S T A T E O F T E N N E S S E E
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Opinion No. 06-061

Investigatory Duties Under Tenn. Code Ann. § 49-7-129

QUESTIONS

1. Under Tenn. Code Ann. § 49-7-129, to what extent must each agency participate in a "joint investigation" to meet their statutory obligations? If the non-lead agency merely reviews incident reports and investigatory materials during and/or after the conclusion of the investigation is this adequate, or are officers from each agency required to actively participate in witness interviews in order to comply with the requirements of the statute?

2. If a non-lead agency fails to comply with its duty pursuant to Tenn. Code Ann. § 49-7-129(c) to fully participate in a "joint investigation," which individual or individuals at the non-compliant agency, whether it be the institution of higher education's law enforcement agency or the local law enforcement agency, would potentially be subject to the criminal penalties of Tenn. Code § 49-7-129(g)?

OPINIONS

1. Insofar as the nature of each investigation will differ, depending upon the facts and circumstances, the extent of participation required of the non-lead agency pursuant to Tenn. Code Ann. § 49-7-129(c) is not subject to rigid definition. As a general rule, the appropriate level of participation for the non-lead agency is a matter to be determined by the lead investigatory agency, in cooperation with the non-lead agency.

2. If they violate the duties imposed by the statute, any law enforcement official or any other employee of an institution of higher education could be criminally liable under Tenn. Code Ann. § 49-7-129(g), depending upon the specific facts and circumstances of the case. Consequently, if a non-lead agency failed to comply with its duty pursuant to Tenn. Code Ann. § 49-7-129(c) to fully participate in a "joint investigation," the official or officials responsible for that agency's failure to participate could be liable under Tenn. Code Ann. § 49-7-129(g), depending upon the specific facts and circumstances of the case.

ANALYSIS

Tenn. Code Ann. § 49-7-129 provides as follows:

(a) This section shall be known and may be cited as the "Robert 'Robbie' Nottingham Campus Crime Scene Investigation Act of 2004".

(b) Regardless of whether a public or private institution of higher education has entered into a mutual assistance agreement with a law enforcement agency pursuant to 49-7-118, the chief security officer or chief law enforcement officer of such institution shall immediately notify, unless otherwise provided by federal law, the local law enforcement agency with territorial jurisdiction over the institution, if the medically unattended death of a person occurs on the property of such institution, or if such officer is in receipt of a report from the victim alleging that any degree of rape has occurred on the property of such institution. The chief security officer or chief law enforcement officer shall designate one (1) or more persons who shall have the authority and duty to notify the appropriate law enforcement agency in the absence of the chief security officer or chief law enforcement officer.

(c) Upon notification pursuant to subsection (b), it shall be the duty of each law enforcement agency to participate in a joint investigation of the death or alleged rape reported pursuant to subsection (b). In the case of a medically unattended death, the local law enforcement agency shall lead the investigation. In the case of an alleged rape, the institution's law enforcement agency shall lead the investigation.

(d) After notifying the local law enforcement agency pursuant to subsection (b), the security officers or law enforcement officers and all other employees of such institution shall cooperate in every respect with the investigation conducted by the law enforcement agency.

(e) Any official of a public or private institution of higher education receiving a report from a victim of rape occurring on the property or in the vicinity of such institution shall refer the victim to a sexual assault program or other service on campus or in the community. Sexual assault programs shall report annually, by January 31, to the chief security or law enforcement officer of such institution of the number of requests for assistance received from victims who were raped on or in the vicinity of a public or private institution of higher education during the preceding calendar year.

(f) As used in this section, "local law enforcement agency"

> means:
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> (1) Within the territory of a municipality, the municipal police force;
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> (2) Within the territory of a county having a metropolitan form of government, the metropolitan police force; and
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> (3) Within the unincorporated territory of a county, the sheriff's office.
>
> (g) A knowing violation of this section is a Class C misdemeanor.

1. Under Tenn. Code Ann. § 49-7-129(c), the local law enforcement agency and the law enforcement agency of the institution of higher education are required to participate in joint investigations of (1) medically unattended deaths and (2) rapes reported to have been committed on institutional property, with the local law enforcement agency designated as the "lead" investigatory agency for medically unattended deaths, and the institutional law enforcement agency designated as the "lead" investigatory agency for rapes reported on campus. You have therefore asked to what extent each agency is required to participate in these "joint investigations" in order to meet their statutory obligations. That is, if the "non-lead" agency merely reviews incident reports and investigatory materials during and/or after the conclusion of the investigation is this adequate, or are officers from each agency required to actively participate in witness interviews in order to comply with the requirements of the statute?

It is impossible to answer this question with any degree of specificity, given the range of facts and circumstances that might exist in any given investigation. Furthermore, the legislature chose not to specify the precise extent to which a "non-lead" agency must contribute to an investigation in order to qualify as having "participated." Employing, however, the fundamental principal of statutory construction that directs the interpreter to "ascertain legislative intent by examining the natural and ordinary meaning of the language used, without a forced or subtle construction that would limit or extend the meaning of the language,"[1] we conclude that the statute's requirement that the agencies engage in a "joint" investigation indicates the legislative intent that the agencies should cooperate with each other in performing the investigation.

The statute establishes which agency shall be the "lead" agency in which type of case, and requires the agencies to cooperate. It therefore appears that the degree of participation that is necessary or appropriate in each case is a matter to be worked out between the lead agency's requests for action on the part of the non-lead agency, and the non-lead agency's capacity to

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[1] *See, e.g., Guy v. Mutual of Omaha Insurance Co.*, 79 S.W.3d 528, 536 (Tenn. 2002); *Lenscrafters, Inc. v. Sundquist*, 33 S.W.3d 772, 777 (Tenn. 2000); *Mooney v. Sneed*, 30 S.W.3d 304, 306 (Tenn. 2000).

participate. It is doubtful that the intent of the legislature was that a lead agency have the authority to make unreasonable requests of a non-lead agency. Nor is it likely the legislative intent that non-lead agencies should unreasonably refuse requests by lead agencies to perform investigatory tasks of which they are capable. Both the lead agency and the non-lead agency are therefore required to cooperate with each other. Depending upon the facts and circumstances, a lead agency may need the non-lead agency to contribute a great deal to an investigation, or it may need very little participation from the non-lead agency. Similarly, depending on the circumstances, the non-lead agency may not have appropriate resources or personnel to comply with all requests from the lead agency. Consequently, both agencies would be expected to cooperate given their respective capabilities.

2. This statute creates duties and responsibilities on the part of a number of law enforcement officials and higher education officials.[2] Paragraph (g) of the statute simply provides that "[a] knowing violation of this section is a Class C misdemeanor." Consequently, any law enforcement or higher education official who knowingly violates any of the duties imposed upon them by this statute could potentially be criminally liable under Tenn. Code Ann. § 49-7-129(g), depending upon the specific facts and circumstances of the case. Thus, if a non-lead agency failed to comply with its duty pursuant to Tenn. Code Ann. § 49-7-129(c) to fully participate in a "joint investigation," the official or officials responsible for that agency's failure to comply could be liable under Tenn. Code Ann. § 49-7-129(g), depending upon the specific facts and circumstances of the case.

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[2] *See* paragraph (e) of the statute, quoted above.