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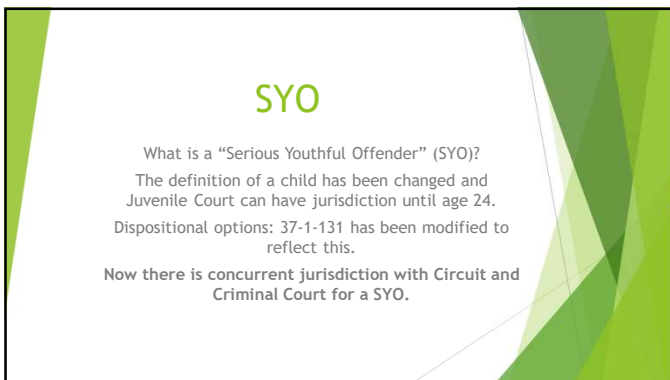
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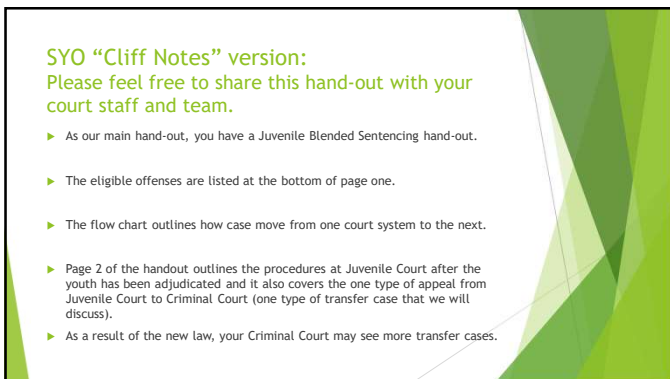
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### Things to think about...

- ▶ Defining your protocol for receiving and requesting records from your Juvenile Court and other Juvenile Courts as needed for the case to go forward.
- ▶ Confidentiality of Juvenile records will have to be maintained, so what safeguards does your court already have in place and what may need to be added as this law will require more records potentially coming from other courts, even out of state courts.
- ▶ Be prepared for the attorneys involved to be requesting certification of records and requests for special hearings in the event of contested evidentiary issues (ex. A disagreement as to whether or not an out of state finding against a Juvenile should be admitted).

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### Grand Jury process?

- ▶ According to the new statute:
- ▶ The case is simply sent over to Criminal or Circuit Court for an adjudicatory hearing.
- ▶ There is no provision for the Grand Jury to get the case.
- ▶ Due to the new procedures in this law, the Admin. Office of the Court and the Tennessee Supreme Court has appointed a committee to review and write new rules to reflect this new process. This is in the works.

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### Circuit or Criminal Court - for what?

- ▶ What happens at Circuit or Criminal court:
- ▶ A Jury Trial - The jury instructions will also have to be modified since the job of the jury is simply to adjudicate - no sentencing or disposition - that goes back to Juvenile Court.
- ▶ BUT, when the case is ruled on by the jury and the youth is found guilty of an offense that qualifies him/her as a Serious Youthful Offender, then the possibility of an additional sentence past age 19 may be ordered by the Juvenile Court Judge, so juries need to know the implication of their decision.
- ▶ Then the case goes back to Juvenile Court.

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### Criminal or Circuit Court

- ▶ Each jurisdiction will need to decide how they will handle:
  - ▶ The file being sent over from Juvenile Court;
  - ▶ This will have to occur quickly as the law requires a jury trial at Circuit or Criminal Court within 1 year (unless good cause is shown to delay the trial).
- ▶ The docketing of the cases;
- ▶ Each court may want to assign a specific type of number to designate that these are the SYO cases that will need to go back to Juv. Ct.

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### Other issues

- ▶ The detention of the youth.
  - ▶ There is still a sight and sound separation that is required between youth and adults. Jurisdiction is extended to 24 for Juvenile Court, but the age of majority in Tennessee is still 18.
  - ▶ This means that the adult jail and holding cells may not work - you must maintain the separation.
  - ▶ If the Court decides to detain and it is one of the cases where SYO designation is an option, then the length of time in detention may be very long - this can very quickly become a budget concern for your court and county.
  - ▶ Some Courts are considering the use of ankle monitors to defer the cost of detaining youth. This will also be a county expense though.

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### How will this work in real life?

- ▶ The general logistics of how to handle these cases...
  - ▶ (Get ideas from Davidson county clerk - Mr. Matthews).
- ▶ Docketing procedures for arraignment, motions, jury trial at Adult Court.
- ▶ Docketing procedures at Juvenile Court for the reviews and the hearing 4 months prior to age 19 to decide if additional time will be imposed by the judge.
- ▶ Who will hear bond revocations prior to adjudication? - Criminal court?
- ▶ New VOPs go back to Juvenile Court.

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### The right to Counsel

- ▶ These youth have the right to counsel.
- ▶ The attorney who was appointed to represent them at Juvenile Court, may not be comfortable with having a jury trial at Circuit or Criminal Court.
- ▶ A new roster of attorneys may need to be developed or training provided to your current attorneys to get them up to speed with the new law.
- ▶ Due to the time lines for these cases, quick appointment will be critical.

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### Working with Juvenile Court

- ▶ Since the law will send cases from Juvenile Court and back to Juvenile Court - a good working relationship is important.
- ▶ Having an organizational meeting with the judges, youth service officers, probation officers, DAs, PDs, DCS and Court Clerks will be an essential ingredient to successfully handling these cases.

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### Any cases???

- ▶ Has your jurisdiction received any qualifying cases yet?
- ▶ If yes, which type:
- ▶ SYO or directly to a transfer hearing???

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### Transfer to Adult Court

- ▶ Juvenile cases that have been transferred to adult court will not be handled any differently under the law.
- ▶ The actual process that occurs at Juvenile Court for the transfer has been modified for youth aged 16-18 with certain offenses, so the transfer may come over sooner than under the previous law.

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### New Law - Old Law

- ▶ Please Note: The DA's office can still file for transfer under 37-1-134.
- ▶ The SYO designation is not in place until the case is adjudicated as such.
- ▶ 1<sup>st</sup> and 2<sup>nd</sup> degree homicide cases and the attempt of a 1<sup>st</sup> or 2<sup>nd</sup> degree murder, must have a transfer hearing (youth age 16 or older).
- ▶ The rest of 37-1-134 (Juvenile Transfer Statute) applies in terms of the other crimes/delinquent acts.

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### Continuing Jurisdiction

Only the jury trial occurs at Criminal or Circuit Court.

The rest of the case - meaning the dispositional hearing - must occur at Juvenile Court.

All reviews will occur at Juvenile Court.

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**What happens when they are 18**

- ▶ Even if they are classified as a serious youthful offender, if they commit a new offense after age 18 (other than a probation violation), the new offense goes to adult criminal court - normal procedure.
- ▶ If the youth is classified as a serious youthful offender and has a probation violation, that case will be heard at Juvenile Court as the court has continuing jurisdiction over the SYO case until age 24.

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**Serious youthful offender**

The statute: 37-1-131(g)  
What types of cases does the law cover?

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**Serious Youthful Offender - Age 14-16**

1<sup>st</sup> degree or 2<sup>nd</sup> degree murder  
Or  
Attempted 1<sup>st</sup> or 2<sup>nd</sup>.

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## Serious Youthful Offender

Age 14 or older: 37-1-131(g)(1)  
 A or B felony or the criminal attempt of an A  
 felony from this list and the youth has a previous  
 adjudication for one of these offenses:

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## A felonies

- 1<sup>st</sup> degree murder
- 2<sup>nd</sup> degree murder
- Aggravated rape
- Rape of a child
- Agg. rape of a child
- Esp. agg. Robbery

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## A Felonies - continued

- Esp. agg. Kidnapping
- Commission of an act of terrorism
- Agg. Child abuse or  
agg. Child neglect or endangerment  
(or attempt of any of these felonies)

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**B Felonies**

- Rape
- Aggravated robbery
- Esp. agg. Burglary
- Agg. Kidnapping
- Carjacking

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**Serious Youthful Offender**

Any other class A or B felony involving the use of a deadly weapon during the offense.

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**Serious Youthful Offender**

The criminal attempt of any class A felony in the previous list.

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## Serious Youthful Offender

The only other way for a youth to be classified as a serious youthful offender is for the DA's office to ask the court to classify the youth as such (as long as the offense is on the list of A/B felonies that qualify or a deadly weapon was used during the commission of an offense that is also an A/B felony, but not on the list).

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## Notice

- ▶ This section, when the Office of the DA can ask for the classification, should require some notice.
- ▶ This request is at the discretion of the DA's Office, so it seems to follow that the youth, his attorney and the court will require that the request be in writing.

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## Previous Adjudications

- ▶ It appears, under the new law, that a previous adjudication from any jurisdiction will count as a previous finding.
- ▶ The law does not differentiate between county and state findings.
- ▶ There will most likely be more requests for files and court orders from other jurisdictions.
- ▶ How will the files be transported between courts, between counties. The Quest system may be helpful.

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So if the youth qualifies by age and charges:  
The new right to a jury trial for juveniles in  
this SYO category

- ▶ Right to a jury trial for a SYO
- ▶ This right can be waived
- ▶ If it is not waived, then the jury trial must occur at circuit or criminal court.

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Jury Trial - Adjudication (just the finding of  
guilt - not the disposition or sentencing).

- ▶ If the juvenile is adjudicated delinquent by a jury and is classified as a SYO, then the case will be sent back to Juvenile Court for the dispositional hearing pursuant to 37-1-131(g).
- ▶ If the juvenile is adjudicated delinquent by a jury for an offense that does not require the SYO classification, then the case will be sent to Juvenile Court for disposition pursuant to 37-1-131(a)-(e).
- ▶ The jury trial must occur within one year of the juvenile being advised of the right to a jury trial.

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Bond or release with conditions

- ▶ Will the one year requirement be extended if the youth has been released on bond or on an ankle monitor with conditions?
- ▶ The statute states: "Unless good cause shown..." 37-1-124
- ▶ The adjudication must occur within one year.
- ▶ What will qualify as Good Cause...

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Questions:

- ▶ Where to house the youth while the trial is pending?
  - ▶ Must still comply with 37-1-116 (sight and sound separation from adults)
  - ▶ Section 10 of the new law specifies the conditions that must be met if a youth is housed in an adult facility. This section applies after a transfer hearing.
- ▶ What if they turn 19 before the jury trial, and then they are found guilty, which court sentences them?
  - ▶ Disposition goes back to Juvenile Court.
  - ▶ Time limit: 1 year from being informed of the right to a jury trial - when is the SYO informed?- what happens if the 1 year is exceeded - dismissal?

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Jury Trial is over, so the case goes back to Juvenile Court.

- ▶ Dispositional hearing at Juvenile Court.
- ▶ Any reviews and any probation violations will be heard at Juvenile Court.
- ▶ Only a new offense by the youth - who is now over 18 will go to Adult Court.

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Required additional dispositions after age 19

Up to 4 years of probation for an A felony.  
 Up to 3 years probation for a B felony.  
 This additional disposition will be stayed by the court and a hearing must occur before it is put into effect. This hearing must occur prior to the youth's 19<sup>th</sup> birthday.

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## The result of the Youthful Offender Classification

The court can impose any of the current dispositions, but the disposition must be for a fixed period of time that does not end until the youthful offender's 19<sup>th</sup> birthday.

- Must sentence the SYO to age 19.
- No DCS credits when the youth is placed in DCS custody.
- After age 19 - the Court must order an additional disposition of up to 4 years for an A felony and 3 years for a B felony, but it will be stayed.
- If the court revokes the stay, they can then modify the length of the disposition in accordance with 37-1-131(g)(4).

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## Who supervises those over 19?

TDOC - under section (g)(6)(B), if the court imposes an additional disposition beyond the 19<sup>th</sup> birthday, then the court shall enter an order on or before the 19<sup>th</sup> birthday committing the offender to TDOC for supervision.

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## What to consider when deciding to impose the additional time or vacate it?

The hearing must occur 4 months prior to the SYO turning 19.

There are a list of factors to consider. If there are 3 or more factors, then the court must lift the stay.

Question: can the court lift the stay and impose the additional time if there are less than 3 factors???

What if there is only one factor?  
What is the burden of proof...

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### 5 factors

1. Did the youth commit a new offense;
2. Did the youth engage in other conduct that creates a substantial safety risk;
3. Did the youth fail to meet the conditions of supervision;
4. Failed to attend with passing grades or graduate from school;
5. Failed to go to work or go on to further schooling, if the offender graduated from HS or obtained a HS equivalency credential.

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### When to revoke the stay...

If the court finds 3 of the circumstances set forth in the previous slide were true.

The court can invoke the original additional disposition or modify the length of the disposition.

Either way, the court must enter this order prior to the youth's 19<sup>th</sup> birthday.

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### During the "adult" phase>>>

- ▶ Which court can hear the VOP?
  - ▶ During the time of any disposition served after the offender's 19<sup>th</sup> birthday, the Juvenile Court has the same powers as the trial court, including, but not limited to, the power to preside over probation revocation proceedings pursuant to 40-35-311.

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## How are we to handle transfer cases now...

For 16 and older:  
A transfer hearing must occur before the Juvenile court judge on 1<sup>st</sup> and 2<sup>nd</sup> degree murder cases or attempt of 1<sup>st</sup> or 2<sup>nd</sup> degree murder.

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## What do we need to prove?

1. Probable cause to believe the child committed the delinquent act as alleged
2. That the child is not committable to an institution for the developmentally disabled or mentally ill.
3. There is no part 3 anymore for youth charged with 1<sup>st</sup> degree murder, 2<sup>nd</sup> degree murder, or the attempt of those offenses and they are in the age range of 16 or older.

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## The transfer order

The court must enter a written order detailing the court's findings of fact and conclusions of law.

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**Is there an appeal?**  
**YES**

Yes, for youth 16 and older who have been transferred on 1<sup>st</sup> or 2<sup>nd</sup> degree homicide charges (and attempt).

No other transfer case has a right to appeal.

The criminal court or court having criminal court jurisdiction must review the juvenile court's order upon the motion of the youth or the prosecution.

The appeal must be filed with 15 days of the juvenile Court's order. The review will be on the record only - no evidentiary hearing. Pending the ruling on the appeal, the juvenile Court's order is stayed.

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**How does this effect the current 37-1-134 - can other cases still be transferred or do they have to be handled with a blended sentence?**

Age 14 and up - DA's Office may seek transfer or seek the SYO designation (if they qualify).

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**Questions?**

- ▶ This is a totally new law for Tennessee, so please reach out to us and to your colleagues as we all try to handle these cases effectively and efficiently.
- ▶ Thank you for the hard work that you do in keeping our courts working smoothly for the litigants and the community.

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