

Amendment No. 1 to SB0610

Kelsey
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) A person 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 victim as defined in § 36-3-601, shall not be released sooner than twelve (12) hours from the time of the arrest if the magistrate or other official duly authorized to release the offender finds that the offender is a continued threat to the alleged victim. 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) If the magistrate finds probable cause to believe the person arrested is a continued threat to the alleged victim, the magistrate shall:

(A) Impose the twelve-hour holding period;

(B) Reduce to writing the reason for the finding and the specific factor, factors, or other facts upon which the magistrate relied; and

(C) Make all reasonable efforts to directly contact the victim and inform the victim that the person charged with the

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offense will be held for the duration of the twelve-hour period mandated in subdivision (h)(1).

(3) If the magistrate finds there is not probable cause to believe the person arrested is a continued threat to the alleged victim, the magistrate shall:

(A) Waive the twelve-hour holding period;

(B) Reduce to writing the reason for the finding and the specific facts upon which the magistrate relied; and

(C) Make 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).

(4) For purposes of this subsection (h), a person arrested for an offense described in subdivision (h)(1) shall be considered a threat to the alleged victim if:

(A) At the time of the arrest, the alleged victim had a valid ex parte order of protection, order of protection, restraining order, or any order issued by a court of competent jurisdiction prohibiting the arrested person from engaging in abusive behavior;

(B) The person arrested has a prior documented history of violent behavior against the alleged victim or has in the past

committed the offenses described in subdivision (h)(1) against the alleged victim or another;

(C) The person arrested used or threatened the use of a deadly weapon against the alleged victim or has done so in the past;

(D) The person arrested appeared to the magistrate to be under the influence of alcohol or a controlled substance;

(E) The person arrested was uncommunicative or uncooperative to the magistrate or statements made to the magistrate by the person arrested were belligerent, unremorseful, or threatening;

(F) The person arrested resisted arrest, threatened the officer, or fled the scene of the alleged crime and knowingly attempted to evade arrest;

(G) The alleged victim, whether because of physical or mental disability, injury inflicted by the person arrested, age, dependents, or lack of resources or transportation, is unable to reach a place of safety or protection in less than twelve (12) hours; or

(H) The cumulative effect of subdivisions (h)(4)(A)—(G), other pertinent factors, or the totality of the circumstances surrounding the occurrence causes the magistrate to believe the person arrested remains a threat to the alleged victim, even if no single factor does.

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

(k)

(1) A person 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 sooner than twelve (12) hours from the time of the arrest if the magistrate or other official duly authorized to release the offender finds that the offender is a continued threat to the alleged victim. 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) If the magistrate finds probable cause to believe the person arrested is a continued threat to the alleged victim, the magistrate shall:

(A) Impose the twelve-hour holding period;

(B) Reduce to writing the reason for the finding and the specific factor, factors, or other facts upon which the magistrate relied; and

(C) Make all reasonable efforts to directly contact the victim and inform the victim that the person charged with the offense will be held for the duration of the twelve-hour period mandated in subdivision (k)(1).

(3) If the magistrate finds there is not probable cause to believe the person arrested is a continued threat to the alleged victim, the magistrate shall:

(A) Waive the twelve-hour holding period;

(B) Reduce to writing the reason for the finding and the specific facts upon which the magistrate relied; and

(C) Make 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).

(4) For purposes of this subsection (k), a person arrested for an offense described in subdivision (k)(1) shall be considered a threat to the alleged victim if:

(A) At the time of the arrest, the alleged victim had a valid ex parte order of protection, order of protection, restraining order, or any order issued by a court of competent jurisdiction prohibiting the arrested person from engaging in abusive behavior;

(B) The person arrested has a prior documented history of violent behavior against the alleged victim or has in the past committed the offenses described in subdivision (k)(1) against the alleged victim or another;

(C) The person arrested used or threatened the use of a deadly weapon against the alleged victim or has done so in the past;

(D) The person arrested appeared to the magistrate to be under the influence of alcohol or a controlled substance;

(E) The person arrested was uncommunicative or uncooperative to the magistrate or statements made to the magistrate by the person arrested were belligerent, unremorseful, or threatening;

(F) The person arrested resisted arrest, threatened the officer, or fled the scene of the alleged crime and knowingly attempted to evade arrest;

(G) The alleged victim, whether because of physical or mental disability, injury inflicted by the person arrested, age, dependents, or lack of resources or transportation, is unable to reach a place of safety or protection in less than twelve (12) hours; or

(H) The cumulative effect of subdivisions (h)(4)(A)—(G), other pertinent factors, or the totality of the circumstances surrounding the occurrence causes the magistrate to believe the person arrested remains a threat to the alleged victim, even if no single factor does.

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