

HOUSE BILL 1258

By Tindell

AN ACT to amend Tennessee Code Annotated, Title 37,
Chapter 3, to create the "Tennessee Second Look
Commission."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 37, Chapter 3, is amended by adding a
new part thereto:

§ 37-3-801.

This part shall be known and may be cited as the "Tennessee Second
Look Commission".

§ 37-3-802.

(a) There is created the Tennessee second look commission that shall
be administratively attached to the administrative office of the courts, but for all
other purposes other than administration, shall be considered independent.

(b) The commission shall review the types of cases set out in subsection

(c) to:

(1) Ascertain errors and defects in the criminal procedure used to
prosecute defendants in child sexual abuse cases;

(2) Identify errors and defects in the criminal justice process in
Tennessee generally;

(3) Develop solutions and methods to correct the identified errors
and defects;

(4) Identify procedures and programs to prevent future wrongful
convictions;

(5) Undertake annual statistical studies of the incidences and causes of child sexual abuse in Tennessee; and

(6) Develop a recommend protocol for the collection of data in child sexual abuse cases.

(c) The commission shall review the following cases:

(1) Juvenile court cases or cases from courts exercising juvenile court jurisdiction where:

(A) The department of children's services filed a petition pursuant to title 37, chapter 1, part 1, alleging that the child is dependent and neglected as defined in § 37-1-102(b)(12)(G) and such allegations were based on child sexual abuse as defined in § 37-1-602(a)(3)(B);

(B) The court made any of the dispositions listed in § 37-1-130(a); and

(C) The department filed a subsequent petition as described in subdivision (c)(1)(A) involving the same victim but based on a separate set of facts.

(2) Criminal court or juvenile court cases where:

(A) A person is charged with the commission of any of the offenses listed in § 37-1-602(a)(3)(B); and

(B) Regardless of the final disposition of the charges listed in subdivision (2)(A), the defendant is charged with a second commission of any of the offenses listed in § 37-1-602(a)(3)(B).

(d) The commission may:

(1) Promulgate bylaws to provide for the election of commission officers, establishment of committees, meetings, and other matters relating to commission functions;

(2) Request and receive the cooperation of other state departments and agencies in carrying out the duties of this part; and

(3) Hold hearings, call witnesses to testify, conduct research and other appropriate activities.

(e)

(1) No later than February 1, 2010, the commission shall submit a report regarding the development of protocol for the collection of data as described in § 37-3-806. No later than January 1, 2011, and annually thereafter on January 1, the commission shall submit a report regarding its findings as set out in § 37-3-802.

(2) The reports described in subdivision (1) shall be submitted to the governor; the judiciary committees of the senate and the house of representatives; the general welfare, health and human resources committee of the senate; the children and family affairs committee of the house of representatives; and the select committee on children and youth.

§ 37-3-803.

(a) The commission shall be co-chaired by the commissioner of the department of children's services and the director of the administrative office of the courts, or either of their designees.

(b) Members of the commission shall be as follows:

(1) The attorney general and reporter or the general's designee;

(2) The director of the Tennessee bureau of investigation or the director's designee;

(3) A member of the judiciary selected by the chief justice of the Tennessee supreme court;

(4) The executive director of the commission on children and youth or the director's designee;

(5) Two (2) members of the house of representatives to be appointed by the speaker of the house of representatives, at least one (1) of whom shall be a member of the children and family affairs committee;

(6) Two (2) senators to be appointed by the speaker of the senate, at least one (1) of whom shall be a member of the general welfare, health and human resources committee or the judiciary committee;

(7) A law enforcement officer appointed by the governor;

(8) A district public defender appointed by the district public defenders conference;

(9) A district attorney general appointed by the district attorneys general conference;

(10) A juvenile court judge appointed by the council of juvenile and family court judges; and

(11) The executive director of Tennessee's chapter of children's advocacy center's or the director's designee.

§ 37-3-804.

(a) All members of the commission shall be voting members. All vacancies shall be filled by the appointing or designating authority in accordance with the requirements of § 37-3-803.

(b) The members of the commission shall receive no salary. Only members of the council selected pursuant to § 37-3-803(b)(11) shall be reimbursed necessary travel and per diem expenses as prescribed in the comprehensive travel regulations by the commissioner of finance and administration for employees of the state of Tennessee, provided that, all other members who are employed by the state or other governmental entity, or who are holding elected office will be compensated and reimbursed in keeping with the performance of their official roles or capacities.

§ 37-3-805.

The commission shall meet as necessary to transact business; provided, that meetings shall be held at least quarterly and the first meeting shall be no later than October 1, 2009. The commission shall meet at such time and place as determined by the chair members announced at least one (1) month in advance of meetings with notice to each member. Written minutes shall be kept of all meetings and all research shall be organized and consolidated for future reference. At all meetings, eight (8) members shall constitute a quorum for the transaction of business.

§ 37-3-806.

(a) In each judicial district in which a child advocacy center meets the requirements of subsection § 9-4-213 (a) or (b), child advocacy center directors or their designees, in conjunction with the department of children's services and the district attorney general of each judicial district shall:

- (1) Collect data and information on all cases described in § 37-3-802(c), according to the protocol developed by the commission;
- (2) Submit to the commission, in accordance with the procedures and deadlines established by the commission, information and data

requested by the commission concerning the cases described in § 37-3-802(c);

(3) Testify, as requested by the commission, regarding any of the cases described in § 37-3-802(c); and

(4) Make recommendations, if any, and advocate for system improvements and resources where gaps and deficiencies may exist in the various systems involved in protecting children from sexual abuse including, but not limited to, child welfare and criminal justice.

(b) In judicial districts in which a child advocacy center does not exist or meet the requirements of subsection § 9-4-213(a) or (b), the district attorney general of each judicial district, or the general's designee, in conjunction with the department of children's services, shall perform the duties described in subsection (a).

§ 37-3-807.

(a) The commission may access and generate information made confidential pursuant to § 37-1-612; however, such information shall retain its confidential status.

(b) Meetings of the commission shall be subject to the provisions of title 8, chapter 44, part 1. However, the commission may elect, by a two-thirds (2/3) vote, to close any meeting for purposes of discussing information made confidential pursuant to state or federal law or for purposes of discussing information that could jeopardize a pending criminal action. Any minutes or other information generated during official meetings shall be sealed from public inspection.

(c) Notwithstanding the provisions of subsection (b), the commission may periodically make available, in a general manner, not revealing confidential

information about children and families, the aggregate findings of its reviews and its recommendations.

(1) All otherwise confidential information and records acquired by the commission in the exercise of its duties are confidential, are not subject to discovery or introduction into evidence in any proceedings, and may only be disclosed as necessary to carry out the purposes of this part.

(2) This subsection (c) shall not, however, prohibit a person from testifying in a civil or criminal action about matters within that person's independent knowledge.

(d) Each statutory member of the commission and each person otherwise attending a commission meeting shall sign a statement indicating an understanding of and adherence to the confidentiality requirements, including the possible civil or criminal consequences of any breach of confidentiality.

§ 37-3-808.

To the extent that funds are available, the commission may hire staff or consultants to assist the commission in completing its duties.

§ 37-3-809.

Any person acting in good faith in compliance with this part shall be immune from civil and criminal liability arising from such action.

§ 37-3-810.

Nothing in this part shall preclude any investigations or reviews to the extent authorized by other laws.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.