3-106.
Oath as to age, §36-3-106.
Waiver of age requirements, §36-3-107.
Petitions.
Waiver of age restrictions, §36-3-107.
Prenuptial agreements.
Enforcement, §36-3-501.
Privilege taxes.
Licenses, §67-4-505.
Tax for license issued, §67-4-411.
Property.
Antenuptial or prenuptial agreements.
Enforcement, §36-3-501.

MARRIAGE —Cont'd
Public officers and employees.
County clerk violating law.
Penalty, §36-3-111.
Quakers.
Traditional marriage rite constitutes solemnization, §36-3-301.
Relationship.
Prohibited degrees, §36-3-101.
Criminal offense of incest, §39-15-302.
Religious Society of Friends.
Solemnization of marriages, §36-3-303.
Traditional marriage rite constitutes solemnization, §36-3-301.
Remarriage.
Absence of spouse for two years.
Return of absent spouse, §36-4-128.
Following annulment or dissolution, §36-4-124.
Second marriage prohibited, §36-3-102.
Same sex marriages.
Not recognized, §36-3-113.
Service of process.
Annulment, §36-4-108.
Signature.
Fraudulent signature on documents, §36-3-112.
Solemnization, §36-3-301.
Incapable persons, §36-3-305.
Religious Society of Friends, §36-3-303.
Time.
Waiting period, §36-3-107.
Validation.
Existing marriages, §36-3-103.
Waiting period.
Waiver, §36-3-107.
Waiver of age requirements and waiting period, §36-3-107.
Welfare.
Temporary assistance for dependent children.
Recipients, §71-3-104.

MARRIED WOMEN'S EMANCIPATION ACT, §36-3-504.

MATERNITY HOMES.
Child care agencies, juveniles, §§37-5-501 to 37-5-519.
See CHILD CARE AGENCIES, JUVENILES.

MEASLES.
Pregnancy.
Serological tests, §§68-5-601 to 68-5-607.
See PREGNANCY.

MEDIATION.
Child custody cases involving domestic abuse, §36-6-107.
Divorce.
Confidentiality of information and documents, §36-4-130.
Domestic abuse situations, §36-4-131.
Requirements for mediation, satisfaction of, §36-4-103.
Parenting plans.
Costs of mediation, §36-6-413.
Dispute resolution.
Defined, §36-6-402.
Procedures and restrictions applicable to, §36-6-409.
Special education, §49-10-605.
Visitation proceedings involving domestic abuse, §36-6-305.

MEDICAID.
Temporary assistance for dependent children.
Deductions from standard of need cost, §71-3-105.

MEDICAID —Cont'd
Welfare.
Medical aid.
See WELFARE.

MEDICAL ASSISTANCE.
General provisions.
See WELFARE.

MEDICAL RECORDS.
Abortion.
Parental consent for abortion by minor.
Retention of documentation required, §37-10-303.
Physicians.
Records to be kept, §39-15-203.
Child's records.
Furnishing to parent or guardian, §§36-6-101, 36-6-103.
Health care providers.
Release, §63-2-101.
Medicaid fraud control unit.
Requests for medical records, §63-2-101.
Release.
Health care providers to provide, §63-2-101.

MEDICAL TESTING.
Genetic testing, §§68-5-501 to 68-5-508.
Metabolic defects.
Newborn testing, §§68-5-401 to 68-5-406.
Pregnancy.
Serological tests, §§68-5-601 to 68-5-607.
See PREGNANCY.
Sexually transmitted diseases.
Confidentiality of records and information, §68-10-113.
Knowledge of governmental persons regarding records.
Competency of governmental person as witness, §68-10-114.

MEDICINE.
School students.
Assistance in self-administration of medications by employees, §49-50-1602.

MENINGITIS.
Home schools, information provided to, §49-6-3050.
Information provided to schools and parents generally, §49-6-5005.

MENINGOCOCCAL DISEASE.
Home schools, information provided to, §49-6-3050.

MENTAL HEALTH.
Admissions.
Involuntary admission.
Emergency involuntary admission to inpatient treatment, §§33-6-401 to 33-6-427.
Nonemergency involuntary admission to inpatient treatment, §§33-6-501 to 33-6-510.
Voluntary admission, §§33-6-201 to 33-6-208.
Children, services for, §§33-8-101 to 33-8-316.
Advocacy for services for children, §33-8-102.
Applicability of title to children, §33-8-101.
Department.
Duties as to children, §33-8-102.
Developmental disabilities.
Eligibility for service, §33-8-201.

MENTAL HEALTH —Cont'd
Children, services for —Cont'd
Electroconvulsive therapy.
Attorneys.
Appointment of or representation by, §33-8-310.
Commitment proceedings pending, §33-8-306.
Compliance with part, §33-8-301.
Conduct of hearing, §33-8-311.
Costs of hearing, §33-8-312.
Court approval, §33-8-305.
Appeal de novo, §33-8-313.
Attorneys at hearing, §33-8-310.
Conduct of hearing, §33-8-311.
Cost of hearing, §33-8-312.
Juvenile court hearing, §33-8-307.
Petition to court, §33-8-309.
Psychiatric evaluation, §33-8-308.
Emergency.
Finding, §33-8-305.
Fourteen or older.
When authorized, §33-8-303.
Juvenile court proceedings, §33-8-307.
Mania.
When authorized, §33-8-302.
Petition to court, §33-8-309.
Psychiatric evaluation, §33-8-308.
Report on use, §33-8-314.
Severe depression.
When authorized, §33-8-302.
State custody of child.
When authorized, §33-8-304.
Emancipated children, §33-8-104.
Fourteen or older.
Electroconvulsive therapy.
When authorized, §33-8-303.
Fundamental principles, §33-8-101.
Funding for priorities, §33-8-103.
Interagency plans and agreements.
Service provider cooperation, §33-8-106.
Transition to adult services, §33-8-105.
Lobotomies.
Prohibited on children, §33-8-315.
Medical procedure rules, §§33-8-301 to 33-8-316.
Needs for children.
Service provider to inform department, §33-8-106.
Outpatient treatment.
Parental participation, §33-8-203.
Sixteen or older.
Parental consent not required to treat, §33-8-202.
Priority populations, §33-8-103.
Sixteen or older.
Rights same as adults, §33-8-202.
Substance dependence.
Eligibility for service, §33-8-201.
Transition to adult services.
Interagency plan, §33-8-105.
Waiver of child's rights.
Prohibited, §33-8-316.
Commitment.
Inpatient treatment.
Emergency involuntary admission to inpatient treatment, §§33-6-401 to 33-6-427.
Nonemergency involuntary admission to inpatient treatment, §§33-6-501 to 33-6-510.
Intellectual and developmental disabilities services.
Forensic services for persons with intellectual disabilities, §§33-5-401 to 33-5-410.

MENTAL HEALTH —Cont'd
Commitment —Cont'd
Sex offenders, services for.
Petition for commitment, §33-6-804.
Community service system, §§33-2-101 to 33-2-106.
Alleviation of geographical disparities, §33-2-106.
Community mental health center, defined, §33-2-101.
Core values, §33-2-104.
Department.
Duties as to system, §33-2-101.
Geographic areas, §33-2-105.
Goals of system, §33-2-102.
Legislative intent, §33-2-106.
Planning and resource allocation.
Areas to be established, §33-2-105.
Purposes of system, §33-2-102.
Requirements for systems, §33-2-103.
Standards for systems, §33-2-103.
Support to system, §33-2-101.
Community settings and inclusion.
Community service system, §§33-2-101 to 33-2-106.
Values of state, §33-1-202.
Convulsive therapy.
Electroconvulsive therapy.
Children, use on.
Provisions governing, §§33-8-301 to 33-8-316.
Custodial interference, §39-13-306.
Definitions, §33-1-101.
Community mental health center cooperation, §33-2-703.
Delinquent and unruly children.
Disposition, §37-1-135.
Evaluation and commitment, §37-1-128.
Department of mental health.
Applicants for employment.
Background checks and fingerprinting, §33-2-1201.
Community mental health centers.
Cooperation among centers, §§33-2-701 to 33-2-709.
Community service system.
Duties as to system, §33-2-101.
Geographic areas for system.
Establishment by department, §33-2-105.
Conflicts of interest.
Contractors of facilities.
Disclosure of interest in facilities, §33-2-1303.
Disclosure of interest in facilities, §33-2-1301.
Contractors of facilities, §33-2-1303.
Failure to disclose, §33-2-1302.
Relief from decisionmaking role.
Personnel records to indicate reason, §33-2-1304.
Employees.
Background checks and fingerprinting, §33-2-1201.
Conflicts of interest, §§33-2-1301 to 33-2-1304.
Officers.
Conflicts of interest, §§33-2-1301 to 33-2-1304.
Responsibilities, §33-1-201.
Volunteers.
Background checks and fingerprinting, §33-2-1201.
Department of mental health and substance abuse services.
Licensing of facilities and services.
Department rulemaking, §33-2-404.

MENTAL HEALTH —Cont'd
Dependent and neglected children.
Disposition, §37-1-135.
Evaluation and commitment, §37-1-128.
Developmental disabilities.
Facilities.
See INTELLECTUAL AND DEVELOPMENTAL DISABILITIES FACILITIES.
Generally.
See INTELLECTUAL AND DEVELOPMENTAL DISABILITIES.
Genetic testing, §§68-5-501 to 68-5-508.
See GENETIC TESTING.
Discharge from inpatient treatment, §§33-6-701 to 33-6-708.
Early identification of needs.
Principles of service, §33-1-203.
Electroconvulsive therapy.
Children, services for, §§33-8-301 to 33-8-316. See within this heading, "Children, services for."
Facilities and services licensure.
See MENTAL HEALTH FACILITIES.
Funds of persons with disabilities under twenty thousand dollars.
Disposition, §34-1-104.
Genetic testing, §§68-5-501 to 68-5-508.
Individual rights.
Values of state, §33-1-202.
Inpatient treatment.
Discharge from inpatient treatment, §§33-6-701 to 33-6-708.
Admission no longer needed, finding of.
Disposition, §33-6-705.
Procedure upon finding, §33-6-703.
Release, §33-6-705.
Review of petition, §33-6-704.
Criminal or juvenile offenders.
Review procedures, §33-6-708.
Current examination of mental condition.
Request for, §33-6-702.
Eligibility.
Periodic review, §33-6-701.
Examinations.
Current examination of mental condition.
Request for, §33-6-702.
Periodic eligibility review, §33-6-701.
Mandatory treatment as condition, §§33-6-601 to 33-6-624, 33-6-707.
Outpatient treatment.
Mandatory treatment as condition of discharge, §33-6-707.
Volunteer outpatient treatment possible, §33-6-706.
Petition for review when admission not needed, §33-6-703.
Review of petition, §33-6-704.
Voluntary outpatient treatment possible, §33-6-706.
Involuntary admission, emergency, §§33-6-401 to 33-6-427.
Attorneys.
Appointment, §33-6-419.
Notice of representation, §33-6-419.
Certification of need for care and treatment.
Completion of certificate, §33-6-404.
Detention to determine, §33-6-401.
Warrant not required, §33-6-402.
Mental health professionals, §33-6-427.
Physician certification, §33-6-426.

MENTAL HEALTH —Cont'd
Inpatient treatment —Cont'd
Involuntary admission, emergency —Cont'd
Certification of need for care and treatment —Cont'd
Probable cause hearing.
Filing certificates with court, §33-6-421.
Release if certificates of need not factually supported, §33-6-424.
Detention.
Certification of need for care and treatment, §33-6-401.
Mental health professionals.
Authority, §33-6-427.
Place of detention, §33-6-425.
Warrant not required, §33-6-402.
Diagnosis, evaluation and treatment.
Admission for, §33-6-403.
Mental health professionals, §33-6-427.
Person already at treatment facility, §33-6-408.
Examination to determine whether to admit, §33-6-404.
Disposition if not admittable, §33-6-407.
Immunity of hospital, treatment resource or health care provider, §33-6-407.
Who may examine, §33-6-407.
Judge not available to rule on admission.
24 hour detention, §33-6-414.
Local facilities.
Admission to facility with contractual relationship with state, §33-6-412.
Admission to facility without contractual relationship with state, §33-6-411.
Notice of admission, §33-6-413.
Order of court for admission, §33-6-413.
Absent order, only 24 hour detention, §33-6-414.
Notice to next of kin or representative, §33-6-416.
Person already at treatment facility.
Admission for diagnosis, evaluation and treatment, §33-6-408.
Physician certification of need for care and treatment, §33-6-426.
Place of detention, §33-6-425.
Private facilities.
Admission to facility with contractual relationship with state, §33-6-411.
Admission to facility without contractual relationship with state, §33-6-412.
Probable cause for admission.
Filing certificates of need with court, §33-6-421.
Finding of probable cause, §33-6-422.
Involuntary commitment, 15 days, §33-6-422.
No finding of probable cause, §33-6-423.
Order of court for admission, §33-6-413.
Notice to next of kin or representative, §33-6-416.
Participation in hearing.
Treatment not to prevent, §33-6-415.

MENTAL HEALTH —Cont'd
Inpatient treatment —Cont'd
Involuntary admission, emergency —Cont'd
Probable cause for admission —Cont'd
Procedure for hearing, §33-6-418.
Release or transfer prior to hearing, §33-6-417.
Waiver of hearing, §33-6-420.
Procedure for probable cause hearing, §33-6-418.
Release as result of hearing, §33-6-423.
Release if certificates of need not factually supported, §33-6-424.
Release prior to hearing, §33-6-417.
State facilities.
Admission to state facility, §33-6-410.
Transfer prior to hearing, §33-6-417.
Transportation.
Determination of suitable method, §33-6-404.
Mental health professionals, §33-6-427.
Notice, §33-6-406.
Paperwork accompanying, §33-6-406.
Waiver of probable cause hearing, §33-6-420.
Involuntary admission, nonemergency, §§33-6-501 to 33-6-510.
Certificates of need for care and treatment.
2 certificates required to commit, §33-6-503.
Children, services for.
Electroconvulsive therapy.
Pendency of proceedings, §33-8-306.
Petition to court, §33-8-309.
Complaint for commitment.
Who may file, §33-6-504.
Contract facilities.
Commitment to, §33-6-507.
Third-party payment arrangements, §33-6-508.
Judicial commitment.
Prerequisites, §33-6-502.
Prerequisites to judicial commitment, §33-6-502.
Private facilities.
Commitment to, §33-6-506.
Third-party payment arrangements, §33-6-508.
Public facilities.
Commitment to, §33-6-506.
Third-party payment arrangements, §33-6-508.
Sex offenders, services for.
Petition for commitment, §33-6-804.
State facilities.
Commitment to state facilities, §33-6-505.
Suitable accommodations, §33-6-509.
Substantial likelihood of serious harm.
Defined, §33-6-501.
Suitable accommodations, §33-6-509.
Veterans administration facilities.
Commitment to, §33-6-510.
Transportation to hospital, treatment resource, etc.
Detention, §33-6-902.
Sheriffs, secondary transport agents, local officer, etc., §33-6-901.

MENTAL HEALTH —Cont'd
Inpatient treatment —Cont'd
Voluntary admission, §§33-6-201 to 33-6-208.
Admissions review committee.
Approval of commitment, §33-6-205.
Composition, §33-6-204.
Reimbursement of members for expenses, §33-6-204.
Application.
Eligibility, §33-6-201.
Approval of commitment, §33-6-205.
Children.
Limitations on admission, §33-6-203.
Release.
Notice to parent, guardian, etc. prior to release of child, §33-6-208.
Eligibility to apply, §33-6-201.
Findings.
Need for hospitalization, §33-6-202.
Hospitalization, need for.
Findings required, §33-6-202.
Person who may apply, §33-6-201.
Release.
Notice to parent, guardian, etc. prior to release of child, §33-6-208.
Procedure, §33-6-207.
Request for release, §33-6-206.
Request for release, §33-6-206.
Procedure for release, §33-6-207.
Intellectual and developmental disabilities.
Facilities.
See INTELLECTUAL AND DEVELOPMENTAL DISABILITIES FACILITIES.
Generally.
See INTELLECTUAL AND DEVELOPMENTAL DISABILITIES.
Involuntary admissions.
Emergency situations.
Admission to inpatient treatment, §§33-6-401 to 33-6-427.
Nonemergency involuntary admission to inpatient treatment, §§33-6-501 to 33-6-510.
Jurisdiction.
Juvenile proceedings.
Concurrent jurisdiction, §37-1-104.
Juvenile courts.
Disposition of child, §37-1-135.
Evaluation and commitment for mental illness or intellectual disability, §37-1-128.
Examination of child, §37-1-128.
Predisposition custody, §36-1-128.
Temporary legal custody for children with mental illnesses, §§37-1-175 to 37-1-183.
Authorized, §37-1-175.
Directing person filed for commitment, §37-1-177.
Discharge, §37-1-178.
Hearing to review custody, §§37-1-179, 37-1-180.
Judges to conduct proceedings, §37-1-181.
Juvenile records task force, §37-1-182.
Least drastic alternative care, training or treatment, §37-1-176.
Reporting status of child no longer meeting commitment standards, §37-1-179.

MENTAL HEALTH —Cont'd
Licenses.
Facilities and services licensure, §§33-2-401 to 33-2-421.
See MENTAL HEALTH FACILITIES.
Lobotomies.
Children, services for.
Prohibited on children, §33-8-315.
Marriage.
Issuance of license, §36-3-109.
Solemnization of marriage, §36-3-305.
Mental health service recipients, §§33-3-101 to 33-3-904.
See MENTAL HEALTH SERVICE RECIPIENTS.
Newborn testing.
Metabolic defects, §§68-5-401 to 68-5-406.
Outpatient treatment.
Assisted outpatient treatment, pilot program, §33-6-624.
Children, services for.
Parental participation, §33-8-203.
Sixteen or older.
Parental consent not required to treat, §33-8-202.
Mandatory outpatient treatment, §§33-6-601 to 33-6-624.
Admission to treatment facility.
Noncompliance with plan, §33-6-611.
Readmitted person eligible for discharge.
Conditional discharge, §33-6-617.
Suspension of plan, §33-6-608.
Amendment of plan, §33-6-606.
Appointing professional not available.
Substitute qualified mental health professionals, §33-6-613.
Assisted outpatient treatment, pilot program, §33-6-624.
Attorneys.
Appointment, §33-6-618.
Notice of representation, §33-6-618.
Burden of proof.
Procedural rights under provisions, §33-6-618.
Discharge.
Mandatory treatment as condition of discharge, §33-6-707.
Notice to court of conditional discharge, §33-6-605.
Readmitted person eligible for discharge.
Conditional discharge, §33-6-617.
Disclosure of patient information to carry out part, §33-6-601.
Due process rights under provisions, §33-6-618.
Duration of obligation, §33-6-623.
Failure to comply, §33-6-609.
Dismissal of other proceedings upon readmission, §33-6-619.
Enforcement, §33-6-612.
Findings, §33-6-614.
Hearing to determine compliance, §33-6-610.
Failure to appear, §33-6-611.
Recommitment, §33-6-615.
Hearing, §33-6-616.
Substitute mental health professionals, §33-6-613.
Grounds for termination of mandated care, §33-6-620.
Payment for services, §33-6-607.
Plan.
Amendment, §33-6-606.

MENTAL HEALTH —Cont'd
Outpatient treatment —Cont'd
Mandatory outpatient treatment —Cont'd
Plan —Cont'd
Approval, §33-6-603.
Judicial review, §33-6-604.
Development, §33-6-603.
Noncompliance, §33-6-609.
Dismissal of other proceedings upon readmission, §33-6-619.
Enforcement, §33-6-612.
Findings, §33-6-614.
Hearing to determine compliance, §§33-6-610, 33-6-611.
Recommitment, §§33-6-615, 33-6-616.
Substitute mental health professionals, §33-6-613.
Resumption of plan, §33-6-608.
Review, §33-6-604.
Suspension of plan, §33-6-608.
Presence at hearings.
Procedural rights under provisions, §33-6-618.
Recommitment.
Failure to comply with plan, §33-6-615.
Hearing, §33-6-616.
Reinstatement of mandatory care, §33-6-621.
Hearing on reinstatement order, §33-6-622.
Release from hospitalization.
Conditional release, subject to outpatient treatment, §33-6-602.
Notice to court of conditional discharge, §33-6-605.
Renewal of obligation of mandatory care, §33-6-621.
Hearing on reinstatement order, §33-6-622.
Six month duration of obligation, §33-6-623.
Substitute qualified mental health professionals, §33-6-613.
Termination of mandated care, §33-6-620.
Severe impairments, services for.
Service for severe impairments not to substitute for outpatient treatment, §33-6-311.
Personal support services.
Conflicts of interest, §§33-2-1301 to 33-2-1304.
Continuing education, §33-2-419.
Defined, §33-2-402.
Licensing of facilities and services, §33-2-403.
Application for licensure, §33-2-406.
Dual licensing under mental health provisions and health facilities provisions not required, §33-2-420.
Duties and responsibilities of personal support services agencies, §33-2-421.
Unlicensed operation, §33-2-405.
Unlicensed provision of services, §33-2-417.
Injunctions against providing unlicensed services, §33-2-412.
Petitions.
Distribution of funds of persons with disabilities under $20,000, §34-1-104.
Policy of state, §33-1-201.

MENTAL HEALTH —Cont'd
Principles of service, §33-1-203.
Rape.
Aggravated rape.
Victim's mental defect or mental incapacitation known to defendant, §39-13-502.
Sex offenders, services for, §§33-6-801 to 33-6-805.
Victim mentally defective, §39-13-503.
Recipients of service, §§33-3-101 to 33-3-904.
See MENTAL HEALTH SERVICE RECIPIENTS.
Removal of disability of incompetence.
Fees, §8-21-401.
Respect.
Values of state, §33-1-202.
Safety.
Values of state, §33-1-202.
Schools and education.
In-service training for teachers and principals.
Understanding warning signs of early-onset mental illness, §49-6-3004.
Universal mental health or socioemotional screening, §49-2-124.
Self-determination.
Values of state, §33-1-202.
Service recipients.
Generally, §§33-3-101 to 33-3-904.
See MENTAL HEALTH SERVICE RECIPIENTS.
Services, §§33-8-101 to 33-8-316.
Community service system, §§33-2-101 to 33-2-106.
Conflicts of interest, §§33-2-1301 to 33-2-1304.
Discharge from inpatient treatment, §§33-6-701 to 33-6-708.
Entitlements.
Unnecessary entitlements, §33-1-204.
Inpatient treatment.
Discharge from inpatient treatment, §§33-6-701 to 33-6-708.
Involuntary admission, emergency, §§33-6-401 to 33-6-427.
Involuntary admission, nonemergency, §§33-6-501 to 33-6-510.
Voluntary admission, §§33-6-201 to 33-6-208.
Intellectual and developmental disabilities services.
Family support, §§33-5-201 to 33-5-212.
Forensic services for persons with intellectual disabilities, §§33-5-401 to 33-5-410.
Mandatory community-based services, §33-5-505.
Residential admission, §§33-5-301 to 33-5-304.
System of services, §§33-5-101 to 33-5-112.
Licenses.
Facilities and services licensure, §§33-2-401 to 33-2-421.
See MENTAL HEALTH FACILITIES.
Outpatient treatment.
Mandatory outpatient treatment, §§33-6-601 to 33-6-624.
Personal support services.
Conflicts of interest, §§33-2-1301 to 33-2-1304.

MENTAL HEALTH —Cont'd
Services —Cont'd
Personal support services —Cont'd
Continuing education, §33-2-419.
Defined, §33-2-402.
Licensing of facilities and services, §33-2-403.
Application for licensure, §33-2-406.
Dual licensing under mental health provisions and health facilities provisions not required, §33-2-420.
Duties and responsibilities of personal support services agencies, §33-2-421.
Unlicensed operation, §33-2-405.
Unlicensed provision of services, §33-2-417.
Injunctions against providing unlicensed services, §33-2-412.
Principles of service, §33-1-203.
Service recipients.
Generally, §§33-3-101 to 33-3-904.
See MENTAL HEALTH SERVICE RECIPIENTS.
Setting service standards.
Quality standards, §33-2-301.
Regulating compliance, §33-2-302.
Severe impairments, services for, §§33-6-301 to 33-6-311.
Sex offenders, §§33-6-801 to 33-6-805.
System of services.
Prescreening agents, §33-6-104.
Screening.
Community-based screening, §33-6-104.
State-owned or operated hospital or treatment resource.
Admissions or transfers for services, §33-6-108.
Subject to available suitable accommodations, §33-6-108.
Transportation.
Inpatient treatment.
Detention, §33-6-902.
Sheriffs, secondary transport agents, local officer, etc., §33-6-901.
Severe impairments, services for, §§33-6-301 to 33-6-311.
Admission to treatment facility beyond 72 hour period, §33-6-309.
Monitoring admissions, §33-6-310.
Continuing treatment needed.
Admission to treatment facility beyond 72 hour period, §33-6-309.
Definitions, §33-6-301.
Detention of severely impaired, §33-6-302.
Examination of detainee, §33-6-303.
Finding of severe impairment, §33-6-304.
Extended detention upon confirmation of finding, §33-6-305.
Examination of detainee, §33-6-303.
Extended detention, §33-6-305.
Rights as service recipient.
Notice, §33-6-306.
Finding of severe impairment.
Confirmation of finding.
Extended detention, §33-6-305.
Detention after finding, §33-6-304.
Grounds for detention of severely impaired, §33-6-302.
Monitoring admissions, §33-6-310.
No further need of immediate care.
Release, §33-6-308.

MENTAL HEALTH —Cont'd
Severe impairments, services for —Cont'd
Outpatient treatment.
Service for severe impairments not to substitute for outpatient treatment, §33-6-311.
Release.
No further need of immediate care, §33-6-308.
Request for release, §33-6-307.
Request for release, §33-6-307.
Rights as service recipient.
Notice, §33-6-306.
Sex offenders, services for, §§33-6-801 to 33-6-805.
Certification for treatment, §33-6-803.
Commitment.
Petition for commitment, §33-6-804.
Conviction of sex crime.
Examination upon, §33-6-802.
Definitions, §33-6-801.
Examinations.
Certification for treatment, §33-6-803.
Conviction, examination upon, §33-6-802.
Prerelease examination, §33-6-804.
Guilty plea.
Post-plea treatment system, §33-6-805.
Post-plea treatment system, §33-6-805.
Release.
Examination prior to release, §33-6-804.
Sex crime.
Defined, §33-6-801.
Sexual offenses.
Rape.
Victim mentally defective, §39-13-503.
Services for sex offenders, §§33-6-801 to 33-6-805.
Stability.
Principles of service, §33-1-203.
Sterilization.
Mental incompetents, §68-34-108.
Transfers of service recipients.
Correction department and children's service department, transfers from, §§33-3-401 to 33-3-412.
Transportation.
Inpatient treatment.
Detention, §33-6-902.
Sheriffs, secondary transport agents, local officer, etc., §33-6-901.
Unnecessary entitlements to services, §33-1-204.
Values of state, §33-1-202.
Community service system.
Core values, §33-2-104.
Voluntary admission.
Inpatient treatment, §§33-6-201 to 33-6-208.
Welfare.
Children's mental health care.
Interagency programs, §71-5-193.

MENTAL HEALTH EXAMINATION OF PERSONS.
Children, services for.
Electroconvulsive therapy.
Court approval.
Psychiatric evaluation, §33-8-308.
Commitment.
Examination of defendant.
Names of examining professionals.
Providing to defendant and counsel, §33-3-614.
Order for examination, §33-3-607.

MENTAL HEALTH EXAMINATION OF PERSONS —Cont'd
Commitment —Cont'd
Examination of defendant —Cont'd
Testimony of certifying or examining professionals, §33-3-615.
Inpatient treatment.
Discharge from inpatient treatment.
Current examination of mental condition.
Request for, §33-6-702.
Periodic eligibility review, §33-6-701.
Involuntary admission, emergency.
Diagnosis, evaluation and treatment.
Admission for, §33-6-403.
Mental health professionals, §33-6-427.
Person already at treatment facility, §33-6-408.
Examination to determine whether to admit, §33-6-404.
Disposition if not admittable, §33-6-407.
Severe impairments, services for.
Detention of severely impaired.
Examination of detainee, §33-6-303.
Sex offenders, services for.
Certification for treatment, §33-6-803.
Conviction, examination upon, §33-6-802.
Prerelease examination, §33-6-804.

MENTAL HEALTH FACILITIES.
Abuse.
Reports of abuse, dereliction or deficiency in operation of facility, §33-2-416.
Admission.
Involuntary admission, emergency, §§33-6-401 to 33-6-427.
See MENTAL HEALTH.
Involuntary admission, nonemergency, §§33-6-501 to 33-6-510.
See MENTAL HEALTH.
Voluntary admission to inpatient treatment, §§33-6-201 to 33-6-208.
See MENTAL HEALTH.
Beds in ICF/MR facilities.
Number and certain exemptions from certificate of need requirements, §71-5-105.
Clients.
Service recipients.
Generally, §§33-3-101 to 33-3-904.
See MENTAL HEALTH SERVICE RECIPIENTS.
Commitment.
Inpatient treatment.
Involuntary admission, emergency, §§33-6-401 to 33-6-427.
See MENTAL HEALTH.
Involuntary admission, nonemergency, §§33-6-501 to 33-6-510.
See MENTAL HEALTH.
Conflicts of interest.
Contractors of facilities.
Disclosure of interest in facilities, §33-2-1303.
Disclosure of interest in facilities, §33-2-1301.
Contractors of facilities, §33-2-1303.
Failure to disclose, §33-2-1302.
Relief from decisionmaking role.
Personnel records to indicate reason, §33-2-1304.
Deficiency.
Reports of abuse, dereliction or deficiency in operation of facility, §33-2-416.

MENTAL HEALTH FACILITIES —Cont'd
Department of mental health.
Licensing of facilities and services.
Generally, §§33-2-401 to 33-2-421.
Dereliction.
Reports of abuse, dereliction or deficiency in operation of facility, §33-2-416.
Employees.
Background checks and fingerprinting, §33-2-1202.
Conflicts of interest, §§33-2-1301 to 33-2-1304.
Sexual relations with service recipients.
Discharge, §33-3-903.
Enrollment.
Suspension of enrollment.
Reports of abuse, dereliction or deficiency, §33-2-416.
Habeas corpus, §§33-3-801 to 33-3-804.
Investigations.
Reports of abuse, dereliction or deficiency.
Department investigation, §33-2-416.
Involuntary admission.
Inpatient treatment.
Involuntary admission, emergency, §§33-6-401 to 33-6-427.
See MENTAL HEALTH.
Involuntary admission, nonemergency, §§33-6-501 to 33-6-510.
See MENTAL HEALTH.
Licensing of facilities and services, §§33-2-401 to 33-2-421.
Administrative procedure.
Denial of license, §33-2-406.
Sanctions against licensed entities, §33-2-408.
Suspension or revocation of license, §33-2-407.
Application for licensure, §33-2-406.
Assistance to applicants.
Provision by department, §33-2-414.
Citation of provisions, §33-2-401.
Conflicts of interest, §§33-2-1301 to 33-2-1304.
Definitions, §33-2-402.
Denial of licensing.
Assistance to service recipients.
Provision by department, §33-2-414.
Procedure, §33-2-406.
Department authority as to, §33-2-403.
Exemptions from licensing, §33-2-403.
Facilities.
Defined, §33-2-402.
Fines, §33-2-407.
Amount of civil penalties, §33-2-409.
Service recipient protection trust fund.
Disposition of civil penalties, §33-2-410.
Types of sanctions against licensed entities, §33-2-408.
Fiscal impact of changes in regulation or policy, §33-5-108.
Inspections, §33-2-413.
Licensees.
Defined, §33-2-402.
Life safety inspections, §33-2-413.
Personal support services.
Application for licensure, §33-2-406.
Conflicts of interest, §§33-2-1301 to 33-2-1304.
Defined, §33-2-402.
Dual licensing under this chapter and under provisions covering home care organizations, §33-2-420.

MENTAL HEALTH FACILITIES —Cont'd
Licensing of facilities and services —Cont'd
Personal support services —Cont'd
Duties and responsibilities of personal support services agencies, §33-2-421.
Providing service without license.
Orders to cease, §33-2-417.
Unlicensed facilities.
Injunctions against providing unlicensed services, §33-2-412.
Unlicensed operation, §33-2-405.
Provisional licenses, §33-2-415.
Reports of abuse, dereliction or deficiency, §33-2-416.
Reputable and responsible character.
Defined, §33-2-402.
Required for licensing, renewal, etc., §33-2-406.
Residential facilities for intellectual or developmental disabilities, §33-2-418.
Review panel.
Exemptions from licensing reviewed, §33-2-403.
Rulemaking.
Department rules for licensure, §33-2-404.
Sanctions against licensed entities.
Administrative procedure, §33-2-408.
Service recipient protection trust fund.
Disposition of civil penalties, §33-2-410.
Types, §33-2-408.
Service recipient protection trust fund, §33-2-410.
Services.
Defined, §33-2-402.
Short title, §33-2-401.
Surveyors.
Notice to licensee of violations, §33-2-411.
Suspension or revocation, §33-2-407.
Assistance to service recipients.
Provision by department, §33-2-414.
Providing unlicensed services, §33-2-412.
Unlicensed facilities.
Injunctions against providing unlicensed services, §33-2-412.
Operation prohibited, §33-2-405.
Orders to cease providing services, §33-2-417.
Officers.
Conflicts of interest, §§33-2-1301 to 33-2-1304.
Personal support services.
Conflicts of interest, §§33-2-1301 to 33-2-1304.
Continuing education, §33-2-419.
Defined, §33-2-402.
Injunctions against providing unlicensed services, §33-2-412.
Licensing, §§33-2-403, 33-2-421.
Application for licensure, §33-2-406.
Dual licensing under this chapter and under provisions covering home care organizations, §33-2-420.
Providing service without license.
Orders to cease, §33-2-417.
Suspension or revocation.
Injunctions against providing unlicensed services, §33-2-412.
Unlicensed operation, §33-2-405.
Training of employees, §33-2-419.

MENTAL HEALTH FACILITIES —Cont'd
Provisional licenses, §33-2-415.
Religious expression, right of service recipients, §33-3-126.
Reports of abuse, dereliction or deficiency, §33-2-416.
Service recipients.
Generally, §§33-3-101 to 33-3-904.
See MENTAL HEALTH SERVICE RECIPIENTS.
Sexual relations with service recipients.
Employees of facility or service provider.
Discharge, §33-3-903.
State facilities.
See STATE MENTAL HEALTH FACILITIES.
Substance abuse services.
Definitions, §33-2-402.
Licensing, §33-2-403.
Application for licensure, §33-2-406.
Providing service without license.
Orders to cease, §33-2-417.
Suspension or revocation, §33-2-412.
Unlicensed operation, §33-2-405.
Unlicensed provision of services.
Injunctions against providing unlicensed services, §33-2-412.
Orders to cease, §33-2-417.
Unlicensed facilities.
Injunctions against providing unlicensed services, §33-2-412.
Operation prohibited, §33-2-405.
Orders to cease providing services, §33-2-417.
Personal support services.
Injunctions against providing unlicensed services, §33-2-412.
Providing service without license.
Orders to cease, §33-2-417.
Whistleblower protection.
Reports of abuse, dereliction or deficiency in operation of facility, §33-2-416.

MENTAL HEALTH SERVICE RECIPIENTS, §§33-3-101 to 33-3-904.
Abuse, exploitation, fraud, neglect or mistreatment reported to department.
Identity of individual reporting confidential, §33-3-108.
Mental health care providers.
Acceptance of information from family members of service recipients, §33-3-109.
Adjudication as a mental defective.
Disclosure of information in court records, §33-3-115.
Assault.
Confidentiality of records.
Felony acts of bodily harm or sexual abuse.
Disclosure to law enforcement agency, §33-3-110.
Beds in ICF/MR facilities.
Number and certain exemptions from certificate of need requirements, §71-5-105.
Child abuse.
Confidentiality of records.
Nondisclosure of child's records to person accused of abuse, §33-3-111.

MENTAL HEALTH SERVICE RECIPIENTS —Cont'd
Children, services for.
Generally, §§33-8-101 to 33-8-316.
See MENTAL HEALTH.
Children's service department.
Transfers of service recipients.
Correction department and children's service department, transfers from, §§33-3-401 to 33-3-412.
Commitment.
Affidavits.
Testimony by certifying or examining professionals, §33-3-615.
Appeals from commitment, §33-3-620.
Applicability of provisions, §33-3-601.
Attorneys at law.
Appointment, §33-3-608.
Notice of representation, §33-3-608.
Attorneys' fees.
Costs of proceedings, §33-3-503.
Audio visual technology.
Use in judicial proceeding, §33-3-505.
Communications to hospital, treatment source, etc., about diagnosis, treatment, etc., of person committed, §33-3-619.
Complaint for commitment.
Contents, §33-3-602.
Requirements, §33-3-602.
Service of process, §33-3-605.
Conduct of hearing, §33-3-613.
Conflicts of interest.
Professional involved in proceeding not to have interest or relationship, §33-3-125.
Continuances, §33-3-612.
Costs of proceedings, §33-3-503.
Court orders.
Copy of order with recipient's history.
Communication, §33-3-502.
Depositions.
Testimony by certifying or examining professionals, §33-3-615.
Detention.
Places of detention, §33-3-616.
Dismissal of proceedings, §33-3-618.
Due process, §33-3-612.
Evidence, §33-3-612.
Clear and convincing requisite for commitment, §33-3-617.
Examination of defendant.
Names of examining professionals.
Providing to defendant and counsel, §33-3-614.
Order for examination, §33-3-607.
Testimony of certifying or examining professionals, §33-3-615.
Facilities.
Disclosures to facility about diagnosis, treatment, etc., of person committed, §33-3-619.
False information, furnishing, §33-3-902.
Fax transmission of pleadings and certificates, §33-3-506.
Hearing.
Conduct, §33-3-613.
Due process, §33-3-612.
Place of hearing, §33-3-610.
Time for hearing, §33-3-606.
Transportation to hearing, §33-3-611.
Two-way electronic audio visual communication.
Use, §33-3-505.
Indigent persons.
Costs of proceedings, §33-3-503.

MENTAL HEALTH SERVICE RECIPIENTS —Cont'd
Commitment —Cont'd
Intellectual and developmental disabilities services.
Forensic services for persons with intellectual disabilities, §§33-5-401 to 33-5-410.
Judicial proceedings.
Generally, §§33-3-501 to 33-3-506.
Jurisdiction, §33-3-603.
Jury trial.
Demand for jury trial, §33-3-609.
Place of detention, §33-3-616.
Place of hearing, §33-3-610.
Police and other law enforcement.
Reporting by inpatient treatment facility of involuntary commitment to local law enforcement, §33-3-117.
Presence of defendant, §33-3-612.
Record of proceedings, §33-3-502.
Release after dismissal of proceedings, §33-3-618.
Release during pendency of proceedings, §33-3-501.
Requisites for commitment, §33-3-617.
Service system, mental health.
Inpatient treatment.
Emergency involuntary admission to inpatient treatment, §§33-6-401 to 33-6-427.
Nonemergency involuntary admission to inpatient treatment, §§33-6-501 to 33-6-510.
Telefax transmission of pleadings and certificates, §33-3-506.
Time for hearing, §33-3-606.
Transportation to hearing, §33-3-611.
Venue, §33-3-603.
Witnesses, §33-3-612.
Certifying or examining professionals, §33-3-615.
Fees.
Costs of proceedings, §33-3-503.
Physician, psychologist, etc., as witnesses, §33-3-504.
Wrongful hospitalization or admission.
Felony, §33-3-901.
Confidentiality of records, §§33-3-103 to 33-3-116.
Abuse, exploitation, fraud, neglect or mistreatment reported to department.
Identity of individual reporting confidential, §33-3-108.
Access expressly required by law, §33-3-108.
Access of service recipient to records, §33-3-112.
Amendment of records.
Request by recipient for amendment, §33-3-113.
Child abuse.
Nondisclosure of child's records to person accused of abuse, §33-3-111.
Consent to disclosure, §33-3-104.
Description of records covered, §33-3-103.
Evidentiary privilege of health professionals.
Exceptions, §33-3-114.
Federally mandated advocacy and protection agency.
Disclosure to agency without consent, §33-3-106.

MENTAL HEALTH SERVICE RECIPIENTS —Cont'd
Confidentiality of records —Cont'd
Felony acts of bodily harm or sexual abuse.
Disclosure to law enforcement agencies, §33-3-110.
Harm, reports of.
Access to information, §33-3-108.
Law enforcement agencies.
Disclosure of collected and reported information, §33-3-115.
Felony acts of bodily harm or sexual abuse, §33-3-110.
Laws expressly requiring access, §33-3-108.
Misdemeanor for violation, §33-3-116.
Nonconsensual disclosure, §33-3-105.
Organizations paying for treatment.
Disclosure to organization without consent, §33-3-106.
Record of court proceedings, §33-3-115.
Release of information to family members and other designated persons, §33-3-109.
Request by recipient for amendment, §33-3-113.
Rulemaking, §33-3-107.
Service recipient access to records, §33-3-112.
Transfer of information to new service provider, §33-3-106.
Who may consent to disclosure, §33-3-104.
Withdrawal of authority to release all information previously authorized, §33-3-109.
Withdraw authority to release all information previously authorized, §33-3-109.
Conflicts of interest.
Commitment.
Professional involved in proceeding not to have interest or relationship, §33-3-125.
Conservator.
Appointment when recipient unable to exercise rights, §33-4-110.
Contracts.
Specific rights preserved, §33-3-102.
Correction department.
Transfers of service recipients.
Correction department and children's service department, transfers from, §§33-3-401 to 33-3-412.
Counseling center.
Defined, §33-3-201.
Counselors and therapists.
Definition of counselor, §33-3-201.
Evidentiary privilege of health professionals.
Exceptions, §33-3-114.
Suicide.
Immunity from liability for suicide or attempted suicide of person consulting counselor, §33-3-201.
Threats by recipients, §33-3-206.
Warnings, precautions, etc., duties as to, §33-3-206.
Immunity for carrying out duties, §33-3-209.
Law enforcement, reporting to, §33-3-210.
Method of carrying out, §33-3-207.
Decision making capacity of patients.
Assessment process.
Uniform process to determine, §33-3-217.

MENTAL HEALTH SERVICE RECIPIENTS —Cont'd
Decision making capacity of patients —Cont'd
Determination, §33-3-217.
Lacking capacity.
Defined, §33-3-218.
Surrogate decision maker for medical decisions, §33-3-219.
Eligibility to serve as, §33-3-220.
Immunity of medical professional, §33-3-221.
Medical decisions.
Surrogate decision maker for medical decisions, §33-3-219.
Eligibility to serve as, §33-3-220.
Immunity of medical professional, §33-3-221.
Definitions.
Isolation, §33-3-120.
Restraint, §33-3-120.
Deprivation of liberty.
Due process, §33-3-101.
Discipline.
Isolation and restraint prohibited, §33-3-120.
Drugs.
Restraint.
Use of drugs to effect restraint, §33-3-120.
Supplying to recipient.
Felony, §33-3-904.
Emergencies.
Isolation and restraint, §33-3-120.
Employees.
Threats by recipients.
Communication to counselor, §33-3-208.
Immunity for carrying out duties, §33-3-209.
Law enforcement, reporting to, §33-3-210.
Escape.
Aiding or abetting, §33-3-904.
Residential service recipients.
Unauthorized leave from facilities, §33-4-106.
Transfers of service recipients.
Correction department and children's service department, transfers from.
Runaways from department facilities.
Custodian upon return, §33-3-411.
Federal bureau of investigation-NICS index.
Disclosure of collected and reported information, §33-3-115.
Fiduciaries.
Acting for recipient.
Evidence of fiduciary status, §33-3-102.
Confidentiality of information.
Consent to disclosure, §33-3-104.
Firearms.
Supplying to recipient.
Felony, §33-3-904.
Gifts.
Employees receiving gifts from service recipients.
Misdemeanor, §33-3-904.
Habeas corpus, §§33-3-801 to 33-3-804.
Discharge.
Order of discharge, §33-3-804.
Disposition of case.
Authorized dispositions, §33-3-803.

MENTAL HEALTH SERVICE RECIPIENTS —Cont'd
Habeas corpus —Cont'd
Mental condition of person seeking release.
Determination, §33-3-802.
Right to file writ, §33-3-801.
Immunity.
Generally, §§33-3-201 to 33-3-221.
Refusal to perform prohibited acts, §33-3-212.
Relinquishment of authority over recipient in compliance with authorized decision, §33-3-212.
Inciting to violence.
Felony, §33-3-904.
Incompetence.
Denial of property rights, ability to contract, etc., §33-3-102.
Intoxicating substances.
Supplying to recipient.
Felony, §33-3-904.
Involuntary care and treatment.
Inpatient treatment.
Involuntary admission, emergency, §§33-6-401 to 33-6-427.
See MENTAL HEALTH.
Involuntary admission, nonemergency, §§33-6-501 to 33-6-510.
See MENTAL HEALTH.
Isolation, §33-3-120.
Judicial commitment to a mental institution..
Disclosure of information in court records, §33-3-115.
Law enforcement agencies.
Disclosure of collected and reported information, §33-3-115.
Liability.
Special liability rules, §§33-3-201 to 33-3-221.
Medical decisions of recipients.
Decision making capacity of patients.
Assessment process.
Uniform process to determine, §33-3-217.
Determination, §33-3-217.
Lacking capacity.
Defined, §33-3-218.
Surrogate decision maker for medical decisions, §33-3-219.
Eligibility to serve as, §33-3-220.
Medical professional acting in accord with surrogate decision.
Immunity, §33-3-221.
Medication.
Restraint.
Use of drugs to effect restraint, §33-3-120.
Nonprofit organizations providing service.
Tortious acts of recipients.
Immunity from liability of organization, §33-3-202.
Property rights.
Specific rights protected, §33-3-102.
Psychiatrists.
Evidentiary privilege of health professionals.
Exceptions, §33-3-114.
Psychologists.
Evidentiary privilege of health professionals.
Exceptions, §33-3-114.
Records.
Confidentiality of records, §§33-3-103 to 33-3-116.

MENTAL HEALTH SERVICE RECIPIENTS —Cont'd
Religious expression, right to, §33-3-126.
Residential service recipients.
Attorneys.
Communication with, §33-4-101.
Certificate of need for commitment for care and treatment, §33-4-108.
Conservator.
Appointment when recipient unable to exercise rights, §33-4-110.
Death of recipient.
Notice, §33-4-109.
Unclaimed property.
Disposal of unclaimed property, §33-4-109.
Family of recipient.
Communication with, §33-4-101.
Death of recipient.
Notice to next of kin, §33-4-109.
Notice of admission to family, §33-4-103.
Guardians.
Death of recipient.
Notice to guardian, §33-4-109.
Notice of admission to family or guardian, §33-4-103.
Medical care.
Treating physical disorder prior to admission, §33-4-104.
Ministers.
Communication with, §33-4-101.
Physicians.
Communication with personal physician, §33-4-101.
Private facilities.
Commitment to private facilities, §33-4-107.
Records.
Services and supports provided, §33-3-101.
Release.
Written statement of release procedures.
Providing to recipient, §33-4-105.
Rights afforded, inability to exercise.
Appointment of conservator, §33-4-110.
Rights of recipients.
Written statement of release procedures and other rights.
Providing to recipient, §33-4-105.
Services and supports to be provided to recipients, §33-3-101.
Special rules for, §§33-4-101 to 33-4-210.
State mental health facilities.
Employee as guardian or conservator, §§33-4-201 to 33-4-210.
See STATE MENTAL HEALTH FACILITIES.
Transfers.
Between facilities within state, §33-3-301.
Judicial review of transfers, §§33-3-701 to 33-3-711.
Treating physical disorder prior to admission, §33-4-104.
Unauthorized leave from facilities, §33-4-106.
Visitors.
Right to receive, §33-4-101.
Restraint, §33-3-120.
Rights, §§33-3-101 to 33-3-126.
Inability to exercise.
Appointment of conservator, §33-4-110.

MENTAL HEALTH SERVICE RECIPIENTS —Cont'd
Runaways.
Aiding and abetting escape, §33-3-904.
Residential service recipients.
Unauthorized leave from facilities, §33-4-106.
Transfers of service recipients.
Correction department and children's service department, transfers from.
Runaways from department facilities.
Custodian upon return, §33-3-411.
Seclusion.
Isolation and restraint, §33-3-120.
Sexual abuse.
Confidentiality of records.
Child sexual abuse.
Nondisclosure of child's records to person accused of abuse, §33-3-111.
Felony acts of bodily harm or sexual abuse.
Disclosure to law enforcement agency, §33-3-110.
Sexual relations with recipient.
Employees of facility or service provider.
Discharge of employee, §33-3-903.
Social workers.
Evidentiary privilege of health professionals.
Exceptions, §33-3-114.
Special liability rules, §§33-3-201 to 33-3-221.
Specific rights protected, §33-3-102.
Suicide.
Counselor not liable for suicide or attempted suicide of person consulting counselor, §33-3-201.
Threats by recipients.
Warning, predicting, precautions, etc.
Counselor duties as to, §33-3-206.
Employee duties as to, §33-3-208.
Immunity of counselors and employees fulfilling duties, §33-3-209.
Law enforcement, reporting to, §33-3-210.
Methods, §33-3-207.
Transfers of service recipients.
Correction department and children's service department, transfers from, §§33-3-401 to 33-3-412.
Adult inmates, §33-3-402.
Appropriateness of transfer.
Determination, §33-3-408.
Approval or disapproval of transfer, §33-3-406.
Determination of appropriateness of transfer, §33-3-408.
Emergency residential care and treatment, §33-3-403.
Youth development center, persons in, §33-3-412.
Private facilities.
Return of transferee from private facility, §33-3-410.
Public facilities.
Return of transferee from public facility, §33-3-409.
Return of transferee from private facility, §33-3-410.
Return of transferee from public facility, §33-3-409.

MENTAL HEALTH SERVICE RECIPIENTS —Cont'd
Transfers of service recipients —Cont'd
Correction department and children's service department, transfers from —Cont'd
Runaways from department facilities.
Custodian upon return, §33-3-410.
Time for transfer, §33-3-407.
Transfer committees.
Appointment, §33-3-404.
Approval or disapproval of transfer, §33-3-406.
Internal operation, §33-3-405.
Officers, §33-3-405.
When transfer made, §33-3-407.
Youth development centers.
Emergency residential care and treatment for persons in, §33-3-412.
Minors transferred from, §33-3-401.
Judicial review of transfer, §§33-3-701 to 33-3-711.
Affidavits.
Examining professionals, testimony of, §33-3-709.
Attorney for transferee.
Appointment, §33-3-704.
Notice of representation, §33-3-704.
Commencement, §33-3-701.
Complaint.
Commencement of proceeding, §33-3-701.
Limitation of filing of complaints, §33-3-711.
Notice of complaint, §33-3-702.
Repetitious filing of complaints, §33-3-711.
Depositions.
Examining professionals, testimony of, §33-3-709.
Evidence, §33-3-707.
Preponderance, §33-3-710.
Findings, §33-3-710.
Hearing.
Conduct of hearing, §§33-3-707, 33-3-708.
Continuance, §33-3-703.
Due process, §33-3-707.
Exclusion of public, §33-3-706.
Formality, §33-3-708.
Notice of hearing, §33-3-702.
Place, §33-3-706.
Time for hearing, §33-3-703.
Jury trial.
Demand, §33-3-705.
Limitation of filing of complaints, §33-3-711.
Place of hearing, §33-3-706.
Witnesses, §33-3-707.
Residential service recipients.
Between facilities within state, §33-3-301.
Wrongful hospitalization or admission.
Felony, §33-3-901.

METABOLIC DEFECTS.
Newborn testing, §§68-5-401 to 68-5-406.

METAL DETECTORS.
School security.
Use of metal detectors, §49-6-4207.

METHAMPHETAMINE.
Manufacturing, delivering, selling or possession.
Child abuse and child neglect or endangerment.
Exposing child to manufacturing process.
Aggravated child abuse and child neglect or endangerment, §39-15-402.

MIDWIVES.
Newborn infants.
Treatment of eyes.
Inflammation, §68-5-202.

MILITARY AFFAIRS.
Active duty.
Child care agencies, welfare.
Child of military parent or guardian on active duty, §71-3-518.
Child custody.
Uniform deployed parents custody and visitation act, §§36-7-101 to 36-7-503.
See CHILD CUSTODY.
Schools and education.
Excused absences for children of parents/custodians deployed or returning from deployment, §49-6-3019.

MISCARRIAGES.
Abortions generally, §§39-15-201 to 39-15-210.
See ABORTION.

MISREPRESENTATION.
Child care agencies.
License applications, §71-3-505.

MISSING CHILDREN RECOVERY, §§37-10-201 to 37-10-209.
Definitions, §37-10-201.
Dissemination of information, §37-10-205.
Distribution of materials concerning missing children, §37-10-209.
File of missing children, §37-10-205.
Fingerprints.
Child fingerprint cards, §37-10-206.
Files, §37-10-207.
Forms.
Reports, §37-10-205.
Intent of legislature, §37-10-208.
Juvenile court.
Missing child order, §37-10-204.
Reports to, §37-10-204.
Legislative intent, §37-10-208.
Reports.
Formal missing child report.
Distribution to law enforcement agencies, §37-10-203.
National crime information center (NCIC).
Entry of report, §37-10-203.
Forms, §37-10-205.
Initial missing child report, §37-10-202.
Juvenile court judges, §37-10-204.
Monthly reports, §37-10-205.
Runaway children.
General provisions, §§37-2-501 to 37-2-507.
Short title of part, §37-10-201.
Solicitation of contributions, §37-10-209.
Statement of identification information, §37-10-202.
Telephone records useful in recovery.
Telecommunications service providers' duties, §37-10-204.

MISSING CHILDREN REGISTRY, §38-6-117.

MISTAKE OR ERROR.
Delinquent and unruly children.
Modification of judgments or orders, JuvPro 213.
Relief from judgments or orders, JuvPro 213.

MODEL AIRPLANE GLUE.
Inhaling, selling, etc., §39-17-422.

MODEL DROPOUT PREVENTION PROGRAM, §49-1-520.

MODELS.
Child labor.
Protection of minor performers, §§50-5-201 to 50-5-222.
See CHILD LABOR.

MODEL TEEN LEARNING CENTERS.
See SCHOOLS AND EDUCATION.

MOTION PICTURES.
Child labor.
Protection of minor performers, §§50-5-201 to 50-5-222.
See CHILD LABOR.

MOTIONS.
Juvenile proceedings.
Rules of juvenile procedure.
Responsive pleadings and motions, JuvPro 105.

MOTOR VEHICLE EQUIPMENT.
Child passenger restraint systems, §55-9-602.
Safety belt requirement.
Operation of passenger vehicles, §55-9-603.

MOTOR VEHICLES.
Cellular telephones.
Learner's permits.
Operation of vehicle while using mobile telephone, §55-50-311.
Child care agencies, welfare.
Motor vehicles used to transport children.
Color and marking requirements, §71-3-502.
Drug tests for employees, §71-3-502.
Safety monitoring system, §71-3-502.
Child endangerment.
Drunk driving child protection act, §55-10-415.
Conservators for persons with disabilities.
Sale of person's property, §34-1-116.
Criminal convictions.
Parental notification.
Learners' permits and intermediate licenses, §55-50-311.
Firearms and other weapons.
Transporting and storing firearm or ammunition in permit holder's motor vehicle, §39-17-1313.
Guardians for minors.
Sale of minor's property, §34-1-116.
Imputed liability.
Learners' permits.
Accompanying drivers, §55-50-311.
Juvenile offenders, §§55-10-701 to 55-10-711.
Construction of part, §55-10-707.
Data search.
Determination of offender status, §55-10-708.

MOTOR VEHICLES —Cont'd
Juvenile offenders —Cont'd
Denial of driving privileges.
Authorized, §55-10-701.
Court denial, §55-10-702.
Data search of applicants for removal, §55-10-708.
Department of safety, §55-10-702.
Reinstatement of privileges, §55-10-702.
Duration, §55-10-701.
Eligibility for license, §55-10-706.
Driver safety or alcohol education programs, §55-10-706.
Expiration of denial period, §55-10-706.
Grounds, §55-10-701.
Withdrawal of order, §55-10-701.
Driver safety or alcohol education programs, §55-10-703.
Eligibility for driver's license, §55-10-703.
Drivers' licenses.
Confiscation, §55-10-704.
Restricted license, §55-10-705.
Data search for applicants, §55-10-708.
Jurisdiction, §§37-1-103, 37-1-146.
Pamphlets.
School and driver's license examination manuals.
Placing of part in, §55-10-710.
Penalties.
Penalty supplemental, §55-10-707.
Provisions of part.
Placement in pamphlet for schools in driver's license examination manuals, §55-10-710.
Records.
Expunction, §55-10-711.
Inspection, §55-10-709.
Suspension of driving privileges.
Department of safety, §55-10-702.
Reinstatement of privileges, §55-10-702.
Duration, §55-10-702.
Schools and education.
Minors withdrawn from secondary school.
Denial of motor vehicle license or permit, §49-6-3017.
Trespass by motor vehicle, §39-14-407.

MULTI-COUNTY COMMUNITY SERVICE AGENCIES, §§37-5-301 to 37-5-319.
See COMMUNITY SERVICE AGENCIES.

MUNICIPAL CORPORATIONS.
Amphitheaters.
Smoking at outdoor amphitheater, prohibition.
Local government ordinances prohibiting, certain localities, §39-17-1551.
Child curfew.
Applicability upon adoption of ordinance, §39-17-1703.
Authorization to adopt, §39-17-1704.
Mayors.
Authority to solemnize marriage, §36-3-301.
Outdoor amphitheaters.
Smoking at outdoor amphitheater, prohibition.
Local government ordinances prohibiting, certain localities, §39-17-1551.

MUNICIPAL CORPORATIONS —Cont'd
Smoking.
Preemption of tobacco regulations, §39-17-1551.
Swimming pools.
Smoking on grounds, prohibition.
Local government ordinances prohibiting, certain localities, §39-17-1551.
Tattooing.
Local regulations superseded, §62-38-210.

MURDER.
Random murder for no obvious reason.
Aggravating factors justifying death penalty or life without parole, §39-13-109.

MUSIC.
Child labor.
Protection of minor performers, §§50-5-201 to 50-5-222.
See CHILD LABOR.

MUTILATION.
Female genital mutilation, §39-13-110.

N

NAMES.
Marriage.
Nickname in license.
Effect, §36-3-307.
Sexually transmitted diseases.
Notice to health officer of name and address of diseased person, §68-10-102.

NECESSARIES.
Parental obligations, §34-1-102.

NEEDLES.
Sharps injury prevention technology.
Diabetes, student management at schools, §49-50-1602.

NEGLECTED AND DEPENDENT CHILDREN.
Child abuse and child neglect or endangerment.
See CHILD ABUSE AND CHILD NEGLECT OR ENDANGERMENT.
Dependent and neglected children.
See DEPENDENT AND NEGLECTED CHILDREN.

NEWBORN INFANTS.
Abortion.
Premature birth during abortion.
Custody of infant prematurely born alive, §39-15-207.
Rights to medical treatment of infants, §39-15-206.
Baby drop off law, §36-1-142.
Blue babies.
Genetic testing.
Critical cyanotic congenital heart disease.
Screening of newborns, §68-5-507.
Eyes, treatment with prophylaxis, §68-5-202.
Genetic testing, §§68-5-501 to 68-5-508.
Advisory committee, §68-5-503.
Critical cyanotic congenital heart disease.
Screening of newborns, §68-5-507.
Definitions, §68-5-501.

NEWBORN INFANTS —Cont'd
Genetic testing —Cont'd
Departmental duties, §68-5-504.
Establishment of program, §68-5-503.
Functions of program, §68-5-504.
Information pamphlet for family.
Providing prior to testing, §68-5-508.
Interstate agreements, §68-5-505.
Metabolic defects.
Newborn testing, §§68-5-401 to 68-5-406.
Blood glucose abnormalities, screening for, §68-5-405.
Cooperation of departments, §68-5-402.
Definitions, §68-5-501.
Destruction of specimen and form containing identifying information after 1 year, §68-5-406.
Exemptions.
Religious beliefs, §68-5-403.
Fees.
Billing and collection methods, §68-5-401.
Legislative declaration, §68-5-401.
Misdemeanors.
Failure to have child tested, §68-5-404.
Policy of state, §68-5-401.
Religion.
Exemptions for religious beliefs, §68-5-403.
Required, §68-5-401.
Exemptions.
Religious beliefs, §68-5-403.
Retention of screening specimen, §68-5-406.
State departments and agencies.
Cooperation, §68-5-402.
Midwives.
Treatment of eyes.
Inflammation, §68-5-202.
Perinatal care.
Advisory committee, §68-1-803.
Terms of members, §68-1-803.
Travel expenses, §68-1-803.
Definitions, §68-1-801.
Development of plan for care, §§68-1-802, 68-1-804.
Perinatal group B streptococcal disease.
Prevention standards, §68-5-401.

NEXT OF KIN.
Mental health inpatient treatment.
Involuntary admission, emergency.
Order of court for admission.
Notice to next of kin or representative, §33-6-416.
Mental health service recipients.
Death of recipient.
Notice to family, guardian, court, etc., §33-4-109.

NO CONTACT ORDERS.
Adoption.
Restraining order prohibiting contact or interference with child.
Validity after adoption finalized, §36-1-123.
Juvenile proceedings.
Rules of juvenile procedure.
Form of injunctive relief, JuvPro 108.
Non-parties, relief against, JuvPro 108.

NOLO CONTENDERE.
Delinquent and unruly children.
No contest pleas, JuvPro 209.

NONPROFIT CORPORATIONS.
Early childhood education.
Contracts with department of education.
Delivery of educational services, §49-6-101.
Mental health service recipients.
Tortious acts of service recipients of corporation.
Immunity from liability of organization, §33-3-202.

NONRESIDENTS.
Delinquent and unruly children.
Out-of-state custody and supervision, §37-1-143.
Out-of-state probation officers.
Powers, §37-1-145.
Supervision under out-of-state order, §37-1-144.
Transfer from another state, §37-1-142.
Dependent and neglected children.
Out-of-state custody and supervision, §37-1-143.
Out-of-state probation officers.
Powers, §37-1-145.
Supervision under out-of-state order, §37-1-144.
Transfer from another state, §37-1-142.
Divorce.
Residing requirements, §36-4-104.
Spouse's refusal to remove to Tennessee.
Proof required, §36-4-117.
Domestic abuse.
Protection orders.
Service of ex parte orders, §36-3-605.
Motor vehicles.
Trespass by motor vehicles.
Notice that violators will be prosecuted, §39-14-407.
Prevention of youth access to tobacco.
Required postings, §39-17-1506.
Sexually transmitted diseases.
Name and address of diseased person given to health officers, §68-10-102.
Printed instructions given patients, §68-10-103.
Smoking material, smoking paraphernalia or smokeless tobacco products.
Persons disseminating.
Warning signs or decals, §39-15-411.
Support and maintenance.
Interstate family support act, §§36-5-2001 to 36-5-2903.
See SUPPORT AND MAINTENANCE.
Trespass.
Trespass by motor vehicles.
Notice that violators will be prosecuted, §39-14-407.
Welfare.
Temporary assistance for dependent children.
Rule to establish procedures for provisions of notice of eligibility, §71-3-107.

NONSUPPORT.
General provisions, §§39-15-101 to 39-15-104.
See DESERTION AND NONSUPPORT.
Support generally.
See SUPPORT AND MAINTENANCE.

NOSE PIERCING.
Body piercing generally, §§62-38-301 to 62-38-310.
See BODY PIERCING.

NOTICE.
Abandonment of infant.
Voluntary delivery of infant to facility, §36-1-142.
Abortion.
Information required to be furnished by physicians, §39-15-202.
Adoption.
Contact veto registry.
Notification made as part of search, contact or identifying request, §36-1-136.
Dismissal of adoption proceedings, §36-1-118.
Adult abuse.
Bail and recognizance.
Family or household member arrested for assault.
Notification to victim of possible release on bond, §36-3-615.
Violation of protection orders.
Hearing, §36-3-612.
Allowing youth access to tobacco.
Required postings, §39-17-1506.
Baby drop off law.
Voluntary delivery of infant to facility, §36-1-142.
Child abuse.
Reports, §37-1-405.
Notification of report to parent or guardian, §37-1-403.
Sexual abuse, §37-1-605.
Child care agencies.
Licenses.
Revocation or suspension, §37-5-514.
Child custody.
Change in physical custody of child.
School officials to be given reasonable advance notice, §36-6-105.
Parental relocation, §36-6-108.
Shelter care.
Notice of hearing, §36-6-109.
Uniform deployed parents custody and visitation act.
Change of address of person with custodial responsibility during deployment, §36-7-106.
Notice of pending deployment, §36-7-105.
Children's clean indoor air act.
Posting of notice of provisions, §39-17-1605.
Children's services department.
Professional licensing, certification and registration.
Notifications required, §37-5-127.
Child support enforcement.
Changes in circumstances, requirements for updating.
Clear notice of requirements to be given to parties, §36-5-101.
Denial, suspension or revocation of license, §36-5-706.
Notice of noncompliance, §36-5-702.
Title IV-D cases, notice of child's upcoming eighteenth birthday, §36-5-101.
Conservators for persons with disabilities.
Duty of court clerk to issue, §34-1-128.
Failure to account, §34-1-111.
Failure to file inventory of disabled person's property, §34-1-110.
Hearings on petition for appointment, §34-1-108.
Necessity for standby fiduciary to function, §34-1-119.
Petition for appointment, §34-1-106.

NOTICE —Cont'd
Divorce.
Creditor's rights.
Notice as to effect of decree, §36-4-134.
Domestic abuse.
Protection order violations, §36-3-612.
Foster care plans.
Hearings.
Notice to foster parent, adoptive parent or relative providing care, §37-2-416.
Guardians for minors.
Duty of court clerk to issue, §34-1-128.
Failure to file accounting with court, §34-1-111.
Failure to file inventory of minor's property, §34-1-110.
Hearings on petition for appointment, §34-1-108.
Necessity for standby fiduciary to function, §34-1-119.
Petition for appointment, §34-1-106.
Interstate child custody proceedings.
Required for exercise of jurisdiction, §36-6-211.
Juvenile proceedings.
See JUVENILE PROCEEDINGS.
Motor vehicles.
Trespass by motor vehicles.
Notice that violators will be prosecuted, §39-14-407.
Paternity.
Intent to claim paternity.
Filing with putative father registry, §36-2-318.
Sexually transmitted diseases.
Name and address of diseased person given to health officers, §68-10-102.
Printed instructions given patients, §68-10-103.
Smoking material, smoking paraphernalia or smokeless tobacco products.
Persons disseminating.
Warning signs or decals, §39-15-411.
Support and maintenance.
Assignment of income for child support, §36-5-501.
Termination of assignment, §36-5-503.
Termination of parental rights.
Appeal as of right, RAP 8A.
Trespass.
Trespass by motor vehicles.
Notice that violators will be prosecuted, §39-14-407.
Voluntary delivery of infant to facility, §36-1-142.
Welfare.
Temporary assistance for dependent children.
Rule to establish procedures for provisions of notice of eligibility, §71-3-107.

NUDIST COLONIES.
Child visitation rights.
Exposure of child to nudist colony prohibited, §36-6-304.

NURSERY SCHOOLS.
Immunization of school children, §§49-6-5001, 49-6-5002.

NURSES.
Child abuse and child neglect or endangerment.
Duty to report child sexual abuse, §37-1-605.

NURSES —Cont'd
Child support enforcement.
Denial or revocation of license, §§36-5-701 to 36-5-714.
Administrative order enforcement, §36-5-812.
Juvenile proceedings, §37-1-151.
Paternity and legitimation, §36-2-320.
Child support reporting.
Immunity, §37-1-410.
Psychiatric and mental health nursing.
Inpatient treatment.
Involuntary admission, emergency.
Role of mental health professionals, §33-6-427.
Schools and education.
Medication administration to children.
Assistance with self-administration, §49-50-1602.

O

OATHS.
Children's services department, §37-5-118.
Conservators for persons with disabilities, §34-1-109.
Guardians for minors, §34-1-109.
Petitions for appointment to be sworn, §34-2-104.

OBESITY.
School programs for children at risk, §§49-6-1401 to 49-6-1405.

OBSCENITY.
Child sexual abuse.
When conduct constitutes, §37-1-602.
Sexual exploitation of children, §§39-17-1001 to 39-17-1008.
Use of minors for obscene purposes.
Child sexual abuse.
When conduct constitutes, §37-1-602.

OCCUPATIONAL SAFETY AND HEALTH.
Sharps injury prevention technology.
Diabetes, student management at schools, §49-50-1602.

ORDERS OF COURT.
Child abduction prevention.
Preventive measures.
Contents of prevention orders, §36-6-608.
Duration of prevention orders, §36-6-610.
Child care agencies.
Inspections by department.
Ex parte order permitting, §37-5-513.
Child custody.
Guardians ad litem.
Appointment in custody proceedings, SupCt 40A.
Desertion and nonsupport.
Nonsupport and flagrant nonsupport.
Orders of protection and assistance, §39-15-102.
Foster care plans.
Modification of orders, §37-2-410.
Guardians ad litem.
Custody proceedings.
Appointment of guardian ad litem in custody proceeding, SupCt 40A.
Guardians for minors.
Permanent guardianship orders, §37-1-803.
Where guardian needed, §34-2-105.

ORDERS OF COURT —Cont'd
Interstate child custody proceedings.
Appearance of parties, §36-6-225.
Full faith and credit of foreign orders, §36-6-237.
International orders.
Enforcement under the Hague Convention, §36-6-226.
Temporary order of enforcement, §36-6-228.
Juvenile proceedings.
See JUVENILE PROCEEDINGS.
Paternity proceedings, §36-2-311.
Protection orders, §36-2-305.
Support orders, §36-2-310.
Protective orders.
Paternity proceedings, §§36-2-305, 36-2-311.
Pending outcome of parentage tests, §36-3-614.
Schools and education.
Attendance.
Excused absences.
Summons, subpoena, court order, etc, preventing attendance, §49-6-3002.
Universal mental health or socioemotional screening.
When permitted, §49-2-124.
Sexually transmitted diseases.
Confidentiality of records and information, §68-10-113.
Termination of parental rights, §36-1-113.

ORDINANCES.
Child curfew.
Applicability upon adoption of ordinance, §39-17-1703.
Authorization to adopt, §39-17-1704.

ORPHAN ASYLUMS, §§71-3-601 to 71-3-612.
Admissions.
Eligibility for admission, §71-3-603.
Welfare of child controlling, §71-3-606.
Education of children, §71-3-610.
Eligibility for admission, §71-3-603.
Expenses.
County contributions, §71-3-612.
Payment by parent or guardian, §71-3-611.
Governing boards, §71-3-601.
Control of indigent children, §71-3-604.
Control of orphans and foundlings, §71-3-607.
Number of members, §71-3-601.
Quorum, §71-3-601.
Interference with children.
Penalty, §71-3-608.
Personal property.
Powers as to, §71-3-602.
Petition to take child from home, §71-3-609.
Real property.
Powers as to, §71-3-602.
Schools and education.
Education of children, §71-3-610.

OUTDOOR AMPHITHEATERS.
Smoking at outdoor amphitheater, prohibition.
Local government ordinances prohibiting, certain localities, §39-17-1551.

P

PAINT.
Inhaling, selling, giving or possessing for unlawful purposes, §39-17-422.

PARAMEDICS.
AIDS.
Exposure of law enforcement, emergency personnel, etc, to blood or fluids of arrested person.
Testing of suspects, §68-10-116.
Exposure to airborne or bloodborne diseases, §68-10-117.
Hepatitis.
Exposure of law enforcement, emergency personnel, etc, to blood or fluids of arrested person.
Testing of suspects, §68-10-116.

PARENTAGE PROCEEDINGS, §§36-2-301 to 36-2-322.
See PATERNITY.

PARENT AND CHILD.
Abandonment of infant.
Voluntary delivery of infant to facility, §36-1-142.
Abortion.
Parental consent for abortion by minor, §§37-10-301 to 37-10-308.
See ABORTION.
Adoption of children.
Interstate compact on adoption and medical assistance, §§36-1-201 to 36-1-206.
Baby drop off law.
Voluntary delivery of infant to facility, §36-1-142.
Child custody.
Uniform child custody jurisdiction and enforcement act, §§36-6-201 to 36-6-243.
See INTERSTATE CHILD CUSTODY PROCEEDINGS.
Childhood immunizations, §§37-10-401 to 37-10-403.
School children, §§49-6-5001, 49-6-5002.
Criminal offenses of child.
Parent, guardian or custodian to notify school, §49-6-3051.
Custodial interference, §39-13-306.
Death of parent.
Devolution of guardianship upon survivor, §34-1-102.
Desertion and nonsupport, §§39-15-101 to 39-15-104.
Donated embryo transfer, parentage of children, §§36-2-401 to 36-2-403.
Family planning act of 1971, §§68-34-101 to 68-34-111.
See FAMILY PLANNING ACT OF 1971.
Firearms and other weapons.
Illegally possessing firearm by minor.
Inaction by persons 18 or older, including parents, §39-17-1312.
Providing handguns to juveniles, §39-17-1320.
Grandparents' visitation rights, §§36-6-302, 36-6-306, 36-6-307.
Guardian of child.
Parents as joint and equal natural guardians, §34-1-102.
Permanent guardians for minors, §§37-1-801 to 37-1-807.
See GUARDIANS FOR MINORS.
Health care decisions for unemancipated minors, §§34-6-401 to 34-6-406.
See HEALTH CARE DECISIONS.
Immunization.
Childhood immunizations, §§37-10-401 to 37-10-403.
School children, §§49-6-5001, 49-6-5002.
Incest, §39-15-302.

PARENT AND CHILD —Cont'd
Kidnapping.
Custodial interference, §39-13-306.
Legitimacy, §§36-2-301 to 36-2-322.
See LEGITIMACY.
Liability of parents and guardians for acts of juveniles, §§37-10-101 to 37-10-103.
Liability of parents for support, §34-1-102.
Marriage.
Consent of parent, §36-3-106.
Oath as to age, §36-3-106.
Waiver of age requirement, §36-3-107.
Medical records of child.
Furnishing to parent, §§36-6-101, 36-6-103.
Mental health.
Children, services for.
Outpatient treatment.
Parental participation, §33-8-203.
Sixteen or older.
Consent of parents not required to treat, §33-8-202.
Inpatient treatment.
Involuntary admission, nonemergency.
Complaint for commitment.
Who may file, §33-6-504.
Voluntary admission.
Release of child.
Notifications, §33-6-208.
Necessaries.
Parental obligations, §34-1-102.
Nudist colonies.
Exposure of child to nudist colony prohibited, §36-6-304.
Parenting plans, §§36-6-401 to 36-6-414.
See PARENTING PLANS.
Paternity, §§36-2-301 to 36-2-322.
See PATERNITY.
Power of attorney for care of minor child.
Contravening decision by parent, §34-6-307.
Delegation of authority by parents, §34-6-302.
Execution of instrument by parents, §34-6-303.
Hardships authorizing delegation, §34-6-302.
Local education agency.
Enrollment of student with power stating hardship, §34-6-302.
Procedure when one parent has legal custody, §34-6-303.
Signatures on power of attorney, §34-6-302.
Project RAP.
Teenage children, §§71-3-701, 71-3-702.
Runaways, §§37-2-501 to 37-2-507.
See RUNAWAY CHILDREN.
Schools and education.
Criminal offenses of child.
Parent, guardian or custodian to notify school, §49-6-3051.
Exceptional and disabled children.
Parent's right to review of decision concerning special education services for their child, §49-10-601.
Right to enforce provisions for educational services, §49-10-602.
Parental involvement plans.
Development of standards by department, §49-1-208.

PARENT AND CHILD —Cont'd
Schools and education —Cont'd
Parent educational participation.
Pupils.
Surveys, analyses or evaluations.
Access of parent or guardian prior to administration, §49-2-211.
Sexual abuse of children, §§37-1-601 to 37-1-616.
See CHILD ABUSE AND CHILD NEGLECT OR ENDANGERMENT.
Shoplifting.
Theft of retail merchandise by minor.
Civil liability of adult, parent or guardian, §39-14-144.
Stepparents' visitation rights, §36-6-303.
Support and maintenance.
Desertion and nonsupport, §§39-15-101 to 39-15-104.
Tanning facilities.
Parental consent prior to minors' use of facilities, §68-117-104.
Teenage children.
Project RAP, §§71-3-701, 71-3-702.
Theft.
Retail merchandise by minor.
Civil liability of adult, parent or guardian, §39-14-144.
Torts.
Liability of parents, guardians, etc., for acts of juveniles, §§37-10-101 to 37-10-103.
Vandalism committed by child.
Parental liability, §37-1-156.
Venue.
Termination of parental rights, §37-1-111.
Visitation rights.
Grandparents' rights, §36-6-303.
Parent visitation, §§36-6-501 to 36-6-511.
See CHILD VISITATION RIGHTS.
Paternity proceedings, §36-2-312.
Stepparents' rights, §36-6-303.
Voluntary delivery of infant to facility, §36-1-142.
Weapons.
Minors illegally possessing firearms.
Inaction by persons 18 or older, including parents, §39-17-1312.
Providing handguns to juveniles, §39-17-1320.

PARENTING PLANS, §§36-6-401 to 36-6-414.
Allocation of parenting responsibilities, §36-6-407.
Children's services department.
Effect, §36-6-411.
Collection and payment of support plan provisions.
Requirements, §36-6-406.
Custody designation, §36-6-407.
Purpose of other state and federal statutes, §36-6-410.
Definitions, §36-6-402.
Dispute resolution.
Costs of mediation, §36-6-413.
Defined, §36-6-402.
Procedures and restrictions applicable to, §36-6-409.
Educational seminars, §36-6-408.
Evaluation, §36-6-414.
Forms.
Use by parties.
Requirements, §36-6-406.

PARENTING PLANS —Cont'd
Gender based presumptions, §36-6-412.
Juvenile court.
Incorporation permitted, §36-6-411.
Jurisdiction not affected, §36-6-411.
Legislative findings, §36-6-401.
Limiting plans, §36-6-406.
Modification.
Fees, §8-21-401.
Parent educational seminar, §36-6-408.
Permanent parenting plan.
Defined, §36-6-402.
Modifying, §36-6-405.
Procedure for determining, §36-6-404.
Requirement of, §36-6-404.
Restrictions in, §36-6-406.
Sexual offense conviction.
Restraining parent from contact with child, §36-6-406.
Temporary parenting plan.
Defined, §36-6-402.
Procedure for determining, §36-6-403.
Requirement of, §36-6-403.
Restrictions in, §36-6-406.
Tender years presumption.
Gender based presumptions, §36-6-412.

PARKS AND RECREATION.
Child abuse and child neglect or endangerment.
Reports.
Authority figures at a community facilities.
Child sexual abuse, §37-1-605.
Firearms and other weapons.
Carrying weapons on public parks, playgrounds, etc., §39-17-1311.
Illegally possessing firearm by minor on park or playground premises.
Inaction by persons 18 or older, including parent or guardian, §39-17-1312.
Tobacco.
Distribution of tobacco samples in parks, §39-17-1504.

PARTIAL BIRTH ABORTIONS, §39-15-209.

PARTIES.
Adoption.
Consent, §36-1-117.
Petition, §36-1-115.
Summons and process, §36-1-117.
Interstate child custody proceedings.
Communication among courts and parties, §§36-6-213, 36-6-215.
Foreign courts, §36-6-215.
Special appearances, §36-6-212.
Juvenile proceedings.
Rules of juvenile procedure.
Appeals.
Parties to appeal, JuvPro 118.
Rules of juvenile proceedings.
Attendance of parties and other necessary persons, JuvPro 112.

PATERNITY, §§36-2-301 to 36-2-322.
Actions to establish parentage, §§36-2-305 to 36-2-308.
Adoption.
Denial of paternity and notice by legal father, §36-1-111.
Agreements to establish parentage, §36-2-305.
Annulment of marriage.
Legitimacy not affected by annulment, §36-4-125.

PATERNITY —Cont'd
Appeals, §36-2-315.
Health insurance coverage for child, §36-2-319.
Birth by unwed mother in birthing institution.
Voluntary acknowledgment of paternity.
Institution to provide information, receiving acknowledgment, duties, §68-3-302.
Birth certificates, §36-2-312.
Child support.
Court establishing or enforcing duty of support.
Full faith and credit to paternity determinations, §36-5-101.
Complaints to establish parentage, §36-2-305.
Custody of child born out of wedlock, §§36-2-303, 36-2-312.
Definitions, §36-2-302.
Discrimination against children born out of wedlock, §36-2-316.
Divorce.
Legitimacy not affected by divorce, §36-4-125.
Domestic abuse.
Contesting paternity, §36-3-614.
Donated embryo transfer, parentage of children.
Definitions, §36-2-402.
Establishing parentage, §36-2-403.
Legislative intent, single means of establishing parentage, §36-2-401.
Relinquishment of rights and responsibilities, §36-2-403.
Employment reports, §§36-5-1101 to 36-5-1108.
Failure to contest paternity, §36-3-614.
Fees.
Clerks of court, §8-21-401.
Health insurance coverage for child, §36-2-319.
Information regarding parties, §37-1-151.
Inheritance of child from father, §36-2-313.
Intent to claim paternity.
Notice.
Filing with putative father registry, §36-2-318.
Interstate family support act.
Proceedings to determine parentage, §36-5-2701.
Jurisdiction.
Juvenile courts, §§37-1-103, 37-1-104.
Jurisdiction of parentage proceedings, §36-2-307.
License revocation requests, §36-2-320.
Notice of intent to claim paternity.
Filing with putative father registry, §36-2-318.
Orders of parentage, §36-2-311.
Fees to be paid to department of health, §36-2-313.
Information to commissioner of health, §36-2-313.
Presumption of parentage, §§24-7-112, 36-2-304.
Protection orders, §§36-2-305, 36-2-311.
Purpose of chapter, §36-2-301.
Putative father registry, §36-2-318.
References to illegitimacy in official records, etc., §36-2-317.
Social security numbers on records, §36-5-1302.

PATERNITY —Cont'd
Statute of limitations for parentage proceedings, §36-2-306.
Support orders, §§36-2-310, 36-2-311.
Past-due support for children receiving assistance, §36-2-322.
Time periods for enforcement, §36-2-321.
Tests to determine parentage, §§24-7-112, 36-2-309.
Administrative orders.
Scope of administrative review, §36-5-1002.
Admissibility of costs for test, §36-2-308.
Child support enforcement, §§36-5-802, 36-5-805, 36-5-806.
Protection order pending outcome of tests, §36-3-614.
Venue of parentage proceedings, §36-2-307.
Visitation rights, §36-2-312.
Voluntary acknowledgment of paternity, §§24-7-113, 68-3-305.
Birth by unwed mother in birthing institution.
Institution to provide information, receiving acknowledgment, duties, §68-3-302.
Child support.
Effect of withdrawal of acknowledgment, §36-5-101.
Rescission, effect on birth certificate, §68-3-203.
Warrant for apprehension of defendant, §36-2-305.

PAYROLL DEDUCTIONS.
Support and maintenance.
Assignment of income for child support, §§36-5-501, 36-5-503.

PENSIONS.
Child support or alimony.
Lump sum amount of benefits.
Treatment when considering right to receive, §§36-5-101, 36-5-121.

PERMANENT GUARDIANS FOR MINORS, §§37-1-801 to 37-1-807.
See GUARDIANS FOR MINORS.

PERMITS.
Body piercing business.
Temporary facility, §62-38-309.
Body piercing services.
Business performing services, §62-38-303.
Child support enforcement.
Denial, revocation or suspension of permit, §§36-5-701 to 36-5-714.
Administrative order enforcement, §36-5-812.
Juvenile proceedings, §37-1-151.
Paternity and legitimation, §36-2-320.
Tattooing.
Studio certificate permits.
Posting, §62-38-206.
Tattoo artists, §62-38-204.

PERSONAL PROPERTY.
Orphan asylums.
Powers as to, §71-3-602.

PERSONAL RESPONSIBILITY PLANS.
Temporary assistance for dependent children.
Eligibility for temporary assistance, §71-3-104.

PETITIONS.
Abortions.
Waiver of parental consent for abortions by minors, SupCt 24.

PETITIONS —Cont'd
Child abduction prevention.
Contents, §36-6-606.
Definition of petition, §36-6-602.
Jurisdiction, §36-6-605.
Conservators for persons with disabilities.
Appointment, §34-1-106.
Transfer of fiduciary relationship, §34-1-117.
Disabilities, persons with.
Funds under $20,000.
Order of distribution, §34-1-104.
Domestic abuse, stalking or sexual assault.
Protection orders, §36-3-602.
Petition for orders of protection.
Form, §36-3-604.
Guardians for minors.
Appointment, §34-1-106.
Content requirements, §34-2-104.
Sworn, §34-2-104.
Who may file, §34-2-102.
Transfer of fiduciary relationship, §34-1-117.
Interstate family support act.
Establishing support order, §36-5-2401.
Juvenile proceedings.
See JUVENILE PROCEEDINGS.
Marriage.
Waiver of age restrictions, §36-3-107.
Mentally ill.
Distribution of funds of persons with disabilities under $20,000, §34-1-104.
Outpatient treatment.
Assisted outpatient treatment, pilot program, §33-6-624.
Minors.
Distribution of funds of minor under $20,000, §34-1-104.
Orphan asylums.
Petition to take child from home, §71-3-609.
Protection of minor performers, contract approval, §50-5-209.
Actions taken by court, §50-5-220.
Contents, §50-5-216.
Hearing on petition, §§50-5-211, 50-5-218.
Appearance of minor, §50-5-219.
Place of filing, §50-5-210.
Protection of earnings, §§50-5-221, 50-5-222.
Service, §50-5-217.
Support and maintenance.
Interstate family support act, §36-5-2311.
Establishing support order, §36-5-2401.
Registration of orders.
Petitions seeking remedies, §36-5-3103.
Termination of parental rights, §§36-1-113, 37-1-147.

PHENYLKETONURIA.
Metabolic defects.
Newborn testing, §§68-5-401 to 68-5-406.

PHOTOGRAPHY.
Abortion.
Photographs of aborted fetuses, §39-15-208.
Delinquent and unruly children.
Destruction of photographs, §37-1-155.
Use of photographs, §37-1-155.

PHYSICAL FITNESS AND HEALTH.
School programs.
Obesity, children at risk for, §§49-6-1401 to 49-6-1405.

PHYSICIANS AND SURGEONS.
Abortion, §§39-15-201 to 39-15-210.
See ABORTION.
Child abuse.
Pregnant unemancipated minors.
Provision of information on reporting child sex abuse, §37-1-403.
Reporting.
Abortion performed on minor less than 13.
Physician duties as to preservation of biological evidence, §39-15-210.
Duty to report.
Child sexual abuse, §37-1-605.
Immunity, §37-1-410.
Retention of custody by physicians, §37-1-404.
Child sexual abuse.
Exceptions to privilege, §§37-1-604, 37-1-614.
Child support enforcement.
Denial or revocation of license, §§36-5-701 to 36-5-714.
Administrative order enforcement, §36-5-812.
Juvenile proceedings, §37-1-151.
Paternity and legitimation, §36-2-320.
Family planning.
Defined, §68-34-102.
Sterilization.
Liability for sterilization, §68-34-109.
Health care decisions.
Unemancipated minors, decisions for.
Health care provider immunity, §34-6-406.
Immunity from civil liability.
Child abuse reporting, §37-1-410.
Juvenile courts.
Examination of child, §37-1-128.
Licenses.
Social security numbers on applications, §36-5-1301.
Mental health.
Commitment.
Witnesses.
Physician, psychologist, etc., as witnesses, §33-3-504.
Inpatient treatment.
Involuntary admission, emergency.
Authority of physician with certain mental health expertise and education, §33-6-427.
Certification of need for care and treatment.
Physician certification, §33-6-426.
Involuntary admission, nonemergency.
Certificates of need for care and treatment, §33-6-503.
Residential service recipients.
Communication with personal physician, §33-4-101.
Schools and education.
Discipline in special school districts.
Pupil's right to physical examination, §49-6-4404.
Sexually transmitted diseases.
Reports.
Required, §68-10-112.
Statutory rape reporting.
Pregnancy of child and alleged father four years older than victim, §§38-1-302, 38-1-303.

PHYSICIANS AND SURGEONS —Cont'd
Tattooing.
Exemptions from chapter, §62-38-210.

PIERCING, BODY, §§62-38-301 to 62-38-310.
See BODY PIERCING.

PKU.
Metabolic defects.
Newborn testing, §§68-5-401 to 68-5-406.

PLEADINGS.
Child custody.
First pleading or affidavit.
Required information to establish jurisdiction, §§36-6-224, 36-6-232.
Verified pleadings, §§36-6-224, 36-6-232.
Interstate child custody proceedings.
Petition for enforcement, §36-6-232.
Required jurisdictional information, §36-6-224.
Verified first pleading, §36-6-224.
Interstate family support act, §36-5-2311.
Juvenile proceedings.
Rules of juvenile procedure.
Responsive pleadings and motions, JuvPro 105.
Service, JuvPro 106.

POISON CONTROL CENTERS, §§68-141-101 to 68-141-108.
Advisory committee.
Tennessee poison control network advisory committee, §68-141-106.
Confidentiality of information.
Individuals to whom treatment provided, §68-141-105.
Establishment, §68-141-101.
Liability.
Limitation, §68-141-107.
Prohibited activities, §68-141-103.
Regional control centers.
Designation, §68-141-102.
Standards, §68-141-104.
Services, §68-141-105.
Standards for designation, §68-141-104.
Reports.
Commissioner of health.
Annual report to general assembly, §68-141-108.

POLICE AND OTHER LAW ENFORCEMENT OFFICERS.
AIDS.
Exposure of officer to HIV.
Testing of suspects, §68-10-116.
Child abuse and child neglect or endangerment.
Multi-level response system, jurisdictions using.
Assistance of law enforcement officers, §37-1-406.
Reports.
Duty to report, §37-1-403.
Child sexual abuse, §37-1-605.
Sharing of information with law enforcement, §37-1-409.
Cigarettes.
Prevention of sales and access to.
Use of minors in aiding enforcement of laws, §39-15-413.
Domestic abuse, §§36-3-618 to 36-3-620.
Duties upon issuance of protection order, §36-3-609.
Hepatitis exposure.
Testing of suspects, §68-10-116.

POLICE AND OTHER LAW ENFORCEMENT OFFICERS —Cont'd
Interstate child custody proceedings.
Hague Convention, §36-6-240.
Mental health.
Commitment.
Reporting by inpatient treatment facility of involuntary commitment of service recipient to local law enforcement, §33-3-117.
Inpatient treatment.
Transportation.
Sheriffs, secondary transport agents, local officer, etc., §33-6-901.
Threats of serious bodily harm or death by service recipient communicated to mental health professional.
Reporting to local law enforcement, §33-3-210.
Smoking.
Use of minors in aid of enforcement of laws, §39-15-413.
Tobacco.
Prevention of sales and access to.
Use of minors in aid of enforcement of laws, §39-15-413.

POPULAR NAMES OF ACTS.
Families First Act of 1996, §71-3-101.
Health care decisions for unemancipated minors, §§34-6-401 to 34-6-406.
See HEALTH CARE DECISIONS.
Uniform Deployed Parents Custody and Visitation Act, §§36-7-101 to 36-7-503.
See CHILD CUSTODY.

POPULATION CONTROL.
Family planning act of 1971, §§68-34-101 to 68-34-111.
See FAMILY PLANNING ACT OF 1971.

PORNOGRAPHIC MATERIAL HARMFUL TO MINORS.
Defenses.
Sale, loan or exhibition of material to minors, §39-17-911.
Exhibiting prohibited, §39-17-911.
Loaning prohibited, §39-17-911.
Sales displays of material of sexual nature, §§39-17-911, 39-17-914.
Video cassettes, sales displays, §39-17-914.

PORNOGRAPHY.
Child abuse.
Reporting child abuse and child neglect or endangerment, §37-1-403.
Pornographic material harmful to minors, §§39-17-911, 39-17-914.

POWER OF ATTORNEY FOR CARE OF MINOR CHILD, §§34-6-301 to 34-6-310.
Caregiver.
Authority, §34-6-304.
Contravening decision by parent, §34-6-307.
Residence change.
Notification by caregiver, §34-6-309.
Responsibilities for child attending school, §49-6-3001.

POWER OF ATTORNEY FOR CARE OF MINOR CHILD —Cont'd
Child custody.
Uniform deployed parents custody and visitation act.
Temporary custody agreements.
Power of attorney delegating custodial responsibility, §36-7-204.
Filing with court, §36-7-205.
Delegation of authority by parent, §34-6-302.
Education.
Caregiver's responsibilities for child attending school, §49-6-3001.
Hardships authorizing delegation, §34-6-302.
Health care durable power of attorney.
Health care decisions act.
Unemancipated minors, decisions for, §§34-6-401 to 34-6-406.
See HEALTH CARE DECISIONS.
Local education agency.
Enrollment of student with power stating hardship, §34-6-302.
Parents.
Contravening decision by parent, §34-6-307.
Delegation of authority by, §34-6-302.
Execution of instrument by, §34-6-303.
Procedure when one parent has legal custody, §34-6-303.
Reliance on power.
Immunity from liability, §34-6-308.
No obligation to inquire or investigate, §34-6-310.
Residence change.
Notification by caregiver, §34-6-309.
Revocation of power, §34-6-305.
School enrollment, §§34-6-304, 49-6-3003.
Signatures on power of attorney, §34-6-302.
Termination of power, §34-6-306.

PREGNANCY.
Abortion.
General provisions, §§39-15-201 to 39-15-210.
See ABORTION.
Parental consent for abortion by minor, §§37-10-301 to 37-10-308.
See ABORTION.
Child sexual abuse.
Person making initial diagnosis of pregnancy to unemancipated minor.
Provision of information on reporting sex abuse, §37-1-403.
Confidentiality of information.
Serological tests, §68-5-604.
Definitions.
Serological tests, §68-5-601.
District attorneys.
Serological tests.
Prosecution of violations, §68-5-607.
HIV screening, §§68-5-701 to 68-5-705.
Consent to testing, §68-5-703.
Counseling and HIV education, §68-5-703.
Purpose of part, §68-5-702.
Rulemaking, §68-5-705.
Short title, §68-5-701.
Testing procedures, §68-5-703.
Miscarriages, §§39-15-201 to 39-15-210.
See ABORTION.

PREGNANCY —Cont'd
Reports.
Serological tests, §68-5-604.
Serological tests.
Approved laboratory.
Defined, §68-5-601.
Department's laboratories not only approved laboratories, §68-5-603.
Confidentiality of information, §68-5-604.
Definitions, §68-5-601.
Department of health.
Defined, §68-5-601.
Rules and regulations, §68-5-606.
Use of test information, §68-5-605.
Enforcement of provisions, §68-5-607.
Free of charge, §68-5-603.
Misdemeanors.
Violations of provisions, §68-5-607.
Penalties.
Violations of provisions, §68-5-607.
Reports, §68-5-604.
Required.
Exception, §68-5-602.
When required, §68-5-602.
Rules and regulations, §68-5-606.
Standard serological test.
Defined, §68-5-601.
Use of test information, §68-5-605.
Violations of provisions.
Penalties, §68-5-607.
Teenage pregnancy.
Department of human services.
Project RAP, §§71-3-701, 71-3-702.
General provisions, §§37-3-501 to 37-3-521.
See TEENAGE PREGNANCY.
Model teen learning centers.
See SCHOOLS AND EDUCATION.
Preschool/parenting learning centers for teen parents, §49-1-206.

PREMATURE BIRTHS.
Infant prematurely born alive during abortion.
Custody, §39-15-207.

PRENUPTIAL AGREEMENTS.
Enforcement, §36-3-501.

PRESCHOOL, PRE-K AND OTHER EARLY EDUCATION MATTERS.
Appropriations for establishing preschools, §49-6-101.
Boards of education.
Control of schools, §49-6-101.
Establishment of schools for preschool children authorized, §49-6-101.
Funds.
Acceptance of federal and state funds for preschool purposes, §49-6-101.
Community-based early childhood education and pre-kindergarten programs, §49-6-101.
Control of schools, §49-6-101.
Funds.
Acceptance of federal and state funds for preschool purposes, §49-6-101.
Headstart program, §49-6-101.
Preschool/parenting learning centers.
Department of education and department of human services.
Joint program.
Development and implementation, §49-1-206.
Reports.
Average daily attendance, §49-6-101.

PRESCHOOL, PRE-K AND OTHER EARLY EDUCATION MATTERS —Cont'd
Voluntary pre-K for Tennessee act of 2005, §§49-6-102 to 49-6-110.
Appropriations, subject to, §49-6-107.
At-risk children, enrollment, §49-6-104.
Collaborative agreements for operation, §49-6-105.
Community pre-k advisory council, §49-6-106.
Coordination between voluntary pre-K classrooms and elementary schools, §49-6-105.
Enrollment and implementation to be voluntary, §49-6-103.
Funding.
Application for funding and approval, §49-6-105.
Matching funds, §49-6-107.
Maximum amount of lottery proceeds, §49-6-110.
Legislative intent, §49-6-103.
Office of early learning, §49-6-108.
Requirements of programs, §49-6-104.
Short title, §49-6-102.

PRESUMPTIONS.
Child custody.
Gender of party seeking custody, §36-6-101.
Parent convicted of certain criminal offenses, §36-6-101.
Parent indicted for aggravated child abuse or child sexual abuse.
Presumption of substantial risk of harm to child, §36-6-112.
Child support.
Appeal of administrative actions.
Amount of support in arrears, §36-5-1002.
Guidelines, §36-5-101.
Ownership of property subject to lien, §36-5-903.
Illegitimate children.
Presumption of parentage, §§24-7-112, 36-2-304.
Intellectual and developmental disabilities facilities.
Licensing of facilities and services.
Application for licensure.
Felons presumed not to have requisite reputable and responsible character, §33-2-406.
Mental health and substance abuse facilities.
Licensing of facilities and services.
Application for licensure.
Felons presumed not to have requisite reputable and responsible character, §33-2-406.
Parentage, §§24-7-112, 36-2-304.
Parenting plans.
Gender based presumptions, §36-6-412.

PRETRIAL DIVERSION.
Delinquent and unruly children, §37-1-110, JuvPro 202.

PRIORITIES.
Guardians for minors.
Persons to be considered for appointment, §34-2-103.

PRISONS AND PRISONERS.
Adoption.
Terminating parental rights of incarcerated parent or guardian, §36-1-113.

PRISONS AND PRISONERS —Cont'd
Mental health service recipients.
Transfers of service recipients.
Correction department and children's service department, transfers from, §§33-3-401 to 33-3-412.
See MENTAL HEALTH SERVICE RECIPIENTS.
TennCare (medical assistance).
Eligibility.
Inmates in jails or correctional facilities, §71-5-106.

PRIVILEGED COMMUNICATIONS.
Child abuse.
Child sexual abuse.
Exceptions to certain privileges, §37-1-614.
Reporting.
Privileges inapplicable, §37-1-411.
Family violence shelters and shelter services.
Location of shelter privileged, §71-6-208.
Husband and wife.
Child sexual abuse.
Exception to privilege, §37-1-614.
Interstate child custody proceedings.
Inapplicability of spousal privilege, §36-6-234.
Mental health professional's evidentiary privilege.
Exceptions to, §33-3-114.
Spousal privilege.
Interstate family support act, §36-5-2316.

PRIVILEGE TAXES.
Marriage licenses.
Rates, §67-4-505.
Tax on license issued, §67-4-411.

PROBATE COURTS.
Jurisdiction.
Concurrent jurisdiction with juvenile courts, §37-1-104.

PROBATE MATTERS.
Guardians for minors.
Actions for appointment of guardian of person or property or both.
Brought in court exercising probate jurisdiction, §34-2-101.

PROBATION.
Mental health.
Sex offenders, services for.
Post-plea treatment system, §33-6-805.
Rape of a child.
Satellite-based monitoring program, §39-13-522.

PROFESSIONAL COUNSELORS AND MARITAL AND FAMILY THERAPISTS.
Child support enforcement.
Denial or revocation of license, §§36-5-701 to 36-5-714.
Administrative order enforcement, §36-5-812.
Juvenile proceedings, §37-1-151.
Paternity and legitimation, §36-2-320.
Licenses.
Social security numbers on applications, §36-5-1301.
Mental health inpatient treatment.
Involuntary admission, emergency.
Role of mental health professionals, §33-6-427.

PROFESSIONAL COUNSELORS AND MARITAL AND FAMILY THERAPISTS —Cont'd
Mental health service recipients.
Privileged communications.
Exceptions, §33-3-114.
Special liability rules.
Suicide of service recipient, §33-3-201.

PROJECT RAP.
Teen pregnancy, §§71-3-701, 71-3-702.

PROPERTY.
Divorce proceedings.
Property of litigants, §§36-4-121, 36-5-102.
Domestic abuse protection orders.
Title to real property not affected, §36-3-606.
Marriage.
Antenuptial or prenuptial agreements.
Enforcement, §36-3-501.
Mental health service recipients.
Specific rights protected, §33-3-102.
Support and maintenance.
Decreed to plaintiff spouse, §36-5-102.
Distribution of marital property, §36-4-121.

PROSECUTORS.
Juvenile proceedings.
Rules of juvenile procedure.
Appearance of prosecuting attorney, JuvPro 104.

PRO SE REPRESENTATION.
Domestic abuse.
Protective order forms, §36-3-604.

PROTECTIVE ORDERS.
Adoption.
Restraining order prohibiting contact or interference with child.
Validity after adoption finalized, §36-1-123.
Domestic abuse, §§36-3-601 to 36-3-612.
See DOMESTIC ABUSE.
Fees.
Clerks of court, §8-21-401.
Paternity proceedings.
Pending outcome of parentage tests, §36-3-614.
Tennessee bureau of investigation.
Protection order entered into national crime information center.
Time for providing notification to agency entering protection order, §38-6-109.

PSYCHIATRISTS AND PSYCHOLOGISTS.
Child support enforcement.
Denial or revocation of license, §§36-5-701 to 36-5-714.
Administrative order enforcement, §36-5-812.
Juvenile proceedings, §37-1-151.
Paternity and legitimation, §36-2-320.
Mental health inpatient treatment.
Involuntary admission, emergency.
Role of mental health professionals, §33-6-427.
Involuntary admission, nonemergency.
Certificates of need for care and treatment.
Licensed clinical psychologist, §33-6-503.
Mental health service recipients.
Commitment.
Witnesses.
Physician, psychologist, etc. as witnesses, §33-3-504.

PSYCHIATRISTS AND PSYCHOLOGISTS —Cont'd
Mental health service recipients —Cont'd
Privileged communications.
Exceptions, §33-3-114.
Special liability rules.
Suicide of service recipient, §33-3-201.
Suicide of service recipient.
Special liability rules, §33-3-201.
Threats of service recipients.
Duties of professionals counseling, §§33-3-206 to 33-3-210.
Mental health services for children.
Electroconvulsive therapy.
Independent psychiatric evaluation, §33-8-308.
Mental health services for sex offenders.
Examinations.
Conviction, examination upon, §33-6-802.
Prerelease examination, §33-6-804.
Social security numbers on license applications, §36-5-1301.

PUBLIC ASSISTANCE.
See WELFARE.

PUBLIC OFFICERS AND EMPLOYEES.
Adoption.
Violation of criminal provisions by state employees, §36-1-105.
Community service agencies.
State employees, §37-5-314.
Marriage.
County clerk violating law.
Penalty, §36-3-111.
Retirement.
Community service agencies.
Participation, §37-5-316.

PUTATIVE FATHER REGISTRY, §36-2-318.

R

RAPE.
Aggravated rape, §39-13-502.
Aggravated statutory rape, §39-13-506.
Aiding and abetting.
Aggravated rape.
Defendant aided or abetted by one or more other persons, §39-13-502.
Child custody.
False allegations of sexual abuse in furtherance of litigation, §36-6-114.
Visitation denial for parent convicted of rape where child conceived from crime, §36-6-102.
Child sexual abuse.
Abortion performed on minor less than 13.
Physician duties as to preservation of biological evidence, §39-15-210.
When conduct constitutes, §37-1-602.
Consent.
Sexual penetration accomplished without, §39-13-503.
Definitions, §39-13-503.
Aggravated statutory rape, §39-13-506.
Mitigated statutory rape, §39-13-506.
Rape of a child, §39-13-522.
Statutory rape, §39-13-506.
False allegations of sexual abuse in furtherance of litigation, §§36-4-135, 36-5-122.

RAPE —Cont'd
Firearms and other weapons.
Aggravated rape.
Defendant armed with weapon, §39-13-502.
Mental health.
Aggravated rape.
Victim's mental defect or mental incapacitation known to defendant, §39-13-502.
Sex offenders, services for.
Post-plea treatment system, §§33-6-801 to 33-6-805.
Victim mentally defective, §39-13-503.
Minors.
Statutory rape, §39-13-502.
Mitigated statutory rape, §39-13-506.
Rape of a child, §39-13-522.
Abortion performed on minor less than 13.
Physician duties as to preservation of biological evidence, §39-15-210.
Class A felony, §39-13-522.
Defined, §39-13-522.
Satellite-based monitoring program, §39-13-522.
Sentencing of child rapist, §39-13-522.
Reports.
Statutory rape reports, §§38-1-301 to 38-1-306.
Sentence and punishment.
Rape of a child, §39-13-522.
Statutory rape, §39-13-506.
Aggravated statutory rape, §39-13-506.
Defined, §39-13-506.
Mitigated statutory rape, §39-13-506.
Reports, §§38-1-301 to 38-1-306.
Confidentiality of reports and identity of person making, §38-1-304.
Department of human services when public assistance application indicates occurrence, §38-1-305.
Doctor, physician, surgeon or health care provider.
Pregnancy of child and alleged father four years older than victim, §§38-1-302, 38-1-303.
Immunity of persons filing, §38-1-306.
Purposes of provisions, §38-1-301.
Victim at least thirteen but less than eighteen years of age, §39-13-506.
Victim under thirteen years of age, §39-13-502.
Termination of parental rights.
Child conceived by rape, termination of rights, §36-1-113.

RAZORS AND RAZOR BLADES.
School property.
Carrying weapons on school property, §39-17-1309.

READING.
Literacy initiative.
See SCHOOLS AND EDUCATION.

REAL PROPERTY.
Domestic abuse protection orders.
Title to property not affected, §36-3-606.
Orphan asylums.
Powers as to, §71-3-602.

RECEIVING HOMES, §§37-2-301 to 37-2-319.
Appropriations, §37-2-302.
Authority to provide, §37-2-301.
Commitment of children.
Generally, §37-2-314.
Time, §37-2-315.

RECEIVING HOMES —Cont'd
Contracts.
Department of children's services.
Funding contracts, §37-2-312.
Department of children's services.
Contracts.
Funding contracts, §37-2-312.
Inspections, §37-2-305.
Investigations, §37-2-317.
Licenses.
Records, §37-2-308.
Required, §37-2-305.
Reports to department, §37-2-313.
Rules and regulations, §37-2-304.
Fires and fire prevention.
Licensed home requirements, §37-2-306.
Funds.
Appropriations, §37-2-302.
Contracts with department of children's services, §37-2-312.
Licenses required, §37-2-311.
State's contribution, §37-2-303.
Health.
Licensed home requirements, §37-2-306.
Inspection, §37-2-305.
Investigations.
Department of children's services, §37-2-317.
Licenses, §37-2-305.
Contents, §37-2-307.
Display on premises, §37-2-309.
Prerequisite to receipt of children and subsidies, §37-2-311.
Records, §37-2-308.
Revocation.
Child support enforcement, §§36-5-701 to 36-5-714.
Administrative order enforcement, §36-5-812.
Juvenile proceedings, §37-1-151.
Paternity and legitimation, §36-2-320.
Procedure, §37-2-310.
Social security numbers on applications, §36-5-1301.
Location of detention.
Licensed areas only, §37-2-318.
Number of children.
Exceeding authorized number.
Prohibited, §37-2-318.
Limitations, §37-2-307.
Records.
Case records kept on children, §37-2-316.
Licenses, §37-2-308.
Reports.
Quarterly reports by county to department of children's services, §37-2-313.
Rules and regulations.
Department of children's services, §37-2-304.
Time.
Commitment of children, §37-2-315.
Violations of chapter.
Penalties, §37-2-319.

RECORDS.
Abortion.
Parental consent for abortion by minor.
Retention of documentation required, §37-10-303.
Physicians performing to keep, §39-15-203.
Adoption.
See ADOPTION.
Child abduction prevention.
Definition of record, §36-6-602.

RECORDS —Cont'd
Child custody.
Medical records of child, §§36-6-101, 36-6-103.
Children, delinquent and unruly.
Children's services departments (counties), §37-2-205.
Court records.
Expunction, §37-1-153.
Inspections, §37-1-153.
Law enforcement records.
Inspections, §37-1-154.
Post-commitment relief, §37-1-317.
Children, dependent and neglected.
Case records kept on children, §37-2-316.
Children's services departments (counties), §37-2-205.
Court files and records.
Expunction, §37-1-153.
Inspection, §37-1-153.
Subsidized receiving homes.
Licenses, §37-2-308.
Children's services department.
Confidentiality, §37-5-107.
Child sexual abuse.
Access to records, §37-1-612.
Child support.
Access to records for enforcement purposes, §36-5-801.
Appeal of administrative actions, §§36-5-1001 to 36-5-1006.
Noncompliance with request for information, §§36-5-811, 36-5-812.
Employment records, §§36-5-1101 to 36-5-1108.
Evidence.
Official records, §24-7-121.
Social security number records, §§36-5-1301, 36-5-1302.
Updating information of parties to administrative actions, §36-5-805.
Community service agencies.
Accounting records, §37-5-313.
Conservators for disabled.
Duties of court clerk, §34-1-128.
No fiduciary appointed in action for appointment.
Expunction of record, §34-1-124.
Criminal law and procedure.
Juvenile cases.
Court files and records, §37-1-153.
Expunction, §37-1-155.
Law enforcement records, §37-1-154.
Delinquent and unruly children.
Children's services departments (counties), §37-2-205.
Court files and records.
Expunction, §37-1-153.
Inspection limited, §37-1-153.
Law enforcement records.
Inspection limited, §37-1-154.
Post-commitment relief.
Counsel's consultations with petitioner, §37-1-317.
Dependent and neglected children.
Case records kept on children, §37-2-316.
Children's services departments (counties), §37-2-205.
Court files and records.
Inspection limited, §37-1-153.
Subsidized receiving homes.
Licenses, §37-2-308.
Divorce.
Expunction upon reconciliation, §36-4-127.

RECORDS —Cont'd
Divorce —Cont'd
Social security numbers on records, §36-5-1302.
Domestic abuse.
Rape crisis centers and family violence shelters.
Confidentiality of records, §36-3-623.
Employment records for child support enforcement, §§36-5-1101 to 36-5-1108.
Expunction of records.
Divorce records.
Reconciliation, §36-4-127.
Juvenile courts, §37-1-155.
Foster care plans.
Confidentiality, §37-2-408.
Guardian and ward.
Guardians for minors.
Duties of court clerk, §34-1-128.
No fiduciary appointed in action for appointment.
Expunction of record, §34-1-124.
Illegitimate children.
Official references to illegitimacy, §36-2-317.
Social security numbers on records, §36-5-1302.
Juvenile proceedings.
General provisions.
See JUVENILE PROCEEDINGS.
Medical records.
See MEDICAL RECORDS.
Mental health service recipients.
Confidentiality of information, §§33-3-103 to 33-3-116.
Residential service recipients.
Services and supports provided, §33-3-101.
Paternity.
Official references to illegitimacy, §36-2-317.
Social security numbers on records, §36-5-1302.
Physicians and surgeons.
Abortion.
Recordkeeping requirements, §39-15-203.
Schools and education.
Attendance, §49-6-3007.
Sexually transmitted diseases.
Confidentiality of records and information, §68-10-113.
Knowledge of governmental persons regarding, §68-10-114.
Social security numbers on certain records, §36-5-1302.
Support and maintenance.
Social security number records, §§36-5-1301, 36-5-1302.
Tattooing, §62-38-207.
Welfare.
Child care agencies.
Casual care operations, §71-3-503.

REFEREES.
Juvenile proceedings, §37-1-206.
Support and maintenance, §§36-5-402, 36-5-403, 36-5-405.

REGISTRATION.
Child support enforcement.
Denial or revocation, §§36-5-701 to 36-5-714.
Administrative order enforcement, §36-5-812.
Juvenile proceedings, §37-1-151.
Interstate child custody proceedings.
Foreign decrees.
See INTERSTATE CHILD CUSTODY PROCEEDINGS.

REGISTRATION —Cont'd
Runaway houses.
Requirements, §37-2-503.
Support orders.
Generally, §§36-5-3101 to 36-5-3111.
See SUPPORT AND MAINTENANCE.
Interstate family support act, §§36-5-2601 to 36-5-2616.
Convention, support proceeding under (Future Contingent Effective Date).
Registration of convention support order, §36-5-2706.

RELIGION.
Child abuse and child neglect or endangerment.
Reports.
Authority figures at a community facilities.
Child sexual abuse, §37-1-605.
Childhood immunizations.
Conflict with religious tenets and practices of parent, §37-10-402.
Christian Science.
Infants, treatment of eyes with prophylaxis, §68-5-202.
Contraceptives.
Refusal to supply on grounds of religion or conscientious objection, §68-34-104.
Family planning.
Contraceptives.
Refusal to supply contraceptives on grounds of religious or conscientious objection, §68-34-104.
Immunization of children.
Conflicts with religious tenets of parents, §37-10-402.
Marriage.
Solemnization of marriages, §36-3-303.
Mental health service recipients.
Right to religious expression, §33-3-126.
Metabolic defects.
Newborn testing.
Exemptions for religious beliefs, §68-5-403.
Schools and education.
Home schooling, §49-6-3050.

REMAINDERS.
Adoption.
Adopted child taking as beneficiary of remainder interest, §36-1-121.

REPORT CARDS.
Copies.
Furnishing to noncustodial or nonresident parent or guardian, §§36-6-101, 36-6-104.
School report cards.
Parental involvement standards.
Evaluating schools on parental involvement, §49-1-208.

REPORTS.
Abortion.
Physicians performing to make, §39-15-203.
Adoption.
See ADOPTION.
Child abuse.
Duty of any person with knowledge, §§37-1-402, 37-1-403.
Multi-level response system for children and families.
Reporting by department, §37-5-605.

REPORTS —Cont'd
Child abuse —Cont'd
Reporting, §§37-1-401 to 37-1-414.
See CHILD ABUSE AND CHILD NEGLECT OR ENDANGERMENT.
School grounds or school supervision.
Abuse occurring on or during, §49-6-1601.
Severe child abuse.
Second look commission to study second or subsequent incidents of severe child abuse, §37-3-803.
Child care agencies.
Abuse or neglect allegations, §37-5-512.
Annual reports, §§37-5-517, 37-5-518.
Departmental annual report, §37-5-519.
Public agencies.
Inspections and recommendations, §37-5-510.
Child placement.
Foster care plans.
See CHILD PLACEMENT.
Violations of confidentiality, §37-2-411.
Children's services department.
Commissioner, §37-5-105.
Death or near fatality of person in custody of department, §37-5-124.
Statutory rape reporting.
Application for public assistance indicates occurrence of statutory rape, §38-1-305.
Child sexual abuse.
See CHILD ABUSE AND CHILD NEGLECT OR ENDANGERMENT.
Child support.
Delinquent support, §36-5-106.
Employment reports, §§36-5-1101 to 36-5-1108.
License denial or revocation, §36-5-712.
Community service agencies.
Annual reports, §37-5-312.
Conservators for persons with disabilities.
Examination of annual accounting, §34-1-131.
Guardian ad litem appointed on filing of petition for conservator, §34-1-107.
Delinquent and unruly children.
Appointment of counsel, §37-1-126.
Department of children's services.
Death or near fatality of person in custody of department, §37-5-124.
Statutory rape reporting.
Application for public assistance indicates occurrence of statutory rape, §38-1-305.
Dependent and neglected children.
Child abuse and child neglect or endangerment.
General provisions, §§37-1-401 to 37-1-414.
See CHILD ABUSE AND CHILD NEGLECT OR ENDANGERMENT.
Subsidized receiving homes.
Reports to department of human services, §37-2-313.
Domestic abuse.
Law enforcement officers' reports, §36-3-619.
Education.
See SCHOOLS AND EDUCATION.
Foster care plans.
Advisory review board, §37-2-406.
Child placement.
See CHILD PLACEMENT.

REPORTS —Cont'd
Foster care plans —Cont'd
Foster care review boards, §37-2-406.
Guardian ad litem.
Appointment on filing of petition for guardianship or conservatorship, §34-1-107.
Guardians for minors.
Examination of annual accounting, §34-1-131.
Guardian ad litem on filing of petition for appointment of guardian, §34-1-107.
Health.
Department of health.
In-home visitation programs, §68-1-125.
Judges.
Child abuse and child neglect or endangerment.
Duty to report, §37-1-403.
Child sexual abuse, §37-1-605.
Juvenile proceedings.
Appointment of counsel, §37-1-126.
Extension of foster care services advisory council, §37-2-601.
Teenage pregnancy.
State reports.
Availability, §37-3-503.
Mental health.
Children, services for.
Electroconvulsive therapy.
Use of electroconvulsive therapy, §33-8-314.
Missing children recovery, §§37-10-202 to 37-10-205.
Nurses.
Child abuse and child neglect or endangerment.
Duty to report.
Child sexual abuse, §37-1-605.
Office of community contact.
Youth investment, §37-3-402.
Physicians and surgeons.
Child abuse and child neglect or endangerment.
Duty to report.
Child sexual abuse, §37-1-605.
Statutory rape reporting.
Pregnancy of child and alleged father four years older than victim, §§38-1-302, 38-1-303.
Poisons and poisoning.
Control centers.
Commissioner of health.
Annual report to general assembly, §68-141-108.
Police and other law enforcement officers.
Child abuse and child neglect or endangerment.
Duty to report, §37-1-403.
Child sexual abuse, §37-1-605.
Domestic violence cases, §36-3-619.
Pregnancy.
Serological tests, §68-5-604.
Rape.
Statutory rape reports, §§38-1-301 to 38-1-306.
Receiving homes.
Quarterly reports by county to department of children's services, §37-2-313.
State mental health facilities.
Employee as guardian or conservator, §33-4-208.
Statutory rape, §§38-1-301 to 38-1-306.
Confidentiality of reports and identity of person making, §38-1-304.

REPORTS —Cont'd
Statutory rape —Cont'd
Department of human services when public assistance application indicates occurrence, §38-1-305.
Doctor, physician, surgeon or health care provider.
Pregnancy of child and alleged father four years older but not legal spouse of victim, §§38-1-302, 38-1-303.
Immunity of person making, §38-1-306.
Purposes of provisions, §38-1-301.
Support and maintenance.
Delinquent child support, §36-5-106.
Employment reports for child support enforcement, §§36-5-1101 to 36-5-1108.
Tattooing of minor, §62-38-211.
Teachers.
Child abuse and child neglect or endangerment.
Duty to report.
Child sexual abuse, §37-1-605.
Criminal activity by students, §49-6-4301.
Venereal diseases, §68-10-112.
Cases in children, §37-1-403.
Youth investment, §37-3-405.

RESEARCH.
Aborted fetuses.
Medical experiments or research upon, §39-15-208.

RESIDENCE.
Adoption.
Petition.
Party, §36-1-115.
Child custody.
Denial of information concerning residence of child to noncustodial or nonresident parent, §36-6-104.
Delinquent and unruly children.
Change of residence to another state.
Transfer of jurisdiction, §37-1-141.
Nonresident child.
Transfer from another state, §37-1-142.
Dependent and neglected children.
Change of residence to another state.
Transfer of jurisdiction, §37-1-141.
Nonresident child.
Transfer from another state, §37-1-142.
Divorce.
Requirements, §36-4-104.
Spouse's refusal to remove to Tennessee.
Proof required, §36-4-117.

RESTITUTION.
Delinquent and unruly children.
Ordering delinquent child to make restitution, §37-1-131.
Juvenile courts.
Definition of restitution, §37-1-102.
Delinquent children, §37-1-131.
Mental health.
Sex offenders, services for.
Post-plea treatment system, §33-6-805.
Schools and education.
Enrollment of out-of-district pupil.
Fraudulent representation of pupil's domicile address.
Liability of parent, guardian or other custodian, §49-6-3003.
Welfare.
Child care services fraud, §71-1-133.

RETIREMENT.
Child support or alimony.
Lump sum amount of benefits.
Treatment when considering right to receive, §§36-5-101, 36-5-121.

RIGHT OF ENTRY.
Child care agencies.
Inspections by department, §37-5-513.

RUBELLA.
Pregnancy.
Serological tests, §§68-5-601 to 68-5-607.

RULES AND REGULATIONS.
Child abuse reports.
Child sexual abuse, §§37-1-409, 37-1-616.
Disclosure of information, §37-1-409.
Multi-level response system for children and families, §37-5-608.
Child care agencies, welfare.
Promulgation, §71-3-502.
Children's services department, §37-5-112.
Post-adoption services and searches, §37-5-122.
Child support.
Administrative enforcement, §36-5-815.
Appeal of administrative actions, §36-5-1006.
Assignments of income for support, §36-5-501.
Employment reports, §36-5-1108.
Lien enforcement, §§36-5-901, 36-5-912.
Records access for enforcement purposes, §36-5-801.
Delinquent and unruly children.
Post-commitment relief.
Promulgation of procedural rules by supreme court, §37-1-322.
Dependent and neglected children.
Subsidized receiving homes.
Department of children's services authority, §37-2-304.
Family planning.
Authority of commissioner to promulgate, §68-34-106.
Fetal and infant mortality review (FIMR) act.
Rules promulgation, §68-142-204.
Foster care.
Kinship foster care program, §37-2-414.
Genetic testing.
Department of health, §68-5-504.
Handgun carry permits, §39-17-1360.
Individuals with disabilities education act.
Rules and regulations to implement provisions regarding, §49-10-609.
Intellectual and developmental disabilities facilities.
Licensing of facilities and services.
Department rulemaking, §33-2-404.
Juvenile proceedings.
Commission on children and youth, §37-3-103.
Predecessor agencies, §37-3-107.
Post-commitment procedures.
Promulgation by supreme court, §37-1-322.
Mental health and substance abuse facilities.
Licensing of facilities and services.
Department rulemaking, §33-2-404.
Mental health service recipients.
Confidentiality of records.
Implementation of provisions, §33-3-107.

RULES AND REGULATIONS —Cont'd
Mental health service recipients —Cont'd
Isolation and restraint, §33-3-120.
Pregnancy.
Serological tests.
Department of health, §68-5-606.
Receiving homes.
Department of children's services, §37-2-304.
Sexually transmitted diseases.
Duty of department of health to make rules and bylaws, §68-10-109.
Special education.
Individuals with disabilities education act.
Rules and regulations to implement provisions regarding, §49-10-609.
Supreme court.
Juvenile law.
Promulgation of rules, §37-1-322.
Welfare.
Medical aid, §71-5-134.
Temporary assistance.
Restrictions on electronic benefit transactions, §71-3-126.
Temporary assistance for dependent children, §71-3-107.
Establishing standard of care, §71-3-105.
Youth investment.
Office of community contact, §37-3-402.

RUNAWAY CHILDREN.
Harboring, concealing or aiding in escape from lawful custody, §39-15-414.
Houses for runaway children, §§37-2-501 to 37-2-507.
Citation, §37-2-501.
Definitions, §37-2-502.
Minimum standards.
Contents, §37-2-505.
Establishment, §37-2-504.
Registration.
Required, §37-2-503.
Shelter for runaways, §37-2-506.
Short title, §37-2-501.
Violations.
Penalties, §37-2-507.
Interstate juvenile compact.
Execution authorized, §37-4-101.
Return of child to home state, §37-4-101.
Text of compact, §37-4-101.

S

SAFE FAMILIES AND FAMILY PRESERVATION ACT, §§37-3-601 to 37-3-605.

SAFETY.
Department of safety.
Drug abuse resistance education.
See ALCOHOL AND DRUG ABUSE.
Schools and education.
Safe and secure learning environments in schools.
Commissioner of education to develop advisory guidelines, §49-1-214.
School safety center, §49-6-4302.
Tennessee school safety center, §49-6-4302.

SAFETY BELTS.
Required use, §55-9-603.

SALES.
Aborted fetuses.
Class E felony, §39-15-208.
Aerosol gases.
Selling, giving or possessing for unlawful purposes.
Class E felony, §39-17-422.
Cigarettes.
Minors.
Prevention of access to tobacco and vapor products.
General provisions, §§39-17-1501 to 39-17-1551.
See TOBACCO.
Smoking paraphernalia, §§39-15-407 to 39-15-414.
Conservators for persons with disabilities.
Property of person, §34-1-116.
Guardians for minors.
Property of minor, §34-1-116.
Minors.
Tobacco.
Prevention of access to tobacco and vapor products.
Generally, §§39-17-1501 to 39-17-1551.
See TOBACCO.
Motor vehicles.
See MOTOR VEHICLES.
Pornographic material harmful to minors, §39-17-911.
Sales displays of material of sexual nature, §39-17-914.

SAME SEX MARRIAGES.
Not recognized, §36-3-113.

SATELLITE HOSPITALS.
Mental health and substance abuse facilities.
Licensing of facilities and services.
Exemptions, §33-2-403.

SCHOOL AGE, §49-6-3001.

SCHOOL BUSES.
Discipline of students.
Disorderly conduct on school bus.
Drivers' authority to hold pupil accountable, §49-6-4102.
Drivers.
Disorderly conduct on school bus.
Authority of driver to hold pupil accountable, §49-6-4102.

SCHOOL SAFETY CENTER, §49-6-4302.

SCHOOLS AND EDUCATION.
Actions.
Assault or injury to student or employee or property of student or employee, §49-6-4006.
Additional instructional time.
School exceeding daily instructional time for academic year, §49-6-3004.
Admission.
Ages of compulsory attendance, §49-6-3001.
Advanced placement courses.
Home school students, PSAT/NMSQT and AP examinations, §49-6-3050.
Alcohol and drug abuse.
Codes of behavior and discipline.
Topics addressed by codes, §49-6-4003.
Allergies.
Food allergies.
Anaphylaxis treatment by student, §49-50-1602.

SCHOOLS AND EDUCATION —Cont'd
Allergies —Cont'd
Food allergies —Cont'd
Emergency precautions to provide treatment, §49-50-1602.
Guidelines for management, §49-50-1602.
Alternative education programs.
Mandated attendance pilot project, §49-6-3402.
Monitoring success of school program, §49-6-3405.
Small learning communities, §49-1-207.
Suspended or expelled students, §49-6-3402.
Advisory council for alternative education, §49-6-3404.
Curriculum, §49-6-3402.
Two-way communications systems required, §49-6-3402.
Alternative opening date, §49-6-3004.
Animals.
Searches and seizures.
Use of animals, §49-6-4208.
Anti-seizure medication, administering to student, §49-50-1602.
Assault.
Communicating threat concerning school employee, §39-13-114.
Principal, teacher, bus driver, other students, etc.
Suspension or expulsion of pupils, §49-6-3401.
Asthma inhalers.
Possession by students, §49-50-1602.
Athletics.
Home schooled students, participation in interscholastic athletic competition, §49-6-3050.
Sudden cardiac arrest prevention, §§68-6-101 to 68-6-104.
See SUDDEN CARDIAC ARREST PREVENTION.
Attendance.
Ages of compulsory attendance, §49-6-3001.
Exceptions, §49-6-3001.
Alternative to misdemeanor prosecution of violations.
Parent education training and parent-teacher conferences, §49-6-3009.
Annual term of compulsory attendance, §49-6-3004.
Attendance at specific school not required, §49-6-3005.
Attendance teachers, §49-6-3006.
Blind children, §49-6-3015.
Caregiver responsibility.
Person designated as caregiver with power of attorney for care of a minor child, §49-6-3001.
Children excused from compulsory attendance, §49-6-3005.
Commencement of school year, §49-6-3004.
Compulsory school attendance laws.
Enforcement of compulsory attendance, §49-6-3007.
Withholding state funds for noncompliance with laws, §49-6-3302.
Deferral of required attendance, §49-6-3001.
Excused absences.
Extracurricular activities.
Non-school-sponsored extracurricular activities, participation, §49-6-3022.

SCHOOLS AND EDUCATION —Cont'd
Attendance —Cont'd
Excused absences —Cont'd
Summons, subpoena, court order, etc, preventing attendance, §49-6-3002.
Excused from compulsory attendance, §49-6-3005.
Financial assistance.
Books furnished by board if child unable to attend because of lack of funds, §49-6-3013.
Relief to children lacking clothing or food, §49-6-3014.
Guidelines for excusing child from compulsory attendance, §49-6-3005.
Guidelines governing student attendance, §49-6-3002.
Home school, §49-6-3001.
Hospital or homebound instruction.
No penalty for period of, §49-6-3002.
In-service days, §49-6-3004.
Inspection of places of employment, §49-6-3008.
Military deployments.
Excused absences for children of parents/custodians deployed or returning from deployment, §49-6-3019.
Names of students furnished to principals at beginning of school year, §49-6-3007.
Notice to parent that attendance of child required.
Absence of child from school, §49-6-3007.
Parental responsibility, §49-6-3001.
Parent education training and parent-teacher conferences.
Alternative to misdemeanor prosecution of violations, §49-6-3009.
Records, §49-6-3007.
Refusal to permit attendance.
Universal mental health or socioemotional screening.
Failure to consent to screening not justification to refuse permission to attend, §49-2-124.
Remedial programs outside of regular school day.
Requiring attendance at, §49-6-3021.
Reports, §49-6-3007.
Summons, subpoena, court order, etc, preventing attendance, §49-6-3002.
Teacher-parent conference days, §49-6-3004.
Term of compulsory attendance, §49-6-3004.
Transfer to other school, state or system.
Documentation of withdrawal and transfer, §49-6-3020.
Truancy.
Attendance officers, §49-6-3006.
Proceedings against parents, §49-6-3007.
Truancy schools.
Composition of student body, §49-6-3012.
Establishment, §49-6-3012.
Vacation days, §49-6-3004.
Violations.
Jurisdiction of school attendance cases, §49-6-3010.
Misdemeanor, §49-6-3009.

SCHOOLS AND EDUCATION —Cont'd
Attendance —Cont'd
Violations —Cont'd
Penalty, §§49-6-3008, 49-6-3009.
Recovery and disposition of fines, §49-6-3011.
Withdrawal of child from public school, §49-6-3001.
Documentation of withdrawal and transfer, §49-6-3020.
Year-round schools, §49-6-3004.
Attorneys' fees.
Assault or injury to student or employee or property of student or employee.
Civil cause of action, §49-6-4006.
Fraudulent enrollment of student in school district.
Civil action seeking restitution, §49-6-3003.
Beepers.
Electronic pagers, possession by students.
Prima facie evidence of intent to use in violation of part, §49-6-4214.
Blind persons, §49-6-3015.
Boards of education.
Authorized to receive federal and state funds for preschool purposes, §49-6-101.
Books.
Furnished for children unable to procure them, §49-6-3013.
Control of schools, §49-6-101.
Discipline.
Promulgation of rules and regulations, §49-6-4104.
Preschool education.
Establishment of schools for preschool children authorized, §49-6-101.
Relief to children lacking clothing or food, §49-6-3014.
Reports.
Children unable to attend school due to lack of clothing or food, §49-6-3014.
Truancy schools, §49-6-3012.
Bomb threats.
Suspension or expulsion of pupils, §49-6-3401.
Books.
Furnished by local board of education when children unable to procure them, §49-6-3013.
Buildings.
Firearms on school grounds.
Concealed weapons, employees authorized to carry in distressed rural counties.
Applicability, §39-17-1309.
Persons permitted to possess or carry firearms on school grounds.
Applicability, §39-17-1309.
Private or parochial schools, handgun carry policy.
Applicability, §39-17-1309.
Bullying, cyber-bullying, harassment or intimidation, §§49-6-4501 to 49-6-4506.
Policies regarding.
LEAs to adopt, review and transmit to commissioner of education, §49-6-4504.
Caregivers.
Person designated as caregiver with power of attorney for care of a minor child.
Responsibilities for child attending school, §49-6-3001.

SCHOOLS AND EDUCATION —Cont'd
Census.
Funds.
Withholding state funds for noncompliance with laws, §49-6-3302.
Names furnished to principals at beginning of school year, §49-6-3007.
State supervisors of census and attendance.
Appointment, §49-6-3301.
Duties.
Generally, §49-6-3301.
Child abuse and child neglect or endangerment.
Prevention.
Parental help line for child abuse prevention.
Promotion and publicizing, duties of educational agencies, §37-10-501.
Reporting.
Approved procedure for reporting in place.
Compliance with duty to report, §37-1-403.
Duty of personnel to report.
Child sexual abuse, §37-1-605.
School grounds or school supervision, abuse occurring on or during, §49-6-1601.
Child custody.
Change in physical custody of child.
Requirements for school officials to permit, §36-6-105.
Copies of report cards, school attendance, names of teachers, class schedules, standardized test scores and other records.
Furnishing to noncustodial or nonresident parent, §§36-6-101, 36-6-104.
High school graduation.
Proof of graduation to human services department or parents, §36-6-104.
Rights of noncustodial parents, §36-6-101.
Children's services department.
Cessation of operations of provider agency school.
Permanent education records, disposition, §37-5-130.
Guardian or custodian to notify school of child's criminal offenses, §49-6-3051.
Juvenile detention.
Education of youth in facilities for detention or for youth at risk, §37-5-131.
Child sexual abuse.
Reporting abuse occurring on school grounds or during school supervisions, §49-6-1601.
Class size.
Pre-kindergarten programs, §49-6-104.
Clean indoor air.
Children's clean indoor air act, §§39-17-1601 to 39-17-1606.
Commencement of school year, §49-6-3004.
Commissioner of education.
Family resource centers, §49-2-115.
Innovative educational programs, §49-1-207.
Safe and secure learning environments in schools.
Development of advisory guidelines for local education agencies, §49-1-214.

SCHOOLS AND EDUCATION —Cont'd
Communications systems in alternative schools for suspended or expelled students.
Two-way communications systems required, §49-6-3402.
Computers.
Curriculum component on Internet safety, §49-1-221.
Internet use policy, §49-1-221.
Conflict resolution intervention programs, §49-2-118.
Consent.
Universal mental health or socioemotional screening, §49-2-124.
Containers.
Search of containers, §49-6-4205.
Contraband.
Disposal of contraband, §49-6-4210.
Contracts.
Early childhood education.
Delivery of educational services, §49-6-101.
Control of schools, §49-6-101.
Corporal punishment, §§49-6-4103 to 49-6-4107.
Arrest and prosecution for injury to student, §49-6-4105.
Authorization for punishment, §49-6-4103.
Rules and regulations for administering, §49-6-4104.
Special school districts, §§49-6-4401 to 49-6-4404.
Administration regulated, §49-6-4402.
Pupils accountable for disorderly conduct, §49-6-4401.
Records required, §49-6-4403.
Remedies for excessive punishment, §49-6-4404.
Rules and regulations, §49-6-4403.
Corrections.
Special school district of penal and reformatory institutions.
Discipline in special school districts, §§49-6-4401 to 49-6-4404.
Curriculum.
Alternative education programs.
Suspended or expelled students, §49-6-3402.
Domestic violence awareness education programs, §49-6-1035.
Internet safety component, §49-1-221.
Lifetime wellness curriculum.
Obesity, children at risk for, §§49-6-1401 to 49-6-1405.
Obesity, children at risk for.
Nutrition and physical activity programs expanded where necessary, §49-6-1404.
Damages.
Assault or injury to student or employee or property of student or employee, §49-6-4006.
Deferral of required attendance, §49-6-3001.
Definitions.
Blind children, §49-6-3015.
Home schools, §49-6-3050.
School security, §49-6-4202.
Delinquent and unruly children.
School assignment, educational plans, and limitations or conditions on attendance, §37-1-131.
Dental care.
Promotion of dental care awareness, §49-6-5004.

SCHOOLS AND EDUCATION —Cont'd
Department of education.
Early childhood education.
Contracts with public or not-for-profit agencies.
Delivery of educational services, §49-6-101.
Mental health, substance abuse and intellectual and developmental disabilities facilities licensure.
Exemptions, §33-2-403.
Office of early learning, §49-6-108.
Parental involvement in schools.
Development of standards, §49-1-208.
Tennessee school safety center.
Establishment, §49-6-4302.
Director of schools.
Codes of behavior and discipline.
Implementation and supervision responsibilities, §49-6-4002.
Inspection of places of employment, §49-6-3008.
Internet use policy, §49-1-221.
Remedial programs outside of regular school day.
Reports of unexcused absences to director of schools.
Principal's report of absences, §49-6-3021.
Disasters.
Waiving school term requirement, §49-6-3004.
Discipline.
Boards of education.
Promulgation of rules and regulations, §49-6-4104.
Citation of chapter, §49-6-4101.
Codes of behavior and discipline.
Administration and implementation within school, §49-6-4002.
Assault or injury to students or employees or to property.
Civil cause of action, §49-6-4006.
Civil cause of action for assault or injury to students or employees or property, §49-6-4006.
Content requirements, §49-6-4003.
Different but consistent codes to apply to different classes, adoption, §49-6-4005.
Discrimination or partiality in application prohibited, §49-6-4004.
Dress code.
Indecent clothing that disrupts learning environment prohibited, §49-6-4009.
Fair application, §49-6-4004.
Force, reasonable.
Relocation of student for safety of student or others, §49-6-4008.
Formulating, §49-6-4002.
Guidance counselors supplied copies for discussion, §49-6-4007.
Implementation and supervision, §49-6-4002.
Indecent clothing that disrupts learning environment prohibited, §49-6-4009.
Language used by students, respect for employees, fighting, threats, etc.
Codes to address topics, §49-6-4003.
Posting of codes, §49-6-4007.
Recommendations from parents, employees, etc., in formulating, §49-6-4002.

SCHOOLS AND EDUCATION —Cont'd
Discipline —Cont'd
Codes of behavior and discipline —Cont'd
Relocation of student.
Safety reasons, relocation for, §49-6-4008.
Review and redrafting existing codes, §49-6-4002.
Safety of student or others justifying relocation of student, §49-6-4008.
Short title, §49-6-4001.
Student and Employee Safe Environment Act of 1996, §49-6-4001.
Teachers, administrative staff and parents provided copies, §49-6-4007.
Uniform application, §49-6-4004.
Uniformity of codes adopted for different classes, §49-6-4005.
Corporal punishment.
Injury to student.
Arrest and prosecution for, §49-6-4105.
Reasonable use authorized, §49-6-4103.
Disorderly conduct.
Pupils accountable, §49-6-4102.
Force.
Reasonable force.
Relocation of student for safety of student or others, §49-6-4008.
Teachers, principals, employees or bus drivers, authority as to, §49-6-4107.
Injury to students.
Arrest and prosecution for, §49-6-4105.
Referrals, §49-6-4106.
School bus drivers.
Disorderly conduct on school bus.
Authority of driver to hold pupil accountable, §49-6-4102.
Security of schools, §§49-6-4201 to 49-6-4219.
Special school districts, §§49-6-4401 to 49-6-4404.
Corporal punishment.
Administration regulated, §49-6-4402.
Authorized, §49-6-4402.
Records required, §49-6-4403.
Remedies for excessive corporal punishment, §49-6-4404.
Rules and regulations, §49-6-4403.
Examinations.
Pupil's right to physical examination, §49-6-4404.
Physicians and surgeons.
Pupil's right to physical examination, §49-6-4404.
Pupils accountable for disorderly conduct, §49-6-4401.
Records.
Corporal punishment, §49-6-4403.
Suspension of pupils by principals, §49-6-3401.
Discrimination.
Discipline.
Codes of behavior and discipline.
Indecent clothing that disrupts learning environment prohibited.
Nondiscriminatory enforcement, §49-6-4009.

SCHOOLS AND EDUCATION —Cont'd
Diseases.
Immunization of school children, §§49-6-5001, 49-6-5002.
Hepatitis B protection by immunization act, §49-6-5003.
Waiving school term requirement, §49-6-3004.
Disorderly conduct.
Discipline in special school districts.
Pupils accountable, §49-6-4401.
Dogs.
Drug searches, §49-6-4208.
Dress codes.
Discipline.
Codes of behavior and discipline.
Indecent clothing that disrupts learning environment prohibited, §49-6-4009.
Drivers license of minor.
Juvenile delinquency or conviction requiring school suspension or expulsion, §49-6-3401.
Dropout prevention.
Model program, §49-1-520.
Drugs.
Codes of behavior and discipline.
Topics addressed by codes, §49-6-4003.
Dogs brought in to search, §49-6-4208.
Drug testing in public schools.
Random drug testing or testing due to reasonable suspicion, §49-6-4213.
School security act, §§49-6-4201 to 49-6-4219.
Searches and seizures, §§49-6-4204 to 49-6-4210.
Dyslexia.
In-service training, §49-6-3004.
Electronic pagers.
Possession by students.
Prima facie evidence of intent to use in violation of part, §49-6-4214.
Electronic referrals.
Disciplinary referrals generally, §49-6-4106.
Elementary schools.
Coordination between voluntary pre-K classrooms and elementary schools, §49-6-105.
Juvenile offender act.
Informing pupils of provisions, §49-6-451.
Emergency management.
Waiving school term requirement, §49-6-3004.
Epilepsy.
Anti-seizure medication, administering to student, §49-50-1602.
Examinations.
Discipline in special school districts.
Pupil's right to physical examination, §49-6-4404.
Home school students, PSAT/NMSQT and AP examinations, §49-6-3050.
Excess instructional time.
School exceeding daily instructional time for full academic year, §49-6-3004.
Exclusion from compulsory attendance, §49-6-3005.
Explosives.
Carrying weapons on school property, §39-17-1309.
Extracurricular activities.
Excused absences from attendance.
Non-school-sponsored extracurricular activities, participation, §49-6-3022.

SCHOOLS AND EDUCATION —Cont'd
Eye care awareness.
Promotion of, §49-6-5004.
Eye examinations.
Parent or guardian unable to afford, §49-6-5004.
Family resource centers, §49-2-115.
Felonies, students charged with or convicted.
Suspension of students.
Off-campus criminal behavior that would be felony if student were adult, §49-6-3401.
Fighting among students.
Codes of behavior and discipline.
Topics addressed by codes, §49-6-4003.
Firearms and other weapons.
Carrying weapons on school property.
Concealed weapons, employees authorized to carry in distressed rural counties.
Applicability, §39-17-1309.
Display of warning signs, §39-17-1309.
Exceptions, §39-17-1309.
Expulsion of student, §49-6-3401.
Felony, §39-17-1309.
Persons permitted to possess or carry firearms on school grounds.
Applicability, §39-17-1309.
Principal to report suspicion to law enforcement officer, §49-6-4209.
Private or parochial schools, handgun carry policy.
Applicability, §39-17-1309.
Codes of behavior and discipline.
Topics addressed by codes, §49-6-4003.
Minor illegally possessing firearm on school premises.
Inaction by persons 18 or older, including parent or guardian, §39-17-1312.
Food allergies.
Anaphylaxis treatment by student, §49-50-1602.
Emergency precautions to provide treatment, §49-50-1602.
Guidelines for management, §49-50-1602.
Funds.
Boards of education.
Authorized to accept federal and state funds for preschool purposes, §49-6-101.
Census.
Withholding state funds for noncompliance with laws, §49-6-3302.
Compulsory school attendance laws.
Withholding state funds for noncompliance with laws, §49-6-3302.
Limitations on appropriations, §49-6-101.
Public school fund.
Pupils.
Attendance.
Violations of provisions, recovery and disposition of fines, §49-6-3011.
Gang activities on school property, §49-6-4215.
GED.
Home schools, §49-6-3050.
Minors withdrawal from secondary school, §49-6-3017.

SCHOOLS AND EDUCATION —Cont'd
General assembly pages.
Missed school attendance, §49-6-3018.
Glucagon administration.
Teacher and employee assistance in administering, §49-50-1602.
Guidance counselors.
Distribution of copies of code of behavior and discipline for discussion, §49-6-4007.
Head Start participation.
School age.
Participation in Head Start, effect on age at entry to school, §49-6-3001.
Headstart program.
Community-based early childhood education and pre-kindergarten pilot programs, §49-6-101.
Health care procedures administered on students, §49-50-1602.
Hearing examination of pupils, §49-6-5004.
Hepatitis B protection by immunization, §49-6-5003.
High schools.
Pages for general assembly, §49-6-3018.
Holidays, §49-6-3016.
Homeless children.
Immunization, §49-6-5001.
Home schools.
Exclusion from compulsory attendance, §49-6-3005.
Generally, §49-6-3050.
Parental responsibility for child's attendance at school.
Exception to home school children, §49-6-3001.
PSAT/NMSQT and AP examinations, home school students permitted to take, §49-6-3050.
Hospital or homebound instruction.
No penalty for period of, §49-6-3002.
Hypoglycemia.
Glucagon administration.
Teacher and employee assistance in administering, §49-50-1602.
Immunization of school children.
Certificate of immunization, §49-6-5002.
Condition under which immunization not required, §49-6-5001.
Designation of diseases against which children must be immunized prior to attendance at school, §49-6-5001.
Effect on counting of daily attendance average, §49-6-5001.
Hepatitis B protection by immunization act, §49-6-5003.
Homeless children, §49-6-5001.
Proof of immunization required prior to enrollment in school, §49-6-5001.
Exceptions, §49-6-5001.
Responsibility of parents or guardian for immunization of children, §49-6-5001.
Rules and regulations, §49-6-5001.
Indemnification.
School security.
Indemnification of principals and teachers from judgment against them, §49-6-4211.
Indian child welfare.
Locally convenient day schools, 25 USCS §1961.
Inhalers.
Asthma inhalers.
Possession by students, §49-50-1602.

SCHOOLS AND EDUCATION —Cont'd
In loco parentis responsibility.
School security, §49-6-4203.
Innovative educational programs, §49-1-207.
In-service training programs, §49-6-3004.
Inspections.
Attendance of pupils.
Inspection of places of employment.
Certificate of attendance, §49-6-3008.
Internet use policy, §49-1-221.
Juvenile offenders.
Informing pupils of juvenile offender act provisions, §49-6-451.
In-service training to include, §49-6-3004.
Kindergartens.
Pre-kindergarten programs, §§49-6-102 to 49-6-110.
Lifetime wellness curriculum.
Obesity, children at risk for, §§49-6-1401 to 49-6-1405.
Limitation of actions.
Fraudulent enrollment of student in school district.
Civil action seeking restitution, §49-6-3003.
Local education agencies.
Bullying, cyber-bullying, harassment or intimidation.
LEAs to adopt, review and transmit policies to commissioner of education, §49-6-4504.
Conflict resolution intervention programs, §49-2-118.
Power of attorney for temporary care of child.
Enrollment of student with power stating hardship, §34-6-302.
Student surveys, analyses or evaluations.
Policies and guidelines, §49-2-211.
Locker searches, §49-6-4204.
Lottery for education.
Criminal provisions.
Use of minors to enforce prohibitions involving minors, §39-15-413.
Medication administered to students.
Assistance by employee in self-administration, §49-50-1602.
Meningitis.
Home schools, information provided to, §49-6-3050.
Information provided to schools and parents generally, §49-6-5005.
Meningococcal disease.
Home schools, information provided to, §49-6-3050.
Mental illness in children and adolescents.
In-service training for teachers and principals.
Understanding warning signs of early-onset mental illness, §49-6-3004.
Universal mental health or socioemotional screening, §49-2-124.
Military deployments.
Excused absences for children of parents/custodians deployed or returning from deployment, §49-6-3019.
Model dropout prevention program, §49-1-520.

SCHOOLS AND EDUCATION —Cont'd
Motor vehicles.
Minors withdrawn from secondary school.
Denial of motor vehicle license or permit, §49-6-3017.
Nurses.
Medication administration to children.
Assistance with self-administration, §49-50-1602.
Obesity, children at risk for, §§49-6-1401 to 49-6-1405.
Framework for developing program, §49-6-1402.
Funding of programs, §49-6-1405.
Health report card, §49-6-1401.
Implementation of programs to identify, §49-6-1401.
Nutrition and physical activity programs expanded where necessary, §49-6-1404.
Program requirements, §§49-6-1401, 49-6-1402.
Tabulation of results, §49-6-1403.
Office of early learning, §49-6-108.
Opening date for schools, §49-6-3004.
Orphan asylums.
Duties of governing boards as to education of children, §71-3-610.
Out of district enrollments.
Tuition, §49-6-3003.
Pagers.
Possession of electronic pagers by students.
Prima facie evidence of intent to use in violation of part, §49-6-4214.
Pages for general assembly.
Missed school attendance, §49-6-3018.
Parental involvement plans.
Development of standards by department, §49-1-208.
Parental responsibility for child's attendance at school, §49-6-3001.
Parent educational participation.
Alternative to misdemeanor prosecution of violations.
Parent education training and parent-teacher conferences, §49-6-3009.
Pupils.
Surveys, analyses or evaluations.
Access of parent or guardian prior to administration, §49-2-211.
Parenting plans.
Parent educational seminar, §36-6-408.
Personnel.
Firearms.
Concealed weapons, employees authorized to carry in distressed rural counties.
Applicability, §39-17-1309.
Persons permitted to possess or carry firearms on school grounds.
Applicability, §39-17-1309.
Physical activity.
Obesity, children at risk for, §§49-6-1401 to 49-6-1405.
Physicians and surgeons.
Discipline in special school districts.
Pupil's right to physical examination, §49-6-4404.
Police and other law enforcement officers.
School policing.
Firearms.
Persons permitted to possess or carry firearms on school grounds.
Applicability, §39-17-1309.

SCHOOLS AND EDUCATION —Cont'd
Posting of codes of behavior and discipline, §49-6-4007.
Power of attorney for care of minor child.
School enrollment, §34-6-304.
Pre-kindergarten programs, §§49-6-102 to 49-6-110.
Appropriations, subject to, §49-6-107.
At-risk children, enrollment, §49-6-104.
Collaborative agreements for operation, §49-6-105.
Community-based early childhood education and pre-kindergarten programs, §49-6-101.
Community pre-k advisory council, §49-6-106.
Coordination between voluntary pre-K classrooms and elementary schools, §49-6-105.
Enrollment and implementation to be voluntary, §49-6-103.
Funding.
Application for funding and approval, §49-6-105.
Matching funds, §49-6-107.
Maximum amount of lottery proceeds, §49-6-110.
Legislative intent, §49-6-103.
Office of early learning, §49-6-108.
Requirements of programs, §49-6-104.
School age.
Participation in pre-kindergarten program, effect on age at entry to school, §49-6-3001.
Short title, §49-6-102.
Preschool children.
Appropriations for establishing preschools, §49-6-101.
Community-based early childhood education and pre-kindergarten programs, §49-6-101.
Control of schools, §49-6-101.
Expansion of pre-kindergarten programs, §§49-6-102 to 49-6-110.
Funds.
Acceptance of federal and state funds for preschool purposes, §49-6-101.
Headstart program, §49-6-101.
Pre-kindergarten programs, §§49-6-102 to 49-6-110.
Reports.
Average daily attendance, §49-6-101.
Preschool/parenting learning centers.
Department of education and department of human services.
Joint program.
Development and implementation, §49-1-206.
Principals.
Absence or withdrawal reports, §49-6-3007.
Codes of behavior and discipline.
Administration and implementation within schools, §49-6-4002.
Application of code uniformly and fairly, §49-6-4004.
Remedial programs outside of regular school day.
Determination to require student attendance, §49-6-3021.
Reports of unexcused absences to director of schools, §49-6-3021.
Training program for principals, §49-6-4212.
In-service training, §49-6-3004.

SCHOOLS AND EDUCATION —Cont'd
Principals —Cont'd
Weapons.
Unlawful carrying on school property.
Report of reasonable suspicion to law enforcement officer, §49-6-4209.
Private schools.
Handgun carry policy on school property.
Applicability, §39-17-1309.
Psychotropic drugs.
Universal mental health or socioemotional screening.
When permitted, §49-2-124.
Pupils.
Admission.
Entrance age, §49-6-3001.
Age.
Admittance, §49-6-3001.
False statements concerning age.
Penalties, §49-6-3008.
Proof of age, §49-6-3008.
Alternative schools.
Mandated attendance pilot project, §49-6-3402.
Suspended or expelled students, §49-6-3402.
Anti-seizure medication, administering to student, §49-50-1602.
Asthma inhalers.
Possession by students, §49-50-1602.
Beepers.
Possession of electronic pagers by students.
Prima facie evidence of intent to use in violation of part, §49-6-4214.
Criminal convictions.
Parent, guardian or custodian to notify school, §49-6-3051.
Deferral of required attendance, §49-6-3001.
Electronic pagers.
School security.
Possession of electronic pagers by students.
Prima facie evidence of intent to use in violation of part, §49-6-4214.
Entering age, §49-6-3001.
Food allergies.
Emergency precautions to provide treatment, §49-50-1602.
Student self-injection, §49-50-1602.
Gang activities on school property, §49-6-4215.
Glucagon administration.
Teachers and employees assistance in administering, §49-50-1602.
Health care procedures administered on students, §49-50-1602.
Hearing examination of pupils, §49-6-5004.
Hepatitis B protection by immunization, §49-6-5003.
Homeless children.
Immunization, §49-6-5001.
Hypoglycemia.
Glucagon administration.
Teacher and employee assistance in administering, §49-50-1602.
Immunization.
Certificate of immunization, §49-6-5002.
Condition under which immunization not required, §49-6-5001.

SCHOOLS AND EDUCATION —Cont'd
Pupils —Cont'd
Immunization —Cont'd
Designation of diseases against which children must be immunized prior to attendance at school, §49-6-5001.
Effect on counting of daily attendance average, §49-6-5001.
Hepatitis B protection by immunization, §49-6-5003.
Homeless children, §49-6-5001.
Proof of immunization required prior to enrollment in school, §49-6-5001.
Exceptions, §49-6-5001.
Responsibility of parents or guardian for immunization of children, §49-6-5001.
Religious exception, §49-6-5001.
Rules and regulations, §49-6-5001.
Jurisdiction.
Violation of attendance provisions, §49-6-3010.
Juvenile offender act.
Informing pupils of provisions, §49-6-451.
Medications.
Assistance by employee in self-administration of medications, §49-50-1602.
Pagers.
Possession of electronic pagers by students.
Prima facie evidence of intent to use in violation of part, §49-6-4214.
Pages for general assembly, §49-6-3018.
School security.
Electronic pagers.
Possession by students.
Prima facie evidence of intent to use in violation of part, §49-6-4214.
Surveys, analyses or evaluations.
Policies and guidelines, §49-2-211.
Suspension of pupils by principals, §49-6-3401.
Alternative school, §49-6-3402.
Transfer of pupils within LEA.
Records, §49-6-3001.
Tuition, §49-6-3001.
Withdrawal from schools, §49-6-3017.
Withdrawal of child from public school, §49-6-3001.
Records.
Attendance, §49-6-3007.
Documentation of withdrawal and transfer to other school, state or system, §49-6-3020.
Discipline in special school districts.
Use of corporal punishment, §49-6-4403.
Referrals, discipline by, §49-6-4106.
Report cards.
Copies.
Furnishing copies to noncustodial or nonresident parents and guardians, §§36-6-101, 36-6-104.
Obesity, children at risk for.
Health report card, §49-6-1401.
School report cards.
Parental involvement standards.
Evaluating schools on parental involvement, §49-1-208.
Reports.
Attendance.
Children habitually and unlawfully absent from school, §49-6-3007.

SCHOOLS AND EDUCATION —Cont'd
Reports —Cont'd
Attendance —Cont'd
Daily reports of attendance, §49-6-3007.
Report of truants at beginning of school year, §49-6-3007.
Unexcused absentees, §49-6-3007.
Withdrawals, §49-6-3007.
Average daily attendance of preschool age pupils, §49-6-101.
Bullying, cyber-bullying, harassment or intimidation.
Contents of policies and information relating to incidents, §49-6-4503.
Child abuse and child neglect or endangerment.
Duty of school personnel to report.
Child sexual abuse, §37-1-605.
Conflict resolution intervention programs.
Yearly effectiveness report, §49-2-118.
Criminal activity by students, §49-6-4301.
Homeless children enrolled without immunizations, §49-6-5001.
Obesity, children at risk for.
Tabulation of results, §49-6-1403.
Office of early learning.
Pre-kindergarten programs, §49-6-108.
Remedial programs outside of regular school day.
Reports of unexcused absences to director of schools.
Principal's report of absences to director of schools, §49-6-3021.
Uniform violent incident reporting system, §49-6-4301.
Resource officers.
Training and employment standards, §49-6-4217.
Rules and regulations.
Immunization, §49-6-5001.
Individuals with disabilities education act.
Rules and regulations to implement provisions regarding, §49-10-609.
Safe and secure learning environments in schools.
Commissioner of education to develop advisory guidelines, §49-1-214.
School security generally, §§49-6-4201 to 49-6-4219.
Safety center, §49-6-4302.
School age, §49-6-3001.
School report cards.
Parental involvement standards.
Evaluating schools on parental involvement, §49-1-208.
School resource officers.
Firearms.
Persons permitted to possess or carry firearms on school grounds.
Applicability, §39-17-1309.
School security.
Electronic control devices, §49-6-4219.
Training and employment standards, §49-6-4217.
School safety center, §49-6-4302.
Schools against violence in education (SAVE) act.
Firearms on school grounds.
Concealed weapons, employees authorized to carry in distressed rural counties.
Applicability, §39-17-1309.

SCHOOLS AND EDUCATION —Cont'd
Schools against violence in education (SAVE) act —Cont'd
Firearms on school grounds —Cont'd
Persons permitted to possess or carry firearms on school grounds.
Applicability, §39-17-1309.
School security, §§49-6-4201 to 49-6-4219.
Animals.
Searches and seizures.
Use of animals, §49-6-4208.
Beepers.
Possession of electronic pagers by students.
Prima facie evidence of intent to use in violation of part, §49-6-4214.
Citation of title, §49-6-4201.
Containers.
Searches and seizures, §49-6-4205.
Contraband.
Disposal, §49-6-4210.
Defense of school personnel by education agency, §49-6-4211.
Indemnity, §49-6-4211.
Definitions, §49-6-4202.
Disposal of contraband, §49-6-4210.
Electronic control devices, §49-6-4219.
Electronic pagers.
Possession by students.
Prima facie evidence of intent to use in violation of part, §49-6-4214.
Indemnification.
Principals and teachers from judgments against them, §49-6-4211.
In loco parentis responsibility, §49-6-4203.
Legislative intent, §49-6-4203.
Lockers.
Searches and seizures, §49-6-4204.
Metal detectors.
Searches and seizures, §49-6-4207.
Notification of policies and procedures to students and parents, §49-6-4216.
Pagers.
Possession of electronic pagers by students.
Prima facie evidence of intent to use in violation of part, §49-6-4214.
Persons.
Searches and seizures, §49-6-4205.
Police.
Electronic control devices, §49-6-4219.
Policies and procedures to be adopted by local boards of education, §49-6-4216.
Principals.
Indemnification of principals from judgments against them, §49-6-4211.
Training program for principals, §49-6-4212.
Report of reasonable suspicion by principal to law enforcement officer, §49-6-4209.
Resource officers.
Electronic control devices, §49-6-4219.
Firearms.
Persons permitted to possess or carry firearms on school grounds.
Applicability, §39-17-1309.

SCHOOLS AND EDUCATION —Cont'd
School security —Cont'd
Resource officers —Cont'd
Training and employment standards, §49-6-4217.
Searches and seizures.
Animals.
Use of animals, §49-6-4208.
Containers, §49-6-4205.
Contraband.
Disposal of contraband, §49-6-4210.
Lockers, §49-6-4204.
Metal detectors.
Use, §49-6-4207.
Persons and containers, §49-6-4205.
Report of reasonable suspicion by principal to law enforcement officer, §49-6-4209.
Use of metal detectors, §49-6-4207.
Short title, §49-6-4201.
Speed limits on school grounds, §49-6-4218.
Statistical information relative to zero tolerance violations.
Standard form for, §49-6-4216.
Testing of students for drugs.
Assistance for students testing positive, §49-6-4213.
Referral information, §49-6-4213.
Title of act, §49-6-4201.
Zero tolerance policy, §49-6-4216.
School term, §49-6-3004.
Security of schools, §§49-6-4201 to 49-6-4219.
Seizures.
Anti-seizure medication, administering to student, §49-50-1602.
Self defense.
Discipline of students.
Availability of self defense to avoid discipline, §49-6-3401.
Sexual abuse of child.
Reporting abuse occurring on school grounds or during school supervisions, §49-6-1601.
Small learning communities.
Innovative educational programs, §49-1-207.
Waiver of board rules or regulations to foster implementation of innovative programs, §49-1-207.
Smoking.
Children's clean indoor air act, §§39-17-1601 to 39-17-1606.
Socioemotional screening.
Universal mental health or socioemotional screening, §49-2-124.
Special education, §§49-10-601 to 49-10-1406.
See SPECIAL EDUCATION.
Special school districts.
Youth development centers, §37-5-119.
Speed limits.
School grounds, §49-6-4218.
Sports.
Home schooled students, participation in interscholastic athletic competition, §49-6-3050.
Standardized tests.
Home school students, PSAT/NMSQT and AP examinations, §49-6-3050.
State board of education.
Attendance.
Guidelines governing student attendance, §49-6-3002.
State supervisors of census and attendance, §49-6-3301.

SCHOOLS AND EDUCATION —Cont'd
Statute of limitations.
Fraudulent enrollment of student in school district.
Civil action seeking restitution, §49-6-3003.
Student and Employee Safe Environment Act of 1996.
Codes of behavior and discipline, §§49-6-4001 to 49-6-4009.
Student records.
Children's services department.
Cessation of operations of department provider agency school.
Disposition of records, §37-5-130.
Suicide prevention education.
In-service training for teachers and principals, §49-6-3004.
Suspension of pupils by principals.
Alternative schools for suspended or expelled students, §49-6-3402.
Grounds, §49-6-3401.
Readmission, §49-6-3401.
Teachers.
See TEACHERS.
Temporary assistance for dependent children.
Eligibility for temporary assistance, §71-3-104.
Tennessee school safety center, §49-6-4302.
Tenure.
Attendance teachers, §49-6-3006.
Term, §49-6-3004.
Threats.
Communicating threat concerning school employee, §39-13-114.
Tobacco.
Children's clean indoor air act, §§39-17-1601 to 39-17-1606.
Truancy.
Attendance officers, §49-6-3006.
Pages for general assembly, §49-6-3018.
Proceedings against parents, §49-6-3007.
Truancy schools, §49-6-3012.
Tuition.
Amount which may be charged to pupils residing outside school district, §49-6-3003.
Public school free to students five years of age residing within the state, §49-6-3001.
Restitution.
Enrollment of out-of-district pupil.
Fraudulent representation of pupil's domicile address.
Liability of parent, guardian or other custodian, §49-6-3003.
Underwear exposure.
Discipline.
Codes of behavior and discipline.
Indecent clothing disruptive of learning environment prohibited, §49-6-4009.
Uniform violent incident reporting system, §49-6-4301.
Universal mental health or socioemotional screening, §49-2-124.
Vacation day, §49-6-3004.
Vaccination, §§49-6-5001, 49-6-5002.
Hepatitis B protection by immunization, §49-6-5003.
Vandalism of school property.
Suspension or expulsion of pupils, §49-6-3401.

SCHOOLS AND EDUCATION —Cont'd
Venue.
Fraudulent enrollment of student in school district.
Civil action seeking restitution, §49-6-3003.
Veterans.
Temporary assistance for dependent children.
Value of benefits for eligibility determination, §71-3-116.
Victims of crime.
Delinquent and unruly children.
School assignment, educational plans, and limitations or conditions on attendance.
Separation from victim as factor considered, §37-1-131.
Violence prevention.
Uniform violent incident reporting system, §49-6-4301.
Violent felonies, students charged with or convicted.
Remand.
Alternative schools for suspended or expelled students generally, §49-6-3402.
Virtual education programs.
Instructional time, §49-6-3004.
Vision.
Eye care awareness, promotion of, §49-6-5004.
Welfare.
Temporary assistance for dependent children.
Eligibility for temporary assistance, §71-3-104.
Withdrawal of child from public school, §49-6-3001.
Year-round schools, §49-6-3004.
Zero tolerance policy.
School security policies and procedures, §49-6-4216.

SCHOOL SECURITY ACT, §§49-6-4201 to 49-6-4219.
See SCHOOLS AND EDUCATION.

SCHOOL TERM, §49-6-3004.

SEALED DOCUMENTS.
Termination of parental rights.
Pleadings and records filed in court placed under seal, §36-1-113.

SEARCHES AND SEIZURES.
Child support lien enforcement, §§36-5-904, 36-5-905.
Control of seized property, §36-5-908.
Firearms and other weapons.
Domestic abuse cases, §36-3-620.
School security, §§49-6-4204 to 49-6-4210.
Sexually transmitted diseases.
Confidentiality of records and information, §68-10-113.
Weapons.
Domestic abuse cases, §36-3-620.

SEAT BELTS.
Required use, §55-9-603.

SECURITY GUARDS.
Carrying weapons on public parks, playgrounds, etc.
Inapplicability of provisions, §39-17-1311.
Carrying weapons on school property.
Inapplicability of provisions, §39-17-1309.

SELF-INCRIMINATION.
Delinquent and unruly children.
Basic rights at hearing, §37-1-127.
Interstate family support act.
Adverse influence permitted, §36-5-2316.

SENTENCING.
Child abuse and child neglect or endangerment.
Juvenile courts.
Authority of judges, §39-15-401.
Child rapist, §39-13-522.
Contributing to delinquency.
Special circumstances, §37-1-156.
Credits.
Juvenile offenders, §37-1-137.
Criminal gang offenses.
Enhanced factors, §40-35-121.
Delinquent and unruly children, §37-1-137.
Contributing to delinquency.
Special circumstances, §37-1-156.
Desertion and nonsupport.
Nonsupport and flagrant nonsupport, §39-15-102.
Developmental disabilities.
Forensic services for intellectually disabled.
Credit on sentence for time in custody, §33-5-406.
Enhancement factors.
Gang offenses, §40-35-121.
Gang offenses.
Enhanced factors, §40-35-121.
Juvenile proceedings, §37-1-137.
Mental health.
Sex offenders, services for.
Post-plea treatment system, §33-6-805.
Rape of a child, §39-13-522.
Release.
Child rapist.
Satellite-based monitoring program, §39-13-522.
Satellite-based monitoring program.
Child rapist.
Supervision, §39-13-522.
Sexual offenses.
Child rapist, §39-13-522.
Term of imprisonment.
Rape of a child, §39-13-522.
Theft.
Vandalism punished as theft, §39-14-408.
Vandalism.
Punished as theft, §39-14-408.

SERVICE OF PROCESS.
Child labor.
Protection of minor performers.
Contract approval petition, §50-5-217.
Child support.
Assignments of income for support, §36-5-501.
Enforcement actions by department, §36-5-807.
Most recent address sufficient, §§36-5-805, 37-1-151.
Conservators for persons with disabilities.
Petition for appointment, §34-1-106.
Hearings on, §34-1-108.
Delinquent and unruly children.
Post-commitment relief.
Copies of final judgment, §37-1-318.
Domestic abuse.
Protection orders, §36-3-609.
Ex parte orders, §36-3-605.

SERVICE OF PROCESS —Cont'd
Domestic abuse —Cont'd
Protection orders —Cont'd
Parents of minor petitioner, §§36-3-602, 36-3-605.
Petition for relief, §36-3-602.
Guardians for minors.
Petition for appointment, §34-1-106.
Interstate child custody proceedings.
Proof of service of notice, §36-6-211.
Interstate family support act.
Presence in state to participate in proceeding, §36-5-2314.
Juvenile courts.
Provisional hearing.
Interlocutory order, §37-1-125.
Juvenile proceedings.
Rules of juvenile procedure.
Pleadings, JuvPro 106.
Subpoenas, JuvPro 107.
Summons, JuvPro 103.
Mail.
Welfare.
Aid to dependent children.
Action against spouse or parent, §71-3-123.
Marriage.
Annulment, §36-4-108.
Mental health service recipients.
Commitment.
Complaint for commitment, §33-3-605.
Paternity proceedings, §36-2-305.
Protection of minor performers.
Contract approval petition, §50-5-217.
Support and maintenance.
Assignments of income for child support, §36-5-501.
Child support.
Enforcement actions by department, §36-5-807.
Most recent address sufficient, §§36-5-805, 37-1-151.
Interstate family support act.
Presence in state to participate in proceeding, §36-5-2314.
Termination of parental rights, RAP 8A.
Welfare.
Aid to dependent children.
Action against spouse or parent, §71-3-123.
Family violence shelters and shelter services.
Proceedings involving shelter or persons staying at shelter, §71-6-208.

SEX OFFENDER REGISTRATION, VERIFICATION AND TRACKING.
Central registry for sexual offenders.
Tennessee bureau of investigation, §38-6-110.
Drivers' licenses.
Sexual or violent offender identification, §55-50-353.
Statutory rape.
Requiring to register upon first conviction, judicial discretion, §39-13-506.

SEXTING.
Solicitation, sexual exploitation of minors, §39-13-529.

SEXUAL ABUSE OF CHILD, §§37-1-601 to 37-1-616.
See CHILD ABUSE AND CHILD NEGLECT OR ENDANGERMENT.

SEXUAL BATTERY, §39-13-504.
Authority figure, §39-13-527.
Child sexual abuse.
When conduct constitutes, §37-1-602.
Mental health.
Sex offenders, services for.
Post-plea treatment system, §§33-6-801 to 33-6-805.
Mental health service recipients.
Employees of facility or service provider.
Discharge of employee, §33-3-903.

SEXUAL EXPLOITATION OF CHILDREN, §§39-17-1001 to 39-17-1008.
Aggravated sexual exploitation, §39-17-1004.
Elements of offense, §39-17-1004.
Citation of act, §39-17-1001.
Criminal forfeiture of conveyances or other property used in commission of acts, §39-17-1008.
Definitions, §39-17-1002.
Elements of offense, §39-17-1003.
Especially aggravated sexual exploitation, §39-17-1005.
Elements of offense, §39-17-1005.
Felonies, §39-17-1003.
Injunctions, §39-17-1006.
Short title of act, §39-17-1001.
Summons and process.
Issuance of process, §39-17-1007.

SEXUALLY TRANSMITTED DISEASES.
Arrests.
Temporary commitment for treatment, §68-10-110.
Blood tests.
Confidentiality of records and information, §68-10-113.
Knowledge of governmental persons regarding records.
Competency of governmental persons as witness, §68-10-114.
Child abuse and child neglect or endangerment.
Reporting cases in children, §37-1-403.
Confidentiality of records and information, §68-10-113.
Definitions, §68-10-101.
Detention.
Places for detention of infected persons, §68-10-108.
Discovery.
Confidentiality of records and information, §68-10-113.
Emergency workers.
Exposure to airborne or bloodborne diseases, §68-10-117.
Health officers.
Authority to arrest persons suspected of being infected, §68-10-110.
Examination of suspected persons, §68-10-104.
Investigations.
Sources of infection, §68-10-104.
Notice of name and address of diseased person, §68-10-102.
Reports, §68-10-112.
HIV positive.
Informing potential victims of exposure.
Immunity from liability, §68-10-115.
Pregnancy screening, §§68-5-701 to 68-5-705.
Infected persons.
Detention.
Location, §68-10-108.

SEXUALLY TRANSMITTED DISEASES —Cont'd
Infected persons —Cont'd
Exposure of others, §68-10-107.
Quarantine.
Authority of health officers to establish and terminate quarantine, §68-10-106.
Isolation to specified area, §68-10-105.
Investigations.
Sources of infection to be investigated, §68-10-104.
Laboratory employees.
Exposure to HIV or hepatitis B, §68-10-116.
Notice.
Name and address of diseased person given to health officers, §68-10-102.
Printed instructions given patients, §68-10-103.
Orders of court.
Confidentiality of records and information, §68-10-113.
Physicians and surgeons.
Reports, §68-10-112.
Police and other law enforcement officers.
Exposure to HIV or hepatitis B.
Testing of suspects, §68-10-116.
Quarantine.
Establishment and termination by health officers, §68-10-106.
Infected persons.
Authority of health officers to establish and terminate quarantine, §68-10-106.
Isolation to specified area, §68-10-105.
Records.
Confidentiality of records and information, §68-10-113.
Knowledge of governmental persons regarding, §68-10-114.
Reports.
Health officers, §68-10-112.
Physicians and surgeons, §68-10-112.
Rules and regulations.
Duty of department of public health to make rules and bylaws, §68-10-109.
Searches and seizures.
Confidentiality of records and information, §68-10-113.
Subpoenas.
Confidentiality of records and information, §68-10-113.
Temporary commitment for treatment, §68-10-110.
Tests.
Confidentiality of records and information, §68-10-113.
Knowledge of governmental persons regarding records.
Competency of governmental person as witness, §68-10-114.
Treatment.
Printed instructions given patients, §68-10-103.
Suspected persons.
Health officers to require treatment, §68-10-104.
Victims of exposure.
Law enforcement officers.
Testing of suspects, §68-10-116.
Persons informing victims immune from liability, §68-10-115.
Violations of chapter.
Each violation deemed a separate offense, §68-10-111.

SEXUALLY TRANSMITTED DISEASES —Cont'd
Witnesses.
Knowledge of governmental persons regarding records.
Competency of governmental person as witness, §68-10-114.

SEXUAL OFFENSES.
Alimony.
False allegations of sexual abuse in furtherance of litigation, §36-5-122.
Child custody.
False allegations of sexual abuse in furtherance of litigation, §36-6-114.
Visitation denial for parent convicted of rape where child conceived from crime, §36-6-102.
Child sexual abuse.
See CHILD ABUSE AND CHILD NEGLECT OR ENDANGERMENT.
Child support.
False allegations of sexual abuse in furtherance of litigation, §36-5-122.
Coercion.
Rape, §39-13-503.
Defenses.
Aggravated sexual exploitation of children.
Consent not a defense, §39-17-1004.
Especially aggravated sexual exploitation.
Consent not a defense, §39-17-1005.
Sexual exploitation of children.
Consent not a defense, §39-17-1003.
Solicitation of minor.
Causing a minor to engage in sexual activity.
Consent not a defense, §39-13-529.
Definitions.
Rape, §39-13-503.
Aggravated rape, §39-13-502.
Sexual battery.
Aggravated sexual battery, §39-13-504.
Evidence.
Minor victims, 12 or younger.
Video recording of interview of child describing sexual conduct, §24-7-123.
False allegations of sexual abuse in furtherance of litigation, §§36-4-135, 36-5-122, 36-6-114.
Incest, §39-15-302.
Child sexual abuse.
When conduct constitutes, §37-1-602.
Mental health service recipients.
Child sexual abuse.
Confidentiality of records.
Nondisclosure of child's records to person accused of abuse, §33-3-111.
Confidentiality of records.
Felony involving bodily harm or sexual abuse.
Disclosure to law enforcement agency, §33-3-110.
Mental health services for sex offenders.
Post-plea treatment system, §§33-6-801 to 33-6-805.
Mentally incapacitated.
Rape.
Aggravated rape.
Victim's mental defect or mental incapacitation known to defendant, §39-13-502.

SEXUAL OFFENSES —Cont'd
Mentally incapacitated —Cont'd
Rape —Cont'd
Victim mentally incapacitated, §39-13-503.
Rape.
See RAPE.
Sexual battery.
Aggravated sexual battery, §39-13-504.
Victim under thirteen years of age, §39-13-504.
Authority figure perpetrating, §39-13-527.
Child sexual abuse.
When conduct constitutes, §37-1-602.
Class B felony, §39-13-504.
Definitions.
Aggravated sexual battery, §39-13-504.

SHAKEN BABY SYNDROME, §68-143-101.

SHARPS.
Diabetes.
Student management at schools, §49-50-1602.

SHERIFFS.
Juvenile courts.
Deputies, §37-1-213.
Mental health.
Inpatient treatment.
Transportation.
Sheriffs, secondary transport agents, local officer, etc., §33-6-901.

SHOPLIFTING.
Civil liability.
Theft by minor, §39-14-144.

SHORT TITLES.
Families First Act of 1996, §71-3-101.

SICKLE CELL ANEMIA.
Genetic testing, §§68-5-501 to 68-5-508.

SIGNATURES.
Child support.
Electronically reproduced signatures effective for orders or subpoenas, §36-5-807.
Assignment of income for support, §36-5-501.
Electronic signatures.
Child abduction prevention.
Effect of provisions on electronic signatures in global and national commerce act, §36-6-612.
Marriage.
Fraudulent signatures on documents, §36-3-112.
Power of attorney for care of minor child.
Signatures required, §34-6-302.

SIGNS.
Children's clean indoor air act.
Posting of no smoking signs, §39-17-1605.
Juvenile courts.
Identifying court as juvenile court, §37-1-206.

SLINGSHOTS.
School property.
Carrying weapons on school property, §39-17-1309.

SMOKE DETECTORS.
Foster care plans.
Required, §37-2-412.

SMOKING.
Children's clean indoor air act, §§39-17-1601 to 39-17-1606.
Minors.
Prevention of access to tobacco and vapor products, §§39-17-1501 to 39-17-1551.

SMOKING PARAPHERNALIA, §§39-15-407 to 39-15-414.
Acquisition of smoking material or paraphernalia by minors.
Acquisition prohibited, §39-15-409.
Definitions, §39-15-407.
Dissemination, §39-15-408.
Defined, §39-15-407.
Identification containing proof of age.
Demanding identification, §39-15-410.
Minors presenting false identification, §39-15-410.
Violations of section, §39-15-410.
Multiple violations.
Prohibition from selling, §39-15-412.
Warning signs or decals.
Prominently displayed, §39-15-411.
Enforcement of laws.
Law enforcement officers using minors in aiding, §39-15-413.
Identification containing proof of age.
Persons contemplating dissemination to individuals believed to be minor.
Demanding identification, §39-15-410.
Minor presenting false identification, §39-15-410.
Law enforcement officers.
Using minors in aiding in enforcement of laws, §39-15-413.
Multiple violations.
Prohibited from selling, §39-15-412.
Notice.
Warnings signs or decals, §39-15-411.
Paraphernalia.
Acquisition by minor.
Prohibited, §39-15-409.
Defined, §39-15-407.
Police.
Using minors in aiding in enforcement of laws, §39-15-413.
Prohibited from selling because of multiple violations, §39-15-412.
Purchase.
Defined, §39-15-407.
Warning signs or decals.
Prominently displayed in places where items disseminated, §39-15-411.

SOCIAL SECURITY NUMBERS.
Conservators for persons with disabilities.
Social security number of respondent.
Given to fiduciary and clerk, placed in court record, use, §34-1-109.
Guardians for minors.
Social security number of respondent.
Given to fiduciary and clerk, placed in court record, use, §34-1-109.
Licenses, §36-5-1301.
Records concerning divorce, paternity, etc., §36-5-1302.

SOCIAL WORKERS.
Child abuse and child neglect or endangerment.
Duty to report, §37-1-605.
Child support enforcement.
Denial or revocation of license, §§36-5-701 to 36-5-714.
Administrative order enforcement, §36-5-812.

SOCIAL WORKERS —Cont'd
Child support enforcement —Cont'd
Denial or revocation of license —Cont'd
Juvenile proceedings, §37-1-151.
Paternity and legitimation, §36-2-320.
Licenses.
Social security numbers on applications, §36-5-1301.
Mental health inpatient treatment.
Involuntary admission, emergency.
Role of mental health professionals, §33-6-427.
Mental health service recipients.
Privileged communications.
Exceptions, §33-3-114.
Threats of service recipients.
Duties of professionals counseling, §§33-3-206 to 33-3-210.

SODOMY.
Crimes against nature.
Child sexual abuse.
When conduct constitutes, §37-1-602.
Employment for minors, §50-5-106.
Sexual conduct.
Sodomy defined as, §50-5-102.

SOLICITATION.
Missing children recovery.
Solicitation of contributions, §37-10-209.
Sexual offenses, §39-13-528.
Causing a minor to engage in sexual activity, §39-13-529.

SPECIAL EDUCATION.
Administrative complaint process, §49-10-604.
Administrative law judges.
Training, §49-10-610.
Department of education.
Individualized education accounts.
Administration of program, §49-10-1405.
Investigation of complaints, §49-10-604.
Special schools and classes to be provided, §68-12-109.
Due process cases, §49-10-606.
Enforcement of provisions for educational services.
Rights of parents or guardians, §49-10-602.
Guardian and ward.
Enforcement of provisions for educational services, §49-10-602.
Review of decision concerning special education services for child, §49-10-601.
Individualized education accounts.
Administration of program, §49-10-1405.
Autonomy of participating schools, §49-10-1406.
Definitions, §49-10-1402.
Participating schools.
Autonomy of participating schools, §49-10-1406.
Kickbacks of funds of account to student or parent, §49-10-1404.
Requirements, §49-10-1404.
Suspension or termination for noncompliance with requirements, §49-10-1404.
Participation in program.
Parental agreement, §49-10-1403.
Short title of provisions, §49-10-1401.
Individualized education programs for disabled children.
Attorneys excluded from teams, §49-10-607.

SPECIAL EDUCATION —Cont'd
Individuals with disabilities education act (IDEA).
Administrative complaint process, §49-10-604.
Compliance, §49-10-603.
Due process cases, §49-10-606.
Enforcement, §49-10-603.
Mediation, §49-10-605.
Rules and regulations to implement provisions regarding, §49-10-609.
Investigation of complaints, §49-10-604.
Mediations, §49-10-605.
Parents' rights.
Enforcement of educational services provisions, §49-10-602.
Review of decision concerning special education services for child, §49-10-601.
Rules and regulations.
Individuals with disabilities education act.
Rules and regulations to implement provisions regarding, §49-10-609.
Special schools and classes, §§68-12-109, 68-12-110.
Training of administrative law judges, §49-10-610.

SPERM DONATIONS.
HIV exposure, §39-13-109.

SPORTS.
Child abuse and child neglect or endangerment.
Reports.
Authority figures at a community facilities.
Child sexual abuse, §37-1-605.
Schools and education.
Home schooled students, participation in interscholastic athletic competition, §49-6-3050.
Youth sport-related injuries.
Sudden cardiac arrest prevention, §§68-6-101 to 68-6-104.
See SUDDEN CARDIAC ARREST PREVENTION.

SPOUSAL ABUSE, §§36-3-601 to 36-3-625.
See DOMESTIC ABUSE.

STATE MENTAL HEALTH FACILITIES.
Charges for services.
Annual calculation, §33-2-1101.
Claims against service recipients, §33-2-1107.
Contributions to pay for services.
Acceptance by department, §33-2-1108.
Court-ordered services.
Liability for, §33-2-1106.
Forensic services.
Exemptions from liability, §33-2-1109.
Inability to pay.
Discrimination based on, §33-2-1110.
Indigency determinations, §33-2-1102.
Exemptions from liability of indigent persons, §33-2-1109.
Information from parties liable for payment, §33-2-1105.
Liability.
Court-ordered services, §33-2-1106.
Exemptions, §33-2-1109.
Forensic services.
Exemptions from liability, §33-2-1109.

STATE MENTAL HEALTH FACILITIES —Cont'd
Charges for services —Cont'd
Liability —Cont'd
Information from parties liable for payment, §33-2-1105.
Mandatory services.
Exemptions from liability, §33-2-1109.
Persons liable for payment for services, §33-2-1103.
Mandatory services.
Exemptions from liability, §33-2-1109.
Nonindigent recipients.
Payment for services, §33-2-1104.
Conservators.
Employee as guardian or conservator, §§33-4-201 to 33-4-210.
Costs in state facilities, §§33-2-1101 to 33-2-1110.
Discrimination.
Charges for services.
Inability to pay.
Discrimination based on, §33-2-1110.
Employee as guardian or conservator, §§33-4-201 to 33-4-210.
Assets other than funds.
Accountability, §33-4-206.
Disposition, §33-4-206.
Termination of guardianship or conservatorship.
Disposition of funds or assets, §33-4-207.
Bond, §33-4-203.
Coercion of guardian or conservator, §33-4-210.
Designation, §33-4-201.
Duration of guardianship or conservatorship, §33-4-204.
Eligibility, §33-4-202.
Funds.
Accountability, §33-4-205.
Termination of guardianship or conservatorship.
Disposition of funds or assets, §33-4-207.
Qualifications, §§33-4-201, 33-4-202.
Reports, §33-4-208.
Termination of guardianship or conservatorship.
Disposition of funds or assets, §33-4-207.
Trusteeship.
Service of employee as trustee, §33-4-209.
Coercion of trustee, §33-4-210.
Guardianship.
Employee as guardian or conservator, §§33-4-201 to 33-4-210.
Inpatient treatment.
Involuntary admission, nonemergency.
Commitment to state facilities, §33-6-505.
Mental health.
Inpatient treatment.
Involuntary admission, emergency.
Admission to state facility, §33-6-410.
Trusts and trustees.
Employee as trustee, §33-4-209.
Coercion of trustee, §33-4-210.

STATUTE OF LIMITATIONS.
Child support judgments, §36-5-103.
Fraud.
Education.
Fraudulent enrollment of student in school district.
Civil action seeking restitution, §49-6-3003.

STATUTE OF LIMITATIONS —Cont'd
Married women.
Applicability of statutes, §36-3-504.
Paternity proceedings, §36-2-306.
Schools and education.
Fraudulent enrollment of student in school district.
Civil action seeking restitution, §49-6-3003.
Six year.
Education.
Fraudulent enrollment of student in school district.
Civil action seeking restitution, §49-6-3003.
Welfare.
Aid to dependent children.
Fraudulent receipt of temporary assistance, §71-3-120.

STATUTE OF REPOSE.
Termination of parental rights, §36-1-113.

STATUTORY RAPE.
Aggravated statutory rape, §39-13-506.
Mitigated statutory rape, §39-13-506.
Reporting, §§38-1-301 to 38-1-306.
Confidentiality of report and identity of person making, §38-1-304.
Department of human services when public assistance application indicates occurrence, §38-1-305.
Doctors, physicians, surgeons or health care providers.
Pregnancy of child and alleged father four years older than victim, §§38-1-302, 38-1-303.
Immunity of persons filing, §38-1-306.
Purposes of provisions, §38-1-301.
Sexual offender registration, verification and tracking.
Requiring to register upon first conviction, judicial discretion, §39-13-506.

STAYS.
Child custody.
Interlocutory or final judgments, §36-6-111.
Guardians for minors.
Permanent guardianship.
Visitation order, §37-1-803.
Interstate child custody proceedings.
Enforcement of child-custody determination pending appeal, §36-6-238.
Simultaneous proceedings, §36-6-221.
Paternity proceedings, §36-2-305.
Termination of parental rights.
Appeal as of right.
Stay or injunction pending appeal, RAP 8A.

STEPPARENTS' VISITATION RIGHTS, §36-6-303.

STERILIZATION.
Family planning, §§68-34-108, 68-34-109.

STIPULATIONS.
Divorce or legal separation.
Grounds or defenses, §36-4-129.

STREET GANGS.
Enhanced factors in sentencing.
Defendant member of criminal gang, §40-35-121.
Schools and education.
Gang activities on school property, §49-6-4215.

STRICKLAND HEARINGS, §37-1-115.

STUDENT AND EMPLOYEE SAFE ENVIRONMENT ACT OF 1996.
Education.
Discipline.
Codes of behavior and discipline, §§49-6-4001 to 49-6-4009.

STUDENT DISCIPLINE.
See SCHOOLS AND EDUCATION.

SUBPOENAS.
Child support.
Access to records for enforcement, §36-5-801.
Appeal of administrative actions, §§36-5-1001 to 36-5-1006.
Failure to comply, §36-5-811.
Motion to enforce administrative subpoena, §36-5-812.
Delinquent and unruly children.
Juvenile proceedings, §37-1-118.
Dependent and neglected children.
Juvenile proceedings, §37-1-118.
Domestic abuse.
Death review teams, §36-3-624.
Juvenile index, §37-1-118.
Juvenile proceedings.
Rules of juvenile procedure, JuvPro 107.
School attendance.
Excused absences.
Summons, subpoena, court order, etc, preventing attendance, §49-6-3002.
Sexually transmitted diseases.
Confidentiality of records and information, §68-10-113.

SUBPOENAS DUCES TECUM.
Juvenile proceedings.
Rules of juvenile procedure, JuvPro 107.

SUBROGATION.
Aid to dependent children.
Assignment of support rights to state, §71-3-124.

SUBSTANCE ABUSE.
Child custody.
Drug abuse by parent, removal of child due to.
Requirements for return of child, §36-6-115.
Schools and education.
Codes of behavior and discipline.
Topics addressed by codes, §49-6-4003.

SUDDEN CARDIAC ARREST PREVENTION.
Coaches.
Education of coaches, §68-6-103.
Failure to adhere to guidelines.
Consequences, §68-6-103.
Community-based youth athletic activity.
Coaches.
Education of coaches, §68-6-104.
Failure to adhere to guidelines.
Consequences, §68-6-104.
Definitions, §68-6-102.
School youth athletic activity.
Coaches.
Education of coaches, §68-6-103.
Failure to adhere to guidelines.
Consequences, §68-6-103.

SUICIDE.
Education for teachers and principals on suicide prevention.
In-service training to include, §49-6-3004.

SUICIDE —Cont'd
Mental health inpatient treatment.
Involuntary admission, nonemergency.
Substantial likelihood of serious harm, §33-6-501.
Mental health service recipients.
Counselors.
Immunity from liability for suicide or attempted suicide of person consulting counselor, §33-3-201.
Schools.
Education for teachers and principals on suicide prevention.
In-service training to include, §49-6-3004.

SUMMER PROGRAMS FOR YOUNG ADOLESCENTS AT RISK.
Department of children's services to establish, §37-5-125.

SUMMONS AND PROCESS.
Adoption.
Parties, §36-1-117.
Conservators for disabled.
Abuse, mismanagement or failure to perform.
Summons to appear, §34-1-123.
Duty of court clerk to issue summons, §34-1-128.
Delinquent and unruly children.
Adjudicatory proceedings.
Attachment of persons where summons ineffectual, §37-1-122.
Dependent and neglected children.
Adjudicatory proceedings.
Attachment of persons where summons ineffectual, §37-1-122.
Guardians for minors.
Abuse, mismanagement or failure to perform.
Summons to appear, §34-1-123.
Duty of court clerk to issue summons, §34-1-128.
Interstate child custody proceedings.
Immunity form jurisdiction for unrelated matters, §36-6-212.
Juvenile proceedings.
See JUVENILE PROCEEDINGS.
Rules of juvenile procedure.
Contents of summons, JuvPro 103.
Service of summons, JuvPro 103.
School attendance.
Excused absences.
Summons, subpoena, court order, etc, preventing attendance, §49-6-3002.
Sexual exploitation of children.
Issuance of process, §39-17-1007.
Termination of parental rights.
Father of child born out of wedlock, §37-1-147.

SUNSET LAW.
Children's services department, §37-5-115.

SUPPORT AND MAINTENANCE.
Actions.
Commencement, §36-5-405.
Department of health and human services, §71-3-124.
Failure of respondent to appear, §36-5-405.
Petitions, §36-5-405.
Procedures.
Generally, §36-5-405.
Aid to dependent children.
Assignment of support rights to state, §71-3-124.

SUPPORT AND MAINTENANCE —Cont'd
Aid to dependent children —Cont'd
Past-due support payments, §36-2-322.
Alimony.
Income withholding, §36-5-501.
Alimony for minor custodial parent, §36-5-102.
Appeal of administrative actions, §§36-5-1001 to 36-5-1006.
Arrests.
Nonsupport and flagrant nonsupport.
Issuance of warrant, §39-15-104.
Assignment of income for support, §§36-5-501, 36-5-503.
Appeal of administrative actions, §§36-5-1001 to 36-5-1006.
Attorneys' fees, §36-5-103.
Recovery by plaintiff spouse, §36-5-103.
Child support.
See CHILD SUPPORT.
Clerks of court.
Assignments of income, §36-5-501.
Fee for handling support payments.
Liability for fee, §36-5-111.
Forms.
Powers and duties, §36-5-404.
Construction and interpretation.
Liberal construction of provisions, §36-5-109.
Definitions.
Assignment of income for child support, §36-5-501.
Expedited process for support, §36-5-401.
Nonsupport and flagrant nonsupport, §39-15-101.
Uniform interstate family support act, §36-5-2101.
Delinquent children.
Parents' liability, §37-1-151.
Delinquent support.
Payment plans, §36-5-113.
Reports pursuant to Fair Credit Reporting Act, §36-5-106.
Work requirements, §36-5-113.
Department of children's services.
Incentive payments.
Social and recreational purposes.
Prohibition against department use of payments for, §36-5-107.
Dependent children.
Parents' liability, §37-1-151.
Desertion and nonsupport.
Execution.
Nonsupport and flagrant nonsupport.
Generally, §§39-15-101 to 39-15-104.
Disabilities, persons with.
Funds under $20,000.
Disposition, §34-1-104.
Domestic abuse protection orders, §36-3-606.
Enforcement of support.
Generally, §36-5-103.
Interstate family support act, §§36-5-2001 to 36-5-2903.
Juvenile courts, §37-1-151.
Nonsupport and flagrant nonsupport.
Generally, §39-15-104.
Registration of orders for enforcement, §§36-5-3101 to 36-5-3111.
Expedited process for support, §§36-5-401 to 36-5-406.
Clerk of court.
Powers and duties, §36-5-404.
Commencement of hearings and actions, §§36-5-402, 36-5-405.

SUPPORT AND MAINTENANCE —Cont'd
Expedited process for support —Cont'd
Definitions, §36-5-401.
Forms.
Promulgation and approval, §36-5-406.
Procedural steps, §36-5-405.
Termination of hearings and actions, §36-5-402.
Fair Credit Reporting Act compliance, §36-5-106.
Federally required state collection and disbursement unit for child and spousal support, §36-5-114.
Establishment, §36-5-116.
Reimbursement of clerks of court for activities involving, §36-5-117.
Felonies.
Nonsupport and flagrant nonsupport.
Class E felony, §39-15-101.
Forms.
Expedited process for support.
Approval, §36-5-406.
Clerks of court.
Powers and duties, §36-5-404.
Promulgation, §36-5-406.
Garnishment of wages.
Interstate family support act, §§36-5-2501 to 36-5-2507.
Illegitimacy.
See LEGITIMACY.
Incentive payments.
Disposition, §36-5-107.
Social and recreational purposes.
Prohibition against agency use of payments for, §36-5-107.
Income assignments, §§36-5-501, 36-5-503.
Enforcement of decree, §36-5-103.
Termination, §36-5-503.
Income withholding to enforce support orders.
Alimony, §36-5-501.
Appeal of administrative actions, §§36-5-1001 to 36-5-1006.
Assignment of income for child support, §§36-5-501, 36-5-503.
Termination, §36-5-503.
Health insurance coverage for child, §36-5-501.
Interstate family support act, §§36-5-2501 to 36-5-2507.
Intercounty enforcement and modification of child support, §§36-5-3001 to 36-5-3009.
Enforcement without transfer of jurisdiction, §§36-5-3101 to 36-5-3111.
Interstate family support act, §§36-5-2001 to 36-5-2903.
Action by minor parent, §36-5-2302.
Applicability of provisions, §36-5-2902.
Applicability of state laws, §36-5-2303.
Attorney general's duties, §36-5-2308.
Attorneys at law.
Private counsel, §36-5-2309.
Child support order modification.
Recognition of order modified in another state, §36-5-2612.
Registration of orders, §§36-5-2609 to 36-5-2616.
Choice of law, §§36-5-2303, 36-5-2604.
Citation of chapter, §36-5-2001.
Commencement of proceedings, §36-5-2301.

SUPPORT AND MAINTENANCE —Cont'd
Interstate family support act —Cont'd
Communications between tribunals, §36-5-2317.
Confidentiality of information, §36-5-2312.
Conflict of laws, §36-5-2303.
Continuing, exclusive jurisdiction, §§36-5-2205, 36-5-2206.
Modification of child-support order issued in another state, §36-5-2611.
Reconciliation with orders of other states, §36-5-2207.
Spousal support order.
Modification, §36-5-2211.
Convention, support proceeding under.
Convention support orders.
Recognition and enforcement, §36-5-2708.
Registration of convention support order.
Recognition and enforcement of registered orders, §36-5-2708.
Definitions.
Convention defined, §36-5-2101.
Convention, support proceeding under (Future Contingent Effective Date), §§36-5-2701 to 36-5-2713.
Applicability of provisions, §36-5-2702.
Applications.
Defined, §36-5-2701.
Foreign support agreements, §36-5-2710.
Central authority.
Defined, §36-5-2701.
Convention support orders.
Defined, §36-5-2701.
Modification of child support orders, §36-5-2711.
Recognition and enforcement.
Partial enforcement, §36-5-2709.
Registration of convention support order, §36-5-2706.
Contest of registered order, §36-5-2707.
Partial enforcement, §36-5-2709.
Definitions, §36-5-2701.
Direct requests.
Defined, §36-5-2701.
Foreign support agreements, §36-5-2710.
Individual filings for relief, §36-5-2705.
English translation to accompany records filed in original language, §36-5-2713.
Foreign central authority.
Defined, §36-5-2701.
Foreign support agreements.
Defined, §36-5-2701.
Recognition and enforcement, §36-5-2710.
Initiation of support proceeding, §36-5-2704.
Languages used, §36-5-2713.
Modification of convention child support orders, §36-5-2711.
Personal information on use, §36-5-2712.
Registration of convention support order, §36-5-2706.
Statutory construction, §36-5-2702.
United States central authority.
Defined, §36-5-2701.

SUPPORT AND MAINTENANCE —Cont'd
Interstate family support act —Cont'd
Convention, support proceeding under (Future Contingent Effective Date) —Cont'd
United States central authority —Cont'd
Human services department as agency designated by US central authority, §36-5-2703.
Costs, §36-5-2313.
Credit for payments, §36-5-2309.
Cumulative remedies, §36-5-2103.
Defense of nonparentage, §36-5-2315.
Definitions, §36-5-2101.
Depositions, §36-5-2316.
Determination of controlling child support order, §36-5-2207.
Discovery, §36-5-2318.
Depositions, §36-5-2316.
Enforcement of support order.
Jurisdiction, §36-5-2206.
Evidence, §36-5-2316.
Extradition, §§36-5-2801, 36-5-2802.
Fees, §36-5-2313.
Clerks of court, §8-21-401.
Foreign countries.
Modification of support order, §36-5-2615.
Registration of order for modification, §36-5-2616.
Obligee, obligor or child residing in foreign countries.
Applicable provisions, §36-5-2104.
Foreign support agreements.
Convention, support proceeding under (Future Contingent Effective Date), §36-5-2710.
Foreign support orders.
Applicable provisions, §36-5-2104.
Foreign tribunals.
Applicable provisions, §36-5-2104.
Human services department.
Convention, support proceeding under (Future Contingent Effective Date).
Initiation of support proceeding by department, §36-5-2704.
United States central authority.
Department as agency designated by US central authority, §36-5-2703.
State information, duties as to, §36-5-2310.
Support enforcement agency, §36-5-2102.
Immunity, §36-5-2314.
Family relationships, §36-5-2316.
Income-withholding order compliance, §36-5-2504.
Inappropriate tribunal, §36-5-2306.
Income withholding order of another state, §§36-5-2501 to 36-5-2507.
Administrative enforcement, §36-5-2507.
Contesting order, §36-5-2506.
Employer's duties, §36-5-2502.
Immunity upon compliance, §36-5-2504.
Multiple orders, §36-5-2503.
Penalties for noncompliance, §36-5-2505.
Pleading or registration unnecessary, §36-5-2501.
Registration of orders generally, §§36-5-2601 to 36-5-2616.

SUPPORT AND MAINTENANCE —Cont'd
Interstate family support act —Cont'd
Initiating tribunal.
Duties, §36-5-2304.
Proceedings involving two or more states, §36-5-2203.
International recovery of child support and other forms of family maintenance, convention on.
Definition of convention, §36-5-2101.
Support proceedings under convention, §§36-5-2701 to 36-5-2713.
Jurisdiction.
Modification of support order of foreign country, §36-5-2615.
Modifying child-support order of another state, §§36-5-2611, 36-5-2613.
Nonresidents.
Bases of jurisdiction, §36-5-2201.
Duration of jurisdiction, §36-5-2202.
Personal jurisdiction under other provisions.
Applicable provisions, §36-5-2210.
Participation by petitioner in proceeding, §36-5-2314.
Proceedings involving two or more states, §§36-5-2203 to 36-5-2206.
Reconciliation of multiple orders, §§36-5-2207 to 36-5-2209.
Minor parents, §36-5-2302.
Modification of support order.
Child support.
Jurisdiction, §36-5-2205.
Convention, support proceeding under (Future Contingent Effective Date).
Modification of convention child support orders, §36-5-2711.
Foreign countries, §36-5-2615.
Registration of order for modification, §36-5-2616.
Spousal support.
Jurisdiction, §36-5-2211.
Multistate proceedings.
Continuing exclusive jurisdiction, §§36-5-2205, 36-5-2211.
Enforcement and modification of support order, §36-5-2206.
Initiating and responding tribunal of this state, §36-5-2203.
Reconciliation with orders of other states, §§36-5-2207 to 36-5-2209.
Simultaneous proceedings in another state, §36-5-2204.
Nondisclosure of information, §36-5-2312.
Nonparentage as defense, §36-5-2315.
Parentage determination proceedings, §§36-5-2402, 36-5-2701.
Paternity.
Voluntary acknowledgment of paternity.
Evidentiary effect, §36-5-2316.
Payments.
Receipt and disbursement, §36-5-2319.
Pleadings and accompanying documents, §36-5-2311.
Presence of petitioner in responding tribunal not required, §36-5-2316.
Procedural rules, §36-5-2316.
Proceedings involving two or more states, §§36-5-2203 to 36-5-2206.
Proceedings under act, §36-5-2301.

SUPPORT AND MAINTENANCE —Cont'd
Interstate family support act —Cont'd
Receipt and disbursement of payments, §36-5-2319.
Recognition of controlling child support order.
Convention, support proceeding under.
Convention support orders.
Enforcement and recognition of registered orders, §36-5-2708.
Convention, support proceeding under (Future Contingent Effective Date).
Convention support orders.
Partial enforcement, §36-5-2709.
Foreign support agreements, §36-5-2710.
Recognition of controlling child-support order, §36-5-2207.
Reconciliation with orders of other states.
Credits for payments, §36-5-2209.
Determination of controlling child support order, §36-5-2207.
Multiple orders for two or more obligees, §36-5-2208.
Recognition of child support orders, §36-5-2207.
Registration of orders, §§36-5-2601 to 36-5-2616.
Authorized, §§36-5-2601, 36-5-2609.
Child support order modification, §§36-5-2609 to 36-5-2616.
Choice of law, §36-5-2604.
Confirmed orders, §§36-5-2607, 36-5-2608.
Contesting registered orders, §§36-5-2606 to 36-5-2608.
Convention, support proceeding under.
Convention support orders.
Recognition and enforcement of registered orders, §36-5-2708.
Convention, support proceeding under (Future Contingent Effective Date).
Convention support orders, §36-5-2706.
Contest of registered orders, §36-5-2707.
Effect of registration, §§36-5-2603, 36-5-2610.
Notice of registration, §§36-5-2605, 36-5-2614.
Requests for registration, §36-5-2602.
Remedies cumulative, §36-5-2103.
Rendition, §§36-5-2801, 36-5-2802.
Reporter's duty, §36-5-2308.
Responding tribunal.
Powers and duties, §36-5-2305.
Proceedings involving two or more states, §36-5-2203.
Self-incrimination.
Adverse influence permitted, §36-5-2316.
Severability clause, §§36-5-2902, 36-5-2903.
Simultaneous proceedings in another state, §36-5-2204.
Spousal privilege, §36-5-2316.
State information agency.
Duties, §36-5-2310.
Support enforcement agency.
Duties, §36-5-2307.
Human services department as support enforcement agency, §36-5-2102.

SUPPORT AND MAINTENANCE —Cont'd
Interstate family support act —Cont'd
Support enforcement agency —Cont'd
Income-withholding order enforcement, §36-5-2507.
Receipt and disbursement of payments, §36-5-2319.
Support orders.
Convention, support proceeding under (Future Contingent Effective Date), §§36-5-2701 to 36-5-2713.
Petition to establish, §36-5-2401.
Temporary child-support orders, §36-5-2401.
Title of chapter, §36-5-2001.
Tribunals of the state, §36-5-2102.
Uniformity of application and construction, §36-5-2901.
Jurisdiction.
Enforcement without transfer of jurisdiction, §§36-5-3101 to 36-5-3111.
Intercounty enforcement and modification of child support, §§36-5-3001 to 36-5-3009.
See CHILD SUPPORT.
Interstate family support act.
Modifying child-support order of another state, §§36-5-2611, 36-5-2613.
Nonresidents.
Bases of jurisdiction, §36-5-2201.
Duration of jurisdiction, §36-5-2202.
Personal jurisdiction under other provisions.
Applicable provisions, §36-5-2210.
Participation by petitioner in proceeding, §36-5-2314.
Proceedings involving two or more states, §§36-5-2203 to 36-5-2206.
Reconciliation of multiple orders, §§36-5-2207 to 36-5-2209.
Juvenile courts, §37-1-103.
Nonsupport and flagrant nonsupport, §39-15-102.
Marital property.
Distribution, §36-4-121.
Misdemeanors.
Nonsupport.
Class A misdemeanor, §39-15-101.
Nonsupport and flagrant nonsupport, §§39-15-101 to 39-15-104.
Appeals, §39-15-103.
Arrest.
Issuance of warrant, §39-15-104.
Court of appeals.
Appeals from final orders or decrees of juvenile courts, §39-15-103.
Criminal law and procedure, §39-15-101.
Definitions, §39-15-101.
Enforcement generally, §39-15-104.
Execution.
Enforcement orders or decrees, §39-15-104.
Extradition.
Flagrant nonsupport.
Duty of governor to demand return, §39-15-104.
Felonies.
Flagrant nonsupport, §39-15-101.
Flagrant nonsupport.
Generally, §39-15-101.
Governor.
Flagrant nonsupport.
Extradition.
Duty of governor to demand, §39-15-104.

SUPPORT AND MAINTENANCE —Cont'd
Nonsupport and flagrant nonsupport —Cont'd
Jurisdiction.
Juvenile courts, §39-15-102.
Juvenile courts.
Appeals from final orders or decrees, §39-15-103.
Jurisdiction, §39-15-102.
Misdemeanors.
Nonsupport.
Orders of protection and assistance, §39-15-102.
Procedure generally, §39-15-104.
Sentencing, §39-15-102.
Orders of support.
Nonsupport and flagrant nonsupport.
Orders of protection and assistance, §39-15-102.
Registration of orders, §§36-5-3101 to 36-5-3111.
Parenting plans, §§36-6-401 to 36-6-414.
See PARENTING PLANS.
Paternity proceedings, §36-2-311.
Health insurance coverage for child, §36-2-319.
License revocation requests, §36-2-320.
Past-due support for children receiving assistance, §36-2-322.
Temporary orders of support, §36-2-310.
Time period for enforcement of orders, §36-2-321.
Payment.
Plans for payment of child support, §36-5-113.
Property.
Decreed to plaintiff spouse, §36-5-102.
Jointly owned property.
Adjustment of interests, §36-4-121.
Marital property.
Distribution, §36-4-121.
Separate property.
Distribution of marital property, §36-4-121.
Referees, §§36-5-402 to 36-5-405.
Appointment, §36-5-402.
Number, §36-5-402.
Powers.
Generally, §36-5-403.
Procedures.
Generally, §36-5-405.
Salary, §36-5-402.
Selection, §36-5-402.
Registration of orders, §§36-5-3101 to 36-5-3111.
Confirmed orders, §§36-5-3107, 36-5-3108.
Construction of provisions, §36-5-3101.
Contesting validity or enforcement of order, §§36-5-3106 to 36-5-3108.
Costs and fees, §36-5-3111.
Definitions, §36-5-3102.
Disbursement of collections, §36-5-3110.
Effect of registered order, §36-5-3104.
Filing of orders, etc., §36-5-3103.
Interstate family support act, §§36-5-2601 to 36-5-2616.
Notice requirements, §§36-5-3103, 36-5-3105.
Contesting validity or enforcement of order, §36-5-3106.
Payments received by issuing court, §36-5-3103.
Petitions seeking remedies, §36-5-3103.
Purpose of provisions, §36-5-3101.
Requests for registration, §36-5-3103.
Rights of department, §36-5-3109.

SUPPORT AND MAINTENANCE —Cont'd
Responsible teen parent pilot project, §36-5-112.
Salaries.
Assignment of income for support.
See CHILD SUPPORT.
Separate property.
Distribution of marital property, §36-4-121.
Service of process.
Assignment of income for child support, §36-5-501.
Interstate family support act.
Presence in state to participate in proceeding, §36-5-2314.
Social security number records, §§36-5-1301, 36-5-1302.
Spousal reconciliation.
Suspension of proceedings to attempt, §36-4-126.
State registry of support cases, §36-5-115.
Reimbursement of clerks of court for activities involving, §36-5-117.
Termination of Acts 1985, Ch 477, §36-5-110.
Wages.
Assignment of income for support, §§36-5-501, 36-5-503.
Welfare.
Aid to dependent children.
Assignment of support rights to state, §71-3-124.
Past-due support payments, §36-2-322.
Work requirements for persons owing child support, §36-5-113.

SUPREME COURT.
Abortion.
Waiver of parental consent for abortion by minors, SupCt 24.
Juvenile law.
Promulgation of rules, §37-1-322.
Termination of parental rights.
Appeal by permission from appellate court to supreme court, RAP 8A.

SURROGATE DECISION MAKERS.
Medical decisions.
Mental health service recipients, §§33-3-219 to 33-3-221.

SWIMMING POOLS.
Smoking on grounds, prohibition.
Local government ordinances prohibiting, §39-17-1551.

SWITCHBLADE KNIVES.
School property.
Carrying weapons on school property, §39-17-1309.

SYPHILIS.
Sexually transmitted diseases generally, §§68-10-101 to 68-10-118.
See SEXUALLY TRANSMITTED DISEASES.

SYRINGES.
Sharps injury prevention technology.
Diabetes, student management at schools, §49-50-1602.

T

TANF.
Child support.
Past-due support payments, §36-2-322.

TANF —Cont'd
Families first program.
See WELFARE.
Temporary assistance generally, §§71-3-101 to 71-3-126.

TANNING FACILITIES CONTROL ACT OF 1990, §§68-117-101 to 68-117-107.
Accompanied by parent, §68-117-104.
Citation of title, §68-117-101.
Contracts.
Requirements, §68-117-104.
Criminal law and procedure.
Violations of chapter, §68-117-105.
Definitions, §68-117-102.
Employees.
Trained attendant on duty.
Requirements, §68-117-104.
Enumeration of requirements, §68-117-104.
Healing arts practitioners.
Applicability of chapter provisions, §68-117-103.
Health care professionals.
Applicability of chapter provisions, §68-117-103.
Interior temperature.
Requirements, §68-117-104.
Maximum exposure time.
Requirements, §68-117-104.
Warning statements, §68-117-106.
Misdemeanors.
Violations of chapter, §68-117-105.
Parental or legal guardian statement.
When signed statement required, §68-117-104.
Protective eyewear.
Requirements, §68-117-104.
Warning statements, §§68-117-106, 68-117-107.
Requirements, §68-117-104.
Warning statements, §§68-117-106, 68-117-107.
Short title, §68-117-101.
Title of act, §68-117-101.
Warning statement.
Parents to sign statement prior to minors' use of facilities, §68-117-104.
Requirements, §68-117-104.
Contents of statement, §§68-117-106, 68-117-107.
Posting in prominent place, §68-117-107.

TATTOOING, §§39-15-403, 62-38-201 to 62-38-212.
Apprentice artist.
License, §62-38-204.
Artists.
Registration, §62-38-204.
Bandaging, §62-38-209.
Certificates.
Studios.
Posting, §62-38-206.
Child support enforcement.
Denial or revocation of permit, §§36-5-701 to 36-5-714.
Administrative order enforcement, §36-5-812.
Juvenile proceedings, §37-1-151.
Paternity and legitimation, §36-2-320.
Conventions.
Temporary location, §62-38-205.
Counties.
Local regulations superseded, §62-38-210.
Crimes and offenses, §39-15-403.

TATTOOING —Cont'd
Definitions, §§39-15-403, 62-38-201.
Equipment, §62-38-203.
Maintenance, §62-38-209.
False identification or statement of age to obtain tattoo, §62-38-211.
Fees.
Studio.
Permit fees, §62-38-202.
Temporary studio location, §62-38-205.
Fines.
Tattooing without a permit, §62-38-208.
Hygiene, §62-38-209.
Inspections, §62-38-203.
Licenses.
Defined, §62-38-201.
Studio, §62-38-202.
Tattoo artists, §62-38-204.
Unlicensed persons, possession of tattoo paraphernalia, §62-38-212.
Local regulations superseded, §62-38-210.
Minors, §62-38-211.
Covering up existing tattoos, §62-38-211.
False identification or statement of age to obtain tattoo, §62-38-211.
Record of signed acknowledgment by parent or guardian, §62-38-207.
Reporting tattooing of minor, §62-38-211.
Municipal corporations.
Local regulations superseded, §62-38-210.
Operators.
License, §62-38-204.
Permit to operate tattooing establishment, §62-38-204.
Permits.
Defined, §62-38-201.
Social security numbers on applications, §36-5-1301.
Studio certificate permits.
Posting, §62-38-206.
Suspension or revocation.
Child support enforcement, §§36-5-701 to 36-5-714.
Administrative order enforcement, §36-5-812.
Juvenile proceedings, §37-1-151.
Paternity and legitimation, §36-2-320.
Tattoo artists, §62-38-204.
Physicians and surgeons.
Exemptions from chapter, §62-38-210.
Possession of tattoo paraphernalia by unlicensed person, §62-38-212.
Premises and equipment, §62-38-203.
Records, §62-38-207.
Registration.
Defined, §62-38-201.
Removal of tattoos, §62-38-209.
Reporting tattooing of minor, §62-38-211.
Rulemaking authority, §62-38-210.
Skin care.
Instructions required, §62-38-207.
Studio.
Certificates.
Posting, §62-38-206.
Certification, §62-38-202.
Critical violations, civil penalty, §62-38-202.
Inspections, §62-38-202.
License, §62-38-202.
Minor violations, civil penalty, §62-38-202.
Permit fees, §62-38-202.

TATTOOING —Cont'd
Studio —Cont'd
Statutes.
Posting, §62-38-206.
Temporary locations, §62-38-205.
Work areas, §62-38-203.

TAXATION.
Guardians for minors.
Permanent guardianship.
How child to be claimed as dependent for tax purposes, §37-1-807.

TEACHERS.
Absence or withdrawal reports, §49-6-3007.
Attendance reports.
Duty to report, §49-6-3007.
Child abuse and child neglect or endangerment.
Duty to report child sexual abuse, §37-1-605.
Reports.
School grounds or school supervision, abuse occurring on or during, §49-6-1601.
Criminal activity by students.
Reports, §49-6-4301.
Dyslexia.
In-service training, §49-6-3004.
Firearms.
Carrying weapons on school property.
Concealed weapons, employees authorized to carry in distressed rural counties.
Applicability, §39-17-1309.
Persons permitted to possess or carry firearms on school grounds.
Applicability, §39-17-1309.
Glucagon administration.
Assistance in administering, §49-50-1602.
Health care procedure for students.
Administration by health care professionals, §49-50-1602.
Holidays.
Paid holidays, §49-6-3016.
Hypoglycemia.
Glucagon administration.
Assistance in administering, §49-50-1602.
In loco parentis responsibility, §49-6-4203.
In-service training programs, §49-6-3004.
Juvenile offenders.
Informing pupils of juvenile offender act provisions, §49-6-451.
In-service training to include act, §49-6-3004.
Medication administered to students.
Assistance in self-administration, §49-50-1602.
Mental illness in children and adolescents.
In-service training for teachers and principals.
Understanding warning signs of early-onset mental illness, §49-6-3004.
Pre-kindergarten programs.
Number of teachers, §49-6-104.
Salaries.
Holidays, §49-6-3016.
Suicide prevention education.
In-service training for teachers and principals, §49-6-3004.
Youth development centers, §37-5-119.

TEBOW LAW.
Home schooled students.
Participation in interscholastic sports competition, §49-6-3050.

TEENAGE PREGNANCY, §§37-3-501 to 37-3-521.
Abortion.
Parental consent for abortion by minor, §§37-10-301 to 37-10-308.
See ABORTION.
Commission on children and youth.
Similar programs or services operating within state.
Notification, §37-3-506.
Department of health.
Duties, §§37-3-501 to 37-3-504.
Hearings.
Information concerning, §37-3-504.
Informational clearinghouse, §37-3-501.
Counseling service.
Clearinghouse not to provide, §37-3-507.
Purpose, §37-3-507.
Reports, §37-3-501.
Juvenile proceedings.
See JUVENILE PROCEEDINGS.
Meetings.
Information concerning, §37-3-504.
Model teenage pregnancy programs.
Notice, §37-3-506.
Potential at-risk first time teen parents.
Targeting, §37-3-521.
Preschool parenting learning centers for teen parents, §49-1-206.
Project RAP, §§71-3-701, 71-3-702.
Reports.
Availability of state reports, §37-3-503.
Research information.
Collection and maintenance, §37-3-503.
Second or subsequent pregnancies.
Informational services regarding, §37-3-521.
Services.
Information on, §37-3-502.
Notification of similar services within state, §37-3-506.
State reports.
Availability, §37-3-503.
Statistical information.
Collection and maintenance, §37-3-503.
Workshops.
Information concerning, §37-3-504.

TEEN COURT, §§37-1-701 to 37-1-706.
Authority of court, §§37-1-303, 37-1-702.
Authority to establish, §37-1-702.
Choosing cases to be referred to court, §37-1-702.
Choosing members, §37-1-704.
Conduct of proceedings, §37-1-705.
Confidentiality of records used, §37-1-705.
Construction of provisions, §37-1-706.
Decisions, §37-1-702.
Deferred judgment.
Teen charged with offense to receive, §37-1-702.
Delegation of responsibility to operate.
Person practicing law, §37-1-706.
Dismissal at end of referral period, §37-1-702.
Due process standards to be met, §37-1-706.

TEEN COURT —Cont'd
Immunity.
Participants, §37-1-705.
Juvenile court's authority not impaired, §37-1-706.
Limited adult participation, §37-1-705.
Number of members, §§37-1-702, 37-1-704.
Participation, procedure for determining, §37-1-702.
Prosecuting and defense attorneys.
Appointment of teens to serve as, §37-1-705.
Recommendations, §37-1-702.
Authority of court, §37-1-703.
Service without compensation, §37-1-704.
Tennessee teen court program of 2000, §37-1-701.
Travel expenses, §37-1-704.

TELECOMMUNICATIONS.
Child custody.
Noncustodial parent's right to telephone conversations, §36-6-101.
Child support.
Statewide toll-free telephone line, §36-5-118.
Missing child recovery.
Telephone records useful in recovery.
Service providers' duties, §37-10-204.
Testimony by phone.
Child support administrative appeals, §36-5-1002.

TELEPHONE NUMBERS.
Child abuse and child neglect or endangerment.
Victim's address, telephone number or location, §§36-2-311, 37-1-151.
Domestic abuse.
Victim's address, telephone number or location, §37-1-151.

TEMPORARY ASSISTANCE FOR DEPENDENT CHILDREN.
Families first program.
See WELFARE.
Generally, §§71-3-101 to 71-3-126.

TENANCIES BY THE ENTIRETY.
Reestablished, §36-3-505.
Unaffected by removal of coverture from married women, §36-3-505.

TENDER YEARS PRESUMPTION.
Parenting plans.
Gender based presumptions, §36-6-412.

TENNCARE (MEDICAL ASSISTANCE).
Cost-saving initiatives.
Authority to implement, §71-5-102.
Department of health.
Contracts with fiscal intermediaries, §71-5-105.
Cooperation with other agencies, §71-5-105.
Duties, §71-5-105.
Reports.
Annual report, §71-5-105.
Rules and regulations, §71-5-105.
Eligibility.
Annual determination, §71-5-106.
Inmates in jails or correctional facilities, §71-5-106.
Enabling provisions, §§71-5-102 to 71-5-106, 71-5-134.
Intellectual and developmental disabilities, persons with.
Eligibility criteria for medical assistance programs and services, §33-5-111.

TENNCARE (MEDICAL ASSISTANCE) —Cont'd
Intellectual and developmental disabilities, persons with —Cont'd
Wait-listed persons, enrollment in self-determination waiver, §33-5-112.
Re-establishing eligibility, §71-5-106.
Reports.
Department of health.
Annual report, §71-5-105.
Rules and regulations.
Department of health, §71-5-105.
Temporary assistance for dependent children.
Deductions from standard of need cost, §71-3-105.

TENNESSEE BUREAU OF INVESTIGATION.
Criminal background checks.
Duties, §38-6-109.
Firearms, instant check unit.
Protection order entered into national crime information center.
Time for providing notification to agency entering protection order, §38-6-109.
Instant check unit.
Protection order entered into national crime information center.
Time for providing notification to agency entering protection order, §38-6-109.
Internet criminal information center, §38-6-116.
Missing children registry, §38-6-117.
Protection order entered into national crime information center.
Time for providing notification to agency entering protection order, §38-6-109.
Sexual offenses.
Central registry for sexual offenders, §38-6-110.

TENNESSEE SCHOOL SAFETY CENTER, §49-6-4302.

TENNESSEE TEEN COURT PROGRAM OF 2000, §§37-1-701 to 37-1-706.

TERMINATION OF PARENTAL RIGHTS.
Adoption, §36-1-113.
Consent of parents, §36-1-111.
Contested terminations, §36-1-124.
Denial of paternity and notice by legal father, §36-1-111.
Pleadings and records filed in court placed under seal, §36-1-113.
Pre-surrender request for home study or preliminary home study, §36-1-111.
Putative father, §36-1-117.
Surrender, §36-1-111.
Waiver of interest, §36-1-111.
Appeals, §37-1-159, RAP 8A.
Best interests of child, §37-1-147.
Child support.
Effect of termination on obligation of support.
Notice to petitioning parent, §36-1-113.
Circuit courts.
Appeals to, §37-1-159, RAP 8A.
Complaint for parentage.
Filing by person listed on putative father registry, §36-2-318.

TERMINATION OF PARENTAL RIGHTS —Cont'd
Fees.
Clerks of court, §8-21-401.
Findings of fact, §§36-1-113, 37-1-147.
Grounds, §§36-1-113, 37-1-147.
Indian child welfare.
Child custody proceedings.
Voluntary termination of parental rights, 25 USCS §1913.
Intervention.
Filing by person listed on putative father registry, §36-2-318.
Jurisdiction, §37-1-104.
Temporary jurisdiction to issue temporary orders, §37-1-103.
Persons contained on putative father registry.
Notice of proceeding to, necessary party to proceeding, §36-2-318.
Petition, §§36-1-113, 37-1-147.
Rape.
Child conceived by rape, termination of rights, §36-1-113.
Summons and process.
Father of child born out of wedlock, §37-1-147.
Temporary orders.
Temporary jurisdiction to issue, §37-1-103.
Trafficking for commercial sex acts, §36-1-113.
Venue, §37-1-111.
Voluntary delivery of infant to facility, §36-1-142.

TEST TUBE BABIES.
Donated embryo transfer, parentage of children, §§36-2-401 to 36-2-403.

THEATERS.
Child labor.
Protection of minor performers, §§50-5-201 to 50-5-222.

THEFT.
Shoplifting.
Theft by minor of retail merchandise.
Civil liability of adults, parents or guardians, §39-14-144.
Vandalism.
Punished as theft, §39-14-408.

THREATS.
Child abduction prevention.
Risk factors for abduction.
Listing, §36-6-607.
Mental health service recipients.
Warning, predicting, precautions, etc.
Counselor duties as to, §33-3-206.
Employee duties as to, §33-3-208.
Immunity of counselors and employees fulfilling duties, §33-3-209.
Law enforcement, reporting to, §33-3-210.
Methods, §33-3-207.
School employees.
Communicating threat concerning school employee, §39-13-114.

TIME.
Conservators for persons with disabilities.
Accounting to court, §34-1-111.
Guardian ad litem appointed on filing of petition for conservator, §34-1-107.
Inventory filing, §34-1-110.
Investments, §34-1-115.

TIME —Cont'd
Guardians for minors.
Accounting to court, §34-1-111.
Termination upon minor reaching 18 years of age, §34-2-106.
Guardian ad litem appointed on filing of petition for guardian, §34-1-107.
Hearings on petition for appointment, §34-1-108.
Inventory filing, §34-1-110.
Investments, §34-1-115.
Termination of parental rights.
Appeal as of right.
Notice of appeal, RAP 8A.
Welfare.
Temporary assistance for dependent children, §71-3-104.

TOBACCO.
Children's clean indoor air act, §§39-17-1601 to 39-17-1606.
Police and other law enforcement officers.
Smoking.
Use of minors in aiding enforcement of laws, §39-15-413.
Prevention of youth access to tobacco and vapor products.
Citation of part, §39-17-1501.
Civil penalties, §§39-17-1505, 39-17-1509.
Criminal penalties.
Allowing access, §39-17-1510.
Definitions, §39-17-1503.
Enforcement, §39-17-1509.
Exemptions, §39-17-1551.
Inspections of sales and distribution locations, §39-17-1509.
Law enforcement officers.
Exemption of minors cooperating with from prohibited purchases provisions, §39-17-1505.
Legislative intent, §39-17-1502.
Liquid nicotine containers, child-resistant packaging standards, §39-17-1512.
Local government exemptions, §39-17-1551.
Misdemeanors.
Vending machine sales, §39-17-1507.
Packaging requirements, §39-17-1508.
Postings required, §39-17-1506.
Preemption of laws, §39-17-1551.
Proof of age, §39-17-1504.
Presentation of false or fraudulent identification, §39-17-1505.
Vending machine sales, §39-17-1507.
Purchases by minors, §39-17-1505.
Citations for violations, §39-17-1505.
Exemptions from prohibitions, §39-17-1505.
Purpose, §39-17-1502.
Preemption, §39-17-1551.
Reporting, §39-17-1509.
Sale or distribution to minors, §39-17-1504.
Shopping malls.
Individual retail establishments.
Policy on use of tobacco products within establishment, §39-17-1551.
Short title, §39-17-1501.
Study of effects of sale and distribution of vapor products to minors, department of agriculture, §39-17-1513.
Vending machine sales, §39-17-1507.

TOBACCO —Cont'd
Retail tobacco store.
Maintenance of smoking paraphernalia in area inaccessible to customers, §39-17-1511.
Smoking paraphernalia.
Generally, §§39-15-407 to 39-15-414.
Vapor products.
Minors.
Prevention of access to tobacco and vapor products, §§39-17-1501 to 39-17-1551.
Welfare.
Temporary assistance.
Electronic benefits transfer cards, prohibited purchases, §71-3-126.

TONGUE PIERCING.
Body piercing generally, §§62-38-301 to 62-38-310.
See BODY PIERCING.

TORTS.
Alienation of affections.
Action abolished, §36-3-701.
Mental health service recipients.
Nonprofit organizations providing service.
Tortious acts of recipients.
Immunity from liability of organization, §33-3-202.
Motor vehicles.
Imputed liability.
Learner's permit.
Accompanying driver, §55-50-311.
Parent and child.
Liability of parents and guardians for acts of juvenile, §§37-10-101 to 37-10-103.

TRAFFICKING IN CHILDREN.
Bond on importation of child, §37-5-403.
Child abuse.
Reporting child abuse and child neglect or endangerment, §37-1-403.
Consent required for importation of child, §37-5-401.
Consent to take child out of state, §37-5-404.
Exemption for relatives of child, §37-5-406.
Importation of child.
Consent required, §37-5-401.
Payments made in connection with child placement, §36-1-109.
Penalty for violations, §37-5-405.
Placement of imported child, §37-5-402.
Sale or surrender of child for money or thing of value, §36-1-109.
Trafficking for commercial sex acts.
Termination of parental rights, §36-1-113.

TRAFFIC LAWS.
Speed limits on school grounds, §49-6-4218.

TRAUMATIC BRAIN INJURIES (TBI).
Traumatic brain injury fund, §§68-55-401, 68-55-402.

TRESPASS BY MOTOR VEHICLE, §39-14-407.

TRUANCY.
Attendance violations generally, §§49-6-3008 to 49-6-3011.
Pages for general assembly, §49-6-3018.

TRUANCY —Cont'd
Proceedings against parents, §49-6-3007.
Truancy schools, §49-6-3012.

TRUSTS AND TRUSTEES.
State mental health facilities.
Employee as trustee, §33-4-209.
Coercion of trustee, §33-4-210.

TUBAL LIGATION.
Family planning.
Sterilization, §68-34-108.

TUBERCULOSIS.
Emergency workers.
Exposure to airborne or bloodborne diseases, §68-10-117.

TYING THE TUBES.
Family planning.
Sterilization, §68-34-108.

U

UNCLAIMED PROPERTY.
Mental health service recipients.
Death of recipient.
Disposal of unclaimed property, §33-4-109.

UNIFORM CHILD ABDUCTION PREVENTION ACT, §§36-6-601 to 36-6-612.

UNIFORM DEPLOYED PARENTS CUSTODY AND VISITATION ACT, §§36-7-101 to 36-7-503.
See CHILD CUSTODY.

UNIVERSITY AND POSTSECONDARY EDUCATION.
Firearms and other weapons.
Carrying weapons on school property, §39-17-1309.
Handgun carry policy of private institutions of higher education.
Applicability, §39-17-1309.
Threats.
Communicating threat concerning school employee, §39-13-114.

UNIVERSITY OF TENNESSEE.
Agriculture and mechanic arts college.
Firearms.
Employees carrying firearms in discharge of duties, §39-17-1309.
Wildlife biology or ecology research and education.
Firearms.
Employees carrying firearms in discharge of duties, §39-17-1309.

V

VACCINATIONS.
Childhood immunizations.
Generally, §§37-10-401 to 37-10-403.
Hepatitis B protection by immunization act, §49-6-5003.
School children, §§49-6-5001, 49-6-5002.

VANDALISM.
Defined, §39-14-408.
Parental liability for vandalism by child, §37-1-156.
Pollution, §39-14-408.
Retail merchandise, §39-14-408.

VANDALISM —Cont'd
School property.
Suspension or expulsion of pupils, §49-6-3401.
Theft.
Punished as theft, §39-14-408.

VAPOR PRODUCTS.
Minors.
Prevention of access to tobacco and vapor products, §§39-17-1501 to 39-17-1551.
See TOBACCO.

VASECTOMIES.
Family planning, §68-34-108.

VENDING MACHINES.
Tobacco sales to minors.
Prevention of access to tobacco and vapor products.
See TOBACCO.

VENUE.
Adoption, §36-1-114.
Change of venue.
Paternity proceedings, §36-2-307.
Child labor.
Protection of minor performers.
Petition for approval of contract, §50-5-210.
Child support.
Administrative action enforcement, §36-5-812.
Judicial review of administrative actions, §36-5-1003.
Delinquent and unruly children, §37-1-111.
Adjudicatory proceedings.
Transfer to home county, JuvPro 210.
Dependent and neglected children, §37-1-111.
Divorce, §36-4-105.
Domestic abuse.
Protection orders, §36-3-602.
Guardians for minors.
Actions for appointment, §34-2-101.
Juvenile courts, §37-1-111.
Termination of parental rights, §37-1-111.
Mental health service recipients.
Commitment, §33-3-603.
Parent and child.
Termination of parental rights, §37-1-111.
Paternity proceedings, §36-2-307.
Protection of minor performers.
Petition for approval of contract, §50-5-210.
Protection orders.
Domestic abuse, stalking or sexual assault, §36-3-602.
Schools and education.
Fraudulent enrollment of student in school district.
Civil action seeking restitution, §49-6-3003.
Termination of parental rights, §37-1-111.

VETERANS.
Temporary assistance for dependent children.
Value of education benefits for eligibility determination, §71-3-116.

VETERANS' ADMINISTRATION.
Mental health inpatient treatment.
Involuntary admission, nonemergency.
Commitment to veterans administration facilities, §33-6-510.

VICARIOUS LIABILITY.
Family purpose doctrine.
Motor vehicles, §55-50-311.
Husband and wife.
Antenuptial debts of wife.
Nonliability of husband, §36-3-503.
Parents and guardians.
Liability for acts of juveniles, §§37-10-101 to 37-10-103.

VICTIMS OF CRIME.
Child abuse victims.
Contact by convict with victims.
Barring convict from contact, §39-15-401.
Aggravated child abuse, §39-15-402.
Physician and surgeon duties.
Reporting abuse, §37-1-605.
Retention of victim custody, §37-1-404.
Delinquent and unruly children.
School assignment, educational plans, and limitations or conditions on attendance.
Separation from victim as factor considered, §37-1-131.
Physicians and surgeons.
Reporting injuries of abuse victims.
Child abuse, §37-1-605.
Retention of custody of child abuse victims, §37-1-404.

VIDEOTAPE.
Testimony of witnesses.
Child support administrative appeals, §36-5-1002.

VISITATION OF CHILDREN.
Child abduction prevention, §§36-6-601 to 36-6-612.
Custodial interference.
Detention of child beyond period of visitation, §39-13-306.
Denial for parent convicted of rape where child conceived from crime, §36-6-102.
Grandparents' rights, §§36-6-302, 36-6-306, 36-6-307.
Mediation in cases involving domestic abuse, §36-6-305.
Noncustodial parents, §36-6-301.
Rights generally, §36-6-101.
Nudist colonies.
Exposure of child to nudist colony prohibited, §36-6-304.
Paternity proceedings, §36-2-312.
Permanent guardianship orders.
Visitation to be specified, §37-1-803.
Stepparents' rights, §36-6-303.

VITAL RECORDS.
Amendment of record, §68-3-203.
Birth, §68-3-203.
Certificates.
Amendment of records, §68-3-203.
Birth inside institution or in route, §68-3-302.
Voluntary acknowledgment of paternity rescission, §68-3-203.
Institutions.
Birth inside institutions.
Procedure, §68-3-302.
Birth certificates.
Father's name on birth certificate, §68-3-305.
New certificate of birth.
Prerequisites, §68-3-310.
Paternity proceedings, §36-2-313.
Surname of child, §68-3-305.

VOLUNTARY PRE-K FOR TENNESSEE ACT OF 2005.
Pre-kindergarten programs, §§49-6-102 to 49-6-110.

W

WAGES.
Support and maintenance.
Assignment of income for child support, §§36-5-501, 36-5-503.
Income withholding to enforce support orders.
Interstate family support act, §§36-5-2501 to 36-5-2507.

WAIVER.
Delinquent and unruly children.
Rules of juvenile procedure.
Rights of children, notification and waiver, JuvPro 205.
Dependent and neglected children.
Rules of juvenile procedure.
Notification and waiver of rights, JuvPro 303.
Juvenile proceedings.
Rules of juvenile procedure.
Summons, service, JuvPro 103.

WARRANTLESS ARRESTS IN DOMESTIC VIOLENCE SITUATIONS, §36-3-619.
Violation of protection orders, §36-3-611.

WARRANTS.
Child abduction prevention.
Physical custody of child, warrant for, §§36-6-608, 36-6-609.
Child custody.
Interstate child custody proceedings.
Warrant for physical custody, §36-6-235.
Domestic abuse.
Warrantless arrests, §36-3-619.
Juvenile courts.
Taking into custody, §37-1-115.
Paternity proceedings.
Warrant for apprehension of defendant, §36-2-305.
Warrantless arrests in domestic violence situations, §§36-3-611, 36-3-619.

WEAPONS.
See FIREARMS AND OTHER WEAPONS.

WEIGHT CONTROL.
School programs for children at risk for obesity, §§49-6-1401 to 49-6-1405.

WELFARE.
Aid to dependent children.
Amendment of provisions, §71-3-117.
Assignment of benefits.
Prohibited, §71-3-121.
Assignment of support rights to state, §71-3-124.
Attorneys.
Representation by attorneys, §71-3-124.
Collections service fee, §71-3-124.
Enforcement and collection of assigned rights, §71-3-124.
Subrogation to state department, §71-3-124.
Attachment.
Exemption, §71-3-121.

WELFARE —Cont'd
Aid to dependent children —Cont'd
Bankruptcy and insolvency.
Exemption from operation of bankruptcy or insolvency laws, §71-3-121.
Caretaker relatives.
Cooperation with department, §71-3-124.
Charging for assistance to applicants.
Unlawful, §71-3-118.
Child support.
Past-due support payments, §36-2-322.
Child support rights, assignment to state, §71-3-124.
Deserting spouse or parent.
Civil action against, §71-3-123.
Prosecution, §71-3-122.
District attorneys.
Child support enforcement, §71-3-125.
Executions.
Exemption, §71-3-121.
Fraudulent receipt of temporary assistance, §71-3-120.
Garnishment, §71-3-121.
List of recipients.
Use, §71-3-119.
Misdemeanors.
Charging for assistance to applicants, §71-3-118.
List of recipients.
Unlawful use, §71-3-119.
Statutory rape reporting.
Department of human services.
When application indicates occurrence of statutory rape, §38-1-305.
Subrogation of department to rights of child or children to receive child support, §71-3-124.
Support rights, assignment to state, §71-3-124.
Temporary assistance.
Generally, §§71-3-101 to 71-3-126.
Transfer of benefits.
Prohibited, §71-3-121.
Aliens.
Temporary assistance for dependent children.
Ineligibility of illegal aliens, §71-3-104.
Asylums.
Orphan asylums, §§71-3-601 to 71-3-612.
See ORPHAN ASYLUMS.
Attachment.
Aid to dependent children.
Exemption, §71-3-121.
Bankruptcy and insolvency.
Aid to dependent children.
Exemption from operation of bankruptcy and insolvency laws, §71-3-121.
Child abuse prevention services.
Administration of program, §71-6-203.
Definitions, §71-6-202.
Funding, §71-6-201.
Prerequisites for receiving funds, §§71-6-204, 71-6-206.
Program established, §71-6-201.
Child care agencies, §§71-3-501 to 71-3-518.
See CHILD CARE AGENCIES, WELFARE.
Child care services.
Fraud, §71-1-133.

WELFARE —Cont'd
Children's mental health care.
Interagency programs, §71-5-193.
Children's services department.
Abandonment of child.
Duties, §34-1-103.
Children committed to department's custody.
Use and disposition of federal funds, §37-1-172.
Generally.
See CHILDREN'S SERVICES DEPARTMENT.
Guardians for minors.
Duties when no natural guardian or child abandoned, §34-1-103.
Orders committing child to custody of department.
Required findings, §37-1-166.
Child support.
Aid to dependent children.
Assignment of support rights to state, §71-3-124.
Past-due support payments, §36-2-322.
Child welfare agencies.
Department of human services.
Market rate study and rate of reimbursement on behalf of low-income families, §71-1-130.
Licenses.
Applications.
Social security numbers, §36-5-1301.
Denial of application.
Child support enforcement, §§36-5-701 to 36-5-714.
Administrative order enforcement, §36-5-812.
Juvenile proceedings, §37-1-151.
Revocation.
Child support enforcement, §§36-5-701 to 36-5-714.
Administrative order enforcement, §36-5-812.
Juvenile proceedings, §37-1-151.
Paternity and legitimation, §36-2-320.
Social security numbers on applications, §36-5-1301.
Rate of reimbursement by department of human services, §71-1-130.
Community service agencies, §§37-5-301 to 37-5-319.
Day care services.
Market study by department and rate of reimbursement, §71-1-130.
Definitions.
Child abuse prevention services, §71-6-202.
Child care agencies, §71-3-501.
Family violence shelters and shelter services, §71-6-202.
Medical aid, §71-5-103.
Temporary assistance for dependent children, §71-3-103.
Department of health.
Medical aid, §§71-5-104, 71-5-105.
Department of human services.
Child placement.
Foster care plans.
Duties generally, §37-2-407.
Child sexual abuse.
Duties, §37-1-611.
Day care services.
Market rate study and rate of reimbursement, §71-1-130.
Mental health, substance abuse and intellectual and developmental disabilities facilities licensure.
Exemptions, §33-2-403.

WELFARE —Cont'd
Department of human services —Cont'd
Orders committing or retaining child within custody of department.
Removal from abusive parent or other party, §37-1-167.
Rules and regulations.
Subsidized receiving homes, §37-2-304.
Standing to litigate paternity or child or spousal support issues, §71-3-124.
Statutory rape reporting.
Public assistance application indicates occurrence of statutory rape, §38-1-305.
Dependent children.
Importation of child.
Interstate compact on the placement of children.
Provisions inapplicable to proceedings under, §37-4-206.
Temporary assistance.
Generally, §§71-3-101 to 71-3-126.
Emergencies.
Diversion grants.
Temporary assistance, in lieu of, §71-3-109.
Employment requirement.
Temporary assistance.
Eligibility, §71-3-104.
Executions.
Aid to dependent children.
Exemption, §71-3-121.
Family violence shelters and shelter services.
Administration of program, §71-6-203.
Definitions, §71-6-202.
Funding, §67-4-411.
Prerequisites for receiving funds, §§71-6-204, 71-6-205.
Intent of legislature, §71-6-207.
Location of shelters privileged, §71-6-208.
Program established, §71-6-201.
Service of process or papers.
Proceedings involving shelter or persons staying at shelter, §71-6-208.
Felonies.
Aid to dependent children.
Fraudulent receipt of temporary assistance, §71-3-120.
Fraud.
Aid to dependent children.
Fraudulent receipt of temporary assistance, §71-3-120.
Child care services, §71-1-133.
Garnishment.
Aid to dependent children.
Exemption, §71-3-121.
Illegal aliens.
Temporary assistance for dependent children.
Ineligibility, §71-3-104.
Indigent persons.
Community service agencies, §§37-5-301 to 37-5-319.
Limitation of actions.
Aid to dependent children.
Fraudulent receipt of temporary assistance, §71-3-120.
Medical aid.
Appropriations.
Program conditioned upon, §71-5-102.
Award of benefits.
Statement in notice awarding benefits, §71-5-106.

WELFARE —Cont'd
Medical aid —Cont'd
Children's mental health care.
Interagency programs, §71-5-193.
Citation of act.
Short title, §71-5-101.
Cost-saving initiatives.
Authority to implement, §71-5-102.
Definitions, §71-5-103.
Eligibility, §71-5-106.
Determination, §71-5-106.
Medically needy.
Defined, §71-5-103.
Not entitlement, §71-5-102.
Prioritization of funding, §71-5-102.
Public policy as to participation, §71-5-102.
Purpose of part, §71-5-102.
Rules and regulations, §71-5-134.
Termination of benefits.
Statement in notice terminating benefits, §71-5-106.
Title of act.
Short title, §71-5-101.
Mental health.
Children's mental health care.
Interagency programs, §71-5-193.
Misdemeanors.
Aid to dependent children.
Charging for assistance to applicants, §71-3-118.
List of recipients.
Unlawful use, §71-3-119.
Orphan asylums.
Interference with children, §71-3-608.
Personal responsibility plans.
Temporary assistance for dependent children.
Eligibility, §71-3-104.
Privileged communications.
Family violence shelters and shelter services.
Location of shelter privileged, §71-6-208.
Project RAP, §§71-3-701, 71-3-702.
Reports.
Medical aid.
General assembly, reports to, §71-5-104.
Restitution.
Child care services fraud, §71-1-133.
Rules and regulations.
Medical aid, §71-5-134.
Service of process.
Aid to dependent children.
Action against spouse or parent, §71-3-123.
Family violence shelters and shelter services.
Proceedings involving shelter or persons staying at shelter, §71-6-208.
Statutory rape reporting.
Department of human services when public assistance application indicates occurrence, §38-1-305.
Support rights of recipient.
Assignment to state, §71-3-124.
Past-due support payments, §36-2-322.
TANF.
Child support.
Past-due support payments, §36-2-322.
Teenage pregnancy.
Project RAP, §§71-3-701, 71-3-702.
Temporary assistance, §§71-3-101 to 71-3-126.
Adjustments to standard of need.
Report by commissioner, §71-3-105.

WELFARE —Cont'd
Temporary assistance —Cont'd
Administration of program by department of human services, §71-3-107.
Administrative procedures established by department of human services, §71-3-107.
Aliens receiving assistance.
Illegal aliens not to receive, §71-3-104.
Amount of standard of need for assistance group, §71-3-105.
Area district managers and directors.
Authority of commissioner in appointing, §71-3-107.
Availability of federal funds.
Continuation of program subject to and limited by, §71-3-102.
Birth of child to caretaker or relative of temporary assistance unit.
Maximum payment standard not to be increased, §71-3-104.
Caretaker relative.
Birth of child to.
Maximum payment standard not to be increased, §71-3-104.
Defined, §71-3-103.
Changes in program.
Authority of commissioner of human services, §71-3-108.
Child care services.
Personal responsibility plan to provide for, §71-3-104.
Child or children defined, §71-3-103.
Child support.
Receipt by department for respective recipients.
Department to pass on to recipient, §71-3-108.
Client characteristics study.
Conducted by department of human services, §71-3-105.
Collegiate grade point average required for receiving assistance, §71-3-104.
Compliance with Title VI of the civil rights act of 1964.
Intent of general assembly, §71-3-103.
Continuation of program.
Subject to and limited by availability of funds, §71-3-102.
Cooperation of other state agencies, §71-3-107.
Cost reflecting standard of need, §71-3-105.
County, district or regional offices.
Organization of department by commissioner, §71-3-107.
Deductions from cost, §71-3-105.
Definitions, §71-3-103.
Dependent child defined, §71-3-103.
Determining need, §71-3-105.
Distribution system to be established by commissioner, §71-3-110.
Education requirement for receiving assistance, §71-3-104.
Electronic benefits transfer cards, prohibited purchases, §71-3-126.
Eligibility for temporary assistance, §71-3-104.
Establishment of system for distribution of benefits, §71-3-110.
Exempted earned income in determining need, §71-3-105.
Families first act of 1996.
Short title, §71-3-101.
Family defined, §71-3-103.
Federal funding changes, §71-3-108.

WELFARE —Cont'd
Temporary assistance —Cont'd
Food stamp assistance to continue to be available, §71-3-104.
Grants for temporary assistance.
Diversion grants in lieu of temporary assistance, §71-3-109.
Establishing in annual appropriations act, §71-3-105.
High school education not successfully completed.
Requirements for payment of assistance to individuals, §71-3-104.
High school graduation of minor parent.
Time limit for receiving assistance begins to run, §71-3-104.
Illegal aliens not to receive assistance, §71-3-104.
Immunization of children and health checks.
Personal responsibility plan, §71-3-104.
Individual development accounts or other accounts established for benefits of recipients, §71-3-115.
Interagency coordination of services.
Plan or statement to be developed by commissioner, §71-3-107.
Investment procedures for individual development accounts or other accounts established for recipients, §71-3-115.
Job placement personnel provided, §71-3-111.
Limitations on single continuous period of eligibility, §71-3-104.
Living in place maintained by applicant's parent, legal guardian or other adult relative, §71-3-104.
Marriage of recipients while receiving assistance, §71-3-104.
Minor parents receiving assistance.
Time limit not to begin to run until graduation from high school, §71-3-104.
Modifications to state welfare plan.
Authority of commissioner of human services, §71-3-108.
Monitoring and protecting safety and well being of children where assistance terminated.
Department of health actions, §71-3-104.
Notice of eligibility determination.
Procedures for provision of established by department of human services, §71-3-107.
Personal responsibility plans.
As condition of eligibility, §71-3-104.
Training and supervision of employees and others responsible for developing, evaluating and managing, §71-3-111.
Pregnancy while receiving temporary assistance.
Maximum payment standard not to be increased, §71-3-104.
Report by commissioner as to adjustments to standard of need, §71-3-105.
Requirements for temporary assistance, §71-3-104.
Restrictions on use of electronic benefits transfer cards, §71-3-126.
Review of electronic benefit transactions, §71-3-126.

WELFARE —Cont'd
Temporary assistance —Cont'd
Rules and regulations by department of human services, §71-3-105.
School attendance requirement.
Personal responsibility plan, §71-3-104.
Short title, §71-3-101.
Standard of need reflecting cost, §71-3-105.
Supervision of employees and others responsible for personal responsibility plans, §71-3-111.
Temporary assistance defined, §71-3-103.
Temporary job counseling provided, §71-3-111.
Training of employees and other responsible for personal responsibility plans, §71-3-111.
Transitional child care assistance.
Caretaker relative becoming ineligible for temporary assistance, §71-3-104.
Unmarried pregnant minors.
Requirements for receiving assistance, §71-3-104.
Veterans education benefits.
Value for eligibility determination, §71-3-116.
Waivers to carry out provisions.
Authority of commissioner of human services, §71-3-108.
TennCare, §§71-5-102, 71-5-106, 71-5-134.
Cost-saving initiatives.
Authority to implement, §71-5-102.
Enabling provisions, §§71-5-102 to 71-5-106, 71-5-134.
Work requirement.
Child support delinquency, §36-5-113.
Temporary assistance.
Eligibility, §71-3-104.

WHISTLEBLOWER PROTECTION.
Juvenile abuse reports.
Punitive damages, §37-1-410.
Mental health facilities.
Reports of abuse, dereliction or deficiency in operation of facility, §33-2-416.
Mental health service recipients.
Reports of abuse, exploitation, fraud, neglect or mistreatment.
Confidentiality of identity of person reporting, §33-3-108.

WILLS.
Adoption.
Limitations restricting devises or bequests to lawful heirs, issues, etc.
Effect of adoption, §36-1-121.

WITNESSES.
Dependent and neglected children.
Rules of juvenile procedure.
Taking children's testimony, JuvPro 306.
Divorce.
Affidavits of proof not required, §36-4-116.
Husband and wife.
Spousal privilege.
Interstate child custody proceedings.
Inapplicability of privilege, §36-6-234.
Interstate family support act, §36-5-2316.

WITNESSES —Cont'd
Juvenile proceedings.
Post-commitment procedures, §37-1-316.
Rights of parties, §37-1-126.
Mental health.
Commitment, §33-3-612.
Fees for witnesses.
Costs of proceedings, §33-3-503.
Physician, psychologist, etc., as witnesses, §33-3-504.
Transfers of service recipients.
Judicial review of transfer, §33-3-707.
Examining professionals, testimony of, §33-3-709.
Self-incrimination.
Interstate family support act, §36-5-2316.
Sexually abused children.
Audio-visually recorded testimony, §24-7-117.
Video recording of interview of child describing sexual conduct.
Admissibility, §24-7-123.
Sexually transmitted diseases.
Knowledge of governmental persons regarding records.
Competency of governmental person as witness, §68-10-114.
Video recording of interview of child describing sexual conduct.
Admissibility, §24-7-123.

WOMEN.
Female genital mutilation, §39-13-110.

WORK REQUIREMENT FOR TEMPORARY PUBLIC ASSISTANCE.
Child support delinquency, §36-5-113.
Temporary assistance for dependent children.
Eligibility, §71-3-104.

WRONGFUL DEATH.
Abortion.
Limitation on wrongful death actions, §39-15-206.

Y

YOUTH DEVELOPMENT CENTERS, §§37-5-201 to 37-5-213.
Accreditation, §37-5-113.
Administration, §37-5-119.
Barbers.
Instruction in barbering, §37-5-212.
Buildings and equipment, §37-5-210.
Clean indoor air.
Children's clean indoor air act, §§39-17-1601 to 39-17-1606.
Coeducational programs, §37-5-201.
Commitment of children, §37-5-205.
Federal offenses, §37-5-207.
Forms, §37-5-208.
Procedure, §37-5-208.
Retention of those committed for penitentiary offenses, §37-5-206.
Education.
Development of youth, §37-5-204.
Escape, §37-5-206.
Established, §37-5-201.
GED courses, §37-5-213.
Mental health service recipients.
Transfers of service recipients.
Correction department and children's service department, transfers from, §§33-3-401 to 33-3-412.
Products of youth centers, §37-5-211.

YOUTH DEVELOPMENT CENTERS —Cont'd
Records and accounts, §37-5-209.
Requirements, §37-5-119.
Schools and education.
Development of youth, §37-5-204.
Smoking.
Children's clean indoor air act, §§39-17-1601 to 39-17-1606.
Special school districts, §37-5-119.
Superintendent, §37-5-202.
Powers and duties, §37-5-203.
Teachers, §37-5-119.
Transfer of children, §37-5-205.
Penitentiary, transfer to, §37-5-206.
Unneeded property.
Sale, §37-5-209.
Vocational and occupational training, §37-5-213.
Work opportunity programs, §37-5-204.

YOUTH DEVELOPMENT DEPARTMENT.
Children's services department.
Transfer of power, §37-5-114.

YOUTH INVESTMENT, §§37-3-401 to 37-3-406.
Citation, §37-3-401.
Funds.
Application for funds.
Authorization, §37-3-406.
Office of community contact.
Creation, §37-3-402.
Director, §37-3-402.
Duties, §37-3-404.
Rules and regulations.
Director to formulate, §37-3-404.
Duties, §37-3-403.
Personnel, §37-3-402.
Programs, §37-3-403.
Rules and regulations, §37-3-404.
Programs.
Office of community contact, §37-3-403.
Reports, §37-3-405.
Rules and regulations.
Office of community contact.
Formulation of rules and regulations by director, §37-3-404.
Short title, §37-3-401.
Volunteers.
Duties, §37-3-405.

YOUTH INVESTMENT —Cont'd
Volunteers —Cont'd
Solicitation by director of office of community contact, §37-3-404.

YOUTH PEDDLING.
Defined, §50-5-102.
Prohibited conduct, §50-5-106.

YOUTH SERVICE OFFICERS.
Children's services department.
Qualifications, §37-5-117.
Juvenile proceedings.
Duties, §37-1-106.
Establishment of title, §37-1-106.
Salary, §37-1-106.

Z

ZERO TOLERANCE.
School security.
Policies and procedures, §49-6-4216.

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