

HOUSE BILL 1293

By Dean

AN ACT to amend Tennessee Code Annotated, Title 39
and Title 40, relative to criminal law.

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

SECTION 1. This act shall be known and may be cited as the “Child Protection Act”.

SECTION 2. Tennessee Code Annotated, Title 39, Chapter 13, Part 5, is amended to add the following new, appropriately designated section:

39-13-533

(a) As used in this section:

(1) “Sexual abuse of a child” means to commit an act upon a minor child that is a violation of:

(A) § 39-13-502, if the child is more than thirteen (13) but less than eighteen (18) years of age;

(B) § 39-13-503, if the child is more than thirteen (13) but less than eighteen (18) years of age;

(C) § 39-13-504;

(D) § 39-13-522;

(E) § 39-13-527;

(F) § 39-13-529(a);

(G) § 39-13-531; or

(H) § 39-13-532.

(2) “Multiple acts of sexual abuse of a child” means:

(A) Engaging in at least one incident of sexual abuse of a child upon three (3) or more different minor children on separate occasions, provided that at least one such incident occurred within the county in which the charge is filed and that one (1) such incident occurred on or after July 1, 2013;

(B) Engaging in three (3) or more incidents of sexual abuse of a child involving the same minor child on separate occasions, provided that at least one such incident occurred within the county in which the charge is filed and that one (1) such incident occurred after July 1, 2013; or

(C) Engaging in five (5) or more incidents of sexual abuse of a child involving two (2) or more different minor children on separate occasions provided that at least one (1) such incident occurred within the county in which the charge is filed and that one such incident occurred on or after July 1, 2013.

(b) A person commits continuous sexual abuse of a child who:

(1) Over a period of ninety (90) days or more, engages in multiple acts of sexual abuse of a child as defined in subdivision (a)(2)(A) or (B); or

(2) Over a period of less than ninety (90) days, engages in multiple acts of sexual abuse of a child as defined in subdivision (a)(2)(C).

(c)

(1) A violation of subsection (b) is a Class A felony if at least three (3) of the acts of sexual abuse of a child constitute a violation of the following:

(A) § 39-13-502, if the child is more than thirteen (13) but less than eighteen (18) years of age;

(B) § 39-13-503, if the child is more than thirteen (13) but less than eighteen (18) years of age;

(C) § 39-13-504;

(D) §39-13-522;

(E) §, 39-13-529(a); or

(F) § 39-13-531.

(2) A violation of subsection (b) is a Class B felony if at least three (3) of the acts of sexual abuse of a child constitute a violation of the following:

(A) § 39-13-527; or

(B) §39-13-532.

(3) A violation of subsection (b) is a Class B felony if there are less than three (3) acts of sexual abuse of a child under subsection (c)(1) but there are at least three (3) acts under any combination of subsection (c)(1) and (c)(2).

(d) In a prosecution under this section, the state may file the charge in any county in which one of the multiple acts of sexual abuse occurred.

(e) At least thirty (30) days prior to trial, the state shall file with the court a written notice identifying the multiple acts of sexual abuse of a

child upon which the violation of this section is based. The notice should include the identity of the victim, the statutory offense violated and the jurisdiction in which the crime occurred. If the separate incidents of sexual abuse of a child include incidents occurring within another judicial district, the notice shall be endorsed in writing by the appropriate district attorney general signifying consent to join such incident occurring in that judicial district within the charge of continuous sexual abuse of a child. When jeopardy has attached for a violation of this section, the inclusion of any incident in the notice which occurred outside the county where the charge is filed shall operate as a bar to prosecution of the incident in another county as a separate offense. Upon good cause, and where the defendant was unaware of the predicate offenses listed in the notice, the trial court may grant a continuance to facilitate proper notification of the incidents of sexual abuse of a child and for preparation by the defense of such incidents specified in the statement.

(f) If more incidents of sexual abuse are included in the notice than required by this section, a jury is not required to agree unanimously on which specific acts of sexual abuse were committed by the defendant.

The jury must agree unanimously that the defendant:

(1) During a period of ninety (90) or more days in duration, committed three (3) or more acts of sexual abuse of a child; or

(2) During a period of less than ninety (90) days in duration, committed five (5) or more acts of sexual abuse of a child against at least two (2) different children.

(g) The state may charge alternative violations of this section and of the separate offenses committed within the county in which the charges are filed and described in the notice filed by the district attorney occurring within the same time period. The separate incidents shall be alleged in separate counts and joined in the same action. A person may be convicted either of one (1) criminal violation of this section, or for one (1) or more of the separate incidents of sexual abuse of a child committed within the county in which the charges were filed, but not both. The state shall not be required to elect submission to the jury of the several counts. The jury shall be instructed to return a verdict on all counts in the indictment. In the event that a verdict of guilty is returned on a separate count that was included in the notice of separate incidents of sexual abuse of a child and the jury returns a verdict of guilty for a violation of this section, at the sentencing hearing the trial judge shall merge the separate count into the conviction under this section and only impose a sentence under this section. A conviction for a violation of this section bars the prosecution of the individual incidents of sexual abuse of a child as separate offenses described in the pre-trial notice filed by the state and presented to the jury. A prosecution for a violation of this section does not bar a prosecution in the same action for individual incidents of sexual abuse not identified in the state's pre-trial notice. The state shall be required to elect as to those individual incidents of sexual abuse not contained in the pre-trial notice prior to submission to the jury. A conviction for such elected offenses shall not be subject to merger at sentencing.

(h) Notwithstanding any other law to the contrary, a person convicted of a violation of this section shall be punished by imprisonment and shall be sentenced from within the full range of punishment for the offense, between Ranges I—III. In addition to the factors listed in §§ 40-35-113—114, the court shall consider the following:

- (1) The need for deterrence;
- (2) The number of victims;
- (3) The number of incidents of sexual abuse committed by the defendant upon the victim;
- (4) The impact of the offense upon the victim;
- (5) The gravity of the offense; and
- (6) Any other factor that justice requires.

SECTION 3 Tennessee Code Annotated, Section 40-35-501, is amended by adding the following new subsection (l) and by redesignating all subsequent subsections accordingly:

(l)

(1) There shall be no release eligibility for a person committing continuous sexual abuse of a child as defined § 39-13-533 on or after July 1, 2013 until the person has served the entire sentence imposed by the court undiminished by any sentence reduction credits the person may be eligible for or earn. Such person shall be permitted to earn any credits for which the person is eligible and the credits may be used for the purpose of increased privileges, reduced security classification, or for any purpose other than the reduction of the sentence imposed by the court.

(2) In addition to the punishment authorized by this section, a person sentenced under § 39-13-533 shall, upon release, receive a sentence of community supervision for life under §39-13-524.

SECTION 4. Tennessee Code Annotated, Title 40, Chapter 18, Part 1 is amended to add the following new section:

40-18-119

(a) Notwithstanding any statute or rule to the contrary, in all cases involving a violation of § 39-13-533; § 39-13-502; § 39-13-503; § 39-13-504; § 39-13-522; § 39-13-527; § 39-13-529(a); § 39-13-531; or 39-13-532, the following rule of evidence adopted from the Federal Rules of Evidence shall apply:

(b) In a criminal case in which the defendant is accused of any of the above referenced offenses, the court may admit evidence that the defendant committed any other offense that would constitute a violation of, or an attempt to commit a violation of, the above referenced offenses. The evidence may be considered on any matter to which it is relevant subject to the provisions of Tennessee Rules of Evidence, 401, 402 and 403.

(c) If the state intends to offer this evidence, the prosecutor must disclose it in writing to the defendant, including witnesses' statements or a summary of the expected testimony at least fifteen (15) days before trial or at a later time the court permits for good cause.

SECTION 5. 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 6. This act shall take effect July 1, 2013, the public welfare requiring it.