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*** Current through the 2012 Regular Session ***

Title 40 Criminal Procedure
Chapter 35 Tennessee Criminal Sentencing Reform Act of 1989
Part 3 Sentences

Tenn. Code Ann. § 40-35-321 (2012)

40-35-321. Collection of biological specimens for DNA analysis -- Persons convicted of certain offenses -- Condition of release from imprisonment.

(a) As used in this section, unless the context otherwise requires, "DNA analysis" means the process through which deoxyribonucleic acid (DNA) in a human biological specimen is analyzed and compared with DNA from another biological specimen for identification purposes.

(b) When a court sentences a person convicted of violating or attempting to violate § 39-13-502, § 39-13-503, § 39-13-504, § 39-13-505, § 39-13-522, § 39-13-531 or § 39-15-302 or when a juvenile court adjudicates a person to be a delinquent child for violating or attempting to violate § 39-13-502, § 39-13-503, § 39-13-504, § 39-13-505, § 39-13-522, § 39-13-531 or § 39-15-302, it shall order the person to provide a biological specimen for the purpose of DNA analysis as defined in subsection (a). If the person is not incarcerated at the time of sentencing, the order shall require the person to report to the probation division of the department charged by law with the supervision of probationers, which shall gather the specimen. If a probation officer is not available to gather the specimen, the court may designate a person to do so. The cost of taking, processing and storing the specimen shall be paid by the defendant and shall be collected by the probation officer in the same manner as other fees. If the person is incarcerated at the time of sentencing, the order shall require the chief administrative officer of the institution of incarceration to designate a qualified person to gather the specimen. The biological specimen shall be forwarded by the approved agency or entity collecting the specimen to the Tennessee bureau of investigation, which shall maintain it as provided in § 38-6-113. The court shall make the providing of the specimen a condition of probation or community correction if either is granted.

(c) If a person convicted of violating or attempting to violate § 39-13-502, § 39-13-503, § 39-13-504, § 39-13-505, § 39-13-522 or § 39-15-302 and committed to the custody of the commissioner of correction for a term of imprisonment has not provided a biological specimen for the purpose of DNA analysis as defined in subsection (a), the commissioner or the chief administrative officer of a local jail shall order the person to provide a biological specimen for the purpose of DNA analysis before completion of the person's term of imprisonment. The biological specimen shall be forwarded by the approved agency or entity collecting the specimen to the Tennessee bureau of investigation which shall maintain it as provided in § 38-6-113. No person shall be released on parole or otherwise unless

and until the person has provided the specimen required by this subsection (c).

(d) (1) When a court sentences a person convicted of any felony offense committed on or after July 1, 1998, or any misdemeanor offense, the conviction for which requires the defendant to register as a sexual offender pursuant to chapter 39, part 2 of this title, on or after July 1, 2007, it shall order the person to provide a biological specimen for the purpose of DNA analysis as defined in subsection (a). If the person is not incarcerated at the time of sentencing, the order shall require the person to report to the probation division of the department charged by law with the supervision of probationers, which shall gather the specimen. If a probation officer is not available to gather the specimen, the court may designate a person to do so. The cost of taking, processing and storing the specimen shall be paid by the defendant and shall be collected by the probation officer in the same manner as other fees. If the person is incarcerated at the time of sentencing, the order shall require the chief administrative officer of the institution of incarceration to designate a qualified person to gather the specimen. The biological specimen shall be forwarded by the approved agency or entity collecting the specimen to the Tennessee bureau of investigation, which shall maintain it as provided in § 38-6-113. The court shall make the providing of the specimen a condition of probation or community correction if either is granted.

(2) If a person convicted of any felony offense or any applicable misdemeanor offense and committed to the custody of the commissioner of correction for a term of imprisonment or sentenced to a period of confinement in a county jail or workhouse has not provided a biological specimen for the purpose of DNA analysis as defined in subsection (a), the commissioner or the chief administrative officer of a local jail may order the person to provide a biological specimen for the purpose of DNA analysis before completion of the person's term of imprisonment. The biological specimen shall be forwarded by the approved agency or entity collecting the specimen to the Tennessee bureau of investigation, which shall maintain it as provided in § 38-6-113.

(e) (1) When a person is arrested on or after January 1, 2008, for the commission of a violent felony as defined in subdivision (e)(3), the person shall have a biological specimen taken for the purpose of DNA analysis to determine identification characteristics specific to the person as defined in subsection (a). After a determination by a magistrate or a grand jury that probable cause exists for the arrest, but prior to the person's release from custody, the arresting authority shall take the sample using a buccal swab collection kit for DNA testing. The biological specimen shall be collected by the arresting authority in accordance with the uniform procedures established by the Tennessee bureau of investigation, pursuant to § 38-6-113 and shall be forwarded by the arresting authority to the Tennessee bureau of investigation, which shall maintain the sample as provided in § 38-6-113. The court or magistrate shall make the provision of a specimen a condition of the person's release on bond or recognizance if bond or recognizance is granted.

(2) The clerk of the court in which the charges against a person described in subdivision (e)(1) are disposed of shall notify the Tennessee bureau of investigation of final disposition of the criminal proceedings. If the charge for which the sample was taken is dismissed or the defendant is acquitted at trial, then the bureau shall destroy the sample and all records of the sample; provided, that there is no other pending qualifying warrant or capias for an arrest or felony conviction that would otherwise require that the sample remain in the data bank.

(3) As used in this subsection (e), "violent felony" means:

- (A)** First or second degree murder;
- (B)** Aggravated kidnapping or especially aggravated kidnapping;
- (C)** Aggravated assault;
- (D)** Aggravated child abuse;
- (E)** Robbery, aggravated robbery or especially aggravated robbery;
- (F)** Aggravated burglary or especially aggravated burglary;
- (G)** Carjacking;
- (H)** Sexual battery, sexual battery by an authority figure or aggravated sexual battery;
- (I)** Statutory rape by an authority figure or aggravated statutory rape;
- (J)** Rape, aggravated rape, rape of a child or aggravated rape of a child;
- (K)** Aggravated arson;
- (L)** Attempt, under § 39-12-101, to commit any of the offenses enumerated in this subdivision (e)(3);
- (M)** Solicitation, under § 39-12-102, to commit any of the offenses enumerated in this subdivision (e)(3);
- (N)** Conspiracy, under § 39-12-103, to commit any of the offenses enumerated in this subdivision (e)(3);
- (O)** Criminal responsibility, under § 39-11-402(2), for any of the offenses enumerated in this subdivision (e)(3);
- (P)** Facilitating the commission, under § 39-11-403, of any of the offenses enumerated in this subdivision (e)(3);
- (Q)** Being an accessory after the fact, under § 39-11-411, to any of the offenses enumerated in this subdivision (e)(3);
- (R)** Aggravated vehicular homicide;
- (S)** Criminally negligent homicide;
- (T)** Reckless homicide;
- (U)** Vehicular homicide; or
- (V)** Voluntary manslaughter.

HISTORY: Acts 1991, ch. 480, § 2; 1995, ch. 11, §§ 1, 2; 1995, ch. 131, §§ 2, 3; 1995, ch. 382, § 1; 1998, ch. 1028, §§ 1, 2; 2007, ch. 77, §§ 1, 2; 2007, ch. 225, § 2; 2010, ch. 964, § 2; 2012, ch. 965, § 1; 2012, ch. 996, §§ 1, 2.