

Amendment No. 1 to HB0041

**Lamberth
Signature of Sponsor**

AMEND Senate Bill No. 610

House Bill No. 41*

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 40-11-150, is amended by deleting subsection (h) and substituting instead the following:

(h)

(1) Except as otherwise provided in this subsection, an offender arrested for the offense of stalking, aggravated stalking, or especially aggravated stalking, as defined in § 39-17-315, or any criminal offense defined in title 39, chapter 13, in which the alleged victim is a domestic abuse victim as defined in § 36-3-601, shall not be released within twelve (12) hours of the time of arrest. The arresting officer shall make official note of the time of the arrest to establish the beginning of the twelve-hour period required by this subsection (h).

(2) Notwithstanding subdivision (h)(1), there are two methods by which the twelve-hour hold period required in subdivision (h)(1) may be waived. If it is waived pursuant to subdivision (h)(2)(A), the magistrate shall make written findings detailing the reason the waiver was granted and sufficient facts to demonstrate that the arrested person qualifies under the criteria set out in this subdivision. The twelve-hour hold required by subdivision (h)(1) may be waived if:

(A)

(i) A person has been charged with an offense described in subdivision (h)(1) but is not in custody;

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(ii) Forty-eight (48) or more hours have elapsed from the time the offense was committed;

(iii) The person charged with the offense:

(a) Voluntarily turned himself or herself in to the proper authorities; or

(b) Was taken into custody; and

(iv) The magistrate made all reasonable efforts to directly contact the victim and inform the victim that the person charged with the offense will be released prior to the conclusion of the twelve-hour period mandated in subdivision (h)(1); or

(B) The magistrate waives the twelve-hour hold period based on the order of an elected or retained judge whose position is established by the Constitution or statutes of this state to have an eight-year term following a hearing conducted in accordance with subdivision (h)(3).

(3)

(A) If the magistrate determines that subdivision (h)(1) is applicable and has ordered the arrested person be held for twelve (12) hours prior to being released on bail, the arrested person or the person's attorney, the state, or the magistrate may petition an elected or retained judge whose term of office is established by the Constitution or statutes of this state as eight (8) years and who has subject matter and territorial

jurisdiction over the alleged offense for a waiver of the twelve-hour hold imposed by the magistrate.

(B) The hearing may be conducted in person or by teleconference. The judge shall review the documents available to the magistrate and the interested parties may make a statement to the judge. New witness testimony will not be taken nor additional evidence introduced. The judge may order the magistrate to grant a waiver from the twelve-hour hold if the judge finds that:

(i) Based on evidence available at the time of the hearing, there was not probable cause to believe the arrested person would pose an immediate danger or threat to the victim if released on bail prior to the twelve-hour hold;

(ii) There was a mistake of fact that makes the twelve-hour hold period inapplicable to the person arrested, including, but not limited to, the victim is not a domestic abuse victim as defined in § 36-3-601, or the person arrested is not the person alleged to have committed the offense; or

(iii) Based on the facts known to the judge, it is in the best interests of justice that the person arrested be admitted to and released on bail prior to completion of the twelve-hour hold period.

(C) If following the hearing, the judge determines that a waiver should be granted pursuant to this subdivision (h)(3), the judge shall reduce the reasons for granting the waiver to writing and notify the magistrate to immediately waive the twelve-hour hold period.

(D) Nothing in this subdivision (h)(3) shall be construed as:

(i) Conferring upon an arrested person the right to a hearing before a judge or the right to have an attorney appointed to represent the arrested person at any hearing that may occur pursuant to this subdivision (h)(3);

(ii) Requiring the judge to grant the petition or hear the petition within a certain length of time. Whether the petition is granted and when it is heard, if it is granted, is totally within the discretion of the judge; or

(iii) Permitting a hearing pursuant to this subdivision (h)(3) to occur unless the state, the arrested person, and, if the arrested person is represented, the arrested person's attorney, are present, either by communication device or in person.

SECTION 2. Tennessee Code Annotated, Section 40-11-150, is amended by deleting subsection (k) and substituting instead the following:

(k)

(1) An offender arrested for a violation of § 71-6-119, involving physical harm or abuse in which the alleged victim is an adult of advanced age as those terms are defined in § 71-6-102, shall not be released within twelve (12) hours of the time of arrest. The arresting officer shall make official note of the time of the arrest to establish the beginning of the twelve-hour period required by this subsection (k).

(2) Notwithstanding subdivision (k)(1), there are two methods by which the twelve-hour hold period required in subdivision (k)(1) may be waived. If it is waived pursuant to subdivision (k)(2)(A), the magistrate shall make written findings detailing the reason the waiver was granted and sufficient facts to demonstrate that the arrested person qualifies under the criteria set out in this

subdivision. The twelve-hour hold required by subdivision (k)(1) may be waived if:

(A)

(i) A person has been charged with an offense described in subdivision (k)(1) but is not in custody;

(ii) Forty-eight (48) or more hours have elapsed from the time the offense was committed;

(iii) The person charged with the offense:

(a) Voluntarily turned himself or herself in to the proper authorities; or

(b) Was taken into custody; and

(iv) The magistrate made all reasonable efforts to directly contact the victim and inform the victim that the person charged with the offense will be released prior to the conclusion of the twelve-hour period mandated in subdivision (k)(1); or

(B) The magistrate waives the twelve-hour hold period based on the order of an elected or retained judge whose position is established by the Constitution or statutes of this state to have an eight-year term following a hearing conducted in accordance with subdivision (k)(3).

(3)

(A) If the magistrate determines that subdivision (k)(1) is applicable and has ordered the arrested person be held for twelve (12) hours prior to being released on bail, the arrested person or the person's attorney, the state, or the magistrate may petition an elected or retained judge whose term of office is established by the Constitution or statutes of this state as eight (8) years and who has subject matter and territorial

jurisdiction over the alleged offense for a waiver of the twelve-hour hold imposed by the magistrate.

(B) The hearing may be conducted in person or by teleconference. The judge shall review the documents available to the magistrate and the interested parties may make a statement to the judge. New witness testimony will not be taken nor additional evidence introduced. The judge may order the magistrate to grant a waiver from the twelve-hour hold if the judge finds that:

(i) Based on evidence available at the time of the hearing, there was not probable cause to believe the arrested person would pose an immediate danger or threat to the victim if released on bail prior to the twelve-hour hold;

(ii) There was a mistake of fact that makes the twelve-hour hold period inapplicable to the person arrested, including, but not limited to, the victim is not a victim as defined in § 36-3-601, or the person arrested is not the person alleged to have committed the offense; or

(iii) Based on the facts known to the judge, it is in the best interests of justice that the person arrested be admitted to and released on bail prior to completion of the twelve-hour hold period.

(C) If following the hearing, the judge determines that a waiver should be granted pursuant to this subdivision (k)(3), the judge shall reduce the reasons for granting the waiver to writing and notify the magistrate to immediately waive the twelve-hour hold period.

(D) Nothing in this subdivision (k)(3) shall be construed as:

(i) Conferring upon an arrested person the right to a hearing before a judge or the right to have an attorney appointed to represent the arrested person at any hearing that may occur pursuant to this subdivision (k)(3);

(ii) Requiring the judge to grant the petition or hear the petition within a certain length of time. Whether the petition is granted and when it is heard, if it is granted, is totally within the discretion of the judge; or

(iii) Permitting a hearing pursuant to this subdivision (k)(3) to occur unless the state, the arrested person, and, if the arrested person is represented, the arrested person's attorney, are present, either by communication device or in person.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.