JUVENILE-RESPONDENT ORDERS OF PROTECTION

CONSIDERATIONS

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Initial Consideration: Is there a need for a statutory scheme whereby orders of protection may be issued against juvenile respondents? Does the present statutory scheme meet the need?

Juvenile courts have broad powers to issue restraining orders, but such are dependent on an underlying proceeding (delinquency, unruly, etc.). Also, confusion exists as to whether juvenile courts presently have such jurisdiction (see Attorney General Opinion 13-98). This statute would create a “stand alone” proceeding. Further, this statute would promote consistency across Tennessee.

If there is a need and the present scheme does not meet the need, juvenile court should be the court with jurisdiction to adjudicate such matters: available resources, experience with juveniles among bench and bar, confidential nature of proceedings and files.

A separate statute may be advisable as with juvenile traffic offenders – a new class of cases to be heard in juvenile court.

Issues and Further Considerations:

1. Modify Title 36 to remove (or clarify the absence of) juvenile-respondent orders of protection. This will make clear that only juvenile courts may consider such orders.

2. Draft new statute for Title 37.

3. Statute framework (suggested):

a. Jurisdiction – grant juvenile courts (and courts exercising juvenile jurisdiction) the exclusive, original jurisdiction to hear such matters (amend T.C.A. 37-1-103). This will also clarify that this proceeding is a “stand alone” proceeding and would not be dependent upon the filing of any other type of petition (delinquency, unruly, etc.).

b. Victim definition – track language from adult statute: family members, stalking and sexual abuse. Consider the “bullying” situation.

c. Abuse definition – track language from adult statute.

d. Respondent definition – juveniles.

e. Ex parte order – track language from adult statute. Consider timeframe to hear petition (15 days?). Probable cause to issue.

f. Standard of Proof/Burden – preponderance of evidence; petitioner bears initial burden.

g. Relief available – mirror language from existing T.C.A. 37-1-152 and Rule 26 (“upon such terms and conditions, and shall remain in force for such time, as shall be deemed just and proper….”). Should there be a time limit as for adults (12 months)?

h. Remedies for violation – tie to delinquency dispositional alternatives in T.C.A. 37-1-131 (as does the traffic offender statute at T.C.A. 37-1-146). Any need for additional remedies? If juvenile becomes an adult during the term of the order, adult remedies apply? If adult remedies apply, tie to Class A misdemeanor as well as contempt?

i. Standard of Proof in violation hearing – preponderance of evidence.

j. Procedures in violation hearing – same as violation of probation (see Rule 35). Time limits for adjudications should apply (but see k below).

k. Pre-hearing detention in violation cases – is this necessary or advisable? If so, procedures for expedited hearing.

l. Appeal – of issuance of order and of violation: de novo to Circuit Court.

m. Extensions – after notice and opportunity to be heard (if a time limit is placed into the statute).

n. Court appointed counsel – during issuance hearing and during violation hearing. Because the issuance of an order, as well as a violation of an order, might result in the removal of the juvenile from the home, the juvenile may be entitled to court appointed counsel. If so, T.C.A. 37-1-126 (right to counsel) may need to be revised. Will the AOC pay?

o. Rules of Procedure – specify that Rules of Juvenile Procedure apply.

p. Guardian ad Litem – court would have authority to appoint (T.C.A. 37-1-149), but AOC may not pay.

q. Modifications of order – track language in adult statute (changed circumstances).

4. When an order is issued, should it be distributed to law enforcement (as with adult orders)? What about juvenile court confidentiality?

5. Would this new legislation trigger a fiscal note?

6. What groups/organizations should be involved? DA’s, Public Defenders, DCS, Domestic Violence Coalition, TCCY, Juvenile Judges, TBA, Private Bar.