

CHAPTER NO. 890

SENATE BILL NO. 2644

By Burchett, Burks, Norris, McLeary, Tracy, Woodson, McNally, Bowers, Ramsey, Crowe, Curtis S. Person, Jr., Kilby, Southerland, Finney, Williams, Black, Beavers

Substituted for: House Bill No. 2604

By Tindell, McKee, Armstrong, McMillan, Maddox, John Deberry, Sontany, Favors, Brown, Coleman, Roach, Harrison, McDaniel, Overbey, Russell Johnson, McCord, Sherry Jones, Langster, Moore, Pruitt, Ferguson, Cobb, Harmon, Fraley Briley, Rinks, Hargrove, Shaw, Gresham, Hensley, Maggart, Hill, DuBois, McCormick, Yokley, Strader, Todd, Crider, Litz, McDonald, Bone, Hargett, Baird, Ulysses Jones, Eldridge, Hackworth, Mike Turner, Niceley, Pleasant, Windle, Eric Watson, Montgomery, Phillip Johnson, Marrero, Lois DeBerry, Rowe, Campfield, Lynn, Harry Brooks, Hood, Swafford, Bo Watson, Towns, Rowland.

AN ACT to amend Tennessee Code Annotated, Title 36; Title 37; Title 38; Title 39; Title 40 and Title 41, relative to the "Child Protection Act of 2006".

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

SECTION 1. The provisions of this act, even though not codified together, may collectively be known as the "Child Protection Act of 2006".

SECTION 2. Tennessee Code Annotated, Section 36-1-113, is amended by deleting subsection (k) in its entirety and by substituting instead the following:

(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.

SECTION 3. Tennessee Code Annotated, Section 36-1-119, is amended by deleting the language "two (2) years" from subsection (d) thereof and by substituting instead the language "one (1) year" and is further amended by deleting the language "one (1) year" from subsection (e) thereof and by substituting instead the language "nine (9) months".

SECTION 4. Tennessee Code Annotated, Title 37-5-105, is amended by adding the following as a new, appropriately designated subsection thereto:

() The Commissioner of the Department of Children's Services, 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 shall 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 of Children's Services and submit such plan and recommendations to the Judiciary Committees of the Senate and House of Representatives, the House of Representatives Children and Family Affairs Committee and the Select Committee on Children and Youth. Any child-specific information shall be confidential except as otherwise provided by statute.

SECTION 5. Tennessee Code Annotated, Section 39-13-506, is amended by deleting the section in its entirety and substituting instead the following:

(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 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) 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) Statutory rape is a Class E felony.

(3) Aggravated statutory rape is a Class D felony.

SECTION 6. Tennessee Code Annotated, Section 40-39-202, is amended by deleting subdivision (10) and substituting instead the following:

(10) "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;

SECTION 7. Tennessee Code Annotated, Section 40-39-202, is amended by deleting item (17)(A)(ii) and substituting instead the following:

(ii) Statutory rape, under § 39-13-506, if the defendant was an authority figure, as defined in § 39-13-527(a)(1) and (a)(2), to the victim or if the defendant has at least one (1) prior conviction for mitigated statutory rape under § 39-13-506(a), statutory rape under § 39-13-506(b), or aggravated statutory rape under § 39-13-506(c);

SECTION 8. Tennessee Code Annotated, Section 40-39-202(17), is amended by deleting subdivision (A)(viii) and substituting instead:

(viii) Spousal sexual battery for those committing the offense prior to June 18, 2005, under former § 39-13-507;

SECTION 9. Tennessee Code Annotated, Section 40-39-202, is further amended by adding the following new subdivisions to item (17):

() Aggravated statutory rape under § 39-13-506(c);

() Exploitation of a minor by electronic means under § 39-13-529; provided the victim of the offense was less than thirteen (13) years of age;

SECTION 10. Tennessee Code Annotated, Section 40-39-203, is amended by deleting subsection (a) and substituting instead the following:

(a) (1) Within forty-eight (48) hours of establishing or changing a primary or secondary residence, establishing a physical presence at a particular location, or becoming employed or practicing a vocation or becoming a student in this state, the offender shall register in person, as required by the provisions of this part. Likewise, within forty-eight (48) hours of release on probation or any other alternative to incarceration, excluding parole, the offender shall register in person, as required by the provisions of this part.

(2) An offender who resides and is registered in this state who intends to move out of this state shall, within forty-eight (48) hours after moving to another state or within forty-eight (48) hours of becoming reasonably certain of such intention to move to another state, report to such offender's designated law enforcement agency the address at which the offender will reside in the new jurisdiction.

SECTION 11. Tennessee Code Annotated, Section 40-39-203, is further amended by designating the language of subsection (b) (2) as (1) and by adding the following new subsection (b)(2):

(2) After registering with the incarcerating facility as provided in subdivision (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 such offender's release from the incarcerating institution, report in person to the offender's registering agency unless the place of incarceration is also such person's registering agency.

SECTION 12. Tennessee Code Annotated, Section 40-39-203, is further amended by deleting the first sentence of subsection (c) and substituting instead the following:

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 such residency or physical presence, register in person with the designated law enforcement agency, completing and signing a TBI registration form, under the penalty of perjury, pursuant to § 39-16-702(b)(3).

SECTION 13. Tennessee Code Annotated, Section 40-39-203, is further amended by deleting subsections (i)(10) and (i)(15) and substituting instead the following:

(10) Any vehicle, mobile home, trailer, or manufactured home, used or owned by an offender, including descriptions, VIN, and license tag numbers;

(15) Whether victims of the offender's convictions are minors or adults, and the correct age of the victim or victims and of the offender at the time of the offense or offenses, if such ages are known;

SECTION 14. Tennessee Code Annotated, Section 40-39-203, is further amended by adding the following to the end of subsection (i)(17):

(a) By January 1, 2007, the TBI shall promulgate and disseminate to all applicable law enforcement agencies, correctional institutions and any other agency that may be called upon to register an offender, rules establishing standardized specifications for the photograph of the offender required by this subdivision. Such 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:

(1) Head Position

(A) The person being photographed must directly face the camera;

(B) The head of the person should not be tilted up, down, or to the side; and

(C) The head of the person should cover about 50% of the area of the photo.

(2) 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.

(3) The photograph must be in focus.

(4) Photos in which the person being photographed is wearing sunglasses or other items that detract from the face are not permitted.

(5) 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.

SECTION 15. Tennessee Code Annotated, Section 40-39-204, is amended by deleting from the third sentence of subsection (b) the language "during the March reporting,".

SECTION 16. Tennessee Code Annotated, Section 40-39-204, is further amended by deleting the first sentence of subsection (e) and substituting instead the following:

If a person required to register under this part is reincarcerated for another offense or as the result of having violated the terms of probation, parole, conditional discharge, or any other form of alternative sentencing, the offender shall immediately report such offender's status as a sexual offender or violent sexual offender to the facility where such offender is incarcerated or detained and notify the offender's appropriate registering agency, if different, that the offender is currently being detained or incarcerated.

SECTION 17. Tennessee Code Annotated, Section 40-39-205, is amended by deleting subsection (b) and substituting instead the following:

(b) It shall be the duty of the offender's designated registering agency, its representatives and designees, including any district attorney general's criminal investigator, to verify the accuracy and completeness of all information contained in the offender's SOR.

SECTION 18. Tennessee Code Annotated, Section 40-39-207, is amended by adding the following new subsection (g):

(g) (1) Any offender required to register pursuant to this chapter because such offender was convicted of the offense of statutory rape under § 39-13-506, and such offense was committed prior to July 1, 2006, may file a request for termination of registration requirements with TBI headquarters in Nashville if such offender would not be required to register if such 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 such 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(17), or violent sexual offenses, as defined in § 40-39-202(25).

(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, such offender has not been convicted of any additional sexual offenses or violent sexual offenses, and that the offender has substantially complied with the provisions of this part and any previous versions of this part, the TBI shall remove the offender's name from the SOR and notify the offender that the offender is no longer required to comply with the provisions of this part.

(4) If it is determined that the offender would still be required to register even if the statutory rape had been committed on or after July 1, 2006, or the offender has been convicted of any additional sexual offenses or violent sexual

offenses during the period of registration or has not substantially complied with the provisions of this part and the previous versions of this part, the TBI shall not remove the offender's name from the SOR and shall notify the offender that such offender has not been relieved of the provisions of this part.

(5) An offender whose request for termination of registration requirements is denied by a TBI official may petition the chancery court of Davidson County or the chancery court of the county where the offender resides, if such county is in Tennessee, for review of such decision. Such review shall be on the record used by the TBI official to deny the request. The TBI official who denied the request for termination of registration requirements may submit an affidavit to the court detailing the reasons such request was denied.

SECTION 19. Tennessee Code Annotated, Section 40-39-208, is amended by adding the following new item to subsection (a):

() Failure to timely report to the offender's designated law enforcement agency when the offender moves to another state;

SECTION 20. Tennessee Code Annotated, Section 40-39-211, is amended by deleting subsection (a) and substituting instead the following:

(a) While mandated to comply with the requirements of this chapter, no sexual offender, as defined in § 40-39-202(16), or violent sexual offender, as defined in § 40-39-202(24), whose victim was a minor, shall knowingly establish a primary or secondary residence or any other living accommodation, or knowingly obtain sexual offender treatment or attend a sexual offender treatment program, or knowingly accept employment, within one thousand feet (1,000') of the property line on which any public school, private or parochial school, licensed day care center, other child care facility, public park, playground, recreation center or public athletic field available for use by the general public.

SECTION 21. Tennessee Code Annotated, Section 40-39-301, is amended by deleting the first sentence of subdivision (3) and substituting instead the following:

"Violent sexual offender" means any person who is convicted in the State of Tennessee, on or after July 1, 2004, of any sexual offense, as defined in subdivision (2) or § 40-39-202(17); or any such person who is convicted in any other jurisdiction of any offense which would constitute a sexual offense in Tennessee.

SECTION 22. Tennessee Code Annotated, Section 39-13-522, is amended by deleting subsection (a) and by substituting instead the following:

(a) Rape of a child is the unlawful sexual penetration of a victim by the defendant or the defendant by a victim, if such victim is more than three (3) years of age but less than thirteen (13) years of age.

SECTION 23. Tennessee Code Annotated, Title 39, Chapter 13, Part 5, is amended by adding the following as a new, appropriately designated section:

§ 39-13-5__.

(a) Aggravated rape of a child is the unlawful sexual penetration of a victim by the defendant or the defendant by a victim, if such victim is three (3) years of age or less.

(b) Aggravated rape of a child is a Class A felony and shall be sentenced within Range III as set forth in Title 40, Chapter 35.

SECTION 24 Tennessee Code Annotated, Section 40-35-501(i)(2), is amended by adding the following language as a new subdivision thereto:

() Aggravated rape of a child;

SECTION 25. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 26. For the purpose of the TBI promulgating standardized photograph specifications as required by Section 8, this act shall take effect upon becoming a law, the public welfare requiring it. All other sections of this act shall take effect July 1, 2006, the public welfare requiring it.

PASSED: May 27, 2006


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 20th day of June 2006


PHIL BREDESEN, GOVERNOR