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JUVENILE COURTS AND PROCEEDINGS

37-1-408. State registry to screen child care providers — Implementation. — (a)(1) The Tennessee bureau of investigation shall establish and maintain a registry to screen child care providers as set forth herein.

(2) The registry shall consist of:

(A) Any person alleged or adjudicated to have committed "child sexual abuse" as defined in § 37-1-602; and

(B) Any person who has been alleged or who has been adjudicated to have committed an act against a child which would constitute severe child abuse.

(i) As used in this section "severe child abuse" means those acts committed against a child as set forth in § 37-1-602 or as the law existed prior to November 1, 1989, any of the following acts:

- (a) Aggravated assault under § 39-2-101 [repealed];
- (b) Assault with intent to commit murder under § 39-2-103 [repealed];
- (c) Murder under § 39-2-201 [repealed];
- (d) First degree murder under § 39-2-202 [repealed];
- (e) Second degree murder under § 39-2-211 [repealed];
- (f) Manslaughter under § 39-2-221 [repealed];
- (g) Aggravated kidnapping under § 39-2-301 [repealed]; and
- (h) Aggravated child abuse under § 39-4-422 [repealed].

(ii) "Severe child abuse" also includes the following acts committed against a child on or after November 1, 1989:

- (a) First degree murder under § 39-13-202;
- (b) Second degree murder under § 39-13-210;
- (c) Voluntary manslaughter under § 39-13-211;
- (d) Criminal attempt for any of the offenses listed above as provided in § 39-12-101;
- (e) Aggravated assault under § 39-13-102;
- (f) Aggravated kidnapping under § 39-13-304;

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(g) Especially aggravated kidnapping under § 39-13-305; and

(h) Aggravated child abuse under § 39-15-402;

(3) The registry shall identify by name and by fingerprints those persons who:

(A) Have been bound over to the grand jury following a preliminary hearing by a judge or have been indicted by a grand jury following allegations of any act as set forth in subdivision (a)(2)(A) or (B); or

(B) Have been adjudicated guilty of or pled guilty to any act as set forth in subdivision (a)(2)(A) or (B).

(4) When a defendant is found not guilty of severe child abuse or child sexual abuse, such defendant's name shall be expunged from the record.

(b)(1) Upon receiving the appropriate form from the department of human services, the bureau shall search the registry for the purpose of verifying the existence of the applicant's name within the registry for:

(A) Any person applying for the adoption of a child or of any person prior to the placement of a child in a foster home; or

(B) Any person applying to work with children as a volunteer or as a paid employee for a child welfare agency as defined in § 71-3-501 or in any institutional or residential child care facility, except such volunteer who is a parent, a grandparent, a person with whom a child permanently resides, or a person having legal custody of a child at such agency or facility.

(2) The bureau shall advise the department of any positive match and the department shall advise the child welfare agency or the institutional or residential child care facility accordingly.

(c) The department shall forward the appropriate form it receives pursuant to § 71-3-529 to the bureau to verify the accuracy of the information as contained on the bureau's registry under subsections (a) and (b).

(d) Implementation of this section shall be delayed until July 1, 1993, to provide the select joint committee on children and youth an opportunity to reassess the costs and benefits of the state registry to screen child care providers. [Acts 1973, ch. 81, § 1; 1977, ch. 343, § 4; T.C.A., §§ 37-1207, 37-1208; Acts 1985, ch. 478, § 40; 1987, ch. 145, §§ 22, 28-30, 32; 1988, ch. 964, § 1; 1992, ch. 833, § 1.]

37-1-409. Reports confidential — Penalty for violation — Authorized access to information. — (a)(1) Reports of harm made under this part and the identity of the reporter are confidential except when the juvenile court in which the investigation report is filed, in its discretion, determines the testimony of the person reporting to be material to an indictment or conviction.

(2) Except as may be ordered by the juvenile court as herein provided, the name of any person reporting child abuse shall not be released to any person other than employees of the department or other child protection team members responsible for child protective services, the abuse registry, or the appropriate district attorney upon subpoena of the Tennessee bureau of investigation without the written consent of the person reporting. Such person's identity shall be irrelevant to any civil proceeding and shall, therefore, not be subject to disclosure by order of any court. This shall not prohibit the subpoenaing of a person reporting child abuse when deemed necessary by the district attorney or the department to protect a child who is the subject of a report, provided that the fact that such person made the report is not disclosed.

(b) Except as otherwise provided in this part, it is unlawful for any person, except for purposes directly connected with the administration of this part, to disclose, receive, make use of, authorize or knowingly permit, participate in, or acquiesce in the use of any list or the name of, or any information concerning, persons receiving services pursuant to this part, or any information concerning a report or investigation of a report of harm under this part, directly or indirectly derived from the records, papers, files or communications of the department of human services or divisions thereof acquired in the course of the performance of official duties.

(c) Any person violating any of the provisions of this section is guilty of a Class B misdemeanor.

(d) In addition to such other purposes as may be directly connected with the administration of this part, the department shall also grant access to information to those persons specified in § 37-1-612.

(e) The department may confirm whether a child abuse or neglect investigation has been commenced, but may not divulge, except as permitted under this part, any details about the case, including, but not limited to, the name of the reporter, the alleged victim, or the alleged perpetrator.

(f) The department shall adopt such rules as may be necessary to carry out the following purposes:

(1) The establishment of administrative and due process procedures for the disclosure of the contents of its files and the results of its investigations for the purpose of protecting children from child sexual abuse, physical abuse, emotional abuse, or neglect; and

(2) For other purposes directly connected with the administration of this chapter, including, but not limited to, cooperation with schools, child welfare agencies, residential and institutional child care providers, child protection agencies, individuals providing care or protection for the child, medical and mental health personnel providing care for the child and the child's family and the perpetrator of any form of child abuse or neglect, law enforcement agencies, the judicial and correctional systems, and for cooperation with scientific and governmental research on child abuse and neglect. [Acts 1973, ch. 81, § 1; 1977, ch. 343, § 4; Acts 1978 (Adj. S.), ch. 886, § 4; T.C.A., §§ 37-1208, 37-1209; Acts 1985, ch. 478, § 42; 1987, ch. 145, §§ 15, 23; 1988, ch. 964, § 3; 1989, ch. 591, § 112.]

CHAPTER 6

BUREAU OF INVESTIGATION

SECTION.		SECTION.
38-6-101.	Bureau created — Director — Divisions of bureau.	38-6-105. Retired agents.
38-6-102.	Criminal investigation division.	38-6-106. Requests by governor for investigative records.
38-6-103.	Forensic services division.	38-6-107. Certification of records by director.
38-6-104.	Personnel.	

38-6-101. Bureau created — Director — Divisions of bureau. — (a)(1)
 There is created the Tennessee bureau of investigation which shall be a separate department of state government. References to the bureau of criminal identification elsewhere in the Code shall be deemed references to the bureau of investigation.

(2) The bureau shall be divided into two divisions, the criminal investigation division and the forensic services division, and the director shall have full control over the activities of each division.

(3) The bureau shall be provided with suitable office space, supplies and equipment to perform the duties and functions assigned to it.

(b)(1) A director shall be appointed to administer such department.

(2) The director's compensation shall be fixed at an amount no less than that provided for the commissioner of safety.

(3) The director shall be a person of experience and ability in the detection of crime and shall be appointed to a fixed term of office by the governor from a list of three (3) nominees submitted to him by a nominating commission composed of:

(A) Two (2) members to be nominated by the speaker of the senate and elected by resolution of the senate;

(B) Two (2) members to be nominated by the speaker of the house of representatives and elected by resolution of the house; and

(C) The executive secretary of the Tennessee district attorneys general conference.

No person nominated by the speakers shall be a member of the general assembly and no more than one member nominated by each speaker and elected by each house shall be from the same political party. Members nominated by the speakers and elected by each house shall serve from the date of their election until January 1 of the year in which the term of the director expires. If no one (1) of the three (3) persons nominated by the commission is satisfactory to the governor, he may reject all three (3), and require the nominating commission to submit three (3) additional names from which to appoint. If none are satisfactory he may require additional nominees, in groups of three (3), until he is able to make his appointment. In any case in which the governor rejects the nominees submitted by the commission, the commission shall resubmit a list of nominees within thirty (30) days of written notice by the governor of such rejection. Within thirty (30) days from the date the full membership of the commission is named initially, the commission shall meet, upon the call of the speaker of the senate, and elect a chairman. Thereafter the commission shall meet at the call of the chairman and shall, within thirty (30) days of the initial meeting, submit its initial list of nominees to the governor. In the case of a vacancy in the office of director arising hereafter during a term, the commission shall meet and submit its list of nominees within sixty (60) days of the date of such vacancy. In such a case the appointment by the governor shall be for the unexpired portion of the director's term. With respect to the appointment of a director to a new term of office, the nominating commission shall be named no later than ninety (90) days before the expiration of the prior term. The commission in such case shall meet initially at the call of the speaker of the senate, elect a chairman and shall then meet and make its submission of nominees no later than thirty (30) days prior to expiration of the term. The first term of office of the director shall begin on March 27, 1980 and shall extend through the thirtieth day of June, 1986. The next term shall begin on the first day of July, 1986, and it, and all successive terms shall be of six (6) full years. The nominating commission as defined under this section shall be subject to the provisions of chapter 44 of title 8.

(4) The director shall be subject to removal from office under the provisions of chapter 47 of title 8, but in the case of suspension of the director under the provisions of § 8-47-116 the office of director shall be filled pending final disposition of the removal proceeding by the official in charge of the criminal investigation division of the bureau.

(5) The official in charge of the criminal investigation division of the bureau shall likewise serve as acting director of the bureau from the occurrence of any vacancy in the office of director until a director is appointed as provided for in this chapter. [Acts 1951, ch. 173, § 1 (Williams, § 11465.10); 1980 (Adj. S.), ch. 636, §§ 1, 13, 15; impl. am. Acts 1982 (Adj. S.), ch. 733, § 4; T.C.A. (orig. ed.), § 38-601.]

38-6-103. Forensic services division — Purchase of breathalyzer tests by local governments. — (a) The forensic services division shall consist of experts in the scientific detection of crime. The director is hereby empowered to employ either upon a temporary or permanent basis, but is not limited to, ballistics expert, pathologist, toxicologist, expert in the detection of human bloodstains and fingerprint experts and such other persons of expert knowledge in the detection of crime as may be found feasible. It shall be the duty of the forensic services division to keep a complete record of such fingerprints as may be obtained by them through exchange with the federal bureau of investigation, with similar bureaus in other states and from fingerprints obtained in this state. Each peace officer of this state, upon fingerprinting any person arrested, shall furnish a copy of such fingerprints to the forensic services division of the bureau. Likewise, such fingerprints as are now on file at the state penitentiary shall be transferred therefrom to the bureau and maintained by it. Each person hereafter received at the state penitentiary shall be fingerprinted and a copy thereof furnished to the bureau. The bureau is hereby authorized to exchange with the federal bureau of investigation any and all information obtained by it in the course of its work and to request of the federal bureau of investigation such information as it may desire.

(b) The services of the forensic services division may be made available by the director to any district attorney general of this state, the chief medical examiner and all county medical examiners in the performance of their duties under the postmortem examination law or to any peace officer upon the approval of the district attorney general of the circuit in which such peace officer is located. The forensic services division likewise is authorized to avail itself of the services of any and all other departments of the state where the same may be of benefit to it, including but not limited to the state chemists and other expert personnel.

(c) The Tennessee crime laboratory and all regional crime laboratories shall be under the supervision of the director of the bureau or his designated representatives.

(d)(1) The Tennessee bureau of investigation shall charge the following fees for services rendered or administered by its forensic services division in connection with any case in a criminal, juvenile, or municipal court, or when otherwise required by law to render such services:

Controlled substances, drugs and narcotics	\$20.00
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Alcohol or drug content of blood, breath or urine\$10.00
Certification of criminal histories
when required by lawThe same amount as fixed
by the federal bureau of
investigation

The results of such tests and the fees therefor shall be certified by the director or his authorized representative and filed with the clerk of the appropriate court. Such fees shall be adjudged as part of the costs of the case to which they relate regardless of whether the charged offense is reduced, amended or changed, or whether the defendant is found guilty of a lesser offense. The appropriate clerk, after deducting five percent (5%) as compensation, shall remit all such fees to the state treasurer, to be expended only as appropriated by the general assembly.

(2) Upon approval of the director of the Tennessee bureau of investigation, local governing bodies which have the responsibility for providing funding for sheriff's offices and police departments, are authorized to purchase from state contracts approved for bureau purchases, scientific instruments designed to examine a person's breath and measure the alcohol content thereof, for use as evidence in the trial of cases, provided that prior to use thereof, such instruments must be delivered to the forensic services division of the bureau for testing and certification pursuant to subsection (g) of this section. The bureau shall continue to maintain and certify the instruments and operating personnel, pursuant to subsection (g) of this section, and furnish expert testimony in support of the use of such instruments when required.

(e)(1) Any fees authorized for services rendered by the bureau which are not incident to a court case shall be paid to the Tennessee bureau of investigation for deposit with the state treasurer for expenditure as herein provided.

(2) Every local governing body purchasing the instruments pursuant to subsection (d) of this section shall report the use of the instrument to the clerk of the court, for inclusion of the service fee as a part of the court costs, which service fee will be disbursed to the local governing body until the purchase price is recovered. Thereafter the service fee will be disbursed by the clerk to the bureau, for the payment to the state treasurer as required by subsection (f) of this section.

(f) All revenue resulting from fines, forfeitures and services rendered by the bureau shall be paid to the state treasurer and used only as appropriated by the general assembly.

(g) The Tennessee bureau of investigation through its forensic services division shall establish, authorize, approve and certify techniques, methods, procedures and instruments for the scientific examination and analysis of evidence, including blood, urine, breath or other bodily substances, and teach and certify qualifying personnel in the operation of such instruments to meet the requirements of the law for the admissibility of evidence. When examinations, tests and analyses have been performed in compliance with such standards and procedures, the results shall be prima facie admissible into evidence in any judicial or quasi-judicial proceeding, subject to the rules of evidence as administered by the courts. [Acts 1951, ch. 173, § 3 (Williams, § 11465.12); 1980 (Adj. S.), ch. 636, § 3; 1980 (Adj. S.), ch. 810, § 1; 1981, ch.

38-6-106. Requests by governor for investigative records — Background checks of appointees. — (a) Any request for investigative records by the governor shall be in writing and shall state specifically the reasons for such request. All such written requests must be signed by the governor and not his agent or designee.

(b) The governor is hereby authorized to request the director of the Tennessee bureau of investigation to conduct a background investigation concerning any person who has asked or agreed to be considered by the governor for appointment to a position of trust and responsibility. Upon the request of the governor, the director shall conduct the investigation and report the results to the governor, either verbally or in writing, as the governor may direct.

(c) All confidential information reported to the governor pursuant to subsection (b) shall remain confidential. [Acts 1980 (Adj. S.), ch. 636, § 14; T.C.A., § 38-506; Acts 1988, ch. 711, § 1.]

38-6-109. Persons applying to work with children — Verification of criminal violation information. — The Tennessee bureau of investigation shall grant access to its computer registry files of criminal offenders to the department of human services for the purpose of verifying the accuracy of criminal violation information of applicants applying to work with children pursuant to § 71-3-529. [Acts 1985, ch. 478, § 28.]

CHAPTER 10

INTRASTATE COMMUNICATION OF CRIMINAL STATISTICS

SECTION.

- 38-10-101. System established.
38-10-102. Reports by state and local agencies.
38-10-103. Uniform crime reports — Rules on form and content.

SECTION.

- 38-10-104. Correlation of reports — Annual reports.
38-10-105. Failure of official to make report or comply with provisions.

38-10-101. System established. — The director of the Tennessee bureau of investigation shall establish a system of intrastate communication of vital statistics and information relating to crime, criminals, and criminal activity. [Acts 1973, ch. 159, § 1; 1978 (Adj. S.), ch. 803, § 1; 1980 (Adj. S.), ch. 636, § 6; T.C.A., § 38-1201.]

38-10-102. Reports by state and local agencies. — All state, county, and municipal law enforcement and correctional agencies, and courts, shall submit to the director of the Tennessee bureau of investigation reports setting forth their activities in connection with law enforcement and criminal justice, including uniform crime reports. [Acts 1973, ch. 159, § 2; 1980 (Adj. S.), ch. 636, § 6; T.C.A., § 38-1202.]

38-10-103. Uniform crime reports — Rules on form and content. — It shall be the duty of the director of the Tennessee bureau of investigation to adopt and promulgate rules and regulations prescribing the form, general content, time, and manner of submission of such uniform crime reports required pursuant to § 38-10-102. The rules so adopted and promulgated shall be filed with the secretary of state pursuant to chapter 5 of title 4 and shall have the force and effect of law. [Acts 1973, ch. 159, § 3; 1980 (Adj. S.), ch. 636, § 6; T.C.A., § 38-1203.]

38-10-104. Correlation of reports — Annual reports. — The director of the Tennessee bureau of investigation shall correlate the reports submitted to it pursuant to § 38-10-102, and shall compile and submit to the governor and the legislature an annual report based on such reports. A copy of said report shall be furnished to law enforcement, prosecuting, judicial, correctional authorities, and other appropriate law enforcement and criminal justice agencies. [Acts 1973, ch. 159, § 4; 1977, ch. 355, § 1; 1980 (Adj. S.), ch. 636, § 6; T.C.A., § 38-1204.]

38-10-105. Failure of official to make report or comply with provisions. — Any officer or official mentioned in this chapter who shall have been notified and refuses to make any report or do any act required by any provision of this chapter shall be deemed guilty of nonfeasance of office and subject to removal therefrom. [Acts 1978 (Adj. S.), ch. 803, § 2; T.C.A., § 38-1205.]

PART 6—COMPUTER OFFENSES

39-14-601. Definitions for computer offenses. — As used in this part, unless the context otherwise requires:

(1) "Access" means to approach, instruct, communicate or connect with, store data in, retrieve or intercept data from, or otherwise make use of any resources of a computer, computer system or computer network, or information exchanged from any communication between computers or authorized computer users and electronic, electromagnetic, electrochemical, acoustic, mechanical or other means;

(2) "Computer" means a device or collection of devices, including its support devices or peripheral equipment or facilities, and the communication systems connected to it which can perform functions including, but not limited to, substantial computation, arithmetic or logical operations, information storage or retrieval operations, capable of being used with external files, one or more operations which contain computer programs, electronic instructions, allows for the input of data, and output data (such operations or communications can occur with or without intervention by a human operator during the processing of a job);

(3) "Computer contaminants" means any set of computer instructions that are designed to modify or in any way alter, damage, destroy, or disrupt the proper operation of a computer system, or computer network without the intent or permission of the owner of the information. They include, but are not limited to, a group of computer instructions commonly called viruses or worms, which are self-replicating or self-propagating and are designed to contaminate other computer programs or computer data, consume computer resources, modify, destroy, record or transmit data, or in some other fashion usurp the normal operation of the computer, computer system, or computer network. Such contaminants may include:

(A) "Virus," meaning a migrating program which, at least, attaches itself to the operating system of any computer it enters and can infect any other computer that has access to an "infected" computer.

(B) "Worm," meaning a computer program or virus that spreads and multiplies, eventually causing a computer to "crash" or cease functioning, but does not attach itself to the operating system of the computer it "infects"; and

(4) "Computer network" means a set of two (2) or more computer systems that transmit data over communication circuits connecting them, and input/output devices including, but not limited to, display terminals and printers, which may also be connected to telecommunication facilities;

(5) "Computer program" means an ordered set of data that are coded instructions or statements that, when executed by a computer, cause the computer to process data;

(6) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer, computer system or computer network whether imprinted or embodied in the computer in any manner or separate from it, including the supporting materials for the software and accompanying documentation;

(7) "Computer system" means a set of connected devices including a computer and other devices including, but not limited to, one (1) or more of the following: data input, output, or storage devices, data communication circuits, and operating system computer programs that make the system capable of performing data processing tasks;

(8) "Data" means a representation of information, knowledge, facts, concepts, or instructions which is being prepared or has been prepared in a formalized manner, and is intended to be stored or processed, or is being stored or processed, or has been stored or processed, in a computer, computer system or computer network;

(9) "Financial instrument" includes, but is not limited to, any check, cashier's check, draft, warrant, money order, certificate of deposit, negotiable instrument, letter of credit, bill of exchange, credit card, debit card, marketable security, or any computer system representation thereof;

(10) "Input" means data, facts, concepts or instructions in a form appropriate for delivery to, or interpretation or processing by, a computer;

(11) "Intellectual property" includes data, which may be in any form including, but not limited to, computer printouts, magnetic storage media, punched cards, or may be stored internally in the memory of a computer;

(12) "Output" means data, facts, concepts or instructions produced or retrieved by computers from computers or computer memory storage devices;

(13) "To process" means to use a computer to put data through a systematic sequence of operations for the purpose of producing a specified result;

(14) "Property" means, but is not limited to, intellectual property, financial instruments, data, computer systems and computer programs, all in machine-readable or human-readable form, and any tangible or intangible item of value;

(15) "Services" includes, but is not limited to, the use of a computer, a computer system, a computer network, computer software, computer program or data to perform tasks; and

(16) "System hacker" means any person who knowingly accesses and without permission alters, damages, deletes, destroys, or otherwise uses any data, computer, computer system, or computer network. [Acts 1989, ch. 591, § 1; 1993, ch. 445, § 1.]

39-14-602. Violations — Penalties. — (a) Whoever knowingly, directly or indirectly, accesses, causes to be accessed, or attempts to access any telephone system, telecommunications facility, computer software, computer program, data, computer, computer system, computer network, or any part thereof, for the purpose of:

(1) Obtaining money, property, or services for oneself or another by means of false or fraudulent pretenses, representations, or promises violates this subsection and is subject to the penalties of § 39-14-105;

(2) Causing computer output to purposely be false, for, but not limited to, the purpose of obtaining money, property, or services for oneself or another by

means of false or fraudulent pretenses, representations, or promises violates this subsection and is subject to the penalties of § 39-14-105.

(b) Whoever intentionally and without authorization, directly or indirectly:

(1) Accesses any computer, computer system, or computer network commits a Class C misdemeanor;

(2) Alters, damages, destroys, or attempts to damage or destroy, or cause the disruption to the proper operation of any computer, or who performs an act which is responsible for the disruption of any computer, computer system, computer network, computer software, program or data which resides or exists internal or external to a computer, computer system or computer network is punishable as in § 39-14-105;

(3) Introduces or is responsible for the input of any computer contaminant into any computer, computer system, or computer network commits a Class B misdemeanor; or

(4) Accesses, causes to be accessed, or attempts to access any computer software, computer program, data, computer, computer system, computer network, or any part thereof, for the purpose of gaining access to computer material or to tamper with computer security devices, including, but not limited to, system hackers, is guilty of a Class A misdemeanor.

(c) Whoever receives, conceals, uses, or aids another in receiving, concealing or using any proceeds resulting from a violation of either subsection (a) or subdivision (b)(2), knowing the same to be proceeds of such violation, or whoever receives, conceals, uses, or aids another in receiving, concealing or using, any books, records, documents, property, financial instrument, computer software, program, or other material, property, or objects, knowing the same to have been used in violating either subsection (a) or subdivision (b)(2) is subject to the penalties of § 39-14-105. [Acts 1989, ch. 591, § 1; 1993, ch. 445, § 1.]

39-14-603. Venue. — For the purposes of venue under the provisions of this part, any violation of this part shall be considered to have been committed:

(1) In any county in which any act was performed in furtherance of any transaction violating this part;

(2) In any county in which any violator had control or possession of any proceeds of the violation or of any books, records, documents, property, financial instrument, computer software, computer program or other material, objects or items which were used in furtherance of the violation; and

(3) In any county from which, to which or through which any access to a computer, computer system, or computer network was made, whether by wire, electromagnetic waves, microwaves or any other means of communication. [Acts 1989, ch. 591, § 1.]

Chapter 15

Expungement of Records

40-15-106. Expunging records. — (a)(1) Upon petition by a defendant in the court which entered a nolle prosequi in his case the court shall order all public records expunged.

(2) For purposes of this section, the word "court" shall also include any court exercising juvenile jurisdiction.

(b) Public records, for the purpose of expunction only, shall not include arrest histories, investigative reports, intelligence information of law-enforcement agencies, or files of district attorneys general that are maintained as confidential records for law enforcement purposes and are not open for inspection by members of the public and shall also not include records of the department of human services which are confidential under state or federal law and which are required to be maintained by state or federal law for audit or other purposes. Whenever an order of expunction issues under this section directed to the department of human services, the department shall notify the defendant if there are records required to be maintained as directed above and the basis therefor. The department shall delete identifying information in these records whenever permitted by state or federal law. These records are to be expunged whenever their maintenance is no longer required by state or federal law.

(c)(1) Release of such confidential records or information contained therein other than to law-enforcement agencies for law-enforcement purposes shall be a misdemeanor.

(2) This section shall not be construed to deny access to any record to the comptroller of the treasury or his agent for purposes of audit investigation; the comptroller or his agent having such access shall protect the confidential nature of any such records which are not otherwise public under other statutes.

(3) Release of arrest histories of a defendant or potential witness in a criminal proceeding to an attorney of record in the proceeding shall be made to such attorney upon request. [Acts 1976 (Adj. S.), ch. 790, § 1; 1980 (Adj. S.), ch. 892, § 1; T.C.A., § 40-2109; Acts 1987, ch. 335, §§ 1, 3.]

CHAPTER 32

DESTRUCTION OF RECORDS UPON DISMISSAL OR ACQUITTAL

SECTION.

40-32-101. Destruction or release of records.

40-32-101. Destruction or release of records. — (a)(1) All public records of a person who has been charged with a misdemeanor or a felony, and which charge has been dismissed, or a no true bill returned by a grand jury, or a verdict of not guilty returned by a jury or a conviction which has by appeal been reversed, shall, upon petition by that person to the court having jurisdiction in such previous action, be removed and destroyed without cost to such person; however, the cost for destruction of records shall apply where the charge or warrant was dismissed in any court as a result of the successful completion of diversion program according to §§ 40-15-102 — 40-15-105; provided, however, that such cost for destruction shall not exceed twenty-five dollars (\$25.00).

(2) All public records of a person required to post bond under the provisions of § 38-3-109 or § 38-4-106, shall be removed and destroyed as required by this chapter upon the expiration of any bond required, if no surety on the bond is required to fulfill the obligations of the bond.

(3) For purposes of this section, "court" also includes any court exercising juvenile jurisdiction.

(b) Public records, for the purpose of expunction only, shall not include arrest histories, investigative reports, intelligence information of law-enforcement agencies, or files of district attorneys general that are maintained as confidential records for law-enforcement purposes and are not open for inspection by members of the public and shall also not include records of the department of human services which are confidential under state or federal law and which are required to be maintained by state or federal law for audit or other purposes. Whenever an order of expunction issues under this section directed to the department of human services, the department shall notify the defendant if there are records required to be maintained as directed above and the basis therefor. The department shall delete identifying information in these records whenever permitted by state or federal law. These records are to be expunged whenever their maintenance is no longer required by state or federal law.

(c)(1) Release of such confidential records or information contained therein other than to law-enforcement agencies for law-enforcement purposes shall be a misdemeanor.

(2) This section shall not be construed to deny access to any record to the comptroller of the treasury or his agent for purposes of audit investigation; the comptroller or his agent having such access shall protect the confidential nature of any such records which are not otherwise public under other statutes.

(3) Release of arrest histories of a defendant or potential witness in a criminal proceeding to an attorney of record in the proceeding shall be made to such attorney upon request. [Acts 1973, ch. 318, § 1; 1975, ch. 193, § 1; 1977, ch. 161, § 1; 1978 (Adj. S.), ch. 736, § 1; 1980 (Adj. S.), ch. 892, § 2; 1982 (Adj. S.), ch. 756, § 1; T.C.A., § 40-4001; Acts 1987, ch. 335, §§ 2, 4.]

TENNESSEE

CRIMINAL SENTENCING REFORM ACT OF 1989

40-35-313. Probation — Conditions — Discharge — Expungement from official records. — (a)(1) If any person who has not previously been convicted of a felony or a Class A misdemeanor is found guilty or pleads guilty to a misdemeanor which is punishable by imprisonment or a Class C, D or E felony, the court may, without entering a judgment of guilty and with the consent of such person, defer further proceedings and place him on probation upon such reasonable conditions as it may require and for a period of time not less than the period of the maximum sentence for the misdemeanor with which he is charged, or not more than the period of the maximum sentence of the felony with which he is charged, on condition that the defendant pay, in addition to the payment of ten dollars (\$10.00) per month as part payment of expenses incurred by the agency, department, program, group or association in supervising the defendant, any or all additional costs of the defendant's supervision, counseling or treatment in a specified manner, based upon the defendant's ability to pay. Such payment shall be made to the clerk of the court in which proceedings against such defendant were pending, to be sent to the agency, department, program, group or association responsible for the supervision of such defendant, unless such defendant is found to be indigent and without anticipated future funds with which to make such payment. Such clerk of the court collecting such payment is permitted to retain five percent (5%) of the proceeds collected for the handling and receiving of such proceeds as provided above.

(2) The provisions of this subsection relative to the payment of a supervision fee shall not apply to any person subject to the provisions of chapter 28, part 2 of this title. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. If, during the period of his probation, such person does not violate any of the conditions of the probation, then upon expiration of such period, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this subsection is without court adjudication of guilt, but a non-public record thereof is retained by the court solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, such person qualifies under this subsection, or for the limited purposes provided in subsection (b). Such discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime or for any other purpose, except as provided in subsection (b). Discharge and dismissal under this subsection may occur only once with respect to any person.

(b) Upon the dismissal of such person and discharge of the proceedings against him under subsection (a), such person may apply to the court for an order to expunge from all official records (other than the non-public records to be retained by the court under subsection (a)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. Each application shall contain a notation by the clerk evidencing that all court costs are paid in full, prior to the entry of an order of expungement. If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged, it shall enter such order. The effect of such order is to restore such person, in the

contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose, except when the person who has availed himself of the privileges of expungement then assumes the role of plaintiff in a civil action based upon the same transaction or occurrence as the expunged criminal record. In that limited situation, notwithstanding any provision of this section or § 40-32-101(a)(3)-(c)(3) to the contrary, the non-public records are admissible for the following purposes:

(1) A plea of guilty is admissible into evidence in the civil trial as a judicial admission; and

(2) A verdict of guilty by a judge or jury is admissible into evidence in the civil trial as either a public record or is admissible to impeach the truthfulness of the plaintiff. In addition, the non-public records retained by the court, as provided in subsection (a), shall constitute the official record of conviction and are subject to the subpoena power of the courts of civil jurisdiction. [Acts 1989, ch. 591, § 6; 1990, ch. 980, §§ 25, 26.]

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BANKS AND FINANCIAL INSTITUTIONS

CHAPTER 6

PAWNBROKERS

45-6-206. Eligibility requirements for license. — (a) To be eligible for a pawnbroker's license, an applicant must:

- (1) Be of good moral character;
- (2) Have net assets, as defined herein, of at least seventy-five thousand dollars (\$75,000), readily available for use exclusively in conducting the business of each licensed pawnbroker;
- (3) Show that the business will be operated lawfully and fairly within the purpose of this part; and
- (4) Produce satisfactory evidence that the applicant(s) has/have been a bona fide resident(s) of the state of Tennessee for at least two (2) years next preceding the date of the application.

(b) Despite a person's eligibility for a pawnbroker's license under subsection (a), the county clerk shall find ineligible an applicant who has a prior felony conviction within ten (10) years next preceding which:

- (1) Directly relates to the duties and responsibilities of the occupation of a pawnbroker; or
 - (2) Otherwise makes the applicant presently unfit for a pawnbroker's license.
- (c) If an applicant for a pawnbroker's license is a business entity, the eligibility requirements of subsections (a) and (b) apply to each operator or beneficial owner, and as to a corporation, to each officer, shareholder, and director. [Acts 1988, ch. 724, § 6.]

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PART 2—TENNESSEE STATE RACING COMMISSION

4-36-202. Eligibility for appointment and membership. — To be eligible for appointment to and membership on the commission, a person shall:

(1) Have been a legal resident of this state for five (5) years immediately preceding the appointment, and shall be more than thirty (30) years of age;

(2) Be of such character and reputation as to promote public confidence in the administration of racing within this state;

(3) Not directly or indirectly or in any capacity own or have any interest in any racetrack where a race meeting may be held, including but not limited to an interest as owner, lessor, lessee, operator, manager, concessionaire, stockholder or employee;

(4) Not be a public official or public employee;

(5) Not have been convicted of any gambling or gaming offense under the federal law or the laws of this state or any other state or of an offense which is punishable as a felony under the federal law or the laws of this state or any other state;

(6) Not wager or cause a wager to be placed upon the outcome of any race at a race meeting which is under the jurisdiction and supervision of the commission;

(7) Not accept any pecuniary or other form of reward or gift from any association or any licensee of the commission; and

(8) Have no pecuniary interest or engage in any private employment in a business which does business with any association. [Acts 1987, ch. 311, § 5.]

10-7-504. Confidential records. — (a)(1) The medical records of patients in state, county and municipal hospitals and medical facilities, and the medical records of persons receiving medical treatment, in whole or in part, at the expense of the state, county or municipality, shall be treated as confidential and shall not be open for inspection by members of the public. Any records containing the source of body parts for transplantation or any information concerning persons donating body parts for transplantation shall be treated as confidential and shall not be open for inspection by members of the public.

(2) All investigative records of the Tennessee bureau of investigation, all criminal investigative files of the motor vehicle enforcement division of the department of safety relating to stolen vehicles or parts, and all files of the drivers' license issuance division of the department of safety relating to bogus drivers' licenses issued to undercover law enforcement agents shall be treated as confidential and shall not be open to inspection by members of the public. The information contained in such records shall be disclosed to the public only in compliance with a subpoena or an order of a court of record; however, such investigative records of the Tennessee bureau of investigation shall be open to inspection by elected members of the general assembly if such inspection is directed by a duly adopted resolution of either house or of a standing or joint committee of either house. Records shall not be available to any member of the executive branch except those directly involved in the investigation in the Tennessee bureau of investigation itself and the governor. The bureau, upon written request by an authorized person of a state governmental agency, is authorized to furnish and disclose to the requesting agency the criminal history, records and data from its files, and the files of the federal government and other states to which it may have access, for the limited purpose of determining whether a license or permit should be issued to any person, corporation, partnership or other entity, to engage in an authorized activity affecting the rights, property or interests of the public or segments thereof.

(3) The records, documents and papers in the possession of the military department which involve the security of the United States and/or the state of Tennessee, including, but not restricted to, national guard personnel records, staff studies and investigations, shall be treated as confidential and shall not be open for inspection by members of the public.

(4) The records of students in public educational institutions shall be treated as confidential. Information in such records relating to academic performance, financial status of a student or the student's parent or guardian, medical or psychological treatment or testing shall not be made available to unauthorized personnel of the institution or to the public or any agency, except those agencies authorized by the educational institution to conduct specific research or otherwise authorized by the governing board of the institution, without the consent of the student involved or the parent or guardian

of a minor student attending any institution of elementary or secondary education, except as otherwise provided by law or regulation pursuant thereto and except in consequence of due legal process or in cases when the safety of persons or property is involved. The governing board of the institution, the department of education, and the Tennessee higher education commission shall have access on a confidential basis to such records as are required to fulfill their lawful functions. Statistical information not identified with a particular student may be released to any person, agency, or the public; and information relating only to an individual student's name, age, address, dates of attendance, grade levels completed, class placement and academic degrees awarded may likewise be disclosed.

(5)(A) The following books, records and other materials in the possession of the office of the attorney general and reporter which relate to any pending or contemplated legal or administrative proceeding in which the office of the attorney general and reporter may be involved shall not be open for public inspection:

(i) Books, records or other materials which are confidential or privileged by state law;

(ii) Books, records or other materials relating to investigations conducted by federal law enforcement or federal regulatory agencies, which are confidential or privileged under federal law;

(iii) The work product of the attorney general and reporter or any attorney working under the attorney general and reporter's supervision and control;

(iv) Communications made to or by the attorney general and reporter or any attorney working under the attorney general and reporter's supervision and control in the context of the attorney-client relationship; or

(v) Books, records and other materials in the possession of other departments and agencies which are available for public inspection and copying pursuant to §§ 10-7-503 and 10-7-506. It is the intent of this section to leave subject to public inspection and copying pursuant to §§ 10-7-503 and 10-7-506 such books, records and other materials in the possession of other departments even though copies of the same books, records and other materials which are also in the possession of the office of the attorney general and reporter are not subject to inspection or copying in the office of the attorney general and reporter; provided, that such records, books and materials are available for copying and inspection in such other departments.

(B) Books, records and other materials made confidential by this subsection which are in the possession of the office of the attorney general and reporter shall be open to inspection by the elected members of the general assembly, if such inspection is directed by a duly adopted resolution of either house or of a standing or joint committee of either house and is required for the conduct of legislative business.

(C) Except for the provisions of subdivision (a)(5)(B), the books, records and materials made confidential or privileged by this subdivision shall be disclosed to the public only in the discharge of the duties of the office of the attorney general and reporter.

(6) State agency records containing opinions of value of real and personal property intended to be acquired for a public purpose shall not be open for public inspection until the acquisition thereof has been finalized. This shall not prohibit any party to a condemnation action from making discovery relative to values pursuant to the rules of civil procedure as prescribed by law.

(7) Proposals received pursuant to personal service, professional service, and consultant service contract regulations, and related records, including evaluations and memoranda, shall be available for public inspection only after the completion of evaluation of same by the state. Sealed bids for the purchase of goods and services, and leases of real property, and individual purchase records, including evaluations and memoranda relating to same, shall be available for public inspection only after the completion of evaluation of same by the state.

(8) All investigative records and reports of the internal affairs division of the department of correction or of the department of youth development shall be treated as confidential and shall not be open to inspection by members of the public. However, an employee of the department of correction or of the department of youth development shall be allowed to inspect such investigative records and reports if the records or reports form the basis of an adverse action against the employee. The release of reports and records shall be in accordance with the Tennessee Rules of Civil Procedure. The court or administrative judge having jurisdiction over the proceedings shall issue appropriate protective orders, when necessary, to ensure that the information is disclosed only to appropriate persons. The information contained in such records and reports shall be disclosed to the public only in compliance with a subpoena or an order of a court of record.

(9) Official health certificates, collected and maintained by the state veterinarian pursuant to rule chapter 0080-2-1 of the department of agriculture, shall be treated as confidential and shall not be open for inspection by members of the public.

(10)(A) The capital plans, marketing information, proprietary information and trade secrets submitted to the Tennessee venture capital network at Middle Tennessee State University shall be treated as confidential and shall not be open for inspection by members of the public.

(B) As used in this subdivision (a)(10), unless the context otherwise requires:

(i) "Capital plans" means plans, feasibility studies, and similar research and information that will contribute to the identification of future business sites and capital investments;

(ii) "Marketing information" means marketing studies, marketing analyses, and similar research and information designed to identify potential customers and business relationships;

(iii) "Proprietary information" means commercial or financial information which is used either directly or indirectly in the business of any person or company submitting information to the Tennessee venture capital network at Middle Tennessee State University, and which gives such person an advantage or an opportunity to obtain an advantage over competitors who do not know or use such information; and

(iv) "Trade secrets" means manufacturing processes, materials used therein, and costs associated with the manufacturing process of a person or company submitting information to the Tennessee venture capital network at Middle Tennessee State University.

(b) Any record designated "confidential" shall be so treated by agencies in the maintenance, storage and disposition of such confidential records. These records shall be destroyed in such a manner that they cannot be read, interpreted or reconstructed. The destruction shall be in accordance with an approved records disposition authorization from the public records commission.

(c) Notwithstanding any provision of the law to the contrary, any confidential public record in existence more than seventy (70) years shall be open for public inspection by any person unless disclosure of the record is specifically prohibited or restricted by federal law or unless the record is a record of services for a person for mental illness or mental retardation. The provisions of this section do not apply to a record concerning an adoption or a record maintained by the office of vital records or by the Tennessee bureau of investigation. For the purpose of providing an orderly schedule of availability for access to such confidential public records for public inspection, all records created and designated as confidential prior to January 1, 1901, shall be open for public inspection on January 1, 1985. All other public records created and designated as confidential after January 1, 1901 and which are seventy (70) years old on January 1, 1985, shall be open for public inspection on January 1, 1986; thereafter all such records shall be open for public inspection pursuant to this part after seventy (70) years from the creation date of such records.

(d) Records of any employee's identity, diagnosis, treatment, or referral for treatment that are maintained by any state or local government employee assistance program shall be confidential; provided, that any such records are maintained separately from personnel and other records regarding such employee that are open for inspection. For purposes of this subsection, "employee assistance program" means any program that provides counseling, problem identification, intervention, assessment, or referral for appropriate diagnosis and treatment, and follow-up services to assist employees of such state or local governmental entity who are impaired by personal concerns including, but not limited to, health, marital, family, financial, alcohol, drug, legal, emotional, stress or other personal concerns which may adversely affect employee job performance. [Acts 1957, ch. 285, § 2; 1970, ch. 531, §§ 1, 2; 1973, ch. 99, § 1; 1975, ch. 127, § 1; 1976, ch. 552, § 1; 1976, ch. 777, § 1; 1977, ch. 152, § 3; 1978, ch. 544, § 1; 1978, ch. 890, § 2; T.C.A., § 15-305; Acts 1983, ch. 211, § 1; 1984, ch. 947, § 2; 1985, ch. 421, §§ 1-4; 1985 (1st E.S.), ch. 5, § 29; 1987, ch. 118, § 2; 1987, ch. 337, § 20; 1988, ch. 783, § 1; 1988, ch. 894, § 2; 1989, ch. 75, § 1; 1989, ch. 278, § 27; 1990, ch. 888, § 1; 1991, ch. 129, § 1; 1992, ch. 823, § 1.]

10-7-505. Violations. — Any official who shall violate the provisions of §§ 10-7-503 — 10-7-506 shall be deemed guilty of a misdemeanor. [Acts 1957, ch. 285, § 3; 1975, ch. 127, § 2; 1977, ch. 152, § 4; T.C.A., § 15-306.]

10-7-506. Public records having commercial value. — (a) In all cases where any person has the right to inspect any such public records, such person shall have the right to take extracts or make copies thereof, and to make photographs or photostats of the same while such records are in the possession, custody and control of the lawful custodian thereof or such custodian's authorized deputy; provided, the lawful custodian of such records shall have the right to adopt and enforce reasonable rules governing the making of such extracts, copies, photographs or photostats.

(b) Within ten (10) days of the release of public records originating in the office of the county assessor of property, the state agency releasing such records shall notify, in writing, the assessor of property of the county in which such records originated of the records released and the name and address of the person or firm receiving the records. The reporting requirements of this subsection shall not apply when county or city summary assessment information is released.

(c)(1) If a request is made for a copy of a public record that has commercial value, and such request requires the reproduction of all or a portion of a computer generated map or other similar geographic data that was developed with public funds, the legislative body of any county to which this subsection applies may establish and impose reasonable fees for the reproduction of such record, in addition to any fees or charges that may lawfully be imposed pursuant to this section. The additional fees authorized by this subsection may not be assessed against individuals who request copies of records for themselves or when the record requested does not have commercial value.

(2) The additional fees authorized by this subsection shall relate to the actual development costs of such maps or geographic data and may include:

(A) Labor costs;

(B) Costs incurred in design, development, testing, implementation and training; and

(C) Costs necessary to ensure that the map or data is accurate, complete and current, including the cost of adding to, updating, modifying and deleting information.

(3) The total collections for the additional fees authorized by this subsection shall not exceed the total development costs of the system producing the maps or geographic data. Once such additional fees have paid the total development costs of the system, such fees shall be adjusted to generate only the amount necessary to maintain the data and ensure that it is accurate, complete and current for the life of the particular system.

(4) As used in this subsection, "commercial value" means a record that may be used for commercial real estate development or related activities and for which a monetary profit may be realized.

(5) The provisions of this subsection shall apply only in counties having a population of not less than three hundred thousand (300,000) nor more than four hundred eighty thousand (480,000) according to the 1980 federal census or any subsequent federal census. [Acts 1957, ch. 285, § 4; T.C.A., § 15-307; Acts 1986, ch. 546, § 1; 1991, ch. 433, § 1; 1992, ch. 682, § 1.]

10-7-507. Records of convictions of traffic and other violations — Availability. — Any public official having charge or custody of or control over any public records of convictions of traffic violations or any other state, county or municipal public offenses shall make available to any citizen, upon request, during regular office hours, a copy or copies of any such record requested by such citizen, upon the payment of a reasonable charge or fee therefor. Such official is authorized to fix a charge or fee per copy that would reasonably defray the cost of producing and delivering such copy or copies. [Acts 1974, ch. 581, § 1; T.C.A., § 15-308.]

10-7-508. Access to records — Records of archival value — Retention or disposal of records. — (a) The director of the records management division, the state librarian and archivist, and the comptroller of the treasury or the comptroller's designated representative for purposes of audit, shall be accorded access to and may examine and receive any public records or writings, whether or not they are subject to public inspection. They shall maintain inviolate any privileged or confidential information so acquired and any record or writing so defined by law.

(b) The state librarian and archivist or an archivist designated by the state librarian and archivist and the director of records management or a records

CHAPTER 35
PRIVATE PROTECTIVE SERVICES

62-35-107. Action upon applications — Investigations — Approval or denial of licenses. — (a) Upon receipt of an application for a license, the commissioner shall:

(1) Conduct an investigation to determine whether the statements made in the application are true;

(2) Compare, or request that the Tennessee bureau of investigation compare, the fingerprints submitted with the application to fingerprints filed with the Tennessee bureau of investigation; and

(3) Submit the fingerprints to the federal bureau of investigation for a search of its files to determine whether the individual fingerprinted has any recorded convictions.

(b) The commissioner shall issue a license, in a form which he shall prescribe, to qualified applicants upon receipt of a nonrefundable, nonproratable fee in accordance with the schedule promulgated by the commissioner.

(c) If an application for a license is denied, the commissioner shall notify the applicant in writing and shall set forth the grounds for denial. If such grounds are subject to correction by the applicant, the notice of denial shall so state and specify a reasonable period of time within which the applicant must make the required correction.

(d) An application shall be accompanied by a notarized statement sworn to by the applicant as to the number of employees in service. Making a false statement shall be punishable by a civil penalty of five hundred dollars (\$500) and assessment of the maximum application fee. [Acts 1987, ch. 436, § 7; 1988, ch. 717, §§ 1, 3; 1989, ch. 523, § 187.]

37-10-207. Children's fingerprint card file. — The Tennessee bureau of investigation shall maintain a separate fingerprint card file for "Children" which shall consist of the "Children" fingerprint cards submitted to it pursuant to § 37-10-206 together with any latent prints believed to be children's prints which have been submitted to it for purposes of identifying missing children. Once each year the bureau shall remove and return to the parent or destroy all fingerprint cards from the children's fingerprint file for children who have become eighteen (18) years of age, unless the child has been reported missing or the child requests in writing that his/her fingerprint remain in the file. Also, the bureau shall destroy any child's fingerprint card upon written request of the parent. The bureau is also authorized to receive "children" fingerprint cards or copies thereof from the federal bureau of investigation when the prints may have been sent directly to the bureau without having also been sent to the Tennessee bureau of investigation as herein provided. The bureau shall not file any of the children's fingerprints authorized herein in any other fingerprint card file. The bureau shall only search the children's fingerprint card file for the purpose of trying to locate and/or identify children who have been reported as missing children and the file shall never be searched for the purpose of identifying a child as having committed a crime unless the parent so requests in writing. [Acts 1985, ch. 158, §. 7.]

MICHIE'S TENNESSEE CODE ANNOTATED
TITLE 26 PROFESSIONS, BUSINESSES AND TRADES
CHAPTER 26 PRIVATE INVESTIGATORS

62-26-104. Investigation of applicant.

(a) Upon receipt of the application, the clerk shall forward it to the district attorney general representing the county in which the application is made.

(b) The district attorney general shall have a reasonable time in which to ascertain whether the applicant has been convicted of a felony or two (2) misdemeanors in any state or federal court, and shall submit his findings to the clerk. [Acts 1978, ch. 691, § 4; T.C.A., § 62-2604; Acts 1983, ch. 43, § 4.]

62-26-105. Issuance of license — Identification card. — (a)(1) If the applicant has not been convicted of a felony or two (2) misdemeanors, and received a sentence of six (6) months or more for each conviction, the clerk shall issue him a license as a private investigator.

(2) This license shall be valid throughout the state of Tennessee for a period of three (3) years from date of issuance.

(3) If the applicant has been convicted of a felony or two (2) misdemeanors, and received a sentence of six (6) months or more for each conviction, the clerk shall reject his application. Provided, however, a licensed private detective as of March 31, 1983, who has had prior to March 31, 1983, two (2) such misdemeanor convictions shall not be prevented from having his license renewed.

(b)(1) Upon issuance of a license, the clerk shall also issue an identification card which shall be valid for the same period as such license.

(A) The identification card shall bear the full name and address of the investigator, his social security number, his date of birth, a recent color photograph of the licensee, the issuance and expiration dates of the license and a line for his signature.

(B) Such cards shall be numbered consecutively as issued by the clerk.

(2) The identification card, as provided in subdivision (b)(1), is to be signed by the private investigator upon its receipt and is to be carried on his person at all times when he is engaged in any activities in the practice of his profession.

(3) It is unlawful for any private investigator knowingly to permit any other person to carry and use his identification card.

(4) If the license of a private investigator is revoked, as provided for in this chapter, it shall be the duty of the private investigator to surrender his license and identification card to the clerk who issued them within ten (10) days of the revocation.

(5)(A) If an identification card as provided by this chapter is lost, misplaced, destroyed or stolen, the private investigator shall immediately report that fact to the clerk who issued the identification card and apply for reissuance of an identification card on such forms as the clerk may provide.

(B) After taking reasonable steps to determine the disposition of the original identification card, the clerk shall issue a replacement identification card to the private investigator, which shall bear the same information as the original identification card. The numbering of the replacement identification card shall be the same as the original, except that it shall have a letter "R" affixed to the end of that number.

(C) The clerk shall collect a nonrefundable fee of five dollars (\$5.00) for the reissuance and shall note the reissuance in the records maintained on the licenses as identification cards. For his services, the clerk shall receive such fee. [Acts 1978, ch. 691, § 5; 1979, ch. 328, §§ 1, 5, 6; T.C.A., § 62-2605; Acts 1983, ch. 43, § 5.]

62-26-106. Maintenance of records. — (a) The clerk shall maintain records of all applications made to him for licenses and the disposition of each.

(b) The clerk shall also maintain records of the issuance, reissuance and revocation of licenses and identification cards. [Acts 1978, ch. 691, § 6; 1979, ch. 328, § 2; T.C.A., § 62-2606.]

62-26-107. Clerk's compensation. — For his services, the clerk shall receive the application fee as provided in § 62-26-103. [Acts 1978, ch. 691, § 7; T.C.A., § 62-2607.]

PART 2—LICENSING AND REGULATION

62-26-202. Definitions. — As used in this part, unless the context otherwise requires:

- (1) "Branch manager" means the individual who is immediately responsible for the operation of a branch office;
- (2) "Branch office" means any office of an investigations company within this state other than its principal place of business within this state;
- (3) "Commissioner" means the commissioner of commerce and insurance or the commissioner's designee;
- (4) "Identification card" means a pocket card issued by the commissioner evidencing that the holder has met the qualifications required by this part to perform the duties of a private investigator in this state;
- (5) "Investigations company" means any person who engages in the business or accepts employment to obtain or furnish information with reference to:
 - (A) Crime or wrongs done or threatened against the United States or any state or territory of the United States;
 - (B) The identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputations or character of any person;
 - (C) The location, disposition or recovery of lost or stolen property;
 - (D) The cause or responsibility for fires, libels, losses, accidents, damages or injuries to persons or to property; or
 - (E) The securing of evidence to be used before any court, board, commission, officer or investigating committee;
- (6) "Licensee" means any investigations company and private investigator licensed in accordance with the provisions of this part;
- (7) "Person" means any individual, firm, association, company, partnership, corporation, non-profit organization, institution or similar entity;
- (8) "Principal corporate officer" means the chief executive officer, president, vice president, treasurer, secretary, or comptroller, as well as any other responsible officer or executive employee who performs functions for the corporation corresponding to those performed by the foregoing officers;
- (9) "Private investigator" means any person who performs one (1) or more services as described in subdivision (5);
- (10) "Qualifying agent" means a principal corporate officer meeting the qualifications set forth in this part for operating an investigations company; and
- (11) [Deleted by 1993 amendment.]
- (12) "Commission" means the private investigation commission. [Acts 1990, ch. 780, § 3; 1991, ch. 457, § 1; 1993, ch. 511, §§ 1, 2.]

62-26-203. [Repealed.]

62-26-204. License required. — (a) Except as otherwise provided in this part, it is unlawful for any person to act as an investigations company or private investigator, without first having obtained a license from the commission.

(b) However, all investigations companies and private investigators holding a license under part 1 [repealed] of this chapter shall continue in effect until their expiration. Holders of such licenses may thereafter obtain the equivalent license under this part by complying with the terms and conditions for renewal prescribed herein.

(c) Every private investigator licensed in accordance with this part shall maintain a place of business at an investigations company which has been duly licensed by the commission.

(d) In the event an applicant for an investigations company license maintains more than one (1) place of business within the state, the applicant shall apply for and obtain a branch office license for each branch office, in addition to the company license for the principal place of business. [Acts 1990, ch. 780, § 5; 1991, ch. 457, § 3; 1993, ch. 511, §§ 4, 5.]

62-26-205. Investigations company license — Application. — (a) An application for an investigations company license shall be filed with the commission on the prescribed form. The application shall include:

- (1) The full name and business address of the applicant; or
 - (A) If the applicant is a partnership, the name and address of each partner; or
 - (B) If the applicant is a corporation, the name and address of the qualifying agent;
- (2) The name under which the applicant intends to do business;
- (3) The address of the principal place of business and all branch offices of the applicant within this state;
- (4) As to each individual applicant; or, if the applicant is a partnership, as to each partner; or, if the applicant is a corporation, as to the qualifying agent, the following information:
 - (A) Full name;
 - (B) Date and place of birth;
 - (C) All residences during the immediate past five (5) years;
 - (D) All employment or occupations engaged in during the immediate past five (5) years;
 - (E) Three (3) sets of classifiable fingerprints;
 - (F) Three (3) credit references from lending institutions or business firms with whom the subject has established a credit record; and
 - (G) A list of all convictions and pending charges of the commission of a felony or misdemeanor in any jurisdiction;

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- (5) If the applicant is a corporation, the following information:
- (A) The correct legal name of the corporation;
 - (B) The state and date of incorporation;
 - (C) The date the corporation qualified to do business in this state;
 - (D) The address of the corporate headquarters, if located outside of this state; and
 - (E) The names of two (2) principal corporate officers other than the qualifying agent, and the business address, residence address and the office held by each in the corporation; and
- (6) Such other information as the commission may reasonably require.
- (b) The application shall be subscribed and sworn to:
- (1) By the applicant, if the applicant is an individual;
 - (2) By each partner, if the applicant is a partnership; or
 - (3) By the qualifying agent, if the applicant is a corporation.
- (c) Any individual signing the application must be at least twenty-one (21) years of age. [Acts 1990, ch. 780, § 6; 1991, ch. 457, § 4.]

62-26-206. Investigations company license — Applicants — Requirements. — Each individual applicant; or, if the applicant is a partnership, each partner; or, if the applicant is a corporation, the qualifying agent, must:

- (1) Be at least twenty-one (21) years of age;
- (2) Be a citizen of the United States or a resident alien;
- (3) Not have been declared by any court of competent jurisdiction incompetent by reason of mental defect or disease unless a court of competent jurisdiction has since declared him competent;
- (4) Not be suffering from habitual drunkenness or narcotics addiction or dependence;
- (5) Be of good moral character; and
- (6) Pass an examination to be administered at least twice annually by the commission designed to measure knowledge and competence in the investigations field. [Acts 1990, ch. 780, § 7; 1991, ch. 457, § 5; 1993, ch. 511, § 6.]

62-26-207. Private investigator license — Applicants — Requirements — Apprentice status. — (a) Each applicant for a private investigator license must:

- (1) Be at least twenty-one (21) years of age;
 - (2) Be a citizen of the United States or a resident alien;
 - (3) Not have been declared by any court of competent jurisdiction incompetent by reason of mental defect or disease unless a court of competent jurisdiction has since declared the applicant competent;
 - (4) Not be suffering from habitual drunkenness or narcotics addiction or dependence;
 - (5) Be of good moral character; and
 - (6) Pass an examination to be administered at least twice annually by the commission, designed to measure knowledge and competence in the investigations field.
- (b) The commission shall grant apprentice status, by correspondence, to applicants for an individual investigator's license; provided, that the applicant is employed by an investigative company. The apprentice is enjoined from working without the direct supervision of a licensed investigator until such time as the apprentice's license application is fully processed.

(c) An apprenticeship may not commence until the sponsoring company has submitted a notice of intent to sponsor. Such notice shall be by written endorsement to the application of the apprentice.

(d) An apprentice status shall be limited to six (6) months and a person shall be able to apply for an apprentice status only once.

(e) Apprenticeship is intended to serve as a learning process. Sponsors shall assume a training status by providing direction and control of the apprentice. No sponsor may sponsor more than six (6) apprentices at one (1) time. The sponsor shall certify completion of training or the termination of the apprentice within fifteen (15) days of such action. The report shall be in such form as may be required by the commission, but shall include as a minimum the following:

- (1) The inclusive dates of the apprenticeship;
- (2) A narrative explaining the primary duties, types of experiences gained and the scope of the training received; and
- (3) An evaluation of the performance of the apprentice and a recommendation regarding future licensing. [Acts 1990, ch. 780, § 8; 1991, ch. 457, §§ 6, 7; 1993, ch. 511, §§ 7, 25.]

62-26-208. Commission — Investigation of applications — Issuance of license — Notification of denial — Identification card. — (a) Upon receipt of an application for a license, accompanied by a nonrefundable, nonproratable application fee as set by the commission according to the following schedule:

Private investigator license	\$ _____
Company license	
Number of private investigators	
Employed by company	
Sole practitioner private investigator	\$ _____
Two to five (2-5) employees	\$ _____
Over five (5) Employees	\$ _____

the commission shall:

(1) Conduct an investigation to determine whether the statements made in the application are true;

(2) Request that the Tennessee bureau of investigation compare the fingerprints submitted with the application to fingerprints filed with the Tennessee bureau of investigation. On subsequent applications, the Tennessee bureau of investigation shall, at the request of the commission, review its criminal history files, based upon the name, date of birth, sex and race, and social security number of an applicant whose fingerprints have previously been submitted to the bureau, for any new information since the date of the fingerprint comparison, and shall furnish any information thereby derived to the commission; and

(3) Submit the fingerprints to the federal bureau of investigation for a search of its files to determine whether the individual fingerprinted has any recorded convictions.

(b) The commission shall issue a license, in a form which the commission shall prescribe, to qualified applicants upon receipt of a nonrefundable, nonproratable fee as set by the commission in accordance with the following schedule:

Private investigator license	\$ _____
Company license	
Number of private investigators	
Employed by company	
Sole practitioner private investigator	\$ _____
Two to five (2-5) employees	\$ _____

Over five (5) employees

\$ _____

(c) If an application for a license is denied, the commission shall notify the applicant in writing and shall set forth the grounds for denial. If such grounds are subject to correction by the applicant, the notice of denial shall so state and specify a reasonable period of time within which the applicant must make the required correction.

(d) The commission shall issue with every private investigator license an identification card that shall contain at least the following information:

- (1) Name;
- (2) Photograph;
- (3) Physical characteristics;
- (4) Private investigator license number; and
- (5) Expiration date of license.

(e) The identification card shall be issued in a wallet-sized card and shall be permanently laminated.

(f) The identification card shall be carried on the person of the licensee when engaged in the activities of the licensee.

(g) An application shall be accompanied by a notarized statement sworn to by the applicant as to the identity and number of private investigators employed by or affiliated with such investigation company. Making a false statement shall be punishable by a civil penalty not to exceed one thousand dollars (\$1,000) and assessment of the maximum application fee. [Acts 1990, ch. 780, § 9; 1991, ch. 457, §§ 8-11; 1993, ch. 511, §§ 8-10.]

Amendments. The 1993 amendment substituted "commission" for "commissioner" in (a) and (b); rewrote (a)(2), which read: "Compare, or request that the Tennessee bureau of investigation compare, the fingerprints submitted with the application to fingerprints filed with the Tennessee bureau of investigation; and";

and rewrote the first sentence in (g), which read: "An applicant shall be accompanied by a notarized statement sworn to by the applicant as to the number of private investigator employees in service."

Effective Dates. Acts 1993, ch. 511, § 27. May 31, 1993.

62-26-209. Posting of license. — Every license issued under this part shall be posted conspicuously in the licensee's principal place of business. [Acts 1990, ch. 780, § 10; 1993, ch. 511, § 11.]

Amendments. The 1993 amendment deleted "in this state" following "business."

Effective Dates. Acts 1993, ch. 511, § 27. May 31, 1993.

62-26-211. Renewal — Validity. — (a) A license, or renewal thereof, issued under this part, shall be valid for a period of two (2) years from the date of issuance. The commission shall provide each licensee with a renewal application form sixty (60) days prior to the expiration of the license.

(b) The fee for the timely renewal of a license shall be as set by the commission in accordance with the following schedule:

Private investigator license	\$ _____
Company license	
Number of private investigators	
Employed by company	
Sole practitioner private investigator	\$ _____

Two to five (2-5) employees

\$ _____

Over five (5) employees

\$ _____

A penalty as prescribed by the commission will be assessed on any renewal application postmarked after the expiration date of the license.

(c) No renewal application will be accepted more than thirty (30) days after the expiration date of the license.

(d) A renewal application shall be accompanied by a notarized statement sworn to by the applicant as to the identity and number of private investigators employed by or affiliated with such investigations company. Making a false statement shall be punishable by a civil penalty not to exceed one thousand dollars (\$1,000) and assessment of the maximum renewal fee. [Acts 1990, ch. 780, § 12; 1991, ch. 457, §§ 12-14; 1993, ch. 511, §§ 12, 13.]

Amendments. The 1993 amendment substituted "commission" for "commissioner" in the first and second sentences of (b); and rewrote the first sentence in (d), which read: "A renewal application shall be accompanied by a notarized statement sworn to by the applicant as to the number of private investigators in service."

Effective Dates. Acts 1993, ch. 511, § 27. May 31, 1993.

Cross-References. Director of division of regulatory boards to promulgate rules concerning certain license renewal dates, § 56-1-302.

62-26-212. Termination of duties — Notice — Substitute agent. —

(a) If the qualifying agent of a licensee ceases to perform his duties on a regular basis, the licensee shall:

(1) Within thirty (30) days, notify the commission by certified or registered mail; and

(2) Within three (3) months, obtain a substitute qualifying agent.

(b) The commission may, in its discretion, extend the period for obtaining a substitute qualifying agent for a reasonable time. [Acts 1990, ch. 780, § 13; 1991, ch. 457, § 15.]

62-26-213. Notice to the commission — When required. — A licensee shall notify the commission in writing within thirty (30) days of:

(1) Any change in the qualifying agent or principal corporate officers identified in its application for license;

(2) Any material change in the information previously furnished or required to be furnished to the commission;

(3) Any occurrence which could reasonably be expected to affect the licensee's right to a license under this part, including, but not limited to, any criminal charges placed against any licensee by any person. An investigative company must also, within thirty (30) days, notify the commission of any criminal charges placed against any investigator employed by or affiliated with such company; or

(4) Any judgment received by any person for punitive damages against any licensee. [Acts 1990, ch. 780, § 14; 1991, ch. 457, § 16; 1993, ch. 511, §§ 14, 15.]

62-26-214. Investigations company — Change in ownership. — (a) If the ownership of an investigations company changes, the new owner, if not already a licensee, may not operate that company more than thirty (30) days after the date of such change of ownership unless, within such thirty-day period, the new owner submits an application for a license. If such application is submitted, the new owner may continue to operate such company until the application has been finally determined by the commission.

(b) For good cause, the commission may extend the period for submitting an application pursuant to subsection (a) for a reasonable time. [Acts 1990, ch. 780, § 15; 1991, ch. 457, § 17.]

62-26-215. [Repealed.]

62-26-216. [Repealed.]

62-26-217. Revocation of license. — (a) The commission may suspend, revoke or refuse to issue or renew any license hereunder upon finding that the holder or applicant has:

- (1) Violated any provision of this part, or any rule promulgated hereunder;
- (2) Practiced fraud, deceit, or misrepresentation;
- (3) Knowingly and willfully made a material misstatement in connection with an application for a license or renewal;
- (4) Been convicted by a court of competent jurisdiction of a felony or a misdemeanor, if the commission finds that such conviction reflects unfavorably on the fitness for such license; or

(5) Committed any act which would have been cause for refusal to issue such license or registration card had it existed and been known to the commission at the time of issuance.

(b) In addition to or in lieu of any other lawful disciplinary action under this section, the commission may assess a civil penalty not exceeding two thousand dollars (\$2,000).

(c) A license shall be subject to expiration and renewal during any period in which the license is suspended. [Acts 1990, ch. 780, § 18; 1991, ch. 457, § 20.]

62-26-219. Reciprocal agreements. — The commission may negotiate and enter into reciprocal agreements with appropriate officials in other states to permit licensed investigations companies and private investigators who

meet or exceed the qualifications established in this part to operate across state lines under mutually acceptable terms. [Acts 1990, ch. 780, § 20; 1991, ch. 457, § 21.]

62-26-220. Part — Distribution of copies. — The commission shall provide a copy of this part and any rules promulgated hereunder as may be amended, to:

- (1) Each licensee every two (2) years at no charge; and
- (2) Any other person, upon request, for such reasonable fee as the commission may fix. [Acts 1990, ch. 780, § 21; 1991, ch. 457, § 22.]

62-26-223. Exceptions to applicability of part. — (a) The provisions of this part do not apply to a public accountant and a certified public accountant, or the agent of either, performing duties relating to public accountancy.

(b) The provisions of this part do not apply to:

- (1) A governmental officer or employee performing official duties;
- (2) A person engaged exclusively in the business of obtaining and furnishing information regarding the financial rating or standing and credit of persons.

(3) An attorney at law, or such attorney's agent, performing duties relating to the attorney's practice of law; provided, that

(A) An investigator claiming exemption under this part must be an agent of the attorney acting within the scope of the investigator's employment for the attorney and at the attorney's direction. The duties performed for the attorney must relate directly to the attorney's practice of law; and

(B) Persons who hold themselves out as private investigators or as investigations companies and who advertise themselves as such shall not be exempt under this part.

(4) An insurance company, licensed insurance agent, or staff or independent adjuster performing investigative duties in connection with insurance business transacted;

(5) A private business employee conducting investigations relating to the internal affairs of such business; or

(6) Any individual conducting investigative activities in connection with the repossession of a vehicle.

(c) An insurance adjuster claiming an exemption to this part under subdivision (b)(4) must be an employee of an insurance company duly licensed to do business in this state, a licensed insurance agent in this state or a staff employee of such an agent (or an independent adjuster performing investigative activity limited to matters directly pertaining to an insurance transaction). The employee of the insurance company, the insurance agent or employee thereof, or the independent adjuster or employee thereof, must be acting within the scope of that person's employment with respect to the investigative activity. [Acts 1991, ch. 457, §§ 28, 29; 1992, ch. 879, §§ 1, 2; 1993, ch. 511, §§ 3, 16, 17.]

62-26-224. Investigative arm of commission — Access to records — Subpoenas. — (a) The division of investigation is designated the official investigative arm of the commission.

(b) Licensees are required to provide the investigative staff all records kept within the normal course of business, as they directly pertain to the exact nature of the complaint under investigation.

(c) The commissioner is granted authority to subpoena to deposition those persons or documents necessary to any investigation undertaken under this part, provided all other means including, but not limited to, notification by return receipt registered United States mail, have been exhausted and have not produced the desired results. [Acts 1993, ch. 511, § 19.]

Effective Dates. Acts 1993, ch. 511, § 27.
May 31, 1993.

62-26-225. Continuing professional education. — (a) Effective beginning with the calendar year 1994, each individual licensee is required to complete six (6) hours of continuing professional education acceptable to the commission in each calendar year.

(b) The commission shall make every effort to ensure that at least one (1) seminar per year will be held in each grand division of the state and that each such seminar provides an opportunity to fulfill the continuing professional education requirements of this section. The commission is encouraged to require that at least one (1) hour per year of continuing professional education be devoted to ethics.

(c) The commission shall promulgate such rules as are necessary to carry out this section. [Acts 1993, ch. 511, § 20.]

Effective Dates. Acts 1993, ch. 511, § 27.
May 31, 1993.

62-26-226. Training. — (a) Any person or company offering private investigator training for a fee must first be certified by the commission. The commission shall ensure that the instructors employed by the training company possess both the experience and academic credentials to ensure that the curriculum and instruction of the training company will be beneficial to those seeking to enter the profession. In order to qualify as a certified trainer/instructor, the trainer:

(1) Must be at least twenty-one (21) years of age;

(2) Has at least three (3) years of supervisory experience satisfactory to the commission with an investigative company or proprietary entity, or with any

federal, United States military, state, county or municipal law enforcement agency; and

(3) Is personally qualified to conduct the training required by this chapter.

(b) A certified trainer may, in the trainer's discretion, instruct personally or use a combination of personal instruction, audio and visual training aids.

(c) To assist in the implementation of the training program, the certified trainer may use as an assistant trainer any person who:

(1) Is at least twenty-one (21) years of age; and

(2) Has at least one (1) year of experience with an investigative company or any United States military, state, county or municipal law enforcement agency.

(d) A certified trainer may be an employee of a private investigative or proprietary agency. If the applicant is not so employed, the applicant must be licensed as company under the provisions of this chapter.

(e) The certified trainer shall certify to the successful completion of the training and shall submit such certification to the commission.

(f) The training program, fees and requirements shall be established by rules promulgated by the commission. [Acts 1993, ch. 511, § 21.]

Effective Dates. Acts 1993, ch. 511, § 27.
May 31, 1993.

62-26-227. Prosecutions. — No action taken under this chapter shall preclude prosecution under § 39-16-302. [Acts 1993, ch. 511, § 22.]

Effective Dates. Acts 1993, ch. 511, § 27.
May 31, 1993.

62-26-228, 62-26-229. [Reserved.]

62-26-230. Penalties. — Any person violating the provisions of this part, or any rule promulgated hereunder, is guilty of a Class A misdemeanor. [Acts 1990, ch. 780, § 24; 1989, ch. 591, § 111.]

PART 3—PRIVATE INVESTIGATION COMMISSION

62-26-301. Creation — Members — Terms — Vacancies. — (a) There is hereby created the Tennessee private investigation commission, hereinafter referred to as the "commission," which consists of nine (9) members appointed by the governor, each of whom shall be a resident of this state and shall possess good moral character.

(b) Eight (8) of the members shall each have been principally engaged as private investigators in this state for at least five (5) years prior to the date of their appointment and shall be of recognized business standing.

(c)(1) The remaining one (1) member of the commission shall be a person who is not engaged in or conducting the business, or acting in the capacity, of a private investigator.

TENNESSEE

PUBLIC CHAPTER NO. 993

HOUSE BILL NO. 3062

By Representatives Walley, Bittle, Davis, Phelan, Rinks, Fitzhugh, Ronnie Cole, Pinion, McDaniel, Beavers, Kent

Substituted for: Senate Bill No. 3160

By Senators Miller, Fowler, Rice, McNally, Atchley, Person, Koelle, Holcomb, Leatherwood, Elisee

AN ACT to amend Tennessee Code Annotated, Title 33, Chapter 1, relative to background evaluations of applicants for employment with and employees of the Department of Mental Health and Mental Retardation.

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

SECTION 1. Tennessee Code Annotated, Title 33, Chapter 1, Part 2, is amended by adding the following language as a new, appropriately designated section: 33-1-209

Section _____. (a) To help the department determine the suitability of a person for volunteer services or employment and verify the accuracy of information submitted in support of an application to work for the department, any person who applies to work for the department as an employee, or any volunteer, whose function would include direct contact with or direct responsibility for persons with mental illness or developmental disabilities must:

(1) Agree to the release of all investigative records about herself or himself from any source, including federal, state and local governments; and

(2) Supply a fingerprint sample for the conduct of a criminal background investigation by the Tennessee Bureau of Investigation. If no disqualifying record is identified, the bureau shall send the fingerprints to the Federal Bureau of Investigation for a national criminal history record check.

(b) The department shall pay the costs for conducting any investigation under this act.

SECTION 2. This act shall take effect July 1, 1996, the public welfare requiring it. Effective date 7/1/96

PUBLIC CHAPTER NO. 905

HOUSE BILL NO. 2381

By Representatives Hargrove, Bittle, Boyer, Peach, McDaniel, Micheal Williams, Stamps, Ramsey, Davis, Newton, Beavers, McAfee, Gunnels, Bell, Robinson, Lewis, Givens, Winningham, Walley, Rinks, Pinion, Phelan, Buck, Rigby, Fitzhugh, Westmoreland, Venable, White, Roach, West, Haley, Shirley, Sharp, Ford, Jackson, Duer, Dunn, Buchett, Callicott

Substituted for: Senate Bill No. 2320

By Senators Haun, Wallace, Miller, Cohen

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 17, Part 13, relative to firearms and other weapons.

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

SECTION 1. Tennessee Code Annotated, Section 39-17-1315, is amended by deleting subsections (b) through (f) in their entirety. 39-17-1315

SECTION 2. Tennessee Code Annotated, Title 39, Chapter 17, Part 13, is amended by adding Sections 3 through 12 of this act as new sections thereto.

SECTION 3. (a) Any resident of Tennessee who has reached the age of majority may apply to the Department of Safety for a handgun carry permit. If the applicant is not prohibited from purchasing or possessing a firearm in this State pursuant to Tennessee Code Annotated, Section 39-17-1316, 39-17-1307(b), 18 U.S.C. 922(g) or any other state or federal law and the applicant otherwise meets all of the requirements of this section, the department shall issue a permit to the applicant. 39-17-1351

(b) The application for a permit shall be on a standard form developed by the Department of Safety and shall require the applicant to disclose, under oath, only the following information concerning the applicant:

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- (1) full legal name and any aliases;
 - (2) addresses for the last five (5) years;
 - (3) date of birth;
 - (4) social security number;
 - (5) physical description (height, weight, race, sex, hair color and eye color;
 - (6) whether the applicant has been convicted of a criminal offense punishable for a term exceeding one (1) year;
 - (7) whether the applicant is currently under indictment or information for any criminal charge punishable for a term exceeding one (1) year;
 - (8) whether the applicant is currently subject to any order of protection and, if so, the applicant shall provide a copy of such order;
 - (9) whether the applicant is a fugitive from justice;
 - (10) whether the applicant is addicted or has been addicted to alcohol, drugs, or controlled substances;
 - (11) whether the applicant has ever been hospitalized because of mental illness or alcohol or drug problems; and
 - (12) whether the applicant has ever been adjudicated mentally ill and/or had a conservator appointed by a court for his or her benefit.
- (c) In addition to the information required under subsection (b), the department shall be required to take fingerprints of the applicant for the purpose of conducting a Tennessee Bureau of Investigation and Federal Bureau of Investigation criminal history record check. The department shall also be required to photograph the applicant in a manner that is suitable for use on the permit.
- (d) The department shall also require an applicant to submit proof of the successful completion of a department approved handgun safety course. Such course shall include both classroom hours and firing range hours.
- (e) The department shall make applications for permits available for distribution at any location where the department conducts driver license examinations.
- (f) Upon receipt of an application, the department shall notify the chief law enforcement officer of the applicant's county of residence that the applicant has requested a permit. The chief law enforcement officer shall conduct a background investigation regarding the applicant. The background investigation shall include those matters which this section requires the applicant to disclose and whether the applicant has failed to disclose specific facts which are required to be disclosed by Section 3(b)(1) through Section 3(b)(9) of this act. The chief law enforcement officer shall also submit a report to the department containing any readily discoverable information that such officer feels may be pertinent to the applicant regarding those matters enumerated in Section 3(b)(10) through Section 3(b)(12) of this act. The chief law enforcement officer shall file such reports with the department within fifteen (15) days after the date such officer receives a copy of the application.
- (g) The department shall deny a permit application if the department determines that the applicant:
- (1) Has been convicted of a felony involving the use or attempted use of force, violence or a deadly weapon or a felony drug offense;
 - (2) Is currently under indictment or information for any criminal charge punishable for a term exceeding one (1) year;
 - (3) Is currently subject to an order of protection the provisions of which prohibit such applicant from carrying or possessing a firearm;
 - (4) Is a fugitive from justice;
 - (5) Is addicted or has been addicted within five (5) years from the date of the application to alcohol, drugs, or controlled substances;
 - (6) Has been hospitalized because of mental illness or alcohol or drug problems within five (5) years from the date of the application;
 - (7) Has been adjudicated mentally ill and/or had a conservator appointed by a court for his or her benefit within five (5) years from the date of the application.

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(8) Has not accurately disclosed any material information required to be disclosed by the applicant;

(9) Fails to meet the requirements of this section; or

(10) Because of mental illness, alcohol or drug problems, physical infirmity, or based on verifiable evidence contained in the report from the sheriff, poses a material likelihood of risk of harm to the public.

(h) The following shall not be grounds for the department to deny a permit application:

(1) The existence of any arrest or other records for any indictment, charge or warrant which has been judicially or administratively expunged;

(2) A conviction that has been set aside by a court of competent jurisdiction because of the applicant's innocence;

(3) A conviction for which the applicant's civil rights have been restored pursuant to Title 40, Chapter 29, unless the conviction was for a felony involving the use or attempted use of force, violence or a deadly weapon or a felony drug offense;

(4) A conviction for any offense not included in subsection (g)(1) of this section if it has been more than five (5) years since the applicant successfully completed any sentence imposed, any period of probation or parole and paid all restitution ordered for such offense; or

(i) If the department denies an application, the department shall notify the applicant in writing within ten (10) days of such denial. The written notice shall state the specific factual basis for the denial. It shall include a copy of any reports, records and/or inquiries reviewed or relied upon by the department.

(j) The department shall issue a permit to an applicant not otherwise prohibited from obtaining a permit under this section no later than thirty (30) days after the results of the fingerprint criminal history checks required in subsection (c) of this section and the sheriff's report required in subsection (g) of this section are both received by the department.

(k) A permit holder shall not be required to complete a handgun safety course to maintain or renew a handgun carry permit. No permit holder shall be required to complete any additional handgun safety course after obtaining a handgun carry permit.

(l) A permit issued pursuant to this section shall be good for four (4) years and shall entitle the permit holder to carry any handgun(s) which the permit holder legally owns or possesses. The permit holder shall have the permit in the holder's immediate possession at all times when carrying a handgun and shall display the permit on demand of a law enforcement officer.

(m) The permit shall be issued on a wallet-sized laminated card of the same approximate size used by the State of Tennessee for driver licenses and shall contain only the following information concerning the permit holder:

(1) The permit holder's name, address, date of birth and social security number;

(2) A description of the permit holder by sex, height, weight and eye color;

(3) A color photograph of the permit holder; and

(4) The permit number and expiration date.

(n) The department shall charge an application and processing fee of one hundred dollars (\$100). Such fee shall cover all aspects of processing the application and issuing a permit.

(o) Substantial compliance with the requirements of this section shall provide the department and any political subdivision thereof with immunity from civil liability alleging liability for issuance of the permit.

(p) Prior to the expiration of a permit, a permit holder may apply to the department for the renewal of a permit by submitting, under oath, a renewal application with a renewal fee of fifty dollars (\$50.00). The renewal application shall be on a standard form developed by the Department of Safety and shall require the applicant to disclose, under oath, the information concerning the applicant as set forth in subsection (b) and shall require the applicant to certify that such applicant still satisfies all the requirements of this section for the issuance of a permit. In the event the permit expires prior to the department's approval or issuance of notice of denial regarding such renewal application, the permit holder shall be entitled to continue to use the expired permit, provided that the permit holder shall also be required to prove by displaying a receipt for the renewal application fee that the renewal application was delivered to the department prior to the expiration date of the permit.

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SECTION 4. (a) The department is hereby authorized to suspend or revoke a handgun permit upon a showing by its records or other sufficient evidence that the permittee: 39-17-1352

(1) Has not accurately disclosed any material information required by Section 3 of this act;

(2) Poses a material likelihood of risk of harm to the public;

(3) Has been arrested for a felony involving the use or attempted use of force, violence or a deadly weapon or a felony drug offense;

(4) Has been convicted of a felony; or

(5) Has violated any other provision of this act.

(b) Upon the suspension or revocation of a permit, the permittee must surrender such permit to the department.

(c)(1) The department, upon suspending or revoking a permit, shall require that such permit be surrendered to and be retained by the department. Prior to the reissuance of a suspended permit, the department may require the permittee to submit evidence that the permittee has completed a program of alcohol or drug abuse education, or has completed treatment by a physician, or a licensed psychologist certified with competence in clinical psychology; or at a facility licensed by the Department of Mental Health and Mental Retardation to provide such treatment. Certification of the psychiatrist or clinical psychologist or facility licensed by the Department of Mental Health and Mental Retardation under this section is not to be construed as a prediction of future behavior but merely certification of completion of the program. The department may not require a permittee to submit such evidence unless such evidence is relevant to the grounds for the suspension or revocation of such permit.

(2) When such examination, as required by this subsection, is administered by a state supported mental health facility, such facility and medical doctors or doctors of psychology employed by such facility who administer such examinations

within the course and scope of such doctor's authority under the statute, shall be immune from tort liability for the proper dissemination of any report or findings to the Department of Safety which results from such examination; provided, that this immunity shall not extend to any other person, institution, or other member of the private sector, not employed or attached to a state supported mental health facility.

(d) The applicant shall have a right to request an administrative hearing pursuant to Title 4, Chapter 5, or to bring a mandamus action to challenge such suspension or revocation of a permit.

SECTION 5. (a) Any person who has received a notice of suspension or revocation may make a written request for a review of the department's determination by the department at a hearing. The request shall be made on a form available from the department. If the person's permit has not been previously surrendered, it must be surrendered at the time the request for a hearing is made. A request for a hearing does not stay the permit suspension or revocation. 39-17-1353

(b) Within thirty (30) days from the date the request for a hearing is filed, the department shall establish a hearing date and set the case on a docket. Nothing in this section shall be construed as requiring the hearing to be conducted within such thirty (30) day period. The hearing shall be held at a place designated by the department. The department shall provide written notice of the time and place of the hearing to the party requesting the hearing at least ten (10) days prior to the scheduled hearing, unless the party agrees to waive this requirement.

(c) The presiding hearing officer shall be the commissioner or an authorized representative designated by the commissioner. The presiding hearing officer shall have the authority to:

(1) Administer oaths and affirmations;

(2) Examine witnesses and take testimony;

(3) Receive relevant evidence;

(4) Issue subpoenas, take depositions, or cause depositions to interrogatories to be taken;

(5) Regulate the course and conduct of the hearing; and

(6) Make a final ruling on the issue.

(d) The sole issue at the hearing shall be whether by a preponderance of the evidence the person has violated any provision of this act. If the presiding hearing officer finds the affirmative of this issue, the suspension or revocation order shall be sustained. If the presiding hearing officer finds the negative of this issue, the suspension or revocation order shall be rescinded.

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(e) The hearing shall be recorded. The decision of the presiding hearing officer shall be rendered in writing, and a copy will be provided to the person who requested the hearing.

(f) If the person who requested the hearing fails to appear without just cause, the right to a hearing shall be waived, and the department's earlier determination shall be final.

(g) Witnesses under subpoena shall be entitled to the same fees as are now or may hereafter be provided for witnesses in civil actions in the circuit court and, unless otherwise provided by law or by action of the agency, the party requesting the subpoenas shall bear the cost of paying fees to the witnesses subpoenaed.

SECTION 6. (a) Within thirty (30) days of the issuance of the final determination of the department following a hearing under Section 5 of this act, a person aggrieved by the determination shall have the right to file a petition in the chancery court of the county of the person's residence for judicial review. The filing of a petition for judicial review shall not stay the revocation order. 39-17-1354

(b) The review shall be on the record, without taking additional testimony. If the court finds that the department exceeded its constitutional or statutory authority, made an erroneous interpretation of the law, acted in an arbitrary and capricious manner, or made a determination which is unsupported by the evidence in the record, the court may reverse the department's determination.

SECTION 7. The Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5, applies to the extent it is consistent with the proceedings under Sections 5 and 6 of this act relating to administrative hearing and judicial review. 39-17-1355

SECTION 8. The department shall issue a duplicate permit to a permit holder upon the payment by the permit holder of a fee of five dollars (\$5.00). 39-17-1356

SECTION 9. Within sixty (60) days of any change in a permit holder's principal place of residence, the permit holder shall notify the department in writing of such permit holder's new address. 39-17-1357

SECTION 10. (a) All permits issued on or after October 1, 1994, pursuant to the former provisions of Tennessee Code Annotated, Section 39-17-1315, shall continue to be valid under this act. At the request of a permit holder, new permit cards shall be issued subject to the applicant meeting the renewal provisions of this act. All such permits shall expire four (4) years from the date of issuance unless revoked or suspended pursuant to the provisions of this act. 39-17-1358

(b)(1) Except as provided in subdivision (2), the sheriff and/or chief law enforcement officer of each county shall retain until January 1, 2001, all applications and files related to the approval or denial of any application submitted from October 1, 1994, to the effective date of this act. Such applications and files shall be destroyed after January 1, 2001.

(2) The sheriff and/or chief law enforcement officer may retain applications and files related to the approval or denial of any application submitted from October 1, 1994 to the effective date of this act if such applications and files are relevant to any pending litigation. After such pending litigation is concluded, such applications and files shall be destroyed.

(c) A violation of this act is a Class B misdemeanor punishable only by a fine not to exceed five hundred dollars (\$500).

(d) Any party aggrieved under the terms of this act by the denial, suspension and/or revocation of a permit, or otherwise, may file a writ of mandamus, as provided by law. Such action shall also allow the recovery of any actual damages sustained by the party. The aggrieved party, if prevailing in action, shall also be entitled to recover those costs and attorney's fees reasonably incurred or relating to such action.

(e) Nothing contained in this section shall be construed to alter, reduce or eliminate any personal civil or criminal liability that an applicant may have for the intentional or negligent use of a firearm.

SECTION 11. An individual, corporation, business entity or local, state or federal government entity or agent thereof is authorized to prohibit possession of weapons by any person otherwise authorized by this subsection, at meetings conducted by, or on premises owned, operated, managed or under control of such individual, corporation, business entity or government entity. Notice of such prohibition shall be posted or announced. 39-17-1359

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SECTION 12. The Department of Safety is authorized to promulgate rules and regulations pursuant to Title 4, Chapter 5, to implement the provisions of this act. 39-17-1360

SECTION 13. For the purpose of promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes this act shall take effect October 1, 1996, the public welfare requiring it. Effective date 10/1/95

PUBLIC CHAPTER NO. 1058

SENATE BILL NO. 2864

By Cohen, Koella, Cooper, Rice

Substituted for: House Bill No. 2485

By Bowers, Towns, Jones, S. (Davidson), Miller, Brooks, Patton, DeBerry, J., Stamps, Eckles, Haley, Kerr, Hassell, Joyce, Byrd, Jones, R. (Shelby), Pinion, Turner (Shelby), Jones, U. (Shelby), Kent, Phelan, Huskey, Tindell, Armstrong, Burchett, Cross, Ford, Davis, Dunn, Clabough, Lewis, Odom, Pruitt, Langster, DeBerry, L.

AN ACT To amend Tennessee Code Annotated, Title 68, relative to adult health care centers.

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

SECTION 1. Tennessee Code Annotated, Title 68, is amended by adding Sections 2 through 15 as a new chapter:

SECTION 2. As used in this chapter, unless the context otherwise requires: 71-2-401

(1) "Department" means the Department of Human Services;

(2) "Commissioner" means the Commissioner of Human Services;

(3) "Adult day care" means services provided to ten (10) or more adult recipients, for more than three (3) hours per day, by a provider of such services who is not related to such adult, pursuant to an individualized plan of care designed to maintain or restore each adult's optimal capacity for self-care through medical or social services;

(4) "Adult day care center" means a facility which provides adult day care services; and

(5) "Related" means, for purposes of this part a person who is related to the adult day care services recipient as a legal or biological parent, child, sibling, aunt, uncle, grandparent of any degree, or cousin to the third degree, or a step-parent, or a step-grandparent of any degree.

SECTION 3. (a) No person or any entity of any kind, public or private, shall provide adult day care in this state without first obtaining a license as provided in this chapter. 71-2-402

(b) If any person or entity appears to be subject to the licensing requirements of this part and is currently licensed by any other agency of state government, the commissioner shall consult with the head of such other state agency, and, if after such consultation, the commissioner determines that the services to adults which are provided by the person or entity are adequately regulated by the licensing requirements of that other state agency, then the commissioner may determine that no licensing of such person or entity by the department pursuant to this part shall be necessary.

SECTION 4. The department, prior to issuing a new license, shall secure from an appropriate law enforcement agency records of any criminal activity, other than minor traffic violations, of the administrator, program director, fiscal officer, direct care workers and paid employees of the proposed adult day care center. The individual investigated shall pay for all expenses for securing such records. The department shall obtain the records each time these positions are to be filled. A past conviction of any crime, especially any crime involving misuse of funds or involving physical abuse shall, in the discretion of the department, be grounds for denial of a license. 71-2-403

TENNESSEE

PUBLIC CHAPTER NO. 1053

SENATE BILL NO. 2719

By Kyle, Harper

Substituted for: House Bill No. 3118

By Langster, DeBerry, L., Pruitt, Jones, U. (Shelby)

AN ACT To amend Tennessee Code Annotated, Title 71, relative to child welfare agencies.

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

SECTION 1. Tennessee Code Annotated, Section 71-3-504(a), is amended by adding the following new subdivision (4): 71-3-504

(4) Notwithstanding any provisions of Tennessee Code Annotated, Title 13, Chapter 7, to the contrary, upon adoption of a resolution by a two-thirds (2/3) vote of the county legislative body, any zoning authority, in determining the suitability of a request for any use of property for the establishment or alteration of any child welfare agency, may consider the criminal background of the person or persons making a request to such board or may consider the criminal background of any person or persons who will manage or operate such child welfare agency. The zoning authority shall be responsible for all costs associated with obtaining such criminal background information.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it. Effective date 5/15/96

TENNESSEE CRIME INFORMATION CENTER

CHAPTER 1395—1—1

(Rules 1395—1—1—.08, continued)

- (i) Department of Corrections shall immediately report all escapes of prisoners to TBI so that fugitives from justice investigation and information files can be set up and maintained by TBI for the execution of its duties in relation thereto.
 - (j) In addition to NCIC programs files, TBI will construct confidential crime data files consistent with dimensions of criminal activities. Data for these files will be obtained from CHR files, NCIC program file, interaction of TBI files and records, arrest records, UCR information, information from Federal agencies and confidential sources.
 - (k) Any individual is entitled to a certified copy of his/her criminal history record based upon his/her criminal history record identified by fingerprints. Therefore, in order for any person to obtain his/her criminal history record, the applicant must submit a copy of his/her fingerprints to TBI for identification of the record and pay the required fee therefor.
- (2) NCIC Programs — Interaction by qualified agencies with all NCIC program files is authorized, which now appear as follows:
- (a) Vehicle File
 - (b) License Plate File
 - (c) Boat File
 - (d) Gun File
 - (e) Article File
 - (f) Securities File
 - (g) Wanted Person File
 - (h) Missing Person File
 - (i) Canadian Warrant File
 - (j) Interstate Identification Index
 - (k) U.S. Secret Service Protective File
 - (l) Unidentified Person File
 - (m) Originating Agency Identifier (ORI) File

Compliance with all NCIC rules and regulations is required for any use of these files.

- (3) All terminal agencies shall fully participate in all NCIC, UCR and crime data programs to the extent of their generation of or action upon data relating to crimes, criminals and criminal activities, which will be reduced to formats by TBI for submission of data.
- (4) Missing Children.
 - (a) The TBI shall establish, maintain, and manage a file of "Missing Children".

TENNESSEE CRIME INFORMATION CENTER

CHAPTER 1395—1—1

(Rules 1395—1—1—.08, continued)

- (h) All information received from TBI criminal history files relating to child sexual abuse is confidential and will retain that status, and its use must be limited to the specific purpose for which its acquisition was authorized. Said data will not be released to any other agency, corporation, person or entity other than those lawfully working on criminal cases or in cooperation with the Department of Human Services pursuant to Chapter 478.

(6) Child Care Agency Employees.

- (a) Chapter 478 of the Public Acts of 1985 does not require the fingerprinting of applicants. Consequently, absolute certainty of identification of criminal history records supplied for anyone for whom a fingerprint is not submitted cannot be provided and the accuracy of the identification of the criminal history data supplied concerning the applicant will always be subject to the serious error of misidentification. TBI does not assume responsibility for any error of misidentification resulting from a failure to supply fingerprints. Notwithstanding that applicant prints are not required for criminal history searches, TBI will accept applicant prints for such searches.
- (b) The Department of Human Services shall be authorized to access, for retrieval purposes only, criminal history information relating to the persons described in Section 27 and 28 of Chapter 478 of the Public Acts of 1985.
- (c) The Department of Human Services shall structure and manage its personnel carrying out this function so as to limit access to the criminal history files of TBI to the unit and personnel who are actually charged with the responsibility of enforcing Chapter 478. No access shall be granted to any other personnel or unit within the Department of Human Services. Use of said information is subject to audit by TBI.

(7) Other TCIC/NCIC Programs.

- (a) All criminal justice agencies which have been identified by NCIC and TCIC as being agencies authorized to handle data in relation to any of the programs and files maintained by NCIC shall be entitled to access the information in relation to those NCIC programs from both NCIC and TCIC files. Privacy and confidentiality status shall be maintained in accordance with Section 1395—1—1—.08 (a) 3.
- (b) All criminal justice agencies having authority to arrest persons shall timely report to TCIC and NCIC name indices and available information concerning any person, wanted on a felony charge supported by an arrest warrant, who is not in custody, and will immediately remove that entry from the computer files when the person has been arrested or the warrant dismissed or withdrawn.

Authority: T.C.A. §§10—7—504, 37—10—102, 37—10—203, 37—10—205, 38—6—110, 38—6—109, 38—10—101, 39—32—101, 39—32—104, 40—32—101 and 40—32—104. Administrative History: Original rule filed October 30, 1986; effective January 27, 1987.

1395—1—1—.09 AUTOMATED FINGERPRINT INFORMATION SYSTEM (AFIS)

(1) Arrestee Fingerprints.

- (a) All law enforcement agencies, state and local, and any other agency having arrest powers shall fingerprint all persons arrested on all felony cases and any misdemeanor cases which involve charges relating to sex crimes against children. The fingerprint shall be taken upon a form supplied by the Federal Bureau of Investigation, and/or the Tennessee Bureau of Investigation, and shall consist of a minimum of two (2) copies. The agency making the arrest shall send the two (2) copies to the Tennessee Bureau of Investigation, one to be entered in its AFIS system and the other to be forwarded to the FBI. In addition, the submitting agency may keep any additional copies which it desires to take for its own files.

TENNESSEE CRIME INFORMATION CENTER

CHAPTER 1395—1—1

(Rules 1395—1—1—.09, continued)

- (b) Department of Corrections shall furnish to the TBI a copy of the fingerprint of each person committed by final disposition to custody of the Department of Corrections.
 - (c) As an integral part of the interactive operation of AFIS and TCIS, TBI will establish a criminal history file for each person whose fingerprints are received and entered into the AFIS system and will thereafter, through the operation of all systems, update the criminal history file for new charges and final dispositions.
 - (d) In order to verify the continuing identification of the person whose identification is originally established by the fingerprints, the Bureau will assign a unique number to each person which will be designated as the state identification number (SID). Final dispositions will be made to the correct file on the basis of that number. Other departments, and specifically the Department of Corrections, are authorized to use the state identification number in any management and control system while performing any duties required by law to be performed by that agency.
- (2) Police Applicants. All fingerprints taken by any agency from applicants for police work in those agencies which are governed by the Police Officer Standards laws and rules and regulations shall submit two (2) copies of the fingerprints of each applicant to the TBI for processing through AFIS.
- (3) Regulatory Agencies.
- (a) State governmental agencies which issue licenses or permits to any person, corporation, partnership, or other entity to engage in an authorized activity affecting the rights, property, or interests of the public or segments thereof, may make written inquiry of the TBI to request criminal history data for the limited purpose of determining if such license or permit should be issued. The written request for such information (if not accompanied by regulation fingerprint cards) must include:
 - 1. complete and correct name of applicant;
 - 2. date of birth;
 - 3. sex;
 - 4. race;
 - 5. Social Security number.

Upon the basis of this information, the criminal history files of TBI will be searched for criminal history information relating to the applicant. Since the data furnished will not be based upon the certainty of fingerprint identification, the possibility of errors and mistakes exist and the Bureau cannot assume responsibility for information furnished pursuant to the requests.

- (b) Requests for criminal history records of applicants for a private investigator license must be accompanied by two (2) copies of the fingerprints of the applicants.
- (c) Section 36—6—103 (d) authorizes the cost to be assessed for furnishing criminal history records searches for all agencies and persons other than police applicants or police work relating to performance of duties relating directly to law enforcement. The charge will be assessed to each requesting agency or person irrespective of whether the request is manual or made through a terminal interfaced to TIES. Each agency requesting or making such searches should obtain payment from the applicant in amount authorized by said Section.

TENNESSEE CRIME INFORMATION CENTER

CHAPTER 1395—1—1

(Rules 1395—1—1—.09, continued)

- (4) Missing Children's Fingerprints. The TBI shall maintain a separate fingerprint file for Missing Children which shall consist of fingerprints submitted to it pursuant to T.C.A. §37—10—206, together with any latent prints believed to be those of missing children. Once each year the TBI will purge this file of fingerprints of children who have become eighteen (18) years of age, unless the child has been reported missing or the child requests in writing that his/her fingerprints remain in the file. The TBI will also destroy any child's fingerprint record in this file upon written request of the custodial parent or legal guardian. The Bureau shall only search the Missing Children Fingerprint File for the purpose of trying to locate/identify children who have been reported as missing children or victims of crime. These fingerprints shall not be included in any other file, and this file shall not be searched for the purpose of the identifying a child as having committed a crime unless the custodial parent or legal guardian so requests in writing, or as authorized by order of a court of record.

Authority: T.C.A. §§37—10—207, 38—6—103 and 38—10—101. Administrative History: Original rule filed October 30, 1986; effective January 27, 1987.

1395—1—1—.10 CERTIFICATION OF RECORDS.

- (1) It is the purpose of these rules relating to certification to provide the certainty of the official authorization of records of the Bureau whenever official attestation, sealing, and certification of the TBI records, reports, documents, and actions are required by law, including orders of the courts, but not to create any greater or additional coverage of certification than authorized by law.
- (2) Every report of the Forensic Services Division rendered or administered in connection with any case in a criminal, juvenile, or municipal court, or when otherwise required by law, dealing with controlled substances, drugs and narcotics; or alcohol or drug content of blood, breath or urine shall bear the following certification:

CERTIFICATION

I certify and attest that this document is the proper record it purports to be, and that the fee therefor is prescribed by T.C.A. §38—6—103.

/s/

Designated Representative of Director TBI (T.C.A.
§§38—6—107 and/or 55—10—410)

[T.C.A. §55—10—410 applies to drug or alcohol content of blood, breath, or urine]

- (3) The following persons shall be responsible for the certification of any Forensic Services Division report prepared at their facility:
 - (a) TBI Assistant Director for Forensic Services
 - (b) Regional Crime Lab Supervisor (Knoxville)
 - (c) Regional Crime Lab Supervisor (Chattanooga)
- (4) The certification of criminal histories, when required by law, shall bear the certification in (2) above, and shall be the responsibility of:
 - (a) TBI Assistant Director for Information Services, or
 - (b) Special Agent in Charge, Identification and Records Unit.

TENNESSEE

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February 28, 1984

Mr. Arzo Carson, Director
Tennessee Bureau of Investigation
4950 Linbar Drive
Nashville, Tennessee 37211

Dear Director Carson:

By recent letter, a copy of which is attached, you have requested informal advice concerning release of criminal history files to governmental non-law enforcement agencies, specifically to Commissioner John C. Neff, Commissioner of the Department of Commerce and Insurance.

You have concluded and I concur that there is no authority permitting you to furnish Commissioner Neff with criminal arrest histories or similar confidential records of the T.B.I. Indeed, T.C.A. § 40-15-106(b), (c)(1), and § 40-32-101(b), (c)(1), expressly prohibit release of such confidential records other than to other law enforcement agencies or for audit investigations by the comptroller. Those statutes, which you reference in your letter, expressly make such release a misdemeanor. Additionally, as you are no doubt aware, § 10-7-504 makes your investigative records confidential and not open to inspection by members of the public. They may be disclosed to the public only in compliance with subpoena or order of a court of record. They may be provided to members of the General Assembly upon direction by a duly approved resolution of either house or of a standing or joint committee of either house. Finally, that statute prohibits providing such records to any member of the executive branch except those persons directly involved in an investigation in the T.B.I. itself, and the governor himself. I have also enclosed two prior

Mr. Arzo Carson, Director

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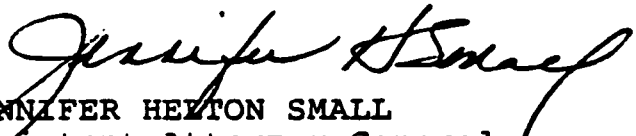
TENNESSEE

February 28, 1984

letters to you which discuss potential problems in release of such information. They specifically discuss our prior discussion that absence of statutory authorization prevents dissemination of criminal history information to other than law enforcement agencies.

I hope that this informal advice has proved helpful. If you should require additional information, please do not hesitate to contact me.

Sincerely,



JENNIFER HEZTON SMALL
Assistant Attorney General

JHS/jc

Attachments