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MEMORANDUM

(9/16/2019)

This memorandum lists the instructions the Tennessee Pattern Jury Instruction Committee (Criminal) changed or created after the 22nd edition of the book was published in 2018. The Administrative Office of the Courts' website includes Word "without comments and footnotes" versions of the instructions at issue. The "with comments and footnotes" version of newly-created and/or substantially revised instructions, are attached to the memorandum which appears on the AOC's website. If the committee changed a comment and/or footnote but did not change the text of an instruction, the instruction will be listed below but it will not be posted on the AOC's website. Some instructions that were not substantively changed, such as rearrangement of definitions, are not included in this memo for clarity but such changes will be noted in the new 23rd edition.

4.03 – Criminal conspiracy

- a) Add the following language as new Comment 3:

Tennessee Code Annotated, section 39-12-106(c), provides, "A person may be convicted of conspiracy and the offense which was the object of the conspiracy." The Advisory Comments provide further clarification, "Under subsection (c), the conspiracy is not merged with the completed offense and, therefore, the offender may be convicted of both the conspiracy and the object offense." In *State v. Watson*, this court noted the trial court's error in merging a conviction for conspiracy to commit first degree murder and first degree premeditated murder. 227 S.W.3d 622, 628 (Tenn. Crim. App. 2006).

State v. Jenelle Leigh Potter, E2015-02261-CCA-R3-CD, 2019 WL 453730, (Tenn. Crim. App. Knoxville, February 5, 2019).

6.02(a) – Aggravated assault

- a) In element 3 of Parts A, E and F, add the following in brackets immediately after the phrase "[first responder]":

[Only for offenses committed on or after 7/1/19: an identifiable employee or contractor of a utility]

- b) Remove the second closing bracket at the end of element 4 in Parts A and F. Add the following in brackets as a new element to Parts A and F:

[and

- (5) **only for offenses committed on or after 7/1/2019:** that the offense was committed by discharging a firearm from within a motor vehicle and the victim was a minor.]]

- c) Change the text of footnote 1 of the instruction to read as follows:

T.C.A. §39-13-102(a)-(c), (e).

- d) Add the following new definition after the definition for [“Law enforcement officer”]:

[“Motor vehicle” means every vehicle that is self-propelled, excluding electric scooters, motorized bicycles, and every vehicle that is propelled by electric power obtained from overhead trolley wires. “Motor vehicle” means any low speed vehicle or medium speed vehicle as defined in this chapter. “Motor vehicle” means any mobile home or house trailer as defined in §55-1-105.]

- e) Add a footnote to the new definition. The text of the footnote should read as follows:

T.C.A. §55-1-103.

- f) Add the following definition of “firearm” after the definition for [“Deadly weapon”]:

[Only for offenses committed on or after May 2, 2019: “Firearm” means *[any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosive] [, or the frame or receiver of any such weapon] [, or any firearm muffler or firearm silencer] [any destructive device]. [The definition of “firearm” does not include an antique firearm.]*

- g) Add a footnote after the bracketed phrase *[, the frame or receiver of any such weapon]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “frame or receiver” if it is fairly raised in the proof.

- h) Add a footnote after the bracketed phrase *[, any firearm muffler or firearm silencer]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “firearm muffler or firearm silencer” if it fairly raised in the proof.

- i) Add a footnote after the bracketed phrase *[any destructive device]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “destructive device” if it is fairly raised in the proof.

- j) Add a footnote after the phrase “*antique firearm*” inside the closing bracket and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “antique firearm” if it is fairly raised in the proof.

- k) Add a footnote after the closing bracket after antique firearm and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. §39-11-106.

- l) In comment 1, after the third sentence and citation, “...T.C.A. §39-13-102(e)(1)” and before the sentence that begins “If the jury finds...”, add the following sentence:

If the jury finds that this offense caused serious bodily injury or death, was committed by discharging a firearm from within a motor vehicle and the victim was a minor, it shall be punished one (1) classification higher than is otherwise provided. T.C.A. §39-13-102(e)(5).

6.03 – Reckless endangerment

- a) The definition of “firearm” should be amended to read as follows:

[Only for offenses committed on or after May 2, 2019: “Firearm” means *[any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosive] [, or the frame or receiver of any such weapon] [, or any firearm muffler or firearm silencer] [any destructive device]. [The definition of “firearm” does not include an antique firearm.]*

or

[Only for offenses committed prior to May 2, 2019: “Firearm” means any weapon designed, made or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use.]

- b) Add a footnote after the bracketed phrase *[, the frame or receiver of any such weapon]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “frame or receiver” if it is fairly raised in the proof.

- c) Add a footnote after the bracketed phrase *[, any firearm muffler or firearm silencer]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “firearm muffler or firearm silencer” if it fairly raised in the proof.

- d) Add a footnote after the bracketed phrase *[any destructive device]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “destructive device” if it is fairly raised in the proof.

- e) Add a footnote after the phrase “*antique firearm*” inside the closing bracket and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “antique firearm” if it is fairly raised in the proof.

- f) Add a footnote after the closing bracket after antique firearm and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. §39-11-106.

- g) Amend element 4 so that it reads as follows:

Only for offenses committed on or after 1/1/12: that the defendant discharged a firearm [**Only for offenses committed on or after 5/2/19:** or antique firearm] into an [*occupied*] [*unoccupied*] habitation.]

- h) Add a new footnote inside the bracket after “antique firearm”. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “antique firearm” if it is fairly raised in the proof.

6.05 – Aggravated vehicular assault

- a) Amend the elements as follows:

[Part A: (1) that the defendant has two (2) or more prior convictions for driving under the influence of an intoxicant [**Only for offenses committed prior to 7/1/19:** , violation of the habitual motor vehicle offender law or any combination of such offenses].]

or

[Part B: (1) that the defendant has one (1) or more prior convictions for the offense of [*vehicular assault*] [*vehicular homicide by intoxication*] [*aggravated vehicular homicide*].]

or

[Part C: (1) that there was at the time of the offense an alcohol concentration in the defendant’s blood or breath of twenty-hundredths of one percent (.20%) or more;

and

(2) that the defendant has one (1) prior conviction for [*driving under the influence of an intoxicant*] [**Only for offenses committed on or after 7/1/19:** a violation of the habitual motor vehicle offender law].]

7.02 – First degree murder by destructive device or bomb

- a) Amend element 2 so that it reads as follows:

that the killing was committed as the result of an unlawful *[throwing]* *[placing]* *[discharging]* of a destructive device or bomb: **[For offenses committed on or after May 2, 2019, see T.C.A. § 39-11-106 for an appropriate definition of “destructive device.”]**

7.04(a) – First degree murder (fixing punishment or life imprisonment or life imprisonment without possibility of parole) (for offenses committed on or after July 1, 1995)

- a) Add the following as new aggravating circumstance 18:

[(18) The defendant knowingly sold or distributed a substance containing *[fentanyl]* *[carfentanil]* *[insert here any other opiate listed in § 39-17-408(c)]* with the intent and premeditation to commit murder.] **[Only for offenses committed on or after July 1, 2019.]**

- b) In aggravating circumstance 7, add a footnote after the phrase “...unlawful throwing, placing or discharging of a destructive device or bomb.” The text of the footnote should read as follows:

See T.C.A. § 39-11-106 for an appropriate definition of “destructive device.”

7.04(b) – First degree murder (fixing punishment for life imprisonment or life imprisonment without possibility of parole) (for offenses committed on or after July 1, 1995)

- a) Add the following as new aggravating circumstance 18:

[(18) The defendant knowingly sold or distributed a substance containing *[fentanyl]* *[carfentanil]* *[insert here any other opiate listed in § 39-17-408(c)]* with the intent and premeditation to commit murder.] **[Only for offenses committed on or after July 1, 2019.]**

- b) In aggravating circumstance 7, add a footnote after the phrase “...unlawful throwing, placing or discharging of a destructive device or bomb.” The text of the footnote should read as follows:

See T.C.A. § 39-11-106 for an appropriate definition of “destructive device.”

7.05(a) – Second degree murder (knowing killing of another)

- a) Bracket the paragraph that begins “The distinction between...”
- b) Move footnote 7 to outside the closing bracket.
- c) Outside the new closing bracket after footnote 7 , add the following in new brackets:

[Delete if not charging Voluntary manslaughter. See footnote 7].

- d) After the existing wording of Footnote 7, add the following:

State v. Mason, W2017-01863-CCA-R3-CD, 2019 WL 350756, (Tenn. Crim. App. Jan. 28, 2019).

7.06- Voluntary manslaughter

- a) Add the following as new element 4:

[and

- (4) **only for offenses committed on or after July 1, 2019:** that the offense was committed by discharging a firearm from within a motor vehicle and the victim was a minor.]

- b) The definition of “firearm” should be added after the paragraph that begins “[The distinction...”. The definition should read as follows:

["Firearm" means *[any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosive] [, or the frame or receiver of any such weapon] [, or any firearm muffler or firearm silencer] [any destructive device]. [The definition of “firearm” does not include an antique firearm.]*

- c) Add a footnote after the bracketed phrase *[, the frame or receiver of any such weapon]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “frame or receiver” if it is fairly raised in the proof.

- d) Add a footnote after the bracketed phrase *[, any firearm muffler or firearm silencer]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “firearm muffler or firearm silencer” if it fairly raised in the proof.

- e) Add a footnote after the bracketed phrase *[any destructive device]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “destructive device” if it is fairly raised in the proof.

- f) Add a footnote after the phrase “*antique firearm*” inside the closing bracket and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “antique firearm” if it is fairly raised in the proof.

- g) Add a footnote after the closing bracket after antique firearm and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. §39-11-106.

- h) Add the following new definition after the new definition of “firearm”:

["Motor vehicle means every vehicle that is self-propelled, excluding electric scooters, motorized bicycles, and every vehicle that is propelled by electric power obtained from overhead trolley wires. “Motor vehicle” means any low speed vehicle or medium speed vehicle as defined in this chapter. “Motor vehicle” means any mobile home or house trailer as defined in §55-1-105.]

- i) Add a footnote at the end of the new definition of “Motor vehicle”. The text of the footnote should read as follows:

T.C.A. § 55-1-103.

- j) Add the following after the first sentence of Comment 1:

If the jury finds that this offense was committed by discharging a firearm from within a motor vehicle and the victim was a minor, it shall be punished one (1) classification higher than is otherwise provided. T.C.A. § 39-13-209.

- k) Add the following as new Comment 2 and renumber existing Comments 2 and 3 as Comment 3 and 4, respectively:

In *State v. Torvarius Mason*, No. W2017-01863-CCA-R3-CD, 2019 WL 350756 (Tenn. Crim. App., Jackson, January 28, 2019), the Court affirmed the trial judge for not charging voluntary manslaughter as a lesser-included offense, because there was no evidence to show that the defendant killed the victim while “in a state of passion produced by adequate provocation sufficient to lead a reasonable person to act in an irrational manner.” The defendant was looking for the person who shot his brother a short time earlier that night, but there was absolutely no proof in the record that the victim was involved in the shooting, so the victim presented no “adequate provocation.” The unarmed victim did nothing to provoke the defendant before the defendant shot him five times, killing him. Defendant was not entitled to a jury instruction on voluntary manslaughter. The Court of Criminal Appeals has held that the elements which distinguish voluntary manslaughter from murder are those of “adequate provocation” and the “state of passion.” It has long been held under Tennessee law, and at common law, that a murder will only be reduced to voluntary manslaughter when the provocation was caused by the victim.. The Tennessee Supreme Court first addressed this issue in *State v. Tilson*, 503 S.W.2d 921 (Tenn. 1974), in which the defendant had been involved in a barroom brawl with several men prior to leaving the bar. 503 S.W.2d at 921-22. The defendant returned a short time later with a pistol and shot the victim who had taken no active part in the fight but had been “on the side” of the one provoking the fight. *Id.* at 923-24. It was held that the defendant’s actions did not constitute voluntary manslaughter because he killed an unarmed man who was simply “on the side” of the person who provoked an earlier fight with the defendant, and did nothing to provoke him.

- l) After the existing wording of Footnote 2, add the following:

See Comment 2.

- m) After the existing wording of Footnote 3, add the following:

See Comment 2.

7.07 – Criminally negligent homicide

- a) Add the following in brackets as new element 3:

[and

- (3) **only for offenses committed on or after July 1, 2019:** that the offense was committed by discharging a firearm from within a motor vehicle and the victim was a minor.]

- b) The definition of “firearm” should be added after new element 3 to read as follows:

[“Firearm” means *[any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosive] [, or the frame or receiver of any such weapon] [, or any firearm muffler or firearm silencer] [any destructive device]. [The definition of “firearm” does not include an antique firearm.]*

- c) Add a footnote after the bracketed phrase *[, the frame or receiver of any such weapon]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “frame or receiver” if it is fairly raised in the proof.

- d) Add a footnote after the bracketed phrase *[, any firearm muffler or firearm silencer]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “firearm muffler or firearm silencer” if it fairly raised in the proof.

- e) Add a footnote after the bracketed phrase *[any destructive device]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “destructive device” if it is fairly raised in the proof.

- f) Add a footnote after the phrase *“antique firearm”* inside the closing bracket and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “antique firearm” if it is fairly raised in the proof.

- g) Add a footnote after the closing bracket after antique firearm and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. §39-11-106.

- h) Add the following new definition after the new definition of “firearm”:

[“Motor vehicle means every vehicle that is self-propelled, excluding electric scooters, motorized bicycles, and every vehicle that is propelled by electric power obtained from overhead trolley wires. “Motor vehicle” means any low speed vehicle or medium speed vehicle as defined in this chapter. “Motor vehicle” means any mobile home or house trailer as defined in §55-1-105.]

- i) Add a footnote at the end of the new definition of “Motor vehicle”. The text of the footnote should read as follows:

T.C.A. § 55-1-103.

- j) Add the following after the first sentence of Comment 1:

If the jury finds that this offense was committed by discharging a firearm from within a motor vehicle and the victim was a minor, it shall be punished one (1) classification higher than is otherwise provided. T.C.A. § 39-13-209.

7.08(d) – Vehicular homicide (drag racing)

- a) Replace the first sentence of the definition of “Motor vehicle” with the following:

“Motor vehicle” means every vehicle, including a low speed vehicle or a medium speed vehicle that is self-propelled, excluding [**Only for offenses committed on or after July 1, 2019:** electric scooters, electric bicycles as defined in §55-8-301,] motorized bicycles, and every vehicle, including a low speed vehicle or a medium speed vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

7.09 – Reckless homicide

- a) Add the following in brackets as new element 3:

[and
(3) **only for offenses committed on or after July 1, 2019:** that the offense was committed by discharging a firearm from within a motor vehicle and the victim was a minor.]

- b) The definition of “firearm” should be added after new element 3 to read as follows:

[“Firearm” means *[any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosive] [, or the frame or receiver of any such weapon] [, or any firearm muffler or firearm silencer] [any destructive device]. [The definition of “firearm” does not include an antique firearm.]*

- c) Add a footnote after the bracketed phrase *[, the frame or receiver of any such weapon]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “frame or receiver” if it is fairly raised in the proof.

- d) Add a footnote after the bracketed phrase *[, any firearm muffler or firearm silencer]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “firearm muffler or firearm silencer” if it fairly raised in the proof.

- e) Add a footnote after the bracketed phrase *[any destructive device]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “destructive device” if it is fairly raised in the proof.

- f) Add a footnote after the phrase “*antique firearm*” inside the closing bracket and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “antique firearm” if it is fairly raised in the proof.

- g) Add a footnote after the closing bracket after antique firearm and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. §39-11-106.

- h) Add the following new definition after the new definition of “firearm”:

[“Motor vehicle means every vehicle that is self-propelled, excluding electric scooters, motorized bicycles, and every vehicle that is propelled by electric power obtained from overhead trolley wires. “Motor vehicle” means any low speed vehicle or medium speed vehicle as defined in this chapter. “Motor vehicle” means any mobile home or house trailer as defined in §55-1-105.]

- i) Add a footnote at the end of the new definition of “Motor vehicle”. The text of the footnote should read as follows:

T.C.A. § 55-1-103.

- j) Add the following after the first sentence of Comment 1:

If the jury finds that this offense was committed by discharging a firearm from within a motor vehicle and the victim was a minor, it shall be punished one (1) classification higher than is otherwise provided. T.C.A. § 39-13-209.

8.02 – Aggravated kidnapping

- a) Add the following definition of “firearm” after the definition for [“Deadly weapon”]:

[Only for offenses committed on or after May 2, 2019: “Firearm” means *[any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosive] [, or the frame or receiver of any such weapon] [, or any firearm muffler or firearm silencer] [any destructive device]. [The definition of “firearm” does not include an antique firearm.]*

- b) Add a footnote after the bracketed phrase *[, the frame or receiver of any such weapon]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “frame or receiver” if it is fairly raised in the proof.

- c) Add a footnote after the bracketed phrase [*any firearm muffler or firearm silencer*] and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “firearm muffler or firearm silencer” if it fairly raised in the proof.

- d) Add a footnote after the bracketed phrase [*any destructive device*] and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “destructive device” if it is fairly raised in the proof.

- e) Add a footnote after the phrase “*antique firearm*” inside the closing bracket and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “antique firearm” if it is fairly raised in the proof.

- f) Add a footnote after the closing bracket after antique firearm and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. §39-11-106.

8.03 – Especially aggravated kidnapping

- a) Add the following definition of “firearm” after the definition for [“Deadly weapon”]:

[Only for offenses committed on or after May 2, 2019: “Firearm” means [*any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosive*] [*or the frame or receiver of any such weapon*] [*or any firearm muffler or firearm silencer*] [*any destructive device*]. [*The definition of “firearm” does not include an antique firearm.*]

- b) Add a footnote after the bracketed phrase [*the frame or receiver of any such weapon*] and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “frame or receiver” if it is fairly raised in the proof.

- c) Add a footnote after the bracketed phrase [*any firearm muffler or firearm silencer*] and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “firearm muffler or firearm silencer” if it fairly raised in the proof.

- d) Add a footnote after the bracketed phrase [*any destructive device*] and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “destructive device” if it is fairly raised in the proof.

- e) Add a footnote after the phrase “*antique firearm*” inside the closing bracket and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “antique firearm” if it is fairly raised in the proof.

- f) Add a footnote after the closing bracket after antique firearm and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. §39-11-106.

8.08(b) – Trafficking for commercial sex act

- a) Amend element 1 to read as follows:

(1)(a) that the defendant [*subjected*] [*attempted to subject*] [*benefitted from*] [*attempted to benefit from*] another person’s providing a commercial sex act [***Only for offenses committed on or after 7/1/19: when the intended victim of the offense was a law enforcement officer or a law enforcement officer eighteen (18) years of age or older posing as a minor***];

or

(b) that the defendant [*recruited*] [*enticed*] [*harbored*] [*transported*] [*provided*] [***Only for offenses committed on or after 7/1/13: [purchased]] [obtained by any means***] another person for the purpose of providing a commercial sex act [***Only for offenses committed on or after 7/1/19: when the intended victim of the offense was a law enforcement officer or a law enforcement officer eighteen (18) years of age or older posing as a minor***];

- b) Add the following phrase to the last paragraph of the instruction before the closing bracket:

[Only for offenses committed on or after 7/1/19: the solicitation was unsuccessful, the conduct solicited was not engaged in, or the law enforcement officer could not engage in the solicited offense.]

9.02 – Aggravated Robbery

- a) Rearrange the definition paragraphs in the following order after the paragraph which begins “[If the act causing...”:

“Deadly weapon”
“Deprive”
“Effective consent”
“Exercise control over property”
“Obtain” means
“Obtain” includes
“Owner”

“Property”
“Serious bodily injury”
[“Violence”
“Intentionally”
“Knowingly”

- b) Renumber the corresponding footnotes of each definition according to the new placement.
- c) Add the following definition of “firearm” after the definition for [“Exercise control over property”]:

[Only for offenses committed on or after May 2, 2019: “Firearm” means *[any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosive] [, or the frame or receiver of any such weapon] [, or any firearm muffler or firearm silencer] [any destructive device]. [The definition of “firearm” does not include an antique firearm.]*

- d) Add a footnote after the bracketed phrase *[, the frame or receiver of any such weapon]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “frame or receiver” if it is fairly raised in the proof.

- e) Add a footnote after the bracketed phrase *[, any firearm muffler or firearm silencer]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “firearm muffler or firearm silencer” if it fairly raised in the proof.

- f) Add a footnote after the bracketed phrase *[any destructive device]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “destructive device” if it is fairly raised in the proof.

- g) Add a footnote after the phrase “*antique firearm*” inside the closing bracket and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “antique firearm” if it is fairly raised in the proof.

- h) Add a footnote after the closing bracket after antique firearm and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. §39-11-106.

9.03 – Especially aggravated robbery

- a) Rearrange the definition paragraphs in the following order after the paragraph which begins “[If the act causing...”:

“Deadly weapon”

“Deprive”
“Effective consent”
“Exercise control over property”
“Obtain” means
“Obtain” includes
“Owner”
“Property”
“Serious bodily injury”
[“Violence”
“Intentionally”
“Knowingly”

- b) Renumber the corresponding footnotes of each definition according to the new placement.
- c) Add the following definition of “firearm” after the definition for [“Exercise control over property”]:

[Only for offenses committed on or after May 2, 2019: “Firearm” means *[any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosive] [, or the frame or receiver of any such weapon] [, or any firearm muffler or firearm silencer] [any destructive device]. [The definition of “firearm” does not include an antique firearm.]*

- d) Add a footnote after the bracketed phrase *[, the frame or receiver of any such weapon]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “frame or receiver” if it is fairly raised in the proof.

- e) Add a footnote after the bracketed phrase *[, any firearm muffler or firearm silencer]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “firearm muffler or firearm silencer” if it fairly raised in the proof.

- f) Add a footnote after the bracketed phrase *[any destructive device]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “destructive device” if it is fairly raised in the proof.

- g) Add a footnote after the phrase *“antique firearm”* inside the closing bracket and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “antique firearm” if it is fairly raised in the proof.

- h) Add a footnote after the closing bracket after antique firearm and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. §39-11-106.

9.04- Carjacking

- a) Rearrange the definition paragraphs in the following order after Part B, element 2:

“Deadly weapon”
“From the possession of another”
[[“Intimidation”
[“Serious bodily injury”
“Intentionally”
“Knowingly”

- b) Renumber the corresponding footnotes of each definition according to the new placement.

- c) Add the following definition of “firearm” after the definition for [“Deadly weapon”]:

[Only for offenses committed on or after May 2, 2019: “Firearm” means *[any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosive] [, or the frame or receiver of any such weapon] [, or any firearm muffler or firearm silencer] [any destructive device]. [The definition of “firearm” does not include an antique firearm.]*

- d) Add a footnote after the bracketed phrase *[, the frame or receiver of any such weapon]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “frame or receiver” if it is fairly raised in the proof.

- e) Add a footnote after the bracketed phrase *[, any firearm muffler or firearm silencer]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “firearm muffler or firearm silencer” if it fairly raised in the proof.

- f) Add a footnote after the bracketed phrase *[any destructive device]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “destructive device” if it is fairly raised in the proof.

- g) Add a footnote after the phrase “*antique firearm*” inside the closing bracket and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “antique firearm” if it is fairly raised in the proof.

- h) Add a footnote after the closing bracket after antique firearm and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. §39-11-106.

10.08(a) – Promoting prostitution of a [minor] [person with an intellectual disability]

a) Amend element 2 in Parts A through F so that it reads as follows:

(2) that the defendant did so when one (1) or more of the persons engaged in prostitution *[was less than eighteen (18) years of age] [had an intellectual disability] [Only for offenses committed on or after 7/1/19: where the subject of the offense was a law enforcement officer or a law enforcement officer eighteen (18) years of age or older posing as a minor];*

b) Rearrange the definition paragraphs in the following order after Part F, element 4:

“House of prostitution”
“Inmate”
[“Law enforcement officer”
[“Minor”
“Patronizing prostitution”
“Prostitution”
“Sexual activity”
“Intentionally”
“Knowingly”
“Recklessly”

c) Renumber the corresponding footnotes of each definition according to the new placement.

d) Amend the paragraph that begins, “It is not a defense...” to read as follows:

[It is not a defense to this offense that *[the subject of the offense was a law enforcement officer] [the victim of the offense was a minor and consented to the offense] [Only for offenses committed on or after 7/1/19: the solicitation was unsuccessful, the conduct solicited was not engaged in, or the law enforcement officer could not engage in the solicited offense].]*

10.10 – Patronizing prostitution

a) Amend element 1 in Parts A and B to read as follows:

(1)(a) that the defendant solicited or hired another person with the intent that the other person engage in prostitution *[Only for offenses committed on or after 7/1/19: where the subject of the offense was a law enforcement officer or a law enforcement officer eighteen (18) years of age or older posing as a minor];*

or

(b) that the defendant entered or remained in a house of prostitution for the purpose of engaging in sexual activity *[Only for offenses committed on or after 7/1/19: where the subject of the offense was a law enforcement officer or a law enforcement officer eighteen (18) years of age or older posing as a minor];*

b) Rearrange the definition paragraphs in the following order after Part C, element 6:

“House of prostitution”

“Inmate”
[“Law enforcement officer”
[“Minor”
“Prostitution”
[“School”
“Sexual activity”
“Intentionally”
“Knowingly”
“Recklessly”

- c) Renumber the corresponding footnotes of each definition according to the new placement.
- d) Amend the last paragraph that begins “[It is not a defense...” to read as follows:

[It is not a defense to this offense that *[the subject of the offense was a law enforcement officer] [the victim of the offense was a minor and consented to the offense] [Only for offenses committed on or after 7/1/19: the solicitation was unsuccessful, the conduct solicited was not engaged in, or the law enforcement officer could not engage in the solicited offense].]*

10.12 – Aggravated rape of a child

- a) Replace the last two sentences of Comment 1 with the following:

Aggravated rape of a child is a Class A felony, and if committed prior to July 1, 2019, shall be sentenced within Range III. If committed on or after July 1, 2010, that offender also shall be sentenced to community supervision for life. If committed on or after July 1, 2019, the sentence is imprisonment for life without the possibility of parole or release eligibility. T.C.A. § 39-13-531(b) and T.C.A. § 40-35-501(h)(2).

10.16 – Violation of sex offender registration act (for offenses committed on or after August 1, 2005)

- a) Change the wording in parenthesis in the title to (for offenses committed on or July 1, 2008)
- b) Add a new footnote to the title and renumber subsequent footnotes accordingly. The new footnote should read as follows:
To obtain the pattern instruction for this offense committed prior to 7/1/08, see T.P.I. 10.16 (22nd ed. 2018), or an earlier edition.
- c) Remove references to “only for offenses committed prior to...” for dates previous to 7/1/08 and remove associated brackets as necessary. **See the attached amended Word version of this instruction for clarification.**
- d) Add the word “or”, centered, below element 3 of Part W.
- e) Add a new Part X to the instruction in brackets to read as follows:

[Part X: **only for offenses committed on or after 7/1/2019:**

- (1) that the defendant had a conviction for [____] *[insert in this blank space a criminal offense or offenses listed in Tenn. Code Ann. § 40-39-202 under the definition of “Sexual Offense” or “Violent Sexual Offense.” See Comment 2.]*;
and
- (2) that the defendant obtained a new conviction for [____] *[insert in this blank space a criminal offense or offenses listed in Tenn. Code Ann. § 40-39-202 under the definition of “Sexual Offense” or “Violent Sexual Offense”, or “Violent Juvenile Sexual Offense” listed in §40-39-202.]*

f) Rearrange the definition paragraphs in the following order after new Part X, element 2:

[“Board”
 [“Conviction”
 [“Designated law enforcement agency”
 [“Employed or practices a vocation”
 [“Homeless”
 [“Institution of higher education”
 [“Law enforcement agency of any institution of higher education”
 [“Local law enforcement agency”
 [“Minor”
 [“Month”
 [“Parent”
 [“Primary residence”
 [“Register”
 [“Report”
 [“Resident”
 [“Secondary residence”
 [“SOR”
 [“Student”
 [“TBI”
 [“TBI registration form”
 [“Within forty-eight (48) hours”
 “Knowingly”
 The requirement of “knowingly”
 “Intentionally”

g) Renumber the corresponding footnotes of each definition according to the new placement.

10.17(a) – Violation of sex offender residential or work restrictions (for offenses committed on or after 8/1/05 but prior to 8/17/09)

a) Delete this instruction.

10.17(b) – Violation of sex offender residential or work restrictions (for offenses committed on or after August 17, 2009)

- a) Renumber this instruction as 10.17.
- b) Add a footnote to the title of the instruction and renumber subsequent footnotes accordingly. The footnote should read as follows:

To obtain the pattern instruction for this offense committed prior to 8/17/2009, see T.P.I. 10.17(a) (22nd ed. 2018), or an earlier edition.

- c) Change element 2(d) to read as follows:

(d) that the defendant, whose victim was a minor, knowingly *[established a primary or secondary residence or any other living accommodation where a minor resided]***[Only for offenses committed on or after July 1, 2019: resided or conducted an overnight visit at a residence where a minor resided or was present];**

- d) The second defense listed after element 2(n) should be amended as follows:

[It is a defense to *[residing where a minor resides] [being alone with a minor] [Only for offenses committed on or after July 1, 2019: conducting an overnight visit at a residence where a minor resided or was present]* if the defendant is a parent of the minor *[unless the offender's parental rights have been or were in the process of being terminated as provided by law]***[Only for offenses committed on or after July 1, 2019: unless the offender had been convicted of a sexual offense or violent sexual offense the victim of which was a child under twelve (12) years of age] [unless any minor or adult child of the offender was a victim of [____] committed by the offender]. [Insert in this blank space a criminal offense or offenses listed in Tenn. Code Ann. § 40-39-202 under the definition of "Sex Offender" or "Violent Sex Offender." See Comment 2].]**

10.24 – Continuous sexual abuse of a child

- a) In comment one, at the beginning of the third sentence, add the phrase “For offenses committed on or after 7/1/18,” so that the sentence reads as follows:

For offenses committed on or after 7/1/18, a defendant convicted of this offense “shall be punished by imprisonment and shall be sentenced from within the full range of punishment for the offense of which the defendant was convicted, regardless of the range for which the defendant would otherwise qualify.”

11.01 – Theft of property

- a) Add a new element 4 to the instruction as follows:

[and
(4) **only for offenses committed on or after July 1, 2019:** that the property was a firearm.]

- b) Add the following sentence to the end of Comment One:

Theft of a firearm shall be punished by confinement for not less than thirty (30) days in addition to any other penalty authorized by law. T.C.A. § 39-14-105(d).

- c) Rearrange the definition paragraphs in the following order after Element 3:

“Deprive
“Effective consent”
“Exercise control over property”

“Obtain” means
“Obtain” includes
“Owner”
“Property”
“Knowingly”
The requirement of “knowingly”
“Intentionally”

- d) Renumber the corresponding footnotes of each definition according to the new placement.
- e) Add the following new definition of “firearm” after the definition for “Exercise control over property”:

[“Firearm” means *[any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosive] [, or the frame or receiver of any such weapon] [, or any firearm muffler or firearm silencer] [any destructive device]. [The definition of “firearm” does not include an antique firearm.]*

- f) Add a footnote after the bracketed phrase *[, the frame or receiver of any such weapon]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “frame or receiver” if it is fairly raised in the proof.

- g) Add a footnote after the bracketed phrase *[, any firearm muffler or firearm silencer]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “firearm muffler or firearm silencer” if it fairly raised in the proof.

- h) Add a footnote after the bracketed phrase *[any destructive device]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “destructive device” if it is fairly raised in the proof.

- i) Add a footnote after the phrase “*antique firearm*” inside the closing bracket and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “antique firearm” if it is fairly raised in the proof.

- j) Add a footnote after the closing bracket after antique firearm and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. §39-11-106.

12.01 – Cock and animal fighting

- a) Delete this instruction. Keep the number “Reserved”.

12.03 – Cock, dog and animal fighting (spectator)

- a) Delete this instruction. Keep the number “Reserved”

12.04(a) – Aggravated cruelty to animals

- a) Rearrange the existing definition paragraphs in the following order:

- “Aggravated cruelty”
- “Companion animal”
- “Livestock”
- “Torture”
- “Intentionally”

- b) Renumber the corresponding footnotes of each definition according to the new placement.
- c) Add the following new definition after the definition of “Companion animal”:

“Depraved” means morally corrupt; perverted.

- d) Add a new footnote to the above new definition. The footnote should read as follows:

State v. Curll, No. M2017-00090-CCA-R3-CD, 2018 WL 3146336 (Tenn. Crim. App., June 26, 2018).

- e) Add the following new definition after the definition of “Livestock”:

“Sadistic” means a delight in cruelty; excessive cruelty.

- f) Add a new footnote to the above new definition. The footnote should read as follows:

State v. Curll, No. M2017-00090-CCA-R3-CD, 2018 WL 3146336 (Tenn. Crim. App., June 26, 2018).

14.09 – Critical infrastructure vandalism

- a) Insert attachment one to this memorandum as a new instruction numbered 14.09 , in the existing “reserved” location.

14.10- Destruction or interference with utility lines, fixtures, or appliances

- a) Add the following phrase to the end of the title of the instruction:

(for offenses committed prior to July 1, 2019)

14.11- Destruction or interference with property utilized by railroads

- a) Add the following phrase to the end of the title of the instruction:

(for offenses committed prior to July 1, 2019)

21.01(a) – Aggravated child [abuse] [neglect or endangerment] (for offenses committed on or after July 1, 2005 but prior to July 1, 2009)

- a) Delete this instruction.

21.01(b) – Aggravated child [abuse] [neglect] (for offenses committed on or after 7/1/09)

- a) Renumber this instruction as 21.01.
b) Add a footnote to the title, renumbering subsequent footnotes accordingly. The text of the footnote should read as follows:

This pattern instruction formerly contained the jury charge for the statutory version of this offense committed prior to July 1, 2009. To obtain that pattern instruction, see T.P.I. 21.01(a) (22nd ed. 2018), or an earlier edition.

- c) Amend the definition paragraph for “Adversely affect the child’s health and welfare” as follows:

[“Adversely affect the child’s health and welfare” may include, but not limited to, *[the natural effects of starvation or dehydration]* [**Only for offenses committed on or after July 1, 2019: acts of female genital mutilation as defined in T.C.A. § 39-13-110.**]

- d) Add the following definition of “firearm” after the definition for [“Deadly weapon”]:

[Only for offenses committed on or after May 2, 2019: “Firearm” means *[any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosive] [, or the frame or receiver of any such weapon] [, or any firearm muffler or firearm silencer] [any destructive device]. [The definition of “firearm” does not include an antique firearm.]*

- e) Add a footnote after the bracketed phrase *[, the frame or receiver of any such weapon]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “frame or receiver” if it is fairly raised in the proof.

- f) Add a footnote after the bracketed phrase *[, any firearm muffler or firearm silencer]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “firearm muffler or firearm silencer” if it fairly raised in the proof.

- g) Add a footnote after the bracketed phrase *[any destructive device]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “destructive device” if it is fairly raised in the proof.

- h) Add a footnote after the phrase “*antique firearm*” inside the closing bracket and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “antique firearm” if it is fairly raised in the proof.

- i) Add a footnote after the closing bracket after antique firearm and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. §39-11-106.

- j) In the definition paragraph for “Serious bodily injury to the child”, add the following to the end of the sentence ending with ...”including those sustained by whipping children with objects”:

, [Only for offenses committed on or after July 1, 2019: or acts of female genital mutilation as defined in T.C.A. § 39-13-110].

- k) Change the text of footnote 14 to read as follows:

T.C.A. §§ 39-15-402(c) and 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.

21.02 – Child [abuse] [neglect] (for offenses committed on or after July 1, 2005)

- a) Amend the definition paragraph for “Adversely affect the child’s health and welfare” as follows:

[Only for offenses committed on or after July 1, 2008: “Adversely affect the child’s health and welfare” may include, but not be limited to, [the natural effects of starvation or dehydration] [Only for offenses committed on or after July 1, 2019: acts of female genital mutilation as defined in T.C.A. § 39-13-110].]

21.03(a) – Parental or custodial child endangerment

- a) In the definition paragraph for “Serious bodily injury”, add the following to the end of the sentence which ends with ...”including those sustained by whipping children with objects”:

, [Only for offenses committed on or after July 1, 2019: or acts of female genital mutilation as defined in T.C.A. § 39-13-110].

- b) Change the text of footnote 7 to read as follows:

T.C.A. §§ 39-15-402(c) and 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.

21.03(b) – Aggravated parental or custodial child endangerment

- a) Add the following definition of “firearm” after the definition for [“Deadly weapon”:

[Only for offenses committed on or after May 2, 2019: “Firearm” means [any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosive] [, or the frame or receiver of any such weapon] [, or any firearm muffler or firearm

silencer] [any destructive device]. [The definition of “firearm” does not include an antique firearm.]

- b) Add a footnote after the bracketed phrase *[, the frame or receiver of any such weapon]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “frame or receiver” if it is fairly raised in the proof.

- c) Add a footnote after the bracketed phrase *[, any firearm muffler or firearm silencer]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “firearm muffler or firearm silencer” if it fairly raised in the proof.

- d) Add a footnote after the bracketed phrase *[any destructive device]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “destructive device” if it is fairly raised in the proof.

- e) Add a footnote after the phrase *“antique firearm”* inside the closing bracket and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “antique firearm” if it is fairly raised in the proof.

- f) Add a footnote after the closing bracket after antique firearm and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. §39-11-106.

- g) In the definition paragraph for “Serious bodily injury”, add the following to the end of the sentence which ends with ...”including those sustained by whipping children with objects”:

, [Only for offenses committed on or after July 1, 2019: or acts of female genital mutilation as defined in T.C.A. § 39-13-110].

- h) Change the text of footnote 11 to read as follows:

T.C.A. §§ 39-15-402(c) and 39-11-106. The trial judge may wish to omit the language regarding a broken bone of a child if not fairly raised in the proof.

21.05 – Distribution of tobacco products to minor

- a) Delete this instruction but keep as [Reserved].

23.01 – Contraband in penal institutions

- a) Add the following in element 1 after *[controlled substance analogue]*:

[telecommunication device]

- b) Rearrange the definition paragraphs after Part B, element 3 in the following order:

["Controlled substance"
["Possession" may be actual
["Possession may also be sole
"Knowingly"
"The requirement of "knowingly"
"Intentionally"

- c) Renumber the corresponding footnotes of each definition according to the new placement.

- d) Add the following as a new definition after ["Possession may also be sole..":

["Telecommunication device" means any type of instrument, device machine, or equipment which is capable of transmitting telephonic, electronic, digital, cellular or radio communications or any part of such instrument, device, machine or equipment which is capable of facilitating the transmission of telephonic, electronic, digital, cellular or radio communications. The term shall include, but not be limited to, cellular phones, digital phones and modem equipment devices.]

- e) Add a new footnote to the new definition outside the closing bracket. The text of the new footnote should read as follows:

T.C.A. § 39-16-201(a).

- f) Comment One should be amended to read as follows:

Commission of this offense regarding weapons, ammunition and explosives is a Class C felony. All other contraband is a Class D felony. T.C.A. § 39-16-201(c). For offenses committed prior to 7/1/19, all violations were a Class C felony except regarding telecommunication devices, which was a Class E felony.

26.10 – Destruction of and tampering with governmental records

- a) Amend Comment One to read as follows:

Destroying or tampering with governmental records is a Class E felony. If committed prior to 7/1/19, it is a Class A misdemeanor.

26.12 – Activating and pointing a laser device at any [law enforcement officer] [firefighter] [emergency medical technician] [emergency service personnel]

- a) Amend footnote 3 of the instruction as follows:

T.C.A. § 7-51-210 and 68-102-302.

27.02 – Failure to appear (for offenses committed prior to May 19, 2004)

- a) Delete this instruction.

27.02(a) – Failure to appear (for offenses committed on or after May 19, 2004)

- a) Renumber this instruction as 27.02.
- b) Add a footnote to the title of the instruction and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

To obtain the pattern instruction for this offense committed prior to 5/19/04, *see* T.P.I. 27.02 (22nd ed. 2018), or an earlier edition.

- c) Rearrange the definition paragraphs in the following order after element 3(e):

[“Custody”
[“Official proceeding”
[“Penal institution”
“Knowingly”
“The requirement of “knowingly”
“Intentionally”

- d) Renumber the corresponding footnotes of each definition according to the new placement.
- e) Amend Comment One to read as follows:

For all offenses committed on or after 7/1/19, failure to appear is a Class A misdemeanor, and any sentence received for a violation “must be ordered to be served consecutively to any sentence received for the offense for which the defendant failed to appear.” T.C.A. § 39-13-609(d) and (e). For offenses committed prior to 7/1/19, failure to appear for a Class A misdemeanor or felony was a Class E felony, and the consecutive nature of the sentences was discretionary with the trial judge.

- f) Delete Comment Two and renumber Comment Three as Comment Two.

27.04 – Resisting stop, frisk, halt, arrest or search – Prevention or obstruction of service of legal writ or process

- a) Rearrange the definition paragraphs in the following order after Part B, element 3:

[“Deadly weapon”
“Force”
“Law enforcement”
[“Serious bodily injury”
“Intentionally”

- b) Renumber the corresponding footnotes of each definition according to the new placement.
- c) Add the following definition of “firearm” after the definition for [“Deadly weapon”:

[Only for offenses committed on or after May 2, 2019: “Firearm” means *[any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an*

explosive] [, or the frame or receiver of any such weapon] [, or any firearm muffler or firearm silencer] [any destructive device]. [The definition of “firearm” does not include an antique firearm.]

- d) Add a footnote after the bracketed phrase *[, the frame or receiver of any such weapon]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “frame or receiver” if it is fairly raised in the proof.

- e) Add a footnote after the bracketed phrase *[, any firearm muffler or firearm silencer]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “firearm muffler or firearm silencer” if it fairly raised in the proof.

- f) Add a footnote after the bracketed phrase *[any destructive device]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “destructive device” if it is fairly raised in the proof.

- g) Add a footnote after the phrase *“antique firearm”* inside the closing bracket and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “antique firearm” if it is fairly raised in the proof.

- h) Add a footnote after the closing bracket after antique firearm and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. §39-11-106.

27.07 – Permitting or facilitating an escape

- a) Rearrange the definition paragraphs in the following order after Part G, element 3:

“Custody”
[“Deadly weapon”
“Escape”
“Facilitation”
[“Penal institution”
[“Serious bodily injury”
“Intentionally”
“Knowingly”
[“Recklessly”

- b) Renumber the corresponding footnotes of each definition according to the new placement.
- c) Add the following definition of “firearm” after the definition for “Facilitation”:

[Only for offenses committed on or after May 2, 2019: “Firearm” means *[any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosive] [, or the frame or receiver of any such weapon] [, or any firearm muffler or firearm silencer] [any destructive device]. [The definition of “firearm” does not include an antique firearm.]*

- d) Add a footnote after the bracketed phrase *[, the frame or receiver of any such weapon]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “frame or receiver” if it is fairly raised in the proof.

- e) Add a footnote after the bracketed phrase *[, any firearm muffler or firearm silencer]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “firearm muffler or firearm silencer” if it fairly raised in the proof.

- f) Add a footnote after the bracketed phrase *[any destructive device]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “destructive device” if it is fairly raised in the proof.

- g) Add a footnote after the phrase “*antique firearm*” inside the closing bracket and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “antique firearm” if it is fairly raised in the proof.

- h) Add a footnote after the closing bracket after antique firearm and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. §39-11-106.

30.12(b) – Aggravated stalking

- a) Rearrange the definition paragraphs in the following order after the paragraph beginning “[Evidence...:”

“Course of conduct”
[“Deadly weapon”
“Emotional distress”
“Harassment”
“Stalking”
“Unconsented contact”
“Victim”
[“Knowingly”
[“The requirement of “knowingly”
“Intentionally”

- b) Renumber the corresponding footnotes of each definition according to the new placement.

- c) Add the following definition of “firearm” after the definition for “Emotional distress”:

[Only for offenses committed on or after May 2, 2019: “Firearm” means *[any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosive] [, or the frame or receiver of any such weapon] [, or any firearm muffler or firearm silencer] [any destructive device]. [The definition of “firearm” does not include an antique firearm.]*

- d) Add a footnote after the bracketed phrase *[, the frame or receiver of any such weapon]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “frame or receiver” if it is fairly raised in the proof.

- e) Add a footnote after the bracketed phrase *[, any firearm muffler or firearm silencer]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “firearm muffler or firearm silencer” if it fairly raised in the proof.

- f) Add a footnote after the bracketed phrase *[any destructive device]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “destructive device” if it is fairly raised in the proof.

- g) Add a footnote after the phrase “*antique firearm*” inside the closing bracket and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “antique firearm” if it is fairly raised in the proof.

- h) Add a footnote after the closing bracket after antique firearm and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. §39-11-106.

30.12(c) – Especially aggravated stalking

- a) Rearrange the definition paragraphs in the following order after the paragraph beginning “[Evidence...:”

“Bodily injury”

“Course of conduct”

[“Deadly weapon”

“Emotional distress”

“Harassment”

“Serious bodily injury”

“Stalking”

“Unconsented contact”

“Victim”

“Recklessly”
“The requirement of recklessly”
“Knowingly”
“The requirement of “knowingly”
“Intentionally”

- b) Renumber the corresponding footnotes of each definition according to the new placement.
- c) Add the following definition of “firearm” after the definition for “Emotional distress”:

[Only for offenses committed on or after May 2, 2019: “Firearm” means *[any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosive] [, or the frame or receiver of any such weapon] [, or any firearm muffler or firearm silencer] [any destructive device]. [The definition of “firearm” does not include an antique firearm.]*

- d) Add a footnote after the bracketed phrase *[, the frame or receiver of any such weapon]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “frame or receiver” if it is fairly raised in the proof.

- e) Add a footnote after the bracketed phrase *[, any firearm muffler or firearm silencer]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “firearm muffler or firearm silencer” if it fairly raised in the proof.

- f) Add a footnote after the bracketed phrase *[any destructive device]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “destructive device” if it is fairly raised in the proof.

- g) Add a footnote after the phrase “*antique firearm*” inside the closing bracket and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “antique firearm” if it is fairly raised in the proof.

- h) Add a footnote after the closing bracket after antique firearm and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. §39-11-106.

31.04 – Controlled substances: Possession with intent to sell or deliver

- a) Amend the elements as follows:

(1) that the defendant knowingly possessed a controlled substance;

and

(2) that the defendant intended to *[deliver] [sell]* such controlled substance;

and

(3) that the controlled substance was *[specify controlled substance]*, a Schedule *[insert schedule number]* controlled substance;

[and

(4) (a) that this occurred *[on the grounds or facilities of a school] [within one thousand feet (1,000') of the real property that comprises a [public] [private] [elementary school] [middle school] [secondary school] [preschool] [child care agency] [public library] [recreational center] [park]]*.

(b) that the recipient or intended recipient of the (insert controlled substance) was under eighteen (18) years of age.]

32.01 – Aggravated gambling promotion

a) Amend the definition of “gambling” as follows:

“Gambling” means risking anything of value for a profit whose return is to any degree contingent on chance, or any games of chance associated with casinos, including, but not limited to, slot machines, roulette wheels and the like. Gambling does not include: (1) a lawful business transaction; (2) annual events operated for the benefit of charitable § 501(c)(3) organizations that are authorized pursuant to a two-thirds (2/3) approval of the general assembly, so long as such events are not prohibited by the state constitution; (3) the Tennessee state lottery; (4) a fantasy sports contest as defined in § 47-18-1602 and conducted in accordance with the Fantasy Sports Act, compiled in title 47, chapter 18. Part 16; or (5) a low-level sports entertainment pool.

b) Add the following new definition after the definition of “Lottery”:

"Low-level sports entertainment pool" or "pool" means a type of pari-mutuel betting

(A) in which a participant:

(i) Pays money for participation in a pool; and

(ii) Makes selections based on the participant's predictions of either the outcome of a series of athletic contests of the same sport or the statistics of individual athletes selected by the participant to assemble an imaginary team of athletes;

(B) that does not involve laying odds; and

(C) that has the following characteristics:

(i) The total or cumulative entry fee paid by an individual participant is no more than twenty-five dollars (\$25.00);

(ii) The total pool is no more than one thousand dollars (\$1,000); and

(iii) The pool is managed by an individual and not by any type of business entity.

c) Add a new footnote to the end of the new definition. The text of the footnote should read as follows:

T.C.A. § 39-17-501(6).

- d) Amend the text of existing footnote 8 to read as follows:

T.C.A. § 39-17-501(7).

32.03 – Gambling

- a) Amend the definition of “gambling” as follows:

“Gambling” means risking anything of value for a profit whose return is to any degree contingent on chance, or any games of chance associated with casinos, including, but not limited to, slot machines, roulette wheels and the like. Gambling does not include: (1) a lawful business transaction; (2) annual events operated for the benefit of charitable § 501(c)(3) organizations that are authorized pursuant to a two-thirds (2/3) approval of the general assembly, so long as such events are not prohibited by the state constitution; (3) the Tennessee state lottery; (4) a fantasy sports contest as defined in § 47-18-1602 and conducted in accordance with the Fantasy Sports Act, compiled in title 47, chapter 18, Part 16; or (5) a low-level sports entertainment pool.

- b) Add the following new definition after the definition of “Lottery”:

"Low-level sports entertainment pool" or "pool" means a type of pari-mutuel betting

(A) in which a participant:

(i) Pays money for participation in a pool; and

(ii) Makes selections based on the participant's predictions of either the outcome of a series of athletic contests of the same sport or the statistics of individual athletes selected by the participant to assemble an imaginary team of athletes;

(B) that does not involve laying odds; and

(C) that has the following characteristics:

(i) The total or cumulative entry fee paid by an individual participant is no more than twenty-five dollars (\$25.00);

(ii) The total pool is no more than one thousand dollars (\$1,000); and

(iii) The pool is managed by an individual and not by any type of business entity.

- c) Add a new footnote to the end of the new definition. The text of the footnote should read as follows:

T.C.A. § 39-17-501(6).

- d) Amend the text of existing footnote 6 to read as follows:

T.C.A. § 39-17-501(7).

32.04 – Gambling promotion

- a) Amend the definition of “gambling” as follows:

“Gambling” means risking anything of value for a profit whose return is to any degree contingent on chance, or any games of chance associated with casinos, including, but not limited to, slot machines, roulette wheels and the like. Gambling does not include: (1) a lawful business transaction; (2) annual events operated for the benefit of charitable § 501(c)(3) organizations that are authorized pursuant to a two-thirds (2/3) approval of the general assembly, so long as such events are not prohibited by the state constitution; (3) the Tennessee

state lottery; (4) a fantasy sports contest as defined in § 47-18-1602 and conducted in accordance with the Fantasy Sports Act, compiled in title 47, chapter 18, Part 16; or (5) a low-level sports entertainment pool.

- b) Add the following new definition after the definition of “Lottery”:

"Low-level sports entertainment pool" or "pool" means a type of pari-mutuel betting

(A) in which a participant:

(i) Pays money for participation in a pool; and

(ii) Makes selections based on the participant's predictions of either the outcome of a series of athletic contests of the same sport or the statistics of individual athletes selected by the participant to assemble an imaginary team of athletes;

(B) that does not involve laying odds; and

(C) that has the following characteristics:

(i) The total or cumulative entry fee paid by an individual participant is no more than twenty-five dollars (\$25.00);

(ii) The total pool is no more than one thousand dollars (\$1,000); and

(iii) The pool is managed by an individual and not by any type of business entity.

- c) Add a new footnote to the end of the new definition. The text of the footnote should read as follows:

T.C.A. § 39-17-501(6).

- d) Amend the text of existing footnote 6 to read as follows:

T.C.A. § 39-17-501(7).

32.05 – Possession of gambling device or record

- a) Amend the definition of “gambling” as follows:

“Gambling” means risking anything of value for a profit whose return is to any degree contingent on chance, or any games of chance associated with casinos, including, but not limited to, slot machines, roulette wheels and the like. Gambling does not include: (1) a lawful business transaction; (2) annual events operated for the benefit of charitable § 501(c)(3) organizations that are authorized pursuant to a two-thirds (2/3) approval of the general assembly, so long as such events are not prohibited by the state constitution; (3) the Tennessee state lottery; (4) a fantasy sports contest as defined in § 47-18-1602 and conducted in accordance with the Fantasy Sports Act, compiled in title 47, chapter 18, Part 16; or (5) a low-level sports entertainment pool.

- b) Add the following new definition after the definition of “Lottery”:

"Low-level sports entertainment pool" or "pool" means a type of pari-mutuel betting

(A) in which a participant:

(i) Pays money for participation in a pool; and

(ii) Makes selections based on the participant's predictions of either the outcome of a series of athletic contests of the same sport or the statistics of individual athletes selected by the participant to assemble an imaginary team of athletes;

(B) that does not involve laying odds; and

(C) that has the following characteristics:

- (i) The total or cumulative entry fee paid by an individual participant is no more than twenty-five dollars (\$25.00);
 - (ii) The total pool is no more than one thousand dollars (\$1,000); and
 - (iii) The pool is managed by an individual and not by any type of business entity.
- c) Add a new footnote to the end of the new definition. The text of the footnote should read as follows:
- T.C.A. § 39-17-501(6).
- d) Amend the text of existing footnote 7 to read as follows:
- T.C.A. § 39-17-501(7).

34.03- Sexual exploitation of a minor (for offenses committed on or after 7/1/05)

- a) Rearrange the definition paragraphs in the following order:
- “Community”
 - [“Lascivious”
 - “Material”
 - “Minor”
 - “Patently offensive”
 - “Sexual activity”
 - [A “simulated sexual activity”
 - “Knowingly”
 - The requirement of “knowingly”
 - “Intentionally”
- b) Renumber the corresponding footnotes of each definition according to the new placement.
- c) Change the definition of “lascivious” to read as follows:
- [“Lascivious” means tending to incite lust; lewd; indecent.]
- d) Change the wording of existing footnote 13 to read as follows:
- State v. Hall, ___ S.W.3d ___, 2019 WL 117580 (Tenn. 2019). See Comment 3.
- e) Add a new comment 3 to the instruction. The text of the comment should read as follows:

In deciding whether or not materials are “lascivious,” the Supreme Court in *State v. Whited*, 506 S.W.3d 416, 438 (Tenn. 2016), held that the fact-intensive determination of whether particular materials contain sexual activity or a lascivious exhibition of private body areas is not facilitated by the adoption of a one-size-fits-all “multi-factor analysis” such as the *Dost* factors. See *Grzybowicz*, 747 F.3d at 1306. Lower courts should refrain from using the *Dost* factors as a test or an analytical framework in making such a determination.

34.04- Aggravated sexual exploitation of a minor

- a) Rearrange the definition paragraphs in the following order:

“Community”
[“Consideration”
[“Cunnilingus”
[“Distribute”
[“Fellatio”
[“Lascivious”
“Material”
“Minor”
[“Obscene”
[“Patently offensive”
[“Promote”
“Prurient interest”
“Sexual activity”
“Sexual conduct”
[A “simulated sexual activity”
[“Sodomy”
“Knowingly”
The requirement of “knowingly”
“Intentionally”

- b) Renumber the corresponding footnotes of each definition according to the new placement.
- c) Change the definition of “lascivious” to read as follows:

[“Lascivious” means tending to incite lust; lewd; indecent.]

- d) Change the wording of existing footnote 23 to read as follows:

State v. Hall, ___ S.W.3d ____, 2019 WL 117580 (Tenn. 2019). See Comment 3.

- e) Add a new comment 3 to the instruction. The text of the comment should read as follows:

In deciding whether or not materials are “lascivious,” the Supreme Court in *State v. Whited*, 506 S.W.3d 416, 438 (Tenn. 2016), held that the fact-intensive determination of whether particular materials contain sexual activity or a lascivious exhibition of private body areas is not facilitated by the adoption of a one-size-fits-all “multi-factor analysis” such as the *Dost* factors. See *Grzybowicz*, 747 F.3d at 1306. Lower courts should refrain from using the *Dost* factors as a test or an analytical framework in making such a determination.

34.05 – Especially aggravated sexual exploitation of a minor

- a) Rearrange the definition paragraphs in the following order:

[“Community”
[“Cunnilingus”
[“Fellatio”
[“Lascivious”
“Material”

“Minor”
[“Patently offensive”
[“Promote”
“Sexual activity”
[A “simulated sexual activity”
[“Sodomy”
“Knowingly”
The requirement of “knowingly”
“Intentionally”

- b) Renumber the corresponding footnotes of each definition according to the new placement.
- c) Change the definition of “lascivious” to read as follows:

[“Lascivious” means tending to incite lust; lewd; indecent.]

- d) Change the wording of existing footnote 17 to read as follows:

State v. Hall, ___ S.W.3d ___, 2019 WL 117580 (Tenn. 2019). See Comment 5.

- e) Add a new Comment 5 to the instruction. The text of the comment should read as follows:

In deciding whether or not materials are “lascivious”, the Supreme Court in *State v. Whited*, 506 S.W.3d 416, 438 (Tenn. 2016), held that

the fact-intensive determination of whether particular materials contain sexual activity or a lascivious exhibition of private body areas is not facilitated by the adoption of a one-size-fits-all "multi-factor analysis" such as the *Dost* factors. See *Grzybowicz*, 747 F.3d at 1306. Lower courts should refrain from using the *Dost* factors as a test or an analytical framework in making such a determination.

34.09 – Exploitation of a minor [by electronic means]

- a) Rearrange the definition paragraphs in the following order:

[“Community”
[“Lascivious”
[“Law enforcement officer”
[“Material”
“Minor”
“Patently offensive”
“Sexual activity”
[A “simulated sexual activity”
“Intentionally”

- b) Renumber the corresponding footnotes of each definition according to the new placement.
- c) Change the definition of “lascivious” to read as follows:

[“Lascivious” means tending to incite lust; lewd; indecent.]

- d) Change the wording of existing footnote 9 to read as follows:

State v. Hall, ___ S.W.3d ____, 2019 WL 117580 (Tenn. 2019). See Comment 3.

- e) Add a new Comment 3 to the instruction. The text of the comment should read as follows:

In deciding whether or not materials are “lascivious”, the Supreme Court in *State v. Whited*, 506 S.W.3d 416, 438 (Tenn. 2016), held that the fact-intensive determination of whether particular materials contain sexual activity or a lascivious exhibition of private body areas is not facilitated by the adoption of a one-size-fits-all “multi-factor analysis” such as the *Dost* factors. See *Grzybowicz*, 747 F.3d at 1306. Lower courts should refrain from using the *Dost* factors as a test or an analytical framework in making such a determination.

36.01 – Weapons: possessing, manufacturing, transporting, repairing or selling prohibited

- a) The definition of “firearm” should be amended to read as follows:

[Only for offenses committed on or after May 2, 2019: “Firearm” means *[any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosive] [, or the frame or receiver of any such weapon] [, or any firearm muffler or firearm silencer] [any destructive device]. [The definition of “firearm” does not include an antique firearm.]*

or

[Only for offenses committed prior to May 2, 2019: “Firearm” means any weapon designed, made or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use.]

- b) Add a footnote after the bracketed phrase *[, the frame or receiver of any such weapon]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “frame or receiver” if it is fairly raised in the proof.

- c) Add a footnote after the bracketed phrase *[, any firearm muffler or firearm silencer]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “firearm muffler or firearm silencer” if it fairly raised in the proof.

- d) Add a footnote after the bracketed phrase *[any destructive device]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “destructive device” if it is fairly raised in the proof.

- e) Add a footnote after the phrase “*antique firearm*” inside the closing bracket and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “antique firearm” if it is fairly raised in the proof.

- f) Add a footnote after the closing bracket after antique firearm and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. §39-11-106.

36.02 – Carrying weapons during judicial proceedings

- a) The definition of “firearm” should be amended to read as follows:

[Only for offenses committed on or after May 2, 2019: “Firearm” means *[any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosive] [, or the frame or receiver of any such weapon] [, or any firearm muffler or firearm silencer] [any destructive device]. [The definition of “firearm” does not include an antique firearm.]*

or

[Only for offenses committed prior to May 2, 2019: “Firearm” means any weapon designed, made or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use.]

- b) Add a footnote after the bracketed phrase *[, the frame or receiver of any such weapon]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “frame or receiver” if it is fairly raised in the proof.

- c) Add a footnote after the bracketed phrase *[, any firearm muffler or firearm silencer]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “firearm muffler or firearm silencer” if it fairly raised in the proof.

- d) Add a footnote after the bracketed phrase *[any destructive device]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “destructive device” if it is fairly raised in the proof.

- e) Add a footnote after the phrase “*antique firearm*” inside the closing bracket and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “antique firearm” if it is fairly raised in the proof.

- f) Add a footnote after the closing bracket after antique firearm and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. §39-11-106.

g) Rearrange the definition paragraphs in the following order:

[“Explosive weapon”
[“Firearm”
[“Firearm silencer”
[“Hoax device”
[“Knife”
[“Knuckles”
[“Machine gun”
[“Rifle”
[“Serious bodily injury”
[“Short barrel”
[“Shotgun”
[“Switchblade”
“Intentionally”
“Knowingly”
“Recklessly”

h) Renumber the corresponding footnotes of each definition according to the new placement.

36.03(a) – Possessing or carrying weapons with intent to go armed on school property

a) The definition of “firearm” should be amended to read as follows:

[Only for offenses committed on or after May 2, 2019: “Firearm” means *[any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosive] [, or the frame or receiver of any such weapon] [, or any firearm muffler or firearm silencer] [any destructive device]. [The definition of “firearm” does not include an antique firearm.]*

or

[Only for offenses committed prior to May 2, 2019: “Firearm” means any weapon designed, made or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use.]

b) Add a footnote after the bracketed phrase *[, the frame or receiver of any such weapon]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “frame or receiver” if it is fairly raised in the proof.

c) Add a footnote after the bracketed phrase *[, any firearm muffler or firearm silencer]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “firearm muffler or firearm silencer” if it fairly raised in the proof.

- d) Add a footnote after the bracketed phrase *[any destructive device]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “destructive device” if it is fairly raised in the proof.

- e) Add a footnote after the phrase “*antique firearm*” inside the closing bracket and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “antique firearm” if it is fairly raised in the proof.

- f) Add a footnote after the closing bracket after antique firearm and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. §39-11-106.

- g) Rearrange the definition paragraphs in the following order:

[“Explosive weapon”
[“Firearm”
[“Knife”
[“Knuckles”
[“Possession” may be actual....
[“Possession” may be sole...
“School property”
[“Serious bodily injury”
[“Switchblade knife”
[“Weapons of like kind”
“Intentionally”
“Knowingly”
“Recklessly”

- h) Renumber the corresponding footnotes of each definition according to the new placement.

36.03(b) – Possessing or carrying firearms on school property

- a) The definition of “firearm” should be amended to read as follows:

[Only for offenses committed on or after May 2, 2019: “Firearm” means *[any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosive] [, or the frame or receiver of any such weapon] [, or any firearm muffler or firearm silencer] [any destructive device]. [The definition of “firearm” does not include an antique firearm.]*

or

[Only for offenses committed prior to May 2, 2019: “Firearm” means any weapon designed, made or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use.]

- b) Add a footnote after the bracketed phrase [*the frame or receiver of any such weapon*] and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “frame or receiver” if it is fairly raised in the proof.

- c) Add a footnote after the bracketed phrase [*any firearm muffler or firearm silencer*] and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “firearm muffler or firearm silencer” if it fairly raised in the proof.

- d) Add a footnote after the bracketed phrase [*any destructive device*] and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “destructive device” if it is fairly raised in the proof.

- e) Add a footnote after the phrase “*antique firearm*” inside the closing bracket and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “antique firearm” if it is fairly raised in the proof.

- f) Add a footnote after the closing bracket after antique firearm and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. §39-11-106.

- g) Rearrange the definition paragraphs in the following order:

[“Firearm”
[“Possession” may be actual...
[“Possession” may be sole...
“School property”
“Intentionally”
“Knowingly”
“Recklessly”

- h) Renumber the corresponding footnotes of each definition according to the new placement.

36.04 – Possessing or carrying weapons on public parks, civic centers, recreational buildings and grounds

- a) The definition of “firearm” should be amended to read as follows:

[Only for offenses committed on or after May 2, 2019: “Firearm” means [*any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosive*] [*or the frame or receiver of any such weapon*] [*or any firearm muffler or firearm silencer*] [*any destructive device*]. [*The definition of “firearm” does not include an antique firearm.*]

or

[Only for offenses committed prior to May 2, 2019: “Firearm” means any weapon designed, made or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use.]

- b) Add a footnote after the bracketed phrase [*the frame or receiver of any such weapon*] and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “frame or receiver” if it is fairly raised in the proof.

- c) Add a footnote after the bracketed phrase [*any firearm muffler or firearm silencer*] and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “firearm muffler or firearm silencer” if it fairly raised in the proof.

- d) Add a footnote after the bracketed phrase [*any destructive device*] and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “destructive device” if it is fairly raised in the proof.

- e) Add a footnote after the phrase “*antique firearm*” inside the closing bracket and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “antique firearm” if it is fairly raised in the proof.

- f) Add a footnote after the closing bracket after antique firearm and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. §39-11-106.

- g) Rearrange the definition paragraphs in the following order:

[“Explosive weapon”
[“Firearm”
[“Firearm silencer”
[“Hoax device”
[“Knife”
[“Knuckles”
[“Machine gun”
[“Recreational facility”
[“Rifle”
[“Serious bodily injury”
[“Short barrel”
[“Shotgun”
[“Switchblade”
“Intentionally”
“Knowingly”

“Recklessly”

- h) Renumber the corresponding footnotes of each definition according to the new placement.

36.05 – Unlawful possession of a handgun by a convicted felon (for offenses committed on or after 7/1/08)

- a) The definition of “firearm” should be amended to read as follows:

[Only for offenses committed on or after May 2, 2019: “Firearm” means *[any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosive] [, or the frame or receiver of any such weapon] [, or any firearm muffler or firearm silencer] [any destructive device]. [The definition of “firearm” does not include an antique firearm.]*

or

[Only for offenses committed prior to May 2, 2019: “Firearm” means any weapon designed, made or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use.]

- b) Add a footnote after the bracketed phrase *[, the frame or receiver of any such weapon]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “frame or receiver” if it is fairly raised in the proof.

- c) Add a footnote after the bracketed phrase *[, any firearm muffler or firearm silencer]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “firearm muffler or firearm silencer” if it fairly raised in the proof.

- d) Add a footnote after the bracketed phrase *[any destructive device]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “destructive device” if it is fairly raised in the proof.

- e) Add a footnote after the phrase *“antique firearm”* inside the closing bracket and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “antique firearm” if it is fairly raised in the proof.

- f) Add a footnote after the closing bracket after antique firearm and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. §39-11-106.

36.05(a) – Unlawful possession of a firearm by a convicted felon (for offenses committed on or after 7/1/08)

- a) The definition of “firearm” should be amended to read as follows:

[Only for offenses committed on or after May 2, 2019: “Firearm” means *[any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosive] [, or the frame or receiver of any such weapon] [, or any firearm muffler or firearm silencer] [any destructive device]. [The definition of “firearm” does not include an antique firearm.]*

or

[Only for offenses committed prior to May 2, 2019: “Firearm” means any weapon designed, made or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use.]

- b) Add a footnote after the bracketed phrase *[, the frame or receiver of any such weapon]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “frame or receiver” if it is fairly raised in the proof.

- c) Add a footnote after the bracketed phrase *[, any firearm muffler or firearm silencer]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “firearm muffler or firearm silencer” if it fairly raised in the proof.

- d) Add a footnote after the bracketed phrase *[any destructive device]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “destructive device” if it is fairly raised in the proof.

- e) Add a footnote after the phrase “*antique firearm*” inside the closing bracket and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “antique firearm” if it is fairly raised in the proof.

- f) Add a footnote after the closing bracket after antique firearm and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. §39-11-106.

36.06(a) – Unlawful possession of a deadly weapon with intent to employ it during the [commission of] [attempt to commit] [escape from] an offense [for “non-dangerous offenses” committed on or after 1/1/08]

- a) The definition of “firearm” should be amended to read as follows:

[Only for offenses committed on or after May 2, 2019: “Firearm” means *[any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosive] [, or the frame or receiver of any such weapon] [, or any firearm muffler or firearm silencer] [any destructive device]. [The definition of “firearm” does not include an antique firearm.]*

or

[Only for offenses committed prior to May 2, 2019: “Firearm” means any weapon designed, made or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use.]

- b) Add a footnote after the bracketed phrase *[, the frame or receiver of any such weapon]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “frame or receiver” if it is fairly raised in the proof.

- c) Add a footnote after the bracketed phrase *[, any firearm muffler or firearm silencer]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “firearm muffler or firearm silencer” if it fairly raised in the proof.

- d) Add a footnote after the bracketed phrase *[any destructive device]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “destructive device” if it is fairly raised in the proof.

- e) Add a footnote after the phrase *“antique firearm”* inside the closing bracket and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “antique firearm” if it is fairly raised in the proof.

- f) Add a footnote after the closing bracket after antique firearm and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. §39-11-106.

36.06(b) – Unlawful possession of a deadly weapon other than a firearm with intent to employ it during the [commission of] [attempt to commit] [escape from] a dangerous offense [for offenses committed on or after 1/1/08]

- a) Add the following definition of “firearm” after the definition for “Employ”:

[Only for offenses committed on or after May 2, 2019: “Firearm” means *[any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosive] [, or the frame or receiver of any such weapon] [, or any firearm muffler or firearm*

silencer] [any destructive device]. [The definition of “firearm” does not include an antique firearm.]

- b) Add a footnote after the bracketed phrase [, *the frame or receiver of any such weapon*] and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “frame or receiver” if it is fairly raised in the proof.

- c) Add a footnote after the bracketed phrase [, *any firearm muffler or firearm silencer*] and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “firearm muffler or firearm silencer” if it fairly raised in the proof.

- d) Add a footnote after the bracketed phrase [*any destructive device*] and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “destructive device” if it is fairly raised in the proof.

- e) Add a footnote after the phrase “*antique firearm*” inside the closing bracket and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “antique firearm” if it is fairly raised in the proof.

- f) Add a footnote after the closing bracket after antique firearm and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. §39-11-106.

36.06(c) – Unlawful [possession] [employment] of a firearm [with intent to go armed] during the [commission of or attempt to commit] [flight or escape from the commission of or attempt to commit] a dangerous offense

- a) Amend the title as follows:

Unlawful [possession] [employment] of a [firearm] [antique firearm] [with intent to go armed] during the [commission of or attempt to commit] [flight or escape from the commission of or attempt to commit] a dangerous offense

- b) Element One of Part A should be amended as follows:

(1) that the defendant possessed a [*firearm*] [*antique firearm*];

- c) Add a new footnote inside the closing bracket after *antique firearm*. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “antique firearm” if it is fairly raised in the proof.

d) Element One of Part B should be amended as follows:

(1) that the defendant employed a *[firearm] [antique firearm]*;

e) Add a new footnote inside the closing bracket after *antique firearm*. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “antique firearm” if it is fairly raised in the proof.

f) The definition of “firearm” should be amended to read as follows:

[Only for offenses committed on or after May 2, 2019: “Firearm” means *[any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosive] [, or the frame or receiver of any such weapon] [, or any firearm muffler or firearm silencer] [any destructive device]. [The definition of “firearm” does not include an antique firearm.]*

or

[Only for offenses committed prior to May 2, 2019: “Firearm” means any weapon designed, made or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use.]

g) Add a footnote after the bracketed phrase *[, the frame or receiver of any such weapon]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “frame or receiver” if it is fairly raised in the proof.

h) Add a footnote after the bracketed phrase *[, any firearm muffler or firearm silencer]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “firearm muffler or firearm silencer” if it fairly raised in the proof.

i) Add a footnote after the bracketed phrase *[any destructive device]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “destructive device” if it is fairly raised in the proof.

j) Add a footnote after the phrase “*antique firearm*” inside the closing bracket and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “antique firearm” if it is fairly raised in the proof.

k) Add a footnote after the closing bracket after antique firearm and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. §39-11-106.

36.07 – Unlawful sale, loan or gift of firearm

- a) The definition of “firearm” should be amended to read as follows:

[Only for offenses committed on or after May 2, 2019: “Firearm” means *[any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosive] [, or the frame or receiver of any such weapon] [, or any firearm muffler or firearm silencer] [any destructive device]. [The definition of “firearm” does not include an antique firearm.]*

or

[Only for offenses committed prior to May 2, 2019: “Firearm” means any weapon designed, made or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use.]

- b) Add a footnote after the bracketed phrase *[, the frame or receiver of any such weapon]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “frame or receiver” if it is fairly raised in the proof.

- c) Add a footnote after the bracketed phrase *[, any firearm muffler or firearm silencer]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “firearm muffler or firearm silencer” if it fairly raised in the proof.

- d) Add a footnote after the bracketed phrase *[any destructive device]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “destructive device” if it is fairly raised in the proof.

- e) Add a footnote after the phrase “*antique firearm*” inside the closing bracket and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “antique firearm” if it is fairly raised in the proof.

- f) Add a footnote after the closing bracket after antique firearm and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. §39-11-106.

- g) Rearrange the definition paragraphs in the following order:

[“Firearm”
[“Intoxicated”

["Minor"
["Switchblade knife"
"Intentionally"
"Knowingly"
"Recklessly"
["Criminal negligence"

- h) Renumber the corresponding footnotes of each definition according to the new placement.
- i) Move the paragraph that begins "[It is a defense to prosecution for this offense that a firearm was loaned..." to the end of the instruction after the other defense.

36.08 – Carrying weapon with intent to go armed

- a) The definition of "firearm" should be amended to read as follows:

[Only for offenses committed on or after May 2, 2019: "Firearm" means *[any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosive] [, or the frame or receiver of any such weapon] [, or any firearm muffler or firearm silencer] [any destructive device]. [The definition of "firearm" does not include an antique firearm.]*

or

[Only for offenses committed prior to May 2, 2019: "Firearm" means any weapon designed, made or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use.]

- b) Add a footnote after the bracketed phrase *[, the frame or receiver of any such weapon]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of "frame or receiver" if it is fairly raised in the proof.

- c) Add a footnote after the bracketed phrase *[, any firearm muffler or firearm silencer]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of "firearm muffler or firearm silencer" if it fairly raised in the proof.

- d) Add a footnote after the bracketed phrase *[any destructive device]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of "destructive device" if it is fairly raised in the proof.

- e) Add a footnote after the phrase *"antique firearm"* inside the closing bracket and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of "antique firearm" if it is fairly raised in the proof.

- f) Add a footnote after the closing bracket after antique firearm and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. §39-11-106.

- g) Rearrange the definition paragraphs in the following order:

["Club"
["Firearm"
["Handgun"
["Knife"
"Public place"
"Intentionally"
"Knowingly"
"Recklessly"

- h) Renumber the corresponding footnotes of each definition according to the new placement.

36.09 – Unlawful possession of firearm where alcoholic beverages are served

- a) The definition of “firearm” should be amended to read as follows:

[Only for offenses committed on or after May 2, 2019: “Firearm” means *[any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosive] [, or the frame or receiver of any such weapon] [, or any firearm muffler or firearm silencer] [any destructive device]. [The definition of “firearm” does not include an antique firearm.]*

or

[Only for offenses committed prior to May 2, 2019: “Firearm” means any weapon designed, made or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use.]

- b) Add a footnote after the bracketed phrase *[, the frame or receiver of any such weapon]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “frame or receiver” if it is fairly raised in the proof.

- c) Add a footnote after the bracketed phrase *[, any firearm muffler or firearm silencer]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “firearm muffler or firearm silencer” if it fairly raised in the proof.

- d) Add a footnote after the bracketed phrase *[any destructive device]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “destructive device” if it is fairly raised in the proof.

- e) Add a footnote after the phrase “*antique firearm*” inside the closing bracket and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “antique firearm” if it is fairly raised in the proof.

- f) Add a footnote after the closing bracket after antique firearm and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. §39-11-106.

- g) Rearrange the definition paragraphs in the following order:

“Alcoholic beverage”
“Beer”
“Firearm”
“Intentionally”
“Knowingly”
“Recklessly”

- h) Renumber the corresponding footnotes of each definition according to the new placement.

36.11 – Failure to prevent or report minor’s possession of firearm

- a) The definition of “firearm” should be amended to read as follows:

[Only for offenses committed on or after May 2, 2019: “Firearm” means *[any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosive] [, or the frame or receiver of any such weapon] [, or any firearm muffler or firearm silencer] [any destructive device]. [The definition of “firearm” does not include an antique firearm.]*

or

[Only for offenses committed prior to May 2, 2019: “Firearm” means any weapon designed, made or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use.]

- b) Add a footnote after the bracketed phrase *[, the frame or receiver of any such weapon]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “frame or receiver” if it is fairly raised in the proof.

- c) Add a footnote after the bracketed phrase *[, any firearm muffler or firearm silencer]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult 27 C.F.R. §478.11 to draft the definition of “firearm muffler or firearm silencer” if it fairly raised in the proof.

- d) Add a footnote after the bracketed phrase *[any destructive device]* and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “destructive device” if it is fairly raised in the proof.

- e) Add a footnote after the phrase “*antique firearm*” inside the closing bracket and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

The trial judge should consult T.C.A. §39-11-106 to draft the definition of “antique firearm” if it is fairly raised in the proof.

- f) Add a footnote after the closing bracket after antique firearm and renumber subsequent footnotes accordingly. The text of the footnote should read as follows:

T.C.A. §39-11-106.

- g) Rearrange the definition paragraphs in the following order:

“Firearm
“Minor”
[“Possession” may be actual...
[“Possession” may be sole...
“Intentionally”
“Knowingly”
“Recklessly”

- h) Renumber the corresponding footnotes of each definition according to the new placement.

38.01 – Driving under the influence [accompanied by a child] [resulting in serious bodily injury to a child] [resulting in the killing of a child] (for offenses committed on or after 7/1/13)

- a) Element one of the instruction should be amended to read as follows:

that the defendant was driving or was in physical control of an automobile or motor driven vehicle [**Only for offenses committed on or after July 1, 2019:** or electric scooter];

- b) The text of Footnote 1 should be amended to read as follows:

T.C.A. § 55-10-401 and T.C.A. §55-8-101.

- c) Add the following definition paragraph before the “Intoxication” definition:

[“Electric scooter” means a device weighing less than one hundred pounds (100 lbs.) that has handlebars and an electric motor, is solely powered by the electric motor or human power, or both, has a maximum speed of no more than twenty miles per hour (20 mph) on a paved level surface when powered solely by the electric motor, and does not include an electric bicycle, electric personal assistive mobility device, motorcycle, or motor-driven cycle.]

- d) Add a footnote after the closing bracket to the new definition. The text of the footnote should read as follows:

T.C.A. §55-8-101.

38.09- Underage driving while impaired – Under 21 [For offenses committed prior to 7/1/16]

- a) Renumber this instruction as 38.09(b).
- b) Revise the phrase “intoxicant of drug” to “intoxicant or drug” in the second sentence from the end of the instruction so that the sentence reads as follows:

The law merely requires that the person be under the influence of an intoxicant or drug.

38.09(a) – Underage driving while impaired (for offenses committed on or after 9/19/16)

- a) Add attachment two to this memo as new instruction 38.09(a), Underage driving while impaired (for offenses committed on or after 9/19/16).

38.10 – Consuming/possessing open container of alcoholic beverage or beer while operating motor vehicle

- a) Replace the first sentence of the definition of “Motor vehicle” with the following:

“Motor vehicle” means every vehicle, including a low speed vehicle or a medium speed vehicle that is self-propelled, excluding [**Only for offenses committed on or after July 1, 2019:** electric scooters, electric bicycles as defined in §55-8-301,] motorized bicycles, and every vehicle, including a low speed vehicle or a medium speed vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

38.11 – Violation of motor vehicle habitual offender act

- a) Amend the title of the instruction as follows:

Violation of motor vehicle habitual offender act (Only for offenses committed prior to 7/1/19)

38.15 – Driving while license [cancelled] [suspended] [revoked]

- a) Replace the first sentence of the definition of “Motor vehicle” with the following:

“Motor vehicle” means every vehicle, including a low speed vehicle or a medium speed vehicle that is self-propelled, excluding [**Only for offenses committed on or after July 1, 2019:** electric scooters, electric bicycles as defined in §55-8-301,] motorized bicycles, and every vehicle, including a low speed vehicle or a medium speed vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

38.17(a) – [Refusing] [preventing] [obstructing] the administration of a required [breath] [blood] test (for offenses committed on or after 7/1/17)

- a) Replace the first sentence of the definition of “Motor vehicle” with the following:

“Motor vehicle” means every vehicle, including a low speed vehicle or a medium speed vehicle that is self-propelled, excluding [**Only for offenses committed on or after July 1, 2019:** electric scooters, electric bicycles as defined in §55-8-301,] motorized bicycles, and every vehicle, including a low speed vehicle or a medium speed vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

38.18 – Driving without license [in possession]

- a) Replace the first sentence of the definition of “Motor vehicle” with the following:

“Motor vehicle” means every vehicle, including a low speed vehicle or a medium speed vehicle that is self-propelled, excluding [**Only for offenses committed on or after July 1, 2019:** electric scooters, electric bicycles as defined in §55-8-301,] motorized bicycles, and every vehicle, including a low speed vehicle or a medium speed vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

38.19 – Violation of financial responsibility law

- a) Replace the first sentence of the definition of “Motor vehicle” with the following:

“Motor vehicle” means every vehicle, including a low speed vehicle or a medium speed vehicle that is self-propelled, excluding [**Only for offenses committed on or after July 1, 2019:** electric scooters, electric bicycles as defined in §55-8-301,] motorized bicycles, and every vehicle, including a low speed vehicle or a medium speed vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

38.21 – Drag racing [resulting in serious bodily injury]

- a) Replace the first sentence of the definition of “Motor vehicle” with the following:

“Motor vehicle” means every vehicle, including a low speed vehicle or a medium speed vehicle that is self-propelled, excluding [**Only for offenses committed on or after July 1, 2019:** electric scooters, electric bicycles as defined in §55-8-301,] motorized bicycles, and every vehicle, including a low speed vehicle or a medium speed vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

40.17 – Defense: Effective consent

- a) In paragraph two, add the following in italics and brackets after [*vehicular assault*]:

[*aggravated vehicular assault*]

- b) In paragraph two, add a new footnote after [*reckless endangerment*] and renumber subsequent footnotes accordingly.

- c) The text of the footnote should read as follows:

For offenses not listed, see Comment 3.

- d) Add a new Comment 3. The text of Comment 3 should read as follows:

As the statutory defense of effective consent only applies to those offenses listed in brackets, if the trial judge wishes to instruct the jury that consent is not a defense to a particular offense, the judge may wish to consult *State v. Matthew Reynolds*, No. M2017-00169-CCA-R3-CD, 2018 WL 6253829 (Tenn. Crim. App., Nov. 28, 2018), (for membership of BDSM) *citing State v. Mickens*, 123 S.W.3d 355, 392 (Tenn. Crim. App. 2003) (for membership of gang).

42.23 – Duty to preserve evidence

- a) Add the following as new Comment 2 to the instruction:

In *State v. Terry Craighead and Sinead St. Omer*, No. M2017-01085-CCA-R3-CD, 2018 WL 5994974 (Tenn. Crim. App., Nashville, November 15, 2018), app. denied (Tenn. Mar. 28, 2019), the two defendants were charged with two counts of felony murder, aggravated child abuse, and aggravated child neglect, when their child, on a feeding tube, starved to death. The trial court imposed the sanction of dismissing the indictment in accordance with the mandates of *State v. Ferguson*, 2 S.W.3d 912 (Tenn. 1999), because the police on the crime scene failed to collect and preserve the feeding tube and pump that was used to feed their infant daughter, and also the information stored in the feeding pump. The trial judge's decision was reversed on appeal, the Court holding that the officers had no duty to collect evidence from the defendants' room, because it was not in the State's control, and therefore there was no duty under *Ferguson* to preserve such evidence. There is a difference between failing to collect evidence on private property not in the State's control, and not preserving evidence already collected and therefore already in the State's control. The Court stated as follows:

In concluding that the State's failure to collect evidence from a crime scene does not rise to the level of a *Ferguson* violation, this court has recognized that "the State is not required to investigate cases in any particular way: Due process does not require the police to conduct a particular type of investigation. Rather, the reliability of the evidence gathered by the police is tested in the crucible of a trial at which the defendant receives due process. Moreover, [i]t is not the duty of this Court to pass judgment regarding the investigative techniques used by law enforcement unless they violate specific statutory or constitutional mandates." [*State v. Brock*, 327 S.W.3d [645, 698-99 (Tenn. Crim. App. 2008)]. We conclude that this court's opinion in *Brock* that an officer's failure to collect evidence from a crime scene owned, operated, or maintained by a private citizen does not violate *Ferguson* controls. *See Brock*, 327 S.W.3d at 698-99. The Defendants have not shown that the investigative techniques used by law enforcement violated "specific statutory or constitutional mandates." *Brock*, 327 S.W.3d at 699 We hold that the police officers had no duty to collect evidence from the Defendants' room and, therefore, no duty under *Ferguson* to preserve such evidence. Accordingly, the trial court erred in dismissing the Defendants' charges.

43.14 – No outside communication during deliberation

- a) Change the second sentence of the instruction to read as follows:

You may not use any electronic device or media, such as a telephone, cell phone, smart phone, iPhone, or computer; the internet, any internet service, or any text or instant messaging service; or any internet chat room, blog, or website, including, but not limited to, Facebook, LinkedIn, YouTube, Snapchat, Instagram, Google, Twitter, or any other social media, to

communicate to anyone any information about this case or to conduct any research about this case until you have returned your verdict and the trial has concluded.

T.P.I. – CRIM. 14.09

CRITICAL INFRASTRUCTURE VANDALISM

Any person who commits the offense of critical infrastructure vandalism is guilty of a crime.

For you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements:¹

- (1) that the defendant [*destroyed*] [*injured*] [*interrupted*] [*interfered with*] critical infrastructure or its operation ;

and
- (2) that the defendant did so knowingly.

"Critical infrastructure" includes, but is not limited to, the infrastructure² of the following services to the general public:

- (1) Telephone, telegraph, television, internet, or other telecommunication services;
- (2) Electric, heat, natural gas, or other power or energy services;
- (3) The distribution of crude or refined liquid petroleum products or natural gas, and the pipelines, pumping stations, terminals, and equipment necessary for operation of the facility;
- (4) Water, wastewater, or sewer services; and
- (5) Railroads and other transportation services.

The critical infrastructure of a utility or company is included, whether the critical infrastructure is in operation, idle, or under construction.³

"Knowingly" means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result.⁴

The requirement of "knowingly" is also established if it is shown that the defendant acted intentionally.⁵

"Intentionally" means that a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result.⁶

Comments

1. Critical infrastructure vandalism is graded identically to theft of property. *See* Comment One to T.P.I.– Crim. 11.10 (Theft of Property).

Footnotes

1. T. C. A. § 39-14-411.

2. Although not defined in the statute, if asked by the jury, the trial judge may wish to define “infrastructure” as “the underlying framework of a system; esp., public services and facilities (such as highways, schools, bridges, sewers, and water systems) needed to support commerce as well as economic and residential development. Black’s, (11th ed. 2019)

3. T. C. A. § 39-14-411(b) and (c).

4. T. C. A. § 39-11-106.

5. T. C. A. § 39-11-106.

6. T. C. A. § 39-11-106.

T.P.I. -- CRIM. 38.09(a)

**UNDERAGE DRIVING WHILE IMPAIRED
(for offenses committed on or after 9/19/16)¹**

Any person who is eighteen (18) years of age or over, but under twenty-one (21) years of age and who operates a motor vehicle while impaired is guilty of a crime.

For you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements:²

(1) that the defendant was driving or was in physical control of an automobile or motor driven vehicle;

and

(2)(a) that the defendant was under the influence of *[an intoxicant]* *[marijuana]* *[a controlled substance]* *[a controlled substance analogue]* *[a drug]* *[a substance affecting the central nervous system]* *[or any combination thereof]*;

or

(b) that the alcohol concentration in the defendant's [blood or breath] was two-hundredths of one percent (0.02%) or more;.

and

(3) That the defendant was eighteen (18) years of age or over, but under twenty-one (21) years of age.

[[_____] is a Schedule ____ controlled substance.]

[[_____] is a controlled substance analogue.]

"Intoxication" is defined as acting under the influence of *[an intoxicant] [marijuana] [a controlled substance] [a controlled substance analogue] [a drug] [a substance affecting the central nervous system] [or any combination thereof]*.

The expression "under the influence of *[an intoxicant] [marijuana] [a controlled substance] [a controlled substance analogue] [a drug] [a substance affecting the central nervous system] [or any combination thereof]*" covers not only all the well known and easily recognized conditions and degrees of intoxication, but also any mental or physical condition which is the result of taking *[an intoxicant] [marijuana] [a controlled substance] [a controlled substance analogue] [a drug] [a substance affecting the central nervous system] [or any combination thereof]* in any form and which deprives the driver of that clearness of mind and control of oneself which the driver would otherwise possess. In this situation, it would not be necessary that the person be in such a condition as would make *[him] [her]* guilty of public drunkenness. The law merely requires that the person be under the influence of *[an intoxicant] [marijuana] [a controlled substance] [a controlled substance analogue] [a drug] [a substance affecting the central nervous system] [or any combination thereof]*. The degree of intoxication must be such that it impairs the driver's ability to safely operate a motor vehicle by depriving the driver of the clearness of mind and control of *[himself] [herself]* which *[he] [she]* would otherwise possess.³

[It is not a defense to this offense that the defendant who drove while under the influence of narcotic drugs or barbitol drugs was lawfully entitled to use the drugs].⁴

COMMENTS

1. Driving while impaired under age 21 is a Class A Misdemeanor, punishable only by a \$250 fine and by a driver's license suspension of one (1) year. The court may also impose, in its discretion, public service work. T.C.A. § 55-10-415(d). Driving while impaired is a lesser included offense of driving while intoxicated. T.C.A. § 55-10-415(c).

FOOTNOTES

1 . This offense was repealed by 2016 Tenn. Pub. Acts Ch. 1030 effective 7/1/16, and was reenacted by 2016 Second Executive Session, ch. 1, effective 9/19/16.

2 . T.C.A. § 55-10-415(a) .

3 . T.C.A. § 55-10-415(a)(1).

4 . T.C.A. § 55-10-415(b).