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Gambling

1. Three elements needed for Gambling under state law:

- A. **CONSIDERATION:** Money or other thing which enables a person to play the game or make the wager.
- B. **CHANCE:** No skill involved (no control over outcome by player).
- C. **PRIZE:** Right to money, credits, or other things of value.

2. **Definitions**

- A. "Gambling" means risking anything of value for a profit whose return is to any degree contingent on chance, but does not include a lawful business transaction;
- B. "Gambling Bet" means anything of value risked in gambling;
- C. "Gambling Device or Record" means anything designed for use in gambling, intended for use in gambling, or used for gambling;
- D. "Lawful Business Transaction," as used in subdivision (1), includes any futures or commodities trading;
- E.. "Lottery" means the selling of anything of value for chances on a prize or stake; and
- F. "Profit" means anything of value in addition to the gambling bet.

3. **Gambling Promotion**

- A. A person commits an offense who knowingly induces or aids another to engage in gambling, and
 - 1. Intends to derive or derives an economic benefit other than personal winnings from the gambling; or
 - 2. Participates in the gambling and has, other than by virtue of skill or luck, a lesser risk of losing or greater chance of winning than one or more of the other participants.
- B. The offense of gambling promotion is a class B misdemeanor.

4. **Aggravated Gambling Promotion**

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A. A person commits an offense who knowingly invests in, finances, owns, controls, supervises, manages or participates in a gambling enterprise.

B. For purposes of this section, "Gambling Enterprise" means two or more persons regularly engaged in gambling promotion.

C. The offense of aggravated gambling promotion is a class E felony.

5. Possession of Gambling Device or Record

A. A person commits an offense who knowingly owns, manufacturers, possesses, buys, sells, rents, leases, stores, repairs, transports, prints or makes any gambling device or record.

B. Any gambling device or record is contraband and shall be subject to seizure, confiscation, forfeiture and destruction in accordance with the provisions of the general forfeiture statute.

C. Possession of a gambling device or record is a class B misdemeanor.

6. Video and Mechanical Machine Gambling

A. Any mechanical machine used for gambling shall be considered a gambling device and subject to confiscation under possession of gambling device or record

B. Any **VIDEO GAME** used for gambling is subject to confiscation under possession of gambling device or record. No matter how innocent a machine is, if it is used as game of chance and payoffs are made on it then it can be seized.

C. Persons caught gambling on pinball or video poker machines should be charged with gambling.

D. When machines are used in gambling they should be confiscated and the players handled the same as in any other gambling case. A memo should also be submitted to the Vice and Narcotics Unit listing who was charged, what was seized, and who is the owner of the business.

E. If any video or pinball machine is confiscated out of a business licensed to sell beer or liquor, the officer confiscating must submit a memo to the city Alcohol Beverage Commission outlining all facts surrounding such seizure.

7. Bingo

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Bingo is illegal in the state of Tennessee and **bingo** cases should be handled the same as other gambling cases.

8. Chain Letters and Pyramid Schemes

Send a memo to the Vice and Narcotics Unit outlining any details concerning these operations. They are gambling under state law.

9. Cock and Animal Fighting

A. It is unlawful for any person to:

1. Own, possess, keep, use or train any bull, bear, dog, cock or other animal, for the purpose of fighting or injuring another such animal, for amusement, sport or gain;
2. Cause, for amusement, sport or gain, any such animal to fight, bait or injure nother animal, or each other;
3. Permit any such acts stated in subdivisions (1) a OR (1) b to be done on any premises under the person's charge or control, or aid or abet such act; or
4. Be knowingly present, as a spectator, at any place or building where preparations are being made for an exhibition for such fighting, baiting or injuring of any animal, with the intent to be present at such exhibition fighting, baiting or injuring.

B. It is the legislative intent that the provisions of this section shall not apply to the training or use of hunting dogs for sport or to the training or use of dogs for law enforcement purposes.

C. It is not an offense to own, possess or keep cocks, or aid or abet the ownership, possession or keeping of cocks for the sole purpose of selling or transporting such cocks to a location in which possession or keeping of such cocks is legal.

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1. Definitions (Two types)

A. **Liquor:** Any alcoholic beverage or intoxicating liquor which contains an alcohol content greater than 5%. Does not include any beverage with alcohol content of 5% or less.

B. **Beer, Ale, Malt Beverages:** Any alcoholic substance containing 5% or less alcohol content.

2. Bootleggers

THE FOLLOWING CHARGES SHOULD BE USED INVOLVING BUSINESSES

A. Unlawful sale of Alcoholic Beverages (T.C.A. 39-17-702)

1. It is unlawful for any person to sell wine, beer, ale, or any other beverage or mixed drink containing alcohol in any establishment unless the establishment is operating in compliance with all laws governing the sale of alcohol.

B. Storage of liquor for sale (T.C.A. 39-17-713)

1. It is unlawful for any person, unless authorized by law to do so, to have or keep in stock, in any warehouse or place of business or other place, any intoxicating liquors, including wine, ale or beer, intended for present or future sale as a beverage, either wholesale or retail, and whether intended to be sold for delivery at the place of sale or to be shipped or otherwise transported for delivery at another place.

2. Second offense or subsequent violations are deemed a felony.

C. Receiving, Possession, and Transporting Alcoholic Beverages (T.C.A. 39-17-703)

1. No person, unless authorized to do so under TCA Title 57, shall receive, possess or transport with the intent to redistribute or resale in this state any intoxicating liquor which does not have a proper state of Tennessee revenue stamp affixed thereto.

2. It shall be inferred that any receipt, possession, or transportation of more than five (5) gallons of intoxicating liquors which do not have a proper State of Tennessee revenue stamp affixed thereto is for the purpose of resale or distribution.

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3. A violation of this section is a class A misdemeanor.

D. Manufacture of Alcoholic Beverages (T.C.A. 39-17-706)

1. It is unlawful for any person, company, or other entity to manufacture intoxicating beverages unless authorized by law to do so; provided, that this section shall not be construed to prohibit the manufacture of alcohol for use as a fuel to power motor-driven vehicles and machinery or for heating purposes or of not less than one hundred eighty-eight proof for chemical pharmaceutical, medical, and bacteriological purposes.

2. A violation of this section is a class "A" misdemeanor.

E. Possession of Still (T.C.A. 39-17-707)

It shall be unlawful for any person to have in his possession or control any still or other apparatus, or part thereof, used or intended to be used for the purpose of manufacturing intoxicating liquor as prohibited by law. A violation of this section is a Class B misdemeanor.

F. Selling Alcoholic Beverage W/O License (T.C.A. 57-3-304)

Any person, firm, or corporation desiring to sell alcoholic spirituous beverages to patrons or customers, in sealed packages only, and not for consumption on the premises, shall make application to the Alcohol Commission for a retailer's license. Any sales of such spirituous beverages without a license is unlawful.

3. Beer Violations Involving Minors

A. Minor Possessing/Transporting Beer (T.C.A. 57-5-301)

It shall be unlawful for any person under the age of twenty-one (21) years of age to have in his or her possession beer for any purpose, it shall be unlawful for any such minor to transport beer for any purpose except the same being in the course of his or her employment.

B. Minor Used False ID to Buy Beer (T.C.A. 57-5-301)

Any person under the age of twenty-one (21) years who knowingly makes a false statement or exhibits false identification to the effect that he or she is twenty-one (21) years or older to any person engaged in the sale of alcoholic beverages licensed hereunder for the purpose of purchasing or obtaining the same shall be guilty of a

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misdemeanor.

C. Purchase/Attempt to Purchase Beer for Minor (T.C.A. 57-5-301)

Any person who purchases any beer for or at the request of a person under the age of twenty-one (21) years shall be guilty of a misdemeanor.

D. Allow Minors to Loiter Where Alcohol Sold (T.C.A. 57-5-301)

It shall be unlawful for the management of any place where alcohol is sold to allow any minor to loiter about such place of business, and the burden of ascertaining the age of minor customers shall be upon the owner or operator of such business.

E. Sell Beer/Alcoholic Beverage - Minor (T.C.A. 57-5-301)

It is illegal to sell any alcoholic beverages to minors. See section on **Minors**.

4. Misc. City and State Alcohol Charges

A. Sell Beer During Prohibited Hours

See section on Alcohol Sales Hours. It is unlawful for businesses to sell during prohibited hours.

B. Selling Beer without a License (T.C.A. 57-5-104)

All businesses involved in the selling of alcoholic beverages must apply for and receive a permit from the Alcoholic Beverage Commission.

C. Possession of Firearm Where Alcoholic Beverages are Served/Sold. (T.C.A. 39-17-1305)

- a. It is an offense for a person to possess a firearm on the premises of a place open to the public where alcoholic beverages are served or in the confines of a building where alcoholic beverages are sold.
- b. A violation of this section is a Class A misdemeanor.
- c. The provisions of subsection (a) shall not apply to a person who is:
 - (1) In the actual discharge of official duties as a law enforcement officer, or is employed in the army, air force, navy, coast guard or marine service of

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the United States or any member of the Tennessee national guard in the line of duty and pursuant to military regulations, or is in the actual discharge of duties as a correctional officer employed by a penal institution; or

(2) On the person's own premises or premises under the person's control or who is the employee or agent of the owner of the premises with responsibility for protecting persons or property.

D. Consuming Alcoholic Beverages on School Premises (T.C.A. 39-17-715)

1. It is unlawful to consume or possess any alcoholic beverage on the school plant or grounds of any public school in this state having any of the grades kindergarten (k) through twelve (12).

2. A violation of this section is a class C misdemeanor.

E. Alc. Bev. Prohibited in Massage Parlor CITY

No person shall sell, give, dispense, provide or keep or cause to be sold, given, dispensed, provided or kept, any alcoholic beverage on the premises of a massage parlor.

F. Drinking on Liquor Store Lot CITY

It shall be unlawful for any person to consume alcoholic beverages while upon the premises of a retail liquor package store or any parking lot under control of said store.

G. Poss/Consum Alcoholic Bev City Park CITY

It shall be unlawful for any person or persons to sell, consume or possess any beverage with alcoholic content in any of the public parks or properties under the jurisdiction of the Park Commission, except in such enclosed buildings or other structures and/or areas as are specifically designated and authorized by the Park Commission.

[All of the above charges were listed as they are in the **SCATS** for ease of use.]

5. Duty of the City Alcohol Beverage Commission

A. When you make any arrest in a business licensed by either the City Alcohol Beverage Commission or the State ABC (retail liquor stores and liquor by the drink businesses), then you must submit a memo (phoned in) to the City ABC. They will forward it to the State, if needed.

B. When an officer is called upon to testify at the Alcohol Beverage Commission, **It is**

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the responsibility of the testifying officer to take with him/her all necessary arrest reports, memos, etc.

Therefore, once an officer submits an alcoholic beverage report, the **officer(s) submitting such report** will make sure all related documents will be attached to the copy retained at the precinct, O.C.U. office, or work station.

The **subpoenaed officer** will obtain all necessary documents prior to reporting to the Alcohol Beverage Commission's hearing at City Hall.

6. Minors

A. In the State of Tennessee a person must be 21 years old to purchase, possess, or consume alcoholic beverages, wine or beer.

B. A person must be 18 or older to sell, transport, possess, or dispense in course of employment.

C. If a violator is seventeen (17) or younger, issue a Juvenile Summons or if warranted, due to one of the misdemeanor exceptions, arrest the violator and transport to Juvenile Court.

D. If a violator is eighteen (18) or older, issue a misdemeanor citation, unless one of the exceptions is present, then make a physical arrest and transport to the CJC.

E. **IMPORTANT!!!** When you charge a person for any alcohol violation which is based on an illegal act of a minor, then you **must** list in the citation or on the arrest ticket of the adult the minor's name, address, and phone number. The prosecutor needs to have this for court.

7. Sales Times for Beer and Alcohol

A. All establishments selling liquor by the drink or beer must cease such sales at 3:00 a.m. No beer can be out in any type container at 3:15 a.m.

State Liquor Licenses (Liquor by the drink) prohibit the sale on premises after 3:00 a.m. A customer may use his own liquor to mix his personal drinks after 3:00 a.m. No Beer or liquor by the drink may be sold between the hours of 3:00 a.m. and 12 noon on Sunday.

(Exception: Beale Street until 5:00 am)

8. Confiscation and Disposal of Contraband Alcoholic Beverages

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A. Three ways which lead to an alcoholic beverage becoming contraband.

1. Unlawful retail or wholesale sales: To engage in sale of alcoholic beverage unless licensed.
2. Liquor by the Drink: Unlawful to engage in sale of liquor by the drink without a license to do so.
3. Unlawful sale of beer or other beverages 5% or less alcohol:

B. Seizure and Disposition of Liquor & Beer:

1. The Police Department is required to notify the Alcoholic Beverage Commission in writing ten (10) days after the seizure and said liquor will be turned over to them.
2. Beer or beverages 5% or less in alcohol content will be destroyed by the Property Room.

C. Procedures Memphis Police Officers are to follow:

1. Notice to Claimant: A notice provided by the Property and Evidence Room outlining the procedure for filing a claim for the return of seized items will be delivered to the person from whom the items were seized. The officer making the arrest and seizure of contraband shall be responsible for the delivery. A copy of the notice, along with a memo regarding the seizure, will be forwarded to Vice Narcotics.
2. **Do not mark on the bottles or cans for identification purposes.** Marking of the bottles lowers the resale value when auctioned. Officers should attach a filled out Property Receipt Tag.
3. Duties of the Property and Evidence Room
 - a. On receipt of contraband beverages, Property Room personnel shall prepare an itemized list showing quantity, brand, name, and size of all bottles seized. Distribution of copies of itemized list are: one copy Alcohol Beverage Commission (when they take possession); one copy maintained for police records. One copy forwarded to office of the City's Chief Administrative Officer.
 - b. Property Room personnel should also make a photograph of the evidence for use in court.

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c. Property and Evidence shall notify the local agent of the State Alcohol Beverage Commission of the items seized above 5% alcohol content.

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1. PROSTITUTION ENFORCEMENT: When a person acts other than as a prostitute or customer of a prostitute, and:

- A. Owns, controls, manages, supervises, or in any way keeping, alone or in association with others, a business for the purpose of engaging in prostitution, or a house of prostitution; or
- B. Procures an inmate for a house of prostitution; or
- C. Encourages, induces, or otherwise purposely causes another to become a prostitute; or
- D. Solicits a person to patronize a prostitute; or
- E. Procures a prostitute for a patron or
- F. Solicits, receives, or agrees to receive any benefit for engaging in any of the activities defined in the above subsections.

Violation of the above law is a class E felony. Before placing these charges, first contact the Vice and Narcotics Unit.

2. Prostitution: To engage or offer or agree to engage in sexual conduct with another person in return for something of value to be received by the person or a 3rd party.

- A. A person commits an offense under this section who engages or offers to engage in prostitution. This is a class B misdemeanor.
- B. Prostitution within 100 feet of a church or school is classified as a class A misdemeanor.

3. Patronizing Prostitution: Soliciting the services of a prostitute for sexual conduct in return for something of value.

- A. A person commits an offense under this section who patronizes or solicits the services of a prostitute. This is a class B misdemeanor.
- B. Patronizing prostitution within 100 feet of a church or school is a class A misdemeanor.

4. Indecent Exposure: A person commits an offense who, in a public place or on the private premises of another, or so near thereto as to be seen from such private premises:

- A. Intentionally:
 - 1. Exposes his genital or buttocks to one (1) or more persons; or
 - 2. Engages in sexual contact or sexual penetration

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- B. Reasonably expects the acts will be viewed by another and such acts:
 - 1. Will offend an ordinary viewing person; or
 - 2. Are for the purpose of sexual arousal and gratification of the defendant.

5. Pedestrian Soliciting Rides/Business

- A. No person shall stand in a roadway for the purpose of soliciting a ride or employment from the occupant of any vehicle.

6. Definitions:

A. Sexual Conduct

- 1. Sexual intercourse, which means any penetration, however slight, of the female sex organ by the male sex organ, whether or not an emission results.
- 2. Deviate sexual intercourse which means cunnilingus or fellatio.
- 3. Sexual contact which means any touching, manual, or otherwise, of the erogenous area of one person by another done for the purpose of arousing or gratifying sexual desire of either party.

- B. Something of value means any money or property, or any token object or article exchangeable for money or property.

6. Other Charges Used

A. Criminal Trespass

- 1. **Authorization of Agency:** If a property owner is having a problem with prostitutes gathering on their property, they can sign an authorization of agency whereby the police department can enforce criminal trespass on their property. A copy of this form should be maintained, 1.) at the Precinct and, 2.) with the Vice and Narcotics Unit.

B. Homosexual Acts

- 1. It is a class C misdemeanor for any person to engage in consensual sexual penetration with a person of the same gender.

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OBSCENITY: DO NOT PLACE ANY OBSCENITY CHARGES, EXCEPT THOSE IN SUBSECTION A (1a) AND A (2b), WITHOUT FIRST CHECKING WITH ORGANIZED CRIME UNIT.

1. Topless Clubs

A. Prohibited Sexual/Pornographic Conduct (this ordinance is used in establishments which have compensated dance permits and also sell beer.)

1. Live entertainment is permitted on any licensed premises, except that:

a. No person shall perform acts of or acts that simulate:

* sexual intercourse, masturbation, sodomy, bestiality, cunnilingus, fellatio, flagellation, or any sexual acts which are prohibited by law;

* the touching, caressing or fondling of the breast, buttocks, anus or genitals; or

* the displaying of the pubic hair, anus, vulva or genitals.

b. Subject to the provisions of subdivision (a) hereof, any entertainer who is employed in whole or in part, whether directly or as independent contractor or agent, by the licensee's premises shall perform only upon a stage at least eighteen (18) inches above the immediate floor level and removed at least twelve (12) inches from the nearest patron.

2. No person shall use artificial devices or inanimate objects to depict any of the prohibited activity described above.

B. Indecent Exposure: This ordinance can be used in business that do not sell beer or in situations involving sexual intercourse. See Section on Prostitution

2. Bookstores

A. Display Material of Sexual Nature: DO NOT PLACE ANY CHARGES WITHOUT CHECKING WITH THE VICE AND NARCOTICS UNIT.

1. It is unlawful for a person to display for sale or rental a visual depiction, including a videocassette tape or film, or a written representation, including a book, magazine or pamphlet, which contains material harmful to minors anywhere minors are lawfully admitted.

2. The state has the burden of proving that the material is displayed. Material is not considered displayed under the following circumstances.

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* The material is placed in "binder racks" that cover the lower two-thirds of the material and the viewable one-third is not harmful to minors; or

* located at a height of not less than five and one half feet from the floor; or

* reasonable steps are taken to prevent minors from perusing the material.

B. The material is sealed, and, if it contains material on its cover which is harmful to minors, it must also be opaquely wrapped.

C. The material is placed out of sight underneath the counter.

D. The material is located so that the material is not open to view by minors and is located in an area restricted to adults.

E. Unless its cover contains material which is harmful to minors, a video cassette tape or film is not considered if it is in a form that cannot be viewed without electrical or mechanical equipment is not being used to produce a visual depiction; or

F. In a situation if the minor is accompanied by his parent or guardian, unless the area is restricted to adults as provided for in subdivision (B) (4)

A violation of this section is a class C misdemeanor for each day the person is in violation of this section.

3. Concerts

A. Definitions

1. "Excess Violence" means the depiction of acts of violence in such a graphic and/or bloody manner as to exceed common limits of custom and candor, or in such a manner that the predominant appeal of the material is portrayal of violence for the sake of violence.

2. "Harmful to Minors" means that quality of any description of nudity, sexual excitement, sexual conduct, excess violence, or sado-masochistic abuse when it:

a. Predominantly appeals to the prurient, shameful or morbid interest of minors;

b. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and

c. is utterly without redeeming social importance for minors.

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3. "Knowingly" means having general knowledge of, or reason to know, or belief or ground for belief, which warrants further inspection or inquiry of both:
 - a. The character and content of any material described herein which is reasonably susceptible of examination by the defendant; and
 - b. The age of the minor; provided, however, that an honest mistake shall constitute an excuse from liability hereunder if the defendant makes a reasonable bona fide attempt to ascertain the true age of such minor;
4. "Minor" means any person who has not reached eighteen (18) years of age and is unemancipated.
5. "Nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than full opaque covering or the showing of the female breast with the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.
6. "Sado-Masochistic Abuse" means flagellation or torture or physical restraint by or upon a person for the purpose of sexual gratification of either person.
7. "Sexual Conduct" means acts of masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or the breast; and
8. "Sexual Excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

B. Allow Minor View Harmful Performance

It shall be unlawful for a promoter, performer, producer, or director to knowingly allow a minor to be present during a live performance which is harmful to minors as hereinabove described.

C. Parent allow minor/view performance

It shall be unlawful for a parent or legal guardian to knowingly allow their child or children to attend a live performance which is harmful to minors as hereinabove described.

D. Minor purchase pass/harm performance

1. It shall be unlawful for any minor to knowingly purchase or attempt to purchase a ticket or attempt to gain admission to, or attend a live performance which is harmful to

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minors hereinabove described.

2. It shall be unlawful for any minor to present or offer to present any written evidence of his age which is false, fraudulent or not actually his own for the purpose of gaining admission to live performance which is harmful to minors as hereinabove described.

3. Any minor who acts in violation of anyone or more provisions of this section shall be taken before the Juvenile Court for appropriate disposition.