

MANDATORY REPORTING PROCEDURES FOR CRIMINAL OFFENSES

I. PURPOSE

To provide guidelines for reporting criminal offenses committed by or perpetrated against students to the appropriate school district personnel and/or law enforcement agency.

II. SCOPE

This policy applies to all SCS employees.

III. DEFINITIONS

Reportable Criminal Offenses – criminal offenses committed by or against students which require immediate reporting to law enforcement and SCS security (see attached definitions of Reportable Criminal Offenses).

Serious personal/bodily injury – bodily injury that involves (a) a substantial risk of death; (b) protracted unconsciousness; (c) extreme physical pain; (d) protracted or obvious disfigurement; or (e) protracted loss or substantial impairment of a function of a bodily member, organ or mental faculty.

Weapon – 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, which 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.

Child abuse or neglect - For the purposes of reporting, 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.

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 constitutes certain criminal offenses and acts as provided in TCA § 37-1-602(a)(3)(A)-(C). Additionally, for the purposes of the reporting, investigation, and treatment provisions of TCA §§ 37-1-603 through 615, “child sexual abuse” *also* means the commission of any act specified in TCA § 37-1-602 (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.

IV. POLICY STATEMENT

The Shelby County Schools Board is responsible for taking every reasonable step to promote a safe and secure teaching and learning environment. The Board recognizes that students may engage in or be the victims of behavior that constitutes a criminal offense under Tennessee State law. When such behavior occurs, SCS policy and/or the law imposes reporting obligations on principals, teachers and/or other district staff who have knowledge of or reasonable suspicion to believe a criminal offense has been or is being committed by a student or against a student.

Shelby County Schools personnel shall follow all mandatory reporting requirements set forth in SCS policy and state law upon notice of a reportable criminal offense and/or serious personal/bodily injury resulting from said violation or criminal offense. Additionally, district personnel shall follow any other reporting requirements and procedures as set forth below.

A. Mandatory Reportable Criminal Offenses to Law Enforcement

1. Violent Criminal Offenses (for additional reporting requirements for Child Abuse and Neglect and Child Sexual Abuse – See Section A2)

Principals must report the criminal offenses identified below immediately first directly to law enforcement and promptly thereafter to SCS Office of Security if,

- a. the alleged offense occurred or there is reasonable suspicion to believe the offense occurred; and
- b. the offense occurred while the student was attending school or a school-sponsored activity during school hours or traveling to or from school on a school bus.

The criminal offenses as identified in state law are:

- Aggravated arson

- Aggravated assault* (fighting with serious bodily injury)
- Aggravated child abuse and neglect (serious bodily injury or use of weapon is involved)
- Aggravated kidnapping
- Aggravated rape
- Aggravated robbery
- Aggravated sexual battery
- Aggravated spousal rape
- Assault and battery endangering life, health or safety*
- Spousal rape
- Spousal sexual battery
- Aggravated vehicular homicide
- Carjacking
- Criminally negligent homicide
- Especially aggravated burglary
- Especially aggravated kidnapping
- Especially aggravated robbery
- First degree murder
- Incest
- Kidnapping
- Rape
- Rape of a child
- Reckless homicide
- Second degree murder
- Sexual battery by an authority figure
- Sexual battery
- Stalking
- Statutory rape
- Vandalism that endangers life, health or safety
- Vehicular assault
- Voluntary manslaughter
- Possession or use of a weapon
- Possession/concealment/use/sale/distribution of explosive devices and firearms
- Possession/sale of drugs

*Any fight not involving the use of a weapon or any fight not resulting in serious personal/bodily injury to the parties involved shall be reported only to the school administrator.

Principals must follow the guidelines regarding alleged victims of criminal offenses listed in both the policy on Unsafe School Choice (6062) and this policy.

2. Child Abuse and Neglect and Child Sexual Abuse (see attached definitions of Criminal Offenses Constituting Child Sexual Abuse)

Any SCS personnel who know or have reasonable cause to suspect that any child has been abused, neglected, or sexually abused, regardless of the location where the suspected child abuse, neglect or sexual abuse occurred, must immediately report such knowledge or suspicions as follows:

- a. The judge having juvenile jurisdiction over the child;
- b. The office of the chief law-enforcement official where the child resides; or
- c. The Sheriff of the county where the child resides; or
- d. The Department of Children Services.

Once a report is made to at least one (1) of the four (4) identified above, then the principal or Regional Superintendent's (where appropriate) must be notified immediately. The principal or Regional Superintendent (where appropriate) shall also notify the SCS Office of Security that a report of child abuse, neglect or sexual abuse was made.

Abuse Occurring on School Grounds or While Under School Supervision or Care

If the suspected child abuse, neglect or sexual abuse occurred on school grounds or while the child was under the supervision or care of the school, then the principal/principal's designee or Regional Superintendent (where appropriate) shall provide to the parent or legal guardian of the child the following:

- a. A verbal notification coordinated with the department of children services, within 24 hours from the time the report was made, that a report has been made; and
- b. Any other information relevant to the future well being of the child while under the supervision or care of the school.

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.

Guidelines established in the policy on Child Abuse and Neglect and Child Sexual Abuse (6017) **must** be followed for reporting suspected incidences of child abuse, neglect or sexual abuse.

Any person who knowingly fails to make a report of child abuse, neglect, or sexual abuse as provided by law commits a Class A misdemeanor.^{2,19}

B. Reportable Criminal Offenses to Principal by Teachers and Other School Personnel

Any of the criminal offenses identified in Section A1 above except child abuse and neglect and child sexual abuse (See Section A2 and Policy 6017), must be reported by teachers or other school personnel directly to the principal or principal's designee immediately if,

1. the alleged offense occurred or there is reasonable suspicion to believe the offense occurred; and
2. the offense occurred while the student was attending school or a school-sponsored activity during school hours or traveling to or from school on a school bus.

As stated above, the principal must report the alleged criminal offense immediately to law enforcement and then to SCS Office of Security. Teachers or other school personnel shall report the criminal offenses identified in Section A1 above directly to local law enforcement and SCS Security only if the principal or his/her designee is not available.

Mandatory annual training on this policy shall be conducted for all principals and designated staff.

V. RESPONSIBILITY

- A. The office responsible for academic affairs is responsible for ensuring this policy is properly implemented.
- B. The offices responsible for student support and SCS security are responsible for developing and disseminating reporting procedures to all school personnel.
- C. Principals, teachers and other school personnel shall be responsible for complying with the provisions of this policy and all laws pertaining to student conduct.
- D. The Superintendent is responsible for determining if this policy is followed.

Legal References:

1. No Child Left Behind Act of 2001, Section 9532
2. TCA 40-38-111(g)
3. Title 39, Chp. 17, part 4
4. TCA 39-17-1307
5. TCA 49-6-4209
6. TCA 49-6-4301
7. TCA 39-17-1309
8. TCA 39-11-106
9. TCA 37-1-102
10. TCA 37-1-403
11. TCA 37-1-412
12. TCA 37-1-102(b)(1)
13. TCA 37-1-409
14. TCA 37-1-410
15. TRR/M 0520-1-3-.08(2)(e)
16. TCA 37-1-602
17. TCA 37-1-611
18. TCA 37-1-605
19. TCA 37-1-615

Cross References:

1. 6062- Unsafe School Choice
2. 6017- Child Abuse and Neglect and Child Sexual Abuse
3. 6022 – Student Conduct

Reportable Criminal Offenses – Definitions

Violent criminal offenses as well as attempt to commit the criminal offenses is defined by TCA 40-38-111(g), TCA 39-12-101 and other applicable state law. Definitions below preceded by an asterisk are not identified under TCA 40-38-111(g) as violent crimes, but, is provided when necessary to accurately define another crime (for example, *arson* is not identified under state law as a violent crime, but *aggravated arson* is identified).

***39-12-101. Criminal attempt. (not considered a violent crime under TCA 40-38-111(g))**

- (a) A person commits criminal attempt who, acting with the kind of culpability otherwise required for the offense:
 - (1) Intentionally engages in action or causes a result that would constitute an offense if the circumstances surrounding the conduct were as the person believes them to be;
 - (2) Acts with intent to cause a result that is an element of the offense, and believes the conduct will cause the result without further conduct on the person's part; or
 - (3) Acts with intent to complete a course of action or cause a result that would constitute the offense, under the circumstances surrounding the conduct as the person believes them to be, and the conduct constitutes a substantial step toward the commission of the offense.
- (b) Conduct does not constitute a substantial step under subdivision (a)(3) unless the person's entire course of action is corroborative of the intent to commit the offense.
- (c) It is no defense to prosecution for criminal attempt that the offense attempted was actually committed.

39-14-302. Aggravated arson.

- (a) A person commits aggravated arson who commits arson as defined in *§39-14-301 or §39-14-303:
 - (1) When one (1) or more persons are present therein; or
 - (2) When any person, including firefighters and law enforcement officials, suffers serious bodily injury as a result of the fire or explosion.
- (b) (1) Aggravated arson is a Class A felony. It is an enhancement factor by which the court the court may increase a defendant's sentence within the appropriate range that the damage or destruction was caused to a structure, whether temporary or permanent in nature, used as a place of worship.

(2) As used in this subsection (b), “place of worship” means any structure that is:

- (A) Approved, or qualified to be approved, by the state board of equalization for property tax exemption pursuant to §67-5-212, based on ownership and use of the structure by a religious institution; and
- (B) Utilized on a regular basis by such religious institution as the site of congregational services, rites or activities communally undertaken for the purpose of worship.

***39-14-301. Arson. (not considered a violent crime under TCA 40-38-111(g))**

(a) A person commits an offense who knowingly damages any structure by means of a fire or explosion:

- (1) Without the consent of all persons who have a possessory, proprietary or security interest therein; or
- (2) With intent to destroy or damage any structure to collect insurance for the damage or destruction or for any unlawful purpose.

(b)(1) Arson is a Class C felony.

(3)(A) Arson of a place of worship is a Class B felony.

(B) As used in this subdivision (b)(2), “place of worship” means any structure that is:

- (i) Approved, or qualified to be approved, by the state board of equalization for property tax exemption pursuant to §67-5-212, based on ownership and use of the structure by a religious institution; and
- (ii) Utilized on a regular basis by such religious institution as the site of congregational services, rites or activities communally undertaken for the purpose of worship.

39-13-102. Aggravated assault.

(a) A person commits aggravated assault who:

(1) Intentionally or knowingly commits an assault as defined in *§39-13-101 and:

- (A) Causes serious bodily injury to another; or
- (B) Uses or displays a deadly weapon; or

(2) Recklessly commits an assault as defined in § 39-13-101(a)(1), and:

- (A) Causes serious bodily injury to another; or
- (B) Uses or displays a deadly weapon.

(b) A person commits aggravated assault who, being the parent or custodian of a child or the custodian of an adult, intentionally or knowingly fails or refuses to

protect such child or adult from an aggravated assault as defined in subdivision (a)(1) or aggravated child abuse as defined in § 39-15-402.

- (c) A person commits aggravated assault who, after having been enjoined or restrained by an order, diversion or probation agreement of a court of competent jurisdiction from in any way causing or attempting to cause bodily injury or in any way committing or attempting to commit an assault against an individual or individuals, intentionally or knowingly attempts to cause or causes bodily injury or commits or attempts to commit an assault against such individual or individuals.
- (d)(1) Aggravated assault under subdivision (a)(1) or subsection (b) or (c) is a Class C felony. Aggravated assault under subdivision (a)(2) is a Class D felony. The court shall consider as an enhancement factor at the time of sentencing that the victim of the aggravated assault was a law enforcement officer, firefighter, correctional officer, youth services officer, probation and parole officer, or a state registered security officer/guard performing an official duty or an employee of the department of correction or the department of children's services; provided, that such officer or employee was performing an official duty. The court shall consider as an enhancement factor at the time of sentencing that the victim of the aggravated assault was an emergency medical or rescue worker, emergency medical technician, or paramedic, whether compensated or acting as a volunteer; provided that such technician or worker was performing an official duty.
- (2) In addition to any other punishment that may be imposed for a violation of this section, if the relationship between the defendant and the victim of the assault is such that the victim is a victim as defined in § 36-3-601(8), and if, as determined by the court, the defendant possesses the ability to pay a fine in an amount not in excess of two hundred dollars (\$200), then the court shall impose a fine at the level of the defendant's ability to pay, but not in excess of two hundred dollars (\$200). Such additional fine shall be paid to the clerk of the court imposing sentence, who shall transfer it to the state treasurer, who shall credit the same to the general fund. All such fines so credited to the general fund shall be subject to appropriation by the general assembly for the exclusive purpose of funding family violence shelters and shelter services. Such appropriation shall be in addition to any amount appropriated pursuant to § 67-4-411.

***39-13-101. Assault. (not considered a violent crime under TCA 40-38-111(g))**

- (a) A person commits assault who:
 - (1) Intentionally, knowingly or recklessly causes bodily injury to another;
 - (2) Intentionally or knowingly causes another reasonably fear imminent bodily injury; or
 - (3) Intentionally or knowingly causes physical contact with another and a reasonable person would regard the contact as extremely offensive or provocative.
- (b) (1) Assault is a Class A misdemeanor unless the offense is committed under subdivision (a)(3), in which event assault is a Class B misdemeanor.
- (2) In addition to any other punishment that may be imposed for a violation of this section, if the relationship between the defendant and the victim of the assault is such that the victim is a victim as defined in § 36-3-601(8), and if, as determined by the court, the defendant possesses the ability to pay a fine in an amount not in excess of two hundred dollars (\$200), then the court shall impose a fine at the level of the defendant's ability to pay, but not in excess of two hundred dollars (\$200). Such additional fine shall be paid to the clerk of the court imposing sentence, who shall transfer it to the state treasurer, who shall credit the same to the general fund. All such fines so credited to the general fund shall be subject to appropriation by the general assembly for the exclusive purpose of funding family violence shelters and shelter services. Such appropriation shall be in addition to any amount appropriated pursuant to § 67-4-411.

39-15-402. Aggravated child abuse and neglect.

- (a) A person commits the offense of aggravated child abuse or aggravated child neglect who commits the offense of child abuse or neglect as defined in § 39-15-401 and:
 - (1) The act of abuse or neglect results in serious bodily injury to the child; or
 - (2) A deadly weapon is used to accomplish the act of abuse.
- (b) A violation of this section is a Class B felony; provided, however, that, if the abused or neglected child is six (6) years of age or less, the penalty is a Class A felony.
- (c) Nothing in this chapter shall be construed to mean a child is neglected, abused, or abused or neglected in an aggravated manner for the sole reason the child is being provided treatment by spiritual means through prayer alone in accordance with the tenets or practices of a recognized church or religious denomination by a duly accredited practitioner thereof in lieu of medical or surgical treatment.

39-15-401. Child abuse and neglect. (not considered a violent crime under TCA 40-38-111(g))

- (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 or neglects such a child so as to adversely affect the child's health and welfare commits a Class A misdemeanor; provided, however, that if the abused or neglected child is six (6) years of age or less, the penalty is a Class D felony.
- (b) (1) Any juvenile 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 such a 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 such 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) If the person pleads not guilty, the juvenile judge shall have the power of a judge of the court of general sessions 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 the grand jury, the person may be prosecuted on an indictment filed by the district attorney general and prosecutor need not be named on the indictment.
- (B) On a plea of not guilty, the juvenile court judge shall have the power to proceed to hear a case on its merits without the intervention of a jury if the person requests a hearing in juvenile court and expressly waives, in writing, indictment, presentment, grand jury investigation and jury trial.
- (C) If the person enters a plea of guilty, the juvenile court judge shall sentence the person under this section.
- (c) Except as expressly provided, the provisions of this section shall not be construed as repealing and provision of any other statute, but shall be supplementary thereto and cumulative thereof.
- (d) A violation of this section may be 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.

39-13-304. Aggravated kidnapping.

- (a) Aggravated kidnapping is false imprisonment, as defined in *§ 39-13-302, committed:
 - (1) To facilitate the commission of any felony or flight thereafter;
 - (2) To interfere with the performance of any governmental or political function;
 - (3) With the intent to inflict serious bodily injury on or to terrorize the victim or another;
 - (4) Where the victim suffers bodily injury; or
 - (5) While the defendant is in possession of a deadly weapon or threatens the use of a deadly weapon.
- (b)(1) Aggravated kidnapping is a Class B felony.
- (2) If the offender voluntarily releases the victim alive or voluntarily provides information leading to the victim's safe release, such actions shall be considered by the court as a mitigating factor at the time of sentencing.

***39-13-302. False imprisonment. (not considered a violent crime under TCA 40-38-111(g))**

- (a) A person commits the offense of false imprisonment who knowingly removes or confines another unlawfully so as to interfere substantially with the other's liberty.
- (b) False imprisonment is a Class A misdemeanor.

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.

39-13-402. Aggravated robbery.

- (a) Aggravated robbery is robbery as defined in *§ 39-13-401:
 - (1) Accomplished with a deadly weapon or by display of any article used or fashioned to lead the victim to reasonably believe it to be a deadly weapon;
 - or
 - (2) Where the victim suffers serious bodily injury.
- (b) Aggravated robbery is a Class B felony.

***39-13-401. Robbery. (not considered a violent crime under TCA 40-38-111(g))**

- (a) Robbery is the intentional or knowing theft of property from the person of another by violence or putting the person in fear.
- (b) Robbery is a Class C felony.

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.

39-13-507. Limited spousal exclusion.

- (a) A person does not commit an offense under this part if the victim is the legal spouse of the perpetrator except as provided in subsections (b) and (c).
- (b) (1) "Spouse rape" means the unlawful sexual penetration of one spouse by the other where:
 - (A) The defendant is armed with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon;
 - (B) The defendant causes serious bodily injury to the victim; or

- (C) The spouses are living apart and one (1) of them has filed for separate maintenance or divorce.
- (2) (A) “Spousal rape,” as defined in subdivision (b)(1)(A) or (B), is a Class C felony.
- (C) “Spousal rape,” as defined in subdivision (b)(1)(C) shall be punished pursuant to § 39-13-502 or § 39-13-503.
- (c) (1) “Aggravated spousal rape” is the unlawful sexual penetration of one spouse by the other where the defendant:
 - (A) Knowingly engaged in conduct that was especially cruel, vile and inhumane to the victim during commission of the offense; and either;
 - (B) Causes serious bodily injury to the victim; or
 - (C) Is armed with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon.
- (2) Aggravated spousal rape is a Class B felony.
- (d) (1) “Spousal sexual battery” means the unlawful sexual contact by one (1) spouse of another where:
 - (A) The defendant is armed with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon;
 - (B) The defendant causes serious bodily injury to the victim; or
 - (C) The spouses are living apart and one (1) of them has filed for separate maintenance or divorce.
- (2) (A) “Spousal sexual battery,” as defined in subdivision (c)(1)(A) or (B), is a Class D felony.
- (C) “Spousal sexual battery,” as defined in subdivision (c)(1)(C) shall be punished pursuant to § 39-13-504 or § 39-13-505.

39-13-218. Aggravated vehicular homicide.

- (a) Aggravated vehicular homicide is vehicular homicide, as defined in *§ 39-13-213(a)(2), where:
 - (1) The defendant has two (2) or more prior convictions for:
 - (A) Driving under the influence of an intoxicant;
 - (B) Vehicular assault; or
 - (C) Any combination of such offenses;
 - (2) The defendant has one (1) or more prior convictions for the offense of vehicular homicide; or
 - (3) There was at the time of the offense twenty-hundredths of one percent (.20%), or more, by weight of alcohol in the defendant’s blood and the defendant has one (1) prior conviction for:
 - (A) Driving under the influence of an intoxicant; or
 - (B) Vehicular assault.

- (b) (1) As used in this section, unless the context otherwise requires, “prior conviction” means an offense for which the defendant was convicted prior to the commission of the instant vehicular homicide and includes convictions occurring prior to July 1, 1996.
- (2) “Prior conviction” includes convictions under the laws of any other state, government, or country which, if committed in this state, would have constituted one (1) of three (3) offenses enumerated in subdivision (a)(1) or (a)(2). In the event that a conviction from a jurisdiction other than Tennessee is not specifically named the same as one (1) of the three (3) offenses enumerated in subdivision (a)(1) or (a)(2), the elements of the offense in the other jurisdiction shall be used by the Tennessee court to determine if such offense constitutes one (1) of the prior convictions required by subsection (a).
- (c) If the defendant is charged with aggravated vehicular homicide, the indictment, in a separate count, shall specify, charge and give notice of the required prior conviction or convictions. If the defendant is convicted of vehicular homicide under § 39-13-213(a)(2), the jury shall then separately consider whether the defendant has the requisite number and types of prior offenses and/or level of blood alcohol concentration necessary to constitute the offense of aggravated vehicular homicide. If the jury convicts the defendant of aggravated vehicular homicide, the court shall pronounce judgment and sentence the defendant from within the felony classification set out in subsection (d).
- (d) Aggravated vehicular homicide is a Class A felony.

***39-13-213. Vehicular homicide. (not considered a violent crime under TCA 40-38-111(g))**

- (a) Vehicular homicide is the reckless killing of another by the operation of an automobile, airplane, motorboat or other motor vehicle:
 - (1) As the proximate result of conduct creating a substantial risk of death or serious bodily injury to a person; or
 - (2) As the proximate result of the driver’s intoxication as set forth in § 55-10-401. For the purposes of this section, “intoxication” includes alcohol intoxication as defined by § 55-10-408, drug intoxication, or both.
- (b) Vehicular homicide is a Class C felony, unless it is the proximate result of driver intoxication as set forth in subdivision (a)(2), in which case it is a Class B felony.
- (c) The court shall prohibit a defendant convicted of vehicular homicide from driving a vehicle in this state for a period of time not less than three (3) years nor more than ten (10) years.

39-13-404. Carjacking.

- (a) “Carjacking” is the intentional or knowing taking of a motor vehicle from the possession of another by use of:
 - (1) A deadly weapon; or
 - (2) Force or intimidation.
- (b) Carjacking is a Class B felony.

39-13-212. Criminally negligent homicide.

- (a) Criminally negligent conduct which results in death constitutes criminally negligent homicide.
- (b) Criminally negligent homicide is a Class E felony.

39-14-404. Especially aggravated burglary.

- (a) Especially aggravated burglary is:
 - (1) Burglary of a habitation or building other than a habitation; and
 - (2) Where the victim suffers serious bodily injury.
- (b) For the purposes of this section, “victim” means any person lawfully on the premises.
- (c) Especially aggravated burglary is a Class B felony.
- (d) Acts which constitute an offense under this section may be prosecuted under this section or any other applicable section, but not both.

39-13-305. Especially aggravated kidnapping.

- (a) Especially aggravated kidnapping is false imprisonment, as defined in *§ 39-13-302:
 - (1) Accomplished with a deadly weapon or by display of any article used or fashioned to lead the victim to reasonably believe it to be a deadly weapon;
 - (2) Where the victim was under the age of thirteen (13) at the time of the removal or confinement;
 - (3) Committed to hold the victim for ransom or reward, or as a shield or hostage; or
 - (4) Where the victim suffers serious bodily injury.
- (b) (1) Especially aggravated kidnapping is a Class A felony.

- (2) If the offender voluntarily releases the victim alive or voluntarily provides information leading to the victim's safe release, such actions shall be considered by the court as a mitigating factor at the time of sentencing.

***39-13-302. False imprisonment. (not considered a violent crime under TCA 40-38-111(g))**

- (a) A person commits the offense of false imprisonment who knowingly removes or confines another unlawfully so as to interfere substantially with the other's liberty.
- (b) False imprisonment is a Class A misdemeanor.

39-13-403. Especially aggravated robbery.

- (a) Especially aggravated robbery is robbery as defined in *§ 39-13-401:
- (1) Accomplished with a deadly weapon; and
- (2) Where the victim suffers serious bodily injury.
- (b) Especially aggravated robbery is a Class A felony.

***39-13-401. Robbery. (not considered a violent crime under TCA 40-38-111-(g))**

- (a) Robbery is the intentional or knowing theft of property from the person of another by violence or putting the person in fear.
- (b) Robbery is a Class C felony.

39-13-202. First degree murder.

- (a) First degree murder is:
- (1) A premeditated and intentional killing of another;
- (2) A killing of another committed in the perpetration of or attempt to perpetrate any first degree murder, act of terrorism, arson, rape, robbery, burglary, theft, kidnapping aggravated child abuse, aggravated child neglect or aircraft piracy; or
- (3) A killing of another committed as the result of the unlawful throwing, placing or discharging of a destructive device or bomb.
- (b) No culpable mental state is required for conviction under subdivision (a)(2) or (a)(3) except the intent to commit the enumerated offenses or acts in such subdivisions.
- (c) A person convicted of first degree murder shall be punished by:
- (1) Death;
- (2) Imprisonment for life without possibility of parole; or

- (3) Imprisonment for life.
- (d) As used in subdivision (a)(1) “premeditation” is an act done after the exercise of reflection and judgment. “Premeditation” means that the intent to kill must have been formed prior to the act itself. It is not necessary that the purpose to kill pre-exist in the mind of the accused for any definite period of time. The mental state of the accused at the time the accused allegedly decided to kill must be carefully considered in order to determine whether the accused was sufficiently free from excitement and passion as to be capable of premeditation.

39-15-302. Incest.

- (a) A person commits incest who engages in sexual penetration as defined in § 39-13-501, with a person, knowing such 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.

39-13-303. Kidnapping.

- (a) Kidnapping is false imprisonment as defined in *§ 39-13-302:
 - (1) Under circumstances exposing the other person to substantial risk of bodily injury; or
 - (2) Where the confinement of another is in a condition of involuntary servitude.
- (b) Kidnapping is a Class C felony.

39-13-302. False imprisonment. (not considered a violent crime under TCA 40-38-111(g))

- (a) A person commits the offense of false imprisonment who knowingly removes or confines another unlawfully so as to interfere substantially with the other’s liberty.
- (b) False imprisonment is a Class A misdemeanor.

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.
- (c) When imposing sentence under the provisions of title 40, chapter 35, for a conviction under this section, the court shall consider as an enhancement factor that the defendant caused the victim to be mentally incapacitated or physically helpless by use of a controlled substance.

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 such victim is less than thirteen (13) years of age.
- (b) Rape of child is a Class A felony.
- (c) When imposing sentence under the provisions of title 40, chapter 35, for a conviction under this section, the court shall consider as an enhancement factor that the defendant caused the victim to be mentally incapacitated or physically helpless by use of a controlled substance.

39-13-215. Reckless homicide.

- (a) Reckless homicide is a reckless killing of another.
- (b) Reckless homicide is a Class D felony.

39-13-210. Second degree murder.

- (1) A knowing killing of another; or
 - (2) A killing of another which results from the unlawful distribution of any Schedule I or Schedule II drug when such drug is the proximate cause of the death of the user.
- (b) Second degree murder is a Class A felony.

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 than eighteen (18) years of age; and either
 - (A) The defendant had, at the time of the offense, supervisory or disciplinary power over the victim by virtue of the defendant's legal, professional or occupational status and used such 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 such authority to accomplish the sexual contact
- (b) Sexual battery by an authority figure is a Class C felony.

39-13-505. Sexual battery.

- (a) 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;
 - (2) The sexual contact is accomplished without the consent of the victim and the defendant knows or has reason to know at the time of the contact that the victim did not consent;
 - (3) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or
 - (4) The sexual contact is accomplished by fraud.
- (b) As used in this section, "coercion" means the threat of kidnapping, extortion, force or violence to be performed immediately or in the future.
- (c) Sexual battery is a Class E felony.
- (d) When imposing sentence under the provisions of title 40, chapter 35, for a conviction under this section, the court shall consider as an enhancement factor that the defendant caused the victim to be mentally incapacitated or physically helpless by use of a controlled substance.

39-17-315. Stalking.

- (a) (1) A person commits the offense of stalking who intentionally and repeatedly follows or harasses another person in such a manner as would cause that person to be in reasonable fear of being assaulted, suffering bodily injury or death.
- (2) As used in this section:
 - (A) "Follows" means maintaining a visual or physical proximity over a period of time to a specific person in such a manner as would cause a reasonable person to have a fear of an assault, bodily injury or death;
 - (B) "Harasses" means a course of conduct directed at a specific person which would cause a reasonable person to fear an assault, bodily injury,

or death, including, but not limited to, verbal threats, written threats, vandalism, or unconsented-to physical contact; and

(C) “Repeatedly” means on two (2) or more separate occasions.

(b) (1) Stalking is a Class A misdemeanor.

(2) A second or subsequent violation of subsection (a) occurring within seven (7) years of the prior conviction is a Class E felony. A second or subsequent violation of subsection (a) involving the same victim and occurring within seven (7) years of the prior conviction is a Class C felony.

(c) The provisions of this section shall not be construed to prohibit following another person during the course of a lawful business activity.

39-13-506. Statutory rape.

(a) Statutory rape is 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 four (4) years older than the victim.

(b) If the person accused of statutory rape is under eighteen (18) years of age, such a defendant shall be tried as a juvenile and shall not be transferred for trial as an adult.

(c) Statutory rape is a Class E felony.

39-13-106. Vehicular assault.

(a) A person commits vehicular assault who, as the proximate result of the person’s intoxication as set forth in § 55-10-401, recklessly causes serious bodily injury to another person by the operation of a motor vehicle. For the purposes of this section, “intoxication” includes alcohol intoxication as defined by § 55-10-408, drug intoxication, or both.

(b) A violation of this section is a Class D felony.

(c) Upon the conviction of a person for the first offense of vehicular assault, the court shall prohibit such convicted person from driving a vehicle in this state for a period of one (1) year. For the second such conviction, the court shall prohibit such convicted person from driving a vehicle in this state for a period of two (2) years. For the third such conviction, the court shall prohibit such convicted person from driving a vehicle in this state for a period of three (3) years. For fourth and subsequent convictions, the court shall prohibit the person from driving a vehicle in this state for a period of five (5) years.

39-13-211. Voluntary manslaughter.

- (a) Voluntary manslaughter is the intentional or knowing killing of another in a state of passion produced by adequate provocation sufficient to lead a reasonable person to act in an irrational manner.
- (b) Voluntary manslaughter is a Class C felony.

Criminal Offenses Constituting Child Sexual Abuse and Definitions

37-1-602 Part Definitions – Harm to child’s health or welfare – “Child Sexual Abuse”

(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] [now § 39-15-302];
 - (vii)** Promotion of performance including sexual conduct by minor under § 39-6-1138 [repealed];
 - (viii)** Rape under § 39-2-604 [repealed] [now 39-13-503];
 - (ix)** Sexual battery under § 39-2-607 [repealed] [now 39-13-505]; 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;

Definitions

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
- (b) Force or coercion is used to accomplish the act; or
- (c) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless.
- (c) Aggravated rape is a Class A felony.

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
 - (C) The victim is less than thirteen (13) years of age.
- (b) Aggravated sexual battery is a Class B felony.

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, 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.

- (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(10), 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.

***39-12-101. Criminal attempt. (not considered a violent crime under TCA 40-38-111(g))**

- (a) A person commits criminal attempt who, acting with the kind of culpability otherwise required for the offense:
 - (1) Intentionally engages in action or causes a result that would constitute an offense if the circumstances surrounding the conduct were as the person believe them to be;
 - (2) Acts with intent to cause a result that is an element of the offense, and believes the conduct will cause the result without further conduct on the person's part; or
 - (3) Acts with intent to complete a course of action or cause a result that would constitute the offense, under the circumstances surrounding the conduct as the person believes them to be, and the conduct constitutes a substantial step toward the commission of the offense.
- (b) Conduct does not constitute a substantial step under subdivision (a)(3) unless the person's entire course of action is corroborative of the intent to commit the offense.
- (c) It is no defense to prosecution for criminal attempt that the offense attempted was actually committed.

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.

***39-13-302. False imprisonment. (not considered a violent crime under TCA 40-38-111(g))**

- (a) A person commits the offense of false imprisonment who knowingly removes or confines another unlawfully so as to interfere substantially with the other's liberty.
- (b) False imprisonment is a Class A misdemeanor.

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.
- (c) When imposing sentence under the provisions of title 40, chapter 35, for a conviction under this section, the court shall consider as an enhancement factor that the defendant caused the victim to be mentally incapacitated or physically helpless by use of a controlled substance.

39-13-505. Sexual battery.

- (a) 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;
 - (2) The sexual contact is accomplished without the consent of the victim and the defendant knows or has reason to know at the time of the contact that the victim did not consent;
 - (3) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or
 - (4) The sexual contact is accomplished by fraud.
- (b) As used in this section, “coercion” means the threat of kidnapping, extortion, force or violence to be performed immediately or in the future.
- (c) Sexual battery is a Class E felony.
- (d) When imposing sentence under the provisions of title 40, chapter 35, for a conviction under this section, the court shall consider as an enhancement factor that the defendant caused the victim to be mentally incapacitated or physically helpless by use of a controlled substance.

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.