

**RULES
OF
THE TENNESSEE BUREAU OF INVESTIGATION**

**CHAPTER 1395-01-05
SEXUAL OFFENDER REGISTRATION AND MONITORING PROGRAM**

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1395-01-05-.01 PURPOSE AND SCOPE.

The purpose of the program has been found to be regulatory, not punitive. It has been held that the program addresses legitimate concerns of law enforcement about sex offenders. Cutshall v. Sundquist, 193 F. 3d 466 (6th Cir. 1999). As an independent department, TBI has been charged with the responsibility of administering and maintaining the program, which is civil and remedial in nature. Only those offenders who meet the statutory definition of "sexual offender" can be registered, regardless of court orders to the contrary. Information contained in the registry should not be used to injure, harass, or commit a criminal act against any person named in the registry; any such action could result in criminal prosecution.

Authority: T.C.A. § 40-39-101. **Administrative History:** Original rule filed December 19, 2001; effective April 30, 2002.

1395-01-05-.02 DEFINITIONS.

- (1) Acknowledgment Form - A form provided by the TBI to agencies for the purpose of confirming that the sexual offender understands the requirements and penalties involved in the sexual offender registration/ monitoring process.
- (2) Business Day - A twenty-four (24) hour period beginning at 12:01 a.m.
- (3) Centralized Record System - Collection of criminal history maintained by the TBI CIU that contains sexual offender registration and verification information.
- (4) CIU - Criminal Intelligence Unit.
- (5) Current Photograph - Most current photograph available.
- (6) Deliver - By United States mail service or other courier service (UPS, Federal Express, etc.) or hand delivery to the TBI Headquarters in Nashville, Tennessee.
- (7) Expungement - The deletion of information from the sexual offender registry upon court order, death of the sexual offender or the act of moving out of the state of Tennessee.
- (8) FBI - Federal Bureau of Investigation.
- (9) Local Law Enforcement Agency - Police Department or Sheriff's Department/Office

(Rule 1395-01-05-.02, continued)

- (10) Notice of Death - Consists of a copy of the certificate of death issued by the State or County Department of Health or a listing in the Social Security Death Index or a listing in the State Department of Health Vital Statistics Index. Obituaries and other death notices from newspapers and other publications are not sufficient absent verification by one of the other means listed above.
- (11) Registration/ Monitoring Form - Form provided to sexual offenders to record sexual offender registration and to verify that information is current and correct.
- (12) Sexual Offender - A person who is, or has been, convicted in Tennessee of committing a sexual offense or who is, or has been, convicted in another state or another country, or who is or has been convicted in a federal or military court, of committing an act which would have constituted a sexual offense if it had been committed in this state; provided that:
 - (a) Conviction or any other alternative to incarceration occurs on or after January 1, 1995; or
 - (b) If conviction occurred prior to January 1, 1995, the person does one of the following:
 - 1. Remains under or is placed on probation, parole, or any other alternative to incarceration on or after January 1, 1995;
 - 2. Is discharged from probation, parole, or any other alternative to incarceration on or after January 1, 1995;
 - 3. Is discharged from incarceration without supervision on or after January 1, 1995.
- (13) Sexual Offender Registry - Collection of information regarding sexual offenders maintained by the TBI CIU.
- (14) Sexual Offense - The commission of any act that constitutes the criminal offense of:
 - (a) Aggravated rape, under § 39-13-502;
 - (b) Rape, under § 39-13-503;
 - (c) Aggravated sexual battery, under § 39-13-504;
 - (d) Sexual battery, under § 39-13-505;
 - (e) Statutory rape, under § 39-13-506;
 - (f) Aggravated prostitution, under § 39-13-516;
 - (g) Sexual exploitation of a minor, under § 39-17-1003;
 - (h) Aggravated sexual exploitation of a minor, under § 39-17-1005;
 - (i) Incest, under § 39-15-302;
 - (j) False imprisonment of a minor, under § 39-13-302;
 - (k) Kidnapping of a minor, under § 39-13-303;
 - (l) Aggravated kidnapping of a minor, under § 39-13-304;

(Rule 1395-01-05-.02, continued)

- (m) Especially aggravated kidnapping of a minor, under § 39-13-305;
 - (n) Rape of a child, under § 39-13-522;
 - (o) Sexual battery by an authority figure, under § 39-13-527;
 - (p) Attempt, under § 39-12-101, solicitation, under § 39-12-102, or conspiracy, under § 39-12-103, to commit any of the offenses enumerated above;
 - (q) Criminal responsibility, under § 39-11-402(2), for facilitating the commission under § 39-11-403 of, or being an accessory after the fact, under § 39-11-411, to any of the offenses enumerated above; or
 - (r) Any act enumerated above committed prior to November 1, 1989, which may have been listed in a section of the Tennessee Code Annotated that has been repealed.
- (15) "Sexually violent offense" means the commission of any act that constitutes the criminal offense of:
- (a) Aggravated rape, under § 39-13-502;
 - (b) Rape, under § 39-13-503(1) or § 39-13-503(3);
 - (c) Aggravated sexual battery, under § 39-13-504;
 - (d) Rape of a child, under § 39-13-522; or
 - (e) Criminal attempt to commit any of the offenses listed above.
- (16) Signature - A valid signature of the sexual offender. If someone besides the sexual offender signs a form, then a valid court order or notarized document authorizing the person signing the form to do so, must be presented to the TBI authorizing such individual's signature for the sexual offender.
- (17) TBI - Tennessee Bureau of Investigation.
- (18) TOMIS - Tennessee Offender Management Information System

Authority: T.C.A. §§ 39-13-502 et seq., 39-13-516, 39-17-1003, 39-17-1005, 39-15-302, 39-13-302 et seq., 39-13-522, 39-12-101 et seq., 39-11-402, 39-11-403, 39-11-411, and 40-39-102. **Administrative History:** Original rule filed December 19, 2001; effective April 30, 2002.

1395-01-05-.03 SEXUAL OFFENDER REGISTRATION AND MONITORING PROGRAM IN GENERAL.

- (1) As an independent state agency, TBI has been statutorily charged with the responsibility of administering and maintaining the program, which is civil and remedial in nature. Only those offenders who meet the statutory definition of "sexual offender" can be registered, regardless of court orders to the contrary.

Information contained in the registry should not be used to injure, harass, or commit a criminal act against any person named in the registry; any such action could result in criminal prosecution.

- (2) All sexual offenders shall:

(Rule 1395-01-05-.03, continued)

- (a) Complete a TBI sexual offender registration/ monitoring form within ten (10) days following release on probation, parole, any other alternative to incarceration; within ten (10) days following discharge from incarceration without supervision; within ten (10) days following any change of residence; and within ten (10) days after coming into a municipality or county where the offender temporarily resides, is domiciled, is employed, carries on a vocation, or is a student for any length of time; and
 - (b) Deliver the form to the TBI CIU at headquarters in Nashville.
 - (c) A registration/monitoring form is not considered complete unless it has been signed by the offender. If another person has been given power of attorney to sign documents for the offender and a copy of the power of attorney has been provided to the TBI CIU that other person may sign the registration/monitoring form instead of the offender.
 - (d) Copies of registration/monitoring forms will not be accepted. The offender must return the original form that he/she receives from the TBI CIU to the TBI CIU.
- (3) A person placed on probation or parole in another state for a crime that qualifies as a sexual offense in Tennessee, who is residing in Tennessee pursuant to a compact for out-of-state supervision, shall be subject to the same registration and monitoring requirements as a person placed on probation or parole for a sexual offense in Tennessee. Likewise, a person who is discharged from incarceration in another state without supervision for a crime that qualifies as a sexual offense in Tennessee shall be subject to the same registration and monitoring requirements as a person who is discharged from incarceration in Tennessee without supervision.
- (4) It is the responsibility of the sexual offender to register with the program within ten days of his or her release into the community after conviction and to return the quarterly monitoring reports to the TBI CIU within ten days of receipt. It is also the responsibility of the sexual offender to give written notice to the TBI CIU of any change in address or employment within ten days of such change.

Authority: T.C.A. §§ 40-39-101 and 40-39-103. **Administrative History:** Original rule filed December 19, 2001; effective April 30, 2002.

1395-01-05-.04 MONITORING FORM REQUIREMENTS.

- (1) TBI shall provide the sexual offender registration/ monitoring and acknowledgment forms to local law enforcement agencies, the Tennessee Department of Correction, the Tennessee Department of Safety, parole officers, probation officers, TBI offices, and other officers and employees assigned responsibility for the supervised release of convicted felons into the community.
- (2) The TBI sexual offender registration/ monitoring form shall require at least the following information:
 - (a) Complete name as well as any alias or aliases;
 - (b) Date and place of birth;
 - (c) Social security number or numbers;
 - (d) State of issuance and identification number of any valid driver license or licenses;

(Rule 1395-01-05-.04, continued)

- (e) For a sexual offender on supervised release, the name address and telephone number of the registrant's parole officer, probation officer, or other person responsible for the registrant's supervision;
 - (f) Sexual offense or offenses of which the registrant has been convicted;
 - (g) Current place and length of employment;
 - (h) Current address and length of residence at such address;
 - (i) Race and gender;
 - (j) A current photograph;
 - (k) Signature of offender; and
 - (l) Such other information the TBI CIU deems necessary.
- (3) At least once every ninety (90) days following receipt of the aforementioned registration/monitoring form, the TBI CIU shall by certified mail return receipt requested, send a nonforwardable, verification/ monitoring form to the registrant's last reported address that shall require the offender to complete the following requirements:
- (a) Verify the continued accuracy of the information on the most recent registration/monitoring form;
 - (b) Complete the form; and
 - (c) Deliver the original form to the TBI CIU at headquarters in Nashville, within ten (10) business days following receipt. Copies or faxes will not be accepted.
- (4) The monitoring requirements may be tolled only under the following circumstances:
- (a) while an offender is incarcerated for another offense or as the result of having violated the terms of probation, parole or conditional discharge;
 - (b) while an offender is deported from this country.
- (5) If the address provided by the offender is incorrect the TBI CIU shall list the address as "unknown." An address is considered to be incorrect if two or more registration/monitoring forms are returned to the TBI CIU by the post office as undeliverable to the offender for any reason (e.g., "unclaimed," "attempted-not known," "moved," "insufficient address," etc.).

Authority: T.C.A. §§ 40-39-103, 40-39-104, and 40-39-105. **Administrative History:** Original rule filed December 19, 2001; effective April 30, 2002.

1395-01-05-.05 SEXUAL OFFENDER AND REGISTRATION MONITORING PROCESS.

- (1) The officer or employee responsible for supervising a sexual offender who is, or has been, released on probation, parole, or any other alternative to incarceration shall:
 - (a) Obtain the offender's signed statement acknowledging that the named officer or employee has obtained the offender's anticipated residential address and completed the following tasks:

(Rule 1395-01-05-.05, continued)

1. Explained the registration and verification requirements and sanctions of the program, and the offender understands; and
 2. Provided the offender with a blank TBI sexual offender registration/ monitoring form and assisted the offender in completion of the form.
- (b) Obtain a current photograph of the offender; and
- (c) Deliver the sexual offender registration forms, acknowledgment statements and photographs to the TBI CIU at headquarters in Nashville within three (3) business days following receipt.
- (2) The warden of the correctional facility or sheriff of the jail from which a sexual offender is released from incarceration, with or without supervision, within at least ninety (90) days prior to the release of the offender shall:
 - (a) Obtain the offender's signed statement acknowledging that the named warden or sheriff, or an agent of the warden or sheriff, has fully explained, and the offender understands, the registration and verification requirements and sanctions of the monitoring process;
 - (b) Include the offender's anticipated residential address on the acknowledgment form; and
 - (c) Deliver the completed acknowledgment form and photograph to the TBI CIU at headquarters in Nashville within three (3) business days prior to the release of the offender.
- (3) If an offender is placed on unsupervised probation, the court shall:
 - (a) Obtain the offender's signed statement acknowledging that the court has fully explained, and the offender understands, the registration and verification requirements and sanctions of the monitoring process;
 - (b) Include the offender's anticipated residential address on the acknowledgment form;
 - (c) Provide the offender with a blank TBI sexual offender registration/ monitoring form and assist the offender in the completion of the form;
 - (d) Obtain a current photograph of the offender; and
 - (e) Send the signed and completed acknowledgment form, the sexual offender registration form and the photograph of the offender to the TBI CIU at headquarters in Nashville within three (3) business days following receipt.
- (4) Sexual offender registration/ monitoring forms and verification/ monitoring forms shall be designed, printed and distributed by and at the expense of TBI. Sexual offender registration/ monitoring forms shall be available from local law enforcement agencies, the TBI, the Tennessee department of correction, the Tennessee department of safety, and parole officers, probation officers, and other public officers and employees assigned responsibility for the supervised release of convicted felons into the community. The TBI recommends that local law enforcement agencies adopt policies regarding the location of such forms within the agencies in order to ensure their availability.

(Rule 1395-01-05-.05, continued)

- (a) Copies of the Sexual Offender Release Notification forms (BI-0126) and Sexual Offender Registration forms (BI-0125) may be obtained from the TBI Sex Offender Registry program in the following ways:

1. By contacting:
Tennessee Internet Criminal Information Center Hotline
1-888-837-4170
2. By faxing a request to:
TBI Sex Offender Registry
(615)532-8315
3. By sending a written request to:
TBI Sex Offender Registry
901 R.S. Gass Boulevard
Nashville, Tennessee 37216-2639

- (b) All questions concerning the Sex Offender Registry Program should be addressed to the following location:

Tennessee Bureau of Investigation
Criminal Intelligence Unit
Sex Offender Registry
901 R.S. Gass Boulevard
Nashville, Tennessee 37216-2639
(888)837-4170

Authority: T.C.A. § 40-39-105. **Administrative History:** Original rule filed December 19, 2001; effective April 30, 2002.

1395-01-05-.06 RECORD SYSTEM.

- (1) The TBI shall establish, maintain and update a file for each registered offender. Said file will contain the offender's registration and monitoring forms, criminal history, and any other documents relevant to the offender's placement on the Sexual Offender Registry (e.g., copies of judgments, probation orders, correspondence with other states concerning offenders moving to or from Tennessee, TOMIS printouts, etc.).
- (2) The TBI shall establish, maintain and update a centralized record system of sexual offender registration and verification information and promptly report such information to the following entities:
 - (a) The local law enforcement agency for the offender's place of residence;
 - (b) The local law enforcement agency for the offender's previous place of residence if a change of residence is indicated;
 - (c) The local law enforcement agency for the offender's place of employment;
 - (d) The local law enforcement agency for the offender's previous place of employment if a change of employment is indicated;
 - (e) When applicable, the probation officer, parole officer, or other public officer or employee assigned responsibility for the offender's supervised release;
 - (f) The District Attorney General's Office; and

(Rule 1395-01-05-.06, continued)

- (g) The identification division of the FBI.
- (3) If an offender does not comply with the registration/ monitoring process requirements, the TBI shall notify the district attorney general and the probation officer, parole officer or other public office or employee assigned responsibility for the sexual offender's supervised release.
- (4) For offenses committed prior to July 1, 1997, information reported on sexual offender registration/ monitoring forms, verification/ monitoring forms, and acknowledgment forms shall be confidential unless the local law enforcement agency determines that release of relevant information is necessary to protect the public. The TBI recommends that local law enforcement agencies should adopt policies regarding the release of confidential information about registered sexual offenders to the public. Such policies should address issues such as:
 - (a) What form(s) of identification will be required of the requestor;
 - (b) What scenarios demonstrate a need to protect the public;
 - (c) In what form the information will be released; and
 - (d) What instructions will be given to the requestor about his or her dissemination of the information to others.
- (5) TBI officers and employees shall be immune from liability relative to their good faith actions, omissions and conduct regarding the sexual offender registration/ monitoring process.
- (6) The following information is public information relating to sexual offenses committed on or after July 1, 1997, and shall be available to the public through the TBI's web site and through the Tennessee Internet Criminal Information Center Hotline, a toll-free telephone number:
 - (a) The offender's complete name as well as any aliases;
 - (b) The offender's date of birth;
 - (c) The sexual offense or offenses of which the offender has been convicted;
 - (d) The street address including the house number, county, city and ZIP code area in which the offender resides, or if the offender does not reside in a city, the county, rural route and ZIP Code area where the offender resides;
 - (e) The offender's race and gender;
 - (f) The date of the last verification of information by the offender;
 - (g) The most recent photograph of the offender that has been submitted to the TBI sexual offender registry;
 - (h) The offender's driver's license number and issuing state; and
 - (i) The offender's parole/ probation office.

Authority: T.C.A. § 40-39-106. **Administrative History:** Original rule filed December 19, 2001; effective April 30, 2002.

1395-01-05-.07 REMOVAL FROM REGISTRATION AND MONITORING REQUIREMENTS.

- (1) Certain offenders must remain on the registry for life; they can only be removed if they move out of state and no longer work or attend school in Tennessee. These offenders fall into two categories:
 - (a) Those who are convicted of a “sexually violent offense”; and
 - (b) Those with one or more convictions for a sexual offense prior to the date of the offense(s) for which they are currently required to register.
- (2) A registered sexual offender may file a petition in the circuit court of the county in which the person resides for an order relieving the person of the continuing duty to submit the required forms for the sexual offender registration and monitoring process only according to the following conditions:
 - (a) No sooner than ten (10) years after termination of active supervision on probation, parole, or any other alternative to incarceration; or
 - (b) No sooner than ten (10) years after discharge from incarceration without supervision.
- (3) If the court enters such an order it is the responsibility of the sexual offender to provide a certified copy of the order to the TBI.
- (4) An individual may not file more than one (1) petition for removal from the sexual register during any five-year period.
- (5) Upon receipt and verification of notice of the death of a registered offender, the TBI CIU shall expunge all data pertaining to a sexual offender from the centralized record system.

Authority: T.C.A. §§40-39-107, 40-39-109, and 40-39-110. **Administrative History:** Original rule filed December 19, 2001; effective April 30, 2002.

1395-01-05-.08 VIOLATIONS - PENALTIES.

- (1) An individual who knowingly falsifies a sexual offender registration/ monitoring form or verification/ monitoring form shall be guilty of a Class A misdemeanor for the first offense, which is punishable by confinement in the county jail for not less than one hundred eighty (180) days.
- (2) Any subsequent violation shall constitute a Class E felony.
- (3) If the offender is on probation, parole, or any other alternative to incarceration, then such falsification shall also constitute grounds for revocation of probation, parole, or other alternative to incarceration.
- (4) An offender who knowingly fails to timely disclose required information including signature or photographs or to timely deliver required registration/ monitoring or verification/ monitoring forms to the TBI CIU shall be deemed to have committed a falsification to the same extent as actually providing false information.
- (5) In a prosecution for violation of the registration and/or monitoring requirements, in lieu of live testimony the TBI CIU records custodian may issue a sworn affidavit regarding the registry records of registered sexual offenders.

(Rule 1395-01-05-.08, continued)

Authority: T.C.A. § 40-39-108. **Administrative History:** Original rule filed December 19, 2001; effective April 30, 2002.

1395-01-05-.09 SUBPOENAS - FEES.

- (1) When an employee of the TBI CIU receives a subpoena to testify in a civil lawsuit relating to information contained in the file of a registered sexual offender the employee shall be considered on State business, and the State shall be compensated for his/her time away from his/her primary duties.
- (2) Fees for compiling documents and materials, copying charges, and fees for expert and other testimony shall be charged at the level set in TBI Policy 7-2-004 (Fees for Production of Documents and Testimony).
- (3) Expenses are to be calculated in accordance with Rule 1395-1-6-.06 of the Tennessee Bureau of Investigation.

Authority: T.C.A. §§ 4-4-103 and 38-6-101. **Administrative History:** Original rule filed December 19, 2001; effective April 30, 2002.