

HOUSE BILL 687

By Maggart

AN ACT to amend Tennessee Code Annotated, Title 37;
Title 40; Title 49 and Title 55, to add certain
juvenile sexual offenders to the Tennessee Sexual
Offender and Violent Sexual Offender
Registration, Verification and Tracking Act of
2004.

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

SECTION 1. Tennessee Code Annotated, Section 37-1-127, is amended by adding the following new subsection thereto:

(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.

SECTION 2. Tennessee Code Annotated, Section 37-1-153(f)(1)(A), is amended by adding the following language as a new subdivision thereto:

(iv) Does not have an adjudication of delinquency for a violent juvenile sexual offense as defined in § 40-39-202;

SECTION 3. Tennessee Code Annotated, Section 40-28-201(a)(2), is amended by deleting the language "40-39-201" and substituting instead the language "40-39-202".

SECTION 4. Tennessee Code Annotated, Section 40-39-201(b)(7), is amended by adding the following language after the language "sex offender registry;":

Provided, that a juvenile offender required to register under this part shall not be required to pay the administrative fee until the offender reaches eighteen (18) years of age;

SECTION 5. Tennessee Code Annotated, Section 40-39-202, is amended by inserting the following between the third and fourth sentences of subdivision (2):

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.

SECTION 6. Tennessee Code Annotated, Section 40-39-202, is amended by adding the following to the end of subdivision (2):

“Conviction” also includes a juvenile delinquency adjudication for a violent juvenile sexual offense if the offense occurs on or after July 1, 2011.

SECTION 7. Tennessee Code Annotated, Section 40-39-202(10), is amended by deleting the subdivision in its entirety and substituting instead the following:

(10) "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;

SECTION 8. Tennessee Code Annotated, Section 40-39-202(13), is amended by deleting the subdivision in its entirety and substituting instead the following:

(13) "Register" means the initial registration of an offender, or the re-registration of an offender after deletion or termination from the SOR;

SECTION 9. Tennessee Code Annotated, Section 40-39-202, is amended by adding the following new subdivisions:

()

(A) “Violent juvenile sexual offender” means a person fourteen (14) years of age or more but less than eighteen (18) years of age who has been adjudicated delinquent in this state for any act that constitutes a violent juvenile sexual offense as defined in this section and:

(i) Has been found to be at high risk of re-offending by a court exercising juvenile jurisdiction; or

(ii) Has a prior adjudication of delinquency for a violent juvenile sexual offense.

(B) When a violent juvenile sexual offender becomes eighteen (18) years of age, such offender shall become a violent sexual offender and this part governing violent sexual offenders shall be applicable to such violent juvenile sexual offender, unless otherwise set out in this part;

(C) “Violent juvenile sexual offense” means:

(A) 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) Aggravated sexual battery, under § 39-13-504(a)(1);

(iv) Rape of a child, under § 39-13-522, provided the victim is at least four (4) years younger than the offender;

(v) Aggravated rape of a child, under § 39-13-531; or

(vi) Criminal attempt, under § 39-12-101, to commit any of the offenses enumerated in this subdivision; and

(B) The adjudication is accompanied by a finding, which was made by any court exercising juvenile jurisdiction, that the juvenile is at high risk of re-

offending if the adjudication is the juvenile's first adjudication for an act listed in subdivision () (A); or

(C) The adjudication is the juvenile's second or subsequent adjudication for an act listed in subdivision () (A).

SECTION 10. Tennessee Code Annotated, Section 40-39-203, is amended by deleting subdivision (a)(2) and substituting instead the following:

(a)

(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.

SECTION 11. Tennessee Code Annotated, Section 40-39-203(i)(6), is amended by deleting the subdivision in its entirety and substituting instead the following:

(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;

SECTION 12. Tennessee Code Annotated, Section 40-39-203, is amended by adding the following new subsection (p):

(p) 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:

(1) Within forty-eight (48) hours of the offender's standardized assessment finding such offender to be at high risk of re-offending, if the adjudication is the juvenile's first adjudication of a violent juvenile sexual offense;
or

(2) Within forty-eight (48) hours of the offender's adjudication, if the adjudication is the juvenile's second or subsequent adjudication of a violent juvenile sexual offense.

SECTION 13. Tennessee Code Annotated, Section 40-39-204, is amended by designating existing subsection (b) as subdivision (b)(1) and by adding the following new subdivision (b)(2):

(2) At least once during the months of March, June, September, and December of each calendar year, all violent juvenile sexual offenders shall report in person to the offender's registering agency to update the offender's fingerprints, palm prints and photograph, as determined necessary by the agency, and to verify the continued accuracy of the information transmitted to the TBI by the court form. Offenders in custody shall register as set out in § 40-39-203(b)(1).

SECTION 14. Tennessee Code Annotated, Section 40-39-206(d), is amended by deleting the language:

For any offender convicted in this state of a sexual offense or violent sexual offense

and substituting instead the language:

For any offender convicted in this state of a sexual offense or violent sexual offense, or adjudicated delinquent for a violent juvenile sexual offense

SECTION 15. Tennessee Code Annotated, Section 40-39-207(a), is amended by deleting the subsection in its entirety and substituting instead the following:

(a)

(1) Except as provided for Section 28 of this act, 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.

SECTION 16. Tennessee Code Annotated, Section 40-39-207(b), is amended by deleting the language "additional sexual offenses, as defined in § 40-39-202, or violent sexual offenses, as defined in § 40-39-202." and substituting instead the language "additional sexual offenses, as defined in § 40-39-202, violent sexual offenses, as defined in § 40-39-202, or violent juvenile sexual offenses, as defined in § 40-39-202."

SECTION 17. Tennessee Code Annotated, Section 40-39-207(c) and (d), is amended by deleting the language "additional sexual offenses or violent sexual offenses" wherever it appears and substituting instead the language "additional sexual offenses, violent sexual offenses or violent juvenile sexual offenses".

SECTION 18. Tennessee Code Annotated, Section 40-39-207(f), is amended by deleting the subsection in its entirety and substituting instead the following:

(f)

(1) 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.

(2) Immediately upon the failure of a violent juvenile sexual offender to register or otherwise substantially comply with the requirements established by this part, the running of the offender's twenty-five-year reporting period shall be tolled, notwithstanding the absence or presence of any warrant or indictment alleging a violation of this part.

SECTION 19. Tennessee Code Annotated, Section 40-39-207(g)(1), is amended by deleting the word "or" at the end of subdivision (A); by deleting the period at the end of subdivision (B) and substituting instead a semi-colon and the word "or"; and by adding the following language as a new subdivision to be designated as follows:

(C) Has one (1) or more prior juvenile adjudications for a violent juvenile sexual offense, as defined in § 40-39-202, if the offenses occurred on or after July 1, 2011;

SECTION 20. Tennessee Code Annotated, Section 40-39-208(i), is amended by deleting the subsection in its entirety and substituting instead the following:

(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.

SECTION 21. Tennessee Code Annotated, Section 40-39-208, is amended by adding a new appropriately designated subsection thereto:

() Notwithstanding any law to the contrary, a violent juvenile sexual offender who knowingly violates this part commits a delinquent act.

SECTION 22. Tennessee Code Annotated, Section 40-39-211(b), is amended by deleting the language:

No sexual offender, as defined in § 40-39-202, or violent sexual offender, as defined in § 40-39-202, shall knowingly:

and substituting instead the following language:

No sexual offender, violent sexual offender, or violent juvenile sexual offender, as those terms are defined in § 40-39-202, shall knowingly:

SECTION 23. Tennessee Code Annotated, Section 40-39-211, is amended by adding the following new subsection:

(i) The residency restrictions set out in subsections (a) and (c) shall not apply to a violent juvenile sexual offender required to register under this part; provided, that the restrictions set out in subsections (a) and (c) shall apply to a violent juvenile sexual offender when such violent juvenile sexual offender is eighteen (18) years of age or older or such violent juvenile sexual offender has graduated from high school, whichever occurs later.

SECTION 24. Tennessee Code Annotated, Section 40-39-211, is amended by adding a new appropriately designated subsection thereto:

() Notwithstanding any law to the contrary, a violent juvenile sexual offender who knowingly violates this section commits a delinquent act.

SECTION 25. Tennessee Code Annotated, Section 40-39-213, is amended by adding a new appropriately designated subsection:

() Notwithstanding any provision of this section to the contrary, no violent juvenile sexual offender shall be required to obtain a photo identification card, but shall

be required to obtain a valid driver license that has been properly designated by the department of safety pursuant to § 55-50-353, if such violent juvenile sexual offender is eligible to receive a driver license.

SECTION 26. Tennessee Code Annotated, Section 40-39-214(a), is amended by deleting the language “immediately after a sex offender” and substituting instead the language “immediately after an offender”.

SECTION 27. Tennessee Code Annotated, Section 40-39-215(a), is amended by deleting the language “for a sexual offender, as defined in § 40-39-202, or violent sexual offender, as defined in § 40-39-202,” and substituting instead the language “for a sexual offender, violent sexual offender or a violent juvenile sexual offender, as those terms are defined in § 40-39-202,”.

SECTION 28. Tennessee Code Annotated, Title 40, Chapter 39, Part 2, is amended by adding a new section thereto:

40-39-21_.

(a) Except as provided in subsection (d), the director of the TBI, or the director’s designee, at times set forth in this section shall review violent juvenile sex offenders for the purpose of determining if, in the interests of justice and the public’s right to know, the violent juvenile sexual offender should remain on the SOR. The review shall take into account the following factors if they can be reasonably determined:

(1) The date of the violent juvenile sexual offender’s act or acts that constitute a violent juvenile sexual offense, and the length of time since the occurrence of such act or acts;

(2) The nature of the violent juvenile sexual offender’s act or acts that constitute a violent juvenile sexual offense and the effect of such act or acts upon any victims and others;

(3) The potential of future harm to the public by the violent juvenile sexual offender;

(4) The violent juvenile sexual offender's criminal or juvenile history, both before and after the act or acts that constitute a violent juvenile sexual offense;

(5) The violent juvenile sexual offender's demonstrated history of good behavior;

(6) The violent juvenile sexual offender's compliance with the terms of such violent juvenile sexual offender's probation, parole or other supervision of any nature;

(7) The violent juvenile sexual offender's work history, or lack thereof;

(8) The violent juvenile sexual offender's demonstrated history of stability, rehabilitation and citizenship, if any;

(9) The desires of the violent juvenile sexual offender's victim or victims or any such victim's family; and

(10) Such other factors that demonstrate whether or not the violent juvenile sexual offender should or should not be removed from the SOR.

(b) The review described in this section shall take place within twelve (12) months of the violent juvenile sexual offender reaching nineteen (19) years of age, and again every five (5) years thereafter, until the violent juvenile sexual offender has been on the SOR for twenty-five (25) years. Such review shall be only upon the written request made by the violent juvenile sexual offender. The violent juvenile sexual offender shall continue to be listed on the SOR for twenty-five (25) years, unless the director or the director's designee determines that the violent juvenile sexual offender has established by a preponderance of the evidence that:

(1) The violent juvenile sexual offender no longer poses any substantial threat of harm to the public;

(2) The violent juvenile sexual offender has substantially complied with all the terms and conditions of any sentence, probation or supervision;

(3) The violent juvenile sexual offender poses no substantial threat of harm to any of the violent juvenile sexual offender's victims or the victims' family;
and

(4) It is in the interest of justice that the violent juvenile sexual offender's information be removed from the SOR.

(c) The director's findings shall be reduced to writing and may be appealed by either the violent juvenile sexual offender or the state in accordance with § 40-39-207.

(d) Twenty-five (25) years after termination of active supervision, probation or custody, a violent juvenile sexual offender required to register under this part may file a request for termination of registration requirements with TBI headquarters in Nashville. Section 40-39-207 shall be used to determine whether the violent juvenile sexual offender may be removed from the SOR or whether or not the violent juvenile sexual offender shall be required to comply with the registration, verification and tracking requirements for the life of the violent juvenile sexual offender.

SECTION 29. Tennessee Code Annotated, Section 55-50-353, is amended by deleting the section in its entirety and substituting instead the following:

55-50-353.

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.

SECTION 30. This act shall take effect on July 1, 2011, the public welfare requiring it.