

Appendix B: Tennessee Code Annotated, Section 40-2-101

Tenn. Code Ann. § 40-2-101

Current through 2017 Regular Session (Chapter 493).

***Tennessee Code Annotated > Title 40 Criminal Procedure > Chapter 2
Limitation of Prosecutions***

40-2-101. Felonies.

- (a) A person may be prosecuted, tried and punished for an offense punishable with death or by imprisonment in the penitentiary during life, at any time after the offense is committed.
- (b) Prosecution for a felony offense shall begin within:
 - (1) Fifteen (15) years for a Class A felony;
 - (2) Eight (8) years for a Class B felony;
 - (3) Four (4) years for a Class C or Class D felony; and
 - (4) Two (2) years for a Class E felony.
- (c) Notwithstanding subsections (a) and (b), offenses arising under the revenue laws of the state shall be commenced within the three (3) years following the commission of the offense, except that the period of limitation of prosecution shall be six (6) years in the following instances:
 - (1) Offenses involving the defrauding or attempting to defraud the state of Tennessee or any agency of the state, whether by conspiracy or not, and in any manner;
 - (2) The offense of willfully attempting in any manner to evade or defeat any tax or the payment of a tax;
 - (3) The offense of willfully aiding or abetting, or procuring, counseling or advising, the preparation or presentation under, or in connection with, any matter arising under the revenue laws of the state, or a false or fraudulent return, affidavit, claim or document, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present the return, affidavit, claim or document; and
 - (4) The offense of willfully failing to pay any tax, or make any return at the time or times required by law or regulation.
- (d) Notwithstanding the provisions of subdivision (b)(3) to the contrary, prosecution for the offense of arson as prohibited by § 39-14-301 shall commence within eight (8) years from the date the offense occurs.
- (e) Prosecutions for any offense committed against a child prior to July 1, 1997, that constitutes a criminal offense under § 39-2-601 [repealed], § 39-2-603 [repealed], § 39-2-604 [repealed], § 39-2-606 [repealed], § 39-2-607 [repealed], § 39-2-608 [repealed], § 39-2-612 [repealed], § 39-4-306 [repealed], § 39-4-307 [repealed], § 39-6-1137 [repealed], or § 39-6-1138 [repealed], or under §§ 39-13-502 -- 39-13-505, § 39-15-302 or § 39-17-902 shall commence no later than the date the child attains the age of majority or within four (4) years after the commission of the offense, whichever occurs later; provided, that pursuant to subsection (a), an offense punishable by life imprisonment may be prosecuted at any time after the offense has been committed.

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- (f)** For offenses committed prior to November 1, 1989, the limitation of prosecution in effect at that time shall govern.
- (g)**
- (1)** Prosecutions for any offense committed against a child on or after July 1, 1997, that constitutes a criminal offense under § 39-17-902 shall commence no later than the date the child reaches twenty-one (21) years of age; provided, that if subsection (a) or (b) provides a longer period of time within which prosecution may be brought than this subsection (g), the applicable provision of subsection (a) or (b) shall prevail.
 - (2)** Prosecutions for any offense committed against a child on or after July 1, 1997, but prior to June 20, 2006, that constitutes a criminal offense under §§ 39-13-502 -- 39-13-505, § 39-13-522 or § 39-15-302 shall commence no later than the date the child reaches twenty-one (21) years of age; provided, that if subsection (a) or (b) provides a longer period of time within which prosecution may be brought than this subsection (g), the applicable provision of subsection (a) or (b) shall prevail.
- (h)**
- (1)** A person may be prosecuted, tried and punished for any offense committed against a child on or after June 20, 2006, that constitutes a criminal offense under § 39-13-504, § 39-13-505, § 39-13-527 or § 39-15-302, no later than twenty-five (25) years from the date the child becomes eighteen (18) years of age.
 - (2)** A person may be prosecuted, tried and punished for any offense committed against a child on or after June 20, 2006, but prior to July 1, 2014, that constitutes a criminal offense under § 39-13-502, § 39-13-503 or § 39-13-522 no later than twenty-five (25) years from the date the child becomes eighteen (18) years of age.
- (i)**
- (1)** A person may be prosecuted, tried and punished for any offense committed against a child on or after July 1, 2007, that constitutes a criminal offense under § 39-13-532, no later than twenty-five (25) years from the date the child becomes eighteen (18) years of age.
 - (2)** A person may be prosecuted, tried and punished for any offense committed against a child on or after July 1, 2007, but prior to July 1, 2014, that constitutes a criminal offense under § 39-13-531, no later than twenty-five (25) years from the date the child becomes eighteen (18) years of age.
- (j)** A person may be prosecuted, tried and punished for any offense committed against a child on or after July 1, 2012, that constitutes a criminal offense under § 39-17-902, § 39-17-1003, § 39-17-1004, or § 39-17-1005, no later than twenty-five (25) years from the date the child becomes eighteen (18) years of age.
- (k)**
- (1)** A person may be prosecuted, tried and punished for any offense committed against a child on or after July 1, 2013, that constitutes a criminal offense under § 39-13-309 or § 39-13-529, no later than fifteen (15) years from the date the child becomes eighteen (18) years of age.
 - (2)** A person may be prosecuted, tried, and punished for any offense committed against a child on or after July 1, 2013, that constitutes a criminal offense under § 39-13-514 no later than ten (10) years from the date the child becomes eighteen (18) years of age.
- (3)**

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- (A)** A person may be prosecuted, tried, and punished for any offense committed against a child on or after July 1, 2013, but prior to July 1, 2015, that constitutes a criminal offense under § 39-13-515 no later than ten (10) years from the date the child becomes eighteen (18) years of age.
- (B)** A person may be prosecuted, tried, and punished for any offense committed against a child on or after July 1, 2015, that constitutes a criminal offense under § 39-13-515 no later than twenty-five (25) years from the date the child becomes eighteen (18) years of age.
- (l) (1)** Notwithstanding subsections (b), (g), (h) and (i) to the contrary, a person may be prosecuted, tried and punished for an act that constitutes the offense of aggravated rape, as prohibited by § 39-13-502, rape, as prohibited by § 39-13-503, rape of a child as prohibited by § 39-13-522 or aggravated rape of a child as prohibited by § 39-13-531 at any time after the commission of the offense if:
- (A)** The victim notifies law enforcement or the office of the district attorney general of the offense within three (3) years of the offense; and
- (B)** The offense is committed:
- (i)** On or after July 1, 2014; or
- (ii)** Prior to July 1, 2014, unless prosecution for the offense is barred because the applicable time limitation set out in this section for prosecution of the offense expired prior to July 1, 2014.
- (2)** If subdivision (l)(1) does not apply to the specified offenses, prosecution shall be commenced within the times otherwise provided by this section.
- (m)** A person may be prosecuted, tried, and punished for any offense committed against a child on or after July 1, 2016, that constitutes the offense of aggravated statutory rape under § 39-13-506(c), no later than fifteen (15) years from the date the child becomes eighteen (18) years of age.
- (n)** Notwithstanding subsection (b), prosecutions for any offense committed on or after July 1, 2016, that constitutes the offense of aggravated child abuse, or aggravated child neglect or endangerment, under § 39-15-402, shall commence by the later of:
- (1)** Ten (10) years after the child reaches eighteen (18) years of age; or
- (2)** The time within which prosecution must be commenced pursuant to subsection (b).

History

Code 1932, §§ 11481-11483; Acts 1977, ch. 62, § 1; T.C.A. (orig. ed.), §§ 40-201 -- 40-203; Acts 1985, ch. 478, § 21; 1990, ch. 980, § 17; 1997, ch. 214, §§ 1, 2; 1998, ch. 962, § 1; 2006, ch. 927, § 1; 2007, ch. 594, § 5; 2012, ch. 1027, § 1; 2013, ch. 416, § 1; 2014, ch. 836, §§ 1, 2; 2015, ch. 310, § 1; 2016, ch. 958, § 1; 2016, ch. 1032, § 1.

Annotations

Notes

Compiler's Notes.

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Sections under title 39, chs. 2, 4 and 6, referred to in this section, were repealed by Acts 1989, ch. 591, effective November 1, 1989.

For the Preamble to the act regarding criminal penalties, procedure and sentencing, please refer to Acts 2007, ch. 594.

Pursuant to Article III, Section 18 of the Constitution of Tennessee, Acts 2014, ch. 836 took effect on April 28, 2014.

Amendments.

The 2012 amendment added (j).

The 2013 amendment added (k).

The 2014 amendment, designated former (g) as present (g)(2) and added (g)(1); in (g)(2), inserted "but prior to June 20, 2006," and substituted "§§ 39-13-502 -- 39-13-505, § 39-13-522 or § 39-15-302" for "§§ 39-13-502 -- 39-13-505, § 39-13-522, § 39-15-302 or § 39-17-902"; in (h), added (2) and substituted "criminal offense under § 39-13-504, § 39-13-505," for "criminal offense under §§ 39-13-502 -- 39-13-505, § 39-13-522," in (1); in (i), added (2) and deleted "§ 39-13-531 or" preceding "§ 39-13-532"; and added (l).

The 2015 amendment, in (k), deleted "or § 39-13-515" following "§ 39-13-514" in (2) and added (3).

The 2016 amendment by ch. 958 added (m).

The 2016 amendment by ch. 1032 added (n).

Effective Dates.

Acts 2012, ch. 1027, § 2. July 1, 2012.

Acts 2013, ch. 416, § 3. July 1, 2013.

Acts 2014, ch. 836, § 4. April 28, 2014. [See the Compiler's Notes.]

Acts 2015, ch. 310, § 2. July 1, 2015.

Acts 2016, ch. 958, § 2. July 1, 2016.

Acts 2016, ch. 1032, § 2. July 1, 2016.

Case Notes

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1. Indictment.**2. Pleading.****1. Construction.**

The applicable punishment for determining the appropriate statute of limitations is the maximum punishment available for an offense. *State v. Ricci*, 914 S.W.2d 475, 1996 Tenn. LEXIS 63 (Tenn. 1996).

Application of the pre-1989 statute of limitations and prosecution of defendants for securities law violations committed in 1988 did not violate constitutional ex post facto provisions or due process since the applicable limitations were not changed by the 1990 amendment which established limitation periods consistent with the Criminal Sentencing Reform Act of 1989, § 40-35-101 et seq. *State v. Ricci*, 914 S.W.2d 475, 1996 Tenn. LEXIS 63 (Tenn. 1996).

2. Pleading Limitations.

The failure on the part of trial counsel to raise the statute of limitations on behalf of the defendant represented a deficiency in performance of a constitutional nature; and because prejudice resulted, the defendant's post-conviction motion based upon a claim of ineffective assistance of counsel was granted. *Morgan v. State*, 847 S.W.2d 538, 1992 Tenn. Crim. App. LEXIS 731 (Tenn. Crim. App. 1992).

3. Allegations of Indictment.

Where an indictment or presentment shows upon its face, or by stipulation, that the applicable statute of limitations has expired, the instrument must allege facts which demonstrate that the statute was tolled for a sufficient period of time to avoid the bar of the statute of limitations. *State v. Davidson*, 816 S.W.2d 316, 1991 Tenn. LEXIS 320 (Tenn. 1991), rehearing denied, 1991 Tenn. LEXIS 424 .

Where there is a statute of limitations that bars prosecution of the offenses charged, there should be a sufficiently definite averment of time in the indictment to show that the offense was committed within the statute of limitations. *State v. Kennedy*, 10 S.W.3d 280, 1999 Tenn. Crim. App. LEXIS 569 (Tenn. Crim. App. 1999).

It was no error to let the State amend an indictment to allege a new ground for tolling the statute of limitations applicable to second-degree murder because (1) defendant consented to the amendment, and, (2) if defendant did not consent, jeopardy had not attached, no new crime was charged, and defendant's substantial right was not prejudiced, as the State could have obtained a superseding indictment. *State v. Hollingsworth*, -- S.W.3d --, 2017 Tenn. Crim. App. LEXIS 17 (Tenn. Crim. App. Jan. 11, 2017).

4. Return of Indictment.

Because an amendment of the date did not charge an additional crime, the court looked to the date the indictment was returned in order to determine whether the amended date fell within the statute of limitations. *State v. Kennedy*, 10 S.W.3d 280, 1999 Tenn. Crim. App. LEXIS 569 (Tenn. Crim. App. 1999).

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5. Concealment of Crime.

If coercion against a minor victim of sexual abuse could amount to concealment of the crime so as to toll the running of the statute of limitations, the time frame for the coercion constituting the concealment would need to be alleged. *State v. Davidson*, 816 S.W.2d 316, 1991 Tenn. LEXIS 320 (Tenn. 1991), rehearing denied, 1991 Tenn. LEXIS 424 .

If the tolling is triggered by concealment, the statute would begin to run when the concealment ceased. *State v. Davidson*, 816 S.W.2d 316, 1991 Tenn. LEXIS 320 (Tenn. 1991), rehearing denied, 1991 Tenn. LEXIS 424 .

6. Prosecution Untimely.

Institution of incest charges was not timely. *State v. Henry*, 834 S.W.2d 273, 1992 Tenn. LEXIS 361 (Tenn. 1992).

Defendant's 1988 indictments on three counts of aggravated rape, aggravated sexual battery, and use of a minor for obscene purposes all occurred more than four years after the offenses; as there was no evidence of concealment, including threats to the victims on the part of defendant, the proof was inadequate to support a tolling of the statutes of limitation, depriving the trial court of subject-matter jurisdiction. *Morgan v. State*, 847 S.W.2d 538, 1992 Tenn. Crim. App. LEXIS 731 (Tenn. Crim. App. 1992).

A conviction for a time-barred crime clearly violates the constitutional rights of an accused. *Morgan v. State*, 847 S.W.2d 538, 1992 Tenn. Crim. App. LEXIS 731 (Tenn. Crim. App. 1992).

7. Waiver of Defense.

Although the statute of limitations is waivable, rather than jurisdictional, a waiver by the defendant must be knowingly and voluntarily entered. While the protection against prosecution provided by a statute of limitations may not rise to the level of a fundamental right, the right is sufficiently substantial to justify application of the same standard used in determining whether there has been an effective waiver as to fundamental rights. *State v. Pearson*, 858 S.W.2d 879, 1993 Tenn. LEXIS 240 (Tenn. 1993).

8. Competence of Counsel.

Defense counsel's failure to object to the jury instructions regarding the law of aggravated rape did not constitute ineffective assistance of counsel; at the time defendant committed the offense (August 1978 -- May 1979), the offense of aggravated rape did not exist, and this instruction was an accurate statement of the law as it existed at the time the indictment was returned. *Overton v. State*, 874 S.W.2d 6, 1994 Tenn. LEXIS 94 (Tenn. 1994).

9. Purpose.

The statute of limitations serves two primary purposes: to avoid the use of stale evidence and to provide an incentive for swift governmental action in criminal cases. *State v. Pearson*, 858 S.W.2d 879, 1993 Tenn. LEXIS 240 (Tenn. 1993).

10. Statute of Limitations.

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Defendant's contention that the prosecution of the forgery and official misconduct offenses was barred by the statute of limitations was without merit under T.C.A. §§ 39-14-114(c), 39-16-402(d) (now (e)) and 40-2-101(b)(4) because each count charged in the reindictment for which defendant was convicted corresponded with a count charged in the original indictment. The conviction counts in the reindictment did not charge any new offenses. *State v. Davis*, -- S.W.3d --, 2011 Tenn. Crim. App. LEXIS 120 (Tenn. Crim. App. Feb. 18, 2011).

Defendant's prosecution for sexual battery, in violation of T.C.A. §§ 39-13-504, 39-13-505, was commenced within the applicable statute of limitations under T.C.A. § 40-2-101(g) where the state established by a preponderance of the evidence, as required under T.C.A. § 39-11-201(f), that the victim was a minor at the time of the offense and that the prosecution was commenced before she turned 21. *State v. Doane*, 393 S.W.3d 721, 2011 Tenn. Crim. App. LEXIS 503 (Tenn. Crim. App. July 6, 2011).

Defendant's conviction for attempted aggravated rape was not barred by the statute of limitations, T.C.A. § 40-2-101(b)(1)-(2), because the John Doe arrest warrant and DNA profile commenced the prosecution against defendant in a timely fashion and tolled the statute of limitations until he was identified and apprehended; a John Doe warrant coupled with a DNA profile of an unknown suspected offender obtained before the expiration of the applicable statute of limitations may validly commence a criminal prosecution and toll the statute of limitations. *State v. Burdick*, -- S.W.3d --, 2011 Tenn. Crim. App. LEXIS 886 (Tenn. Crim. App. Dec. 2, 2011), *aff'd*, 395 S.W.3d 120, 2012 Tenn. LEXIS 903 (Tenn. Dec. 18, 2012).

Prosecution for attempted aggravated rape was properly and timely commenced with in the eight-year statute of limitations for attempted aggravated rape, T.C.A. § 40-2-101(b)(1)-(2), by the filing of the "John Doe" arrest warrant because The "John Doe" designation in the warrant, coupled with the detailed DNA profile of the assailant, identified defendant with "reasonable certainty" as required by the Fourth Amendment, Tenn. Const. art. I, § 7, T.C.A. § 40-6-208, and Tenn. R. Crim. P. 4(c)(1)(B). *State v. Burdick*, 395 S.W.3d 120, 2012 Tenn. LEXIS 903 (Tenn. Dec. 18, 2012).

Issuance of the state warrant three weeks before the expiration of the statute of limitations, listing "John Doe" along with defendant's DNA profile, was sufficient to toll the statute of limitations pursuant to T.C.A. § 40-2-101(b)(2). *State v. Davison*, -- S.W.3d --, 2012 Tenn. Crim. App. LEXIS 706 (Tenn. Crim. App. Sept. 5, 2012).

Because the deputy court clerk's testimony established her as a neutral and detached person who was capable of making a probable cause determination as she evinced a common sense understanding of probable cause and a clear understanding of her duty with regard to issuing an arrest warrant, the arrest warrant issued was valid and commenced the prosecution for aggravated burglary in a timely fashion. *State v. Fryar*, -- S.W.3d --, 2013 Tenn. Crim. App. LEXIS 484 (Tenn. Crim. App. June 7, 2013), *appeal denied*, -- S.W.3d --, 2013 Tenn. LEXIS 875 (Tenn. Oct. 23, 2013).

Defendant's re-indictment for conspiracy to commit first degree premeditated murder was not time-barred because defendant's initial indictment for the crime tolled the statute until the State agreed to nolle prosequi the charge. *State v. Blair*, -- S.W.3d --, 2015 Tenn. Crim. App. LEXIS 549 (Tenn. Crim. App. July 9, 2015).

Trial court erred in dismissing defendant's re-indictment for rape of a child and aggravated sexual battery based on a violation of defendant's due process and speedy trial rights, because defendant's constitutional right to a speedy trial was not implicated, the prosecution commenced within the applicable statutory periods, the length of the delay, between 7 and 12 years, was not excessive, the bulk of the delay was attributable to the victim's reluctance to come forward and changing memory, factors not within the control of either the State or defendant, and defendant's inability to call certain

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witnesses due to death or failure to locate did not demonstrate actual prejudice. *State v. Beaty*, -- S.W.3d --, 2016 Tenn. Crim. App. LEXIS 606 (Tenn. Crim. App. Aug. 16, 2016).

Decisions Under Prior Law

1. Indictment.

Indictment for voluntary manslaughter filed in 1933 was barred where state had filed prior indictment on same case in 1919 and had not prosecuted the voluntary manslaughter indictment even though defendant had been in custody of state for 12 years. *Smith v. State*, 168 Tenn. 265, 77 S.W.2d 450, 1934 Tenn. LEXIS 50 (1935).

Addition of words in indictment which would prevent the running of the limitation of the former section following the words "against the peace and dignity of the state" did not invalidate indictment as being contrary to the provisions of Tenn. Const., art. VI, § 12 that the indictment end with the above quoted words, substantial compliance with such constitutional provision being sufficient. *Burton v. State*, 214 Tenn. 9, 377 S.W.2d 900, 1964 Tenn. LEXIS 441 (1964).

Where indictment was returned within period of limitation so that prosecution was commenced, trial of accused, for assault with intent to commit murder more than four years after date of commission of offense was not barred by statute. *State ex rel. Lewis v. State*, 1 Tenn. Crim. App. 535, 447 S.W.2d 42, 1969 Tenn. Crim. App. LEXIS 289 (Tenn. Crim. App. 1969).

Indictment for concealing stolen property which did not state the month and day in 1971 when the offense was committed was not defective, since the indictment was returned April 4, 1972, well before the expiration of the applicable statute of limitations. *Prince v. State*, 529 S.W.2d 729, 1975 Tenn. Crim. App. LEXIS 287 (Tenn. Crim. App. 1975).

2. Pleading.

It is not necessary for the defendant to plead the defense afforded by the former section specially, but he can avail himself of it under his plea of not guilty by establishing a defense by proof on the trial. *State v. Landis*, 177 Tenn. 304, 145 S.W.2d 1032, 1940 Tenn. LEXIS 39 (1941).

Opinion Notes

Attorney General Opinions.

Statute of limitations of aggravated gambling promotion, OAG 99-127 (6/29/99).

A prosecution for the sale of beer to minors must commence within 12 months if a Class A misdemeanor and within two years if a Class E felony, OAG 01-062 (4/20/01).

Research References & Practice Aids

Cross-References.

Penalties for Class A, B, C, D, and E felonies, § 40-35-111.

Transfer from juvenile court, sentence of death prohibited, § 37-1-134.

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Section to Section References.

This chapter is referred to in § 39-11-201.

This section is referred to in § 62-13-313.

Textbooks.

Tennessee Criminal Practice and Procedure (Raybin), § 16.82.

Tennessee Jurisprudence, 18 Tenn. Juris., Limitations of Actions, § 18.

Law Reviews.

Defending Life in Tennessee Death Penalty Cases (Roy B. Herron), 51 Tenn. L. Rev. 681 (1984).

Collateral References.

Conviction of lesser offense, against which statute of limitations has run, where statute has not run against offense with which defendant is charged. 47 A.L.R.2d 887.

Relation back of amended pleading substituting true name of defendant for fictitious name used in earlier pleading so as to avoid bar of limitations. 85 A.L.R.3d 130.

When statute of limitations begins to run against action for conversion of property by theft. 79 A.L.R.3d 847.

When statute of limitations begins to run against criminal prosecution for embezzlement, fraud, false pretenses, or similar crimes. 77 A.L.R.3d 689.

When statute of limitations begins to run on charge of obstructing justice or on conspiring to do so. 77 A.L.R.3d 725.

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