



Defending Against the Charge of Sexual Battery

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Disclaimer

The content in this book is intended to be general legal information for unrepresented defendants. I do not know the specifics of your case, and this book is not legal advice based upon the particular details of your case. I do not automatically become your attorney just because you are reading this book. If you are already represented by an attorney, then you should listen to him or her. With that out of the way, happy reading!

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Question #1: How much trouble am I in?

As with many sex crime offenses, the greatest penalty of a conviction may not be not the actual potential jail time, but the social stigma it can cause. Imagine that a potential employer does a background check on you, and he or she learns that you were convicted for trying to sleep with a prostitute! So whether you actually have to serve jail time on it or not, your primary focus should be trying to avoid a conviction altogether.

Depending on the facts of the case, a conviction for this offense could result in jail, placement on the Sex Offense Registry (in some cases), a felony on your record, loss of your marriage, child visitation, employment, immigration status, loss of car or house (in some cases), and many more.

You are about to have to make a very difficult decision – do you have the heart for the battle to come? It will be very tempting to plead guilty rather than go to trial because it's cheaper, quicker, and easier ... but you will be wearing a scarlet letter forevermore.

Question #2: Do I have a good chance at trial?

I can only give general advice here without having read the specific facts in your case, but I can say this – as you read this guide, you will probably be surprised at how many things you would like to present at trial but cannot.

The **first** thing you need to understand about the offense of sexual battery is that the offense is all about “unlawful sexual contact” that is less than sexual penetration (otherwise, the offense would be rape). So if you’re charged with sexual battery and then you blurt out to the police that you and the alleged victim ‘never even had sex,’ then you’re missing the point – no one is saying that you did.

Unlawful sexual contact is further defined under Tenn. Code Ann. § 39-13-501 as “the intentional touching of the victim’s, the defendant’s, or any other person’s intimate parts, or the intentional touching of the clothing covering the immediate area of the victim’s, the defendant’s, or any other person’s intimate parts, if that intentional touching can

be reasonably construed as being for the purpose of sexual arousal or gratification.”

Notice in the definition above that sexual contact can occur because the defendant touched the alleged victim’s private parts, or because the defendant forced the alleged victim to touch the defendant’s private parts. Also, notice that no one ever has to be naked – the touching can occur through the clothing.

The **second** thing you need to know about this offense is that “force or coercion” must be used to accomplish the act. This could be as simple as groping a woman’s breast at a bar, so don’t think that all that much is actually required with this element – the point is that the alleged victim did not consent to the behavior.

We all know what force is, but coercion is more complicated and varied – in a case for rape and sexual battery, a defendant threatened to publicly expose the victim as a homosexual unless he cooperated, and the jury found that this sexual offense was accomplished through the use of coercion. State v. McKnight, 900 S.W.2d 36 (Tenn. 1994).

The **third** (and most interesting thing) you need about sexual battery is that it can also

be accomplished by fraud. Tenn. Code Ann. § 39-13-505.

Sexually battery by fraud is controversial and not allowed in some states because it opens defendants up to scenarios that many would consider mere ‘pillow talk.’ However, in Tennessee, prosecution under these facts is permitted.

Imagine that you told a person that you were single, or did not have an STD, or were a casting agent in Hollywood (and I’m being a bit ridiculous here, but you get the point). If the alleged victim consented to you touching him or her at the time based on the fraud that you perpetrated, and that person would never have consented to the sexual contact if he or she knew the truth about what you lied about, then that person did not really have a knowing consent, because you misled them in order to get their consent under false pretenses.

Question #3: What facts can make the charge more serious?

I have already defined the standard offense of Sexual Battery above, but a good working definition is an unlawful sexual contact accomplished by force, coercion, or fraud and without consent.

Sexual Battery is a Class E felony. The range of punishment for a Class E felony is “not less than one (1) year nor more than six (6) years. In addition, the jury may assess a fine not to exceed three thousand dollars (\$3,000).” Tenn. Code Ann. § 40-35-111.

There are two heightened versions of Sexual Battery with additional elements and greater punishments, which include: 1) Sexual Battery by an Authority Figure, and 2) Aggravated Sexual Battery.

If the above elements of Sexual Battery are met, but any of these additional factors are present, then the charge will be **Sexual Battery by an Authority Figure**:

(1) The victim was, at the time of the offense, thirteen (13) years of age or older but

less than eighteen (18) years of age; or (2) The victim was, at the time of the offense, mentally defective, mentally incapacitated or physically helpless, regardless of age; and, (3) (A) The defendant was at the time of the offense in a position of trust, or had supervisory or disciplinary power over the victim by virtue of the defendant's legal, professional or occupational status and used the position of trust or power to accomplish the sexual contact; or (B) The defendant had, at the time of the offense, parental or custodial authority over the victim and used the authority to accomplish the sexual contact. Tenn. Code Ann. § 39-13-527.

Sexual Battery by an Authority Figure is a Class C felony. The range of punishment for a Class C felony is not less than three (3) years nor more than fifteen (15) years based on the classification of the defendant. In addition, the jury may assess a fine not to exceed ten thousand dollars (\$10,000).” Tenn. Code Ann. § 40-35-111. The sentence must be served 100% day for day, meaning that the defendant will get no sentence reductions for good behavior.

If the above elements of Sexual Battery are met, but any of these additional factors are present, then the charge will be an **Aggravated Sexual Battery**:

(1) Force or coercion is used to accomplish the act and the defendant is armed with a weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a weapon; (2) The defendant causes bodily injury to the victim; (3) The defendant is aided or abetted by one or more other persons, and either a) force or coercion is used to accomplish the act; or b) the defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or (4) The victim is less than thirteen (13) years of age. Tenn. Code Ann. § 39-13-505.

Aggravated Sexual Battery is a Class B felony. The range of punishment for a Class B felony is not less than eight (8) years nor more than thirty (30) years based on the classification of the defendant. In addition, the jury may assess a fine not to exceed twenty-five thousand dollars (\$25,000).” Tenn. Code Ann. § 40-35-111. In most cases, the sentence must be served at 85%, meaning that the offense

must be served without the possibility of parole, and no credits may be applied to reduce the sentence by more than 15%.

Keep in mind that each sexual act can count as a separate incident and support multiple convictions. State v. Hogg, -- S.W.3d --, 2014 Tenn. LEXIS 668 (Tenn. Sept. 25, 2014).

Question #4: Could this charge put me on the Sex Offender Registry?

Sexual Battery will place a criminal defendant onto the Sex Offender Registry as a Sexual Offender, which means that a convicted defendant can petition for removal after ten years of compliance.

Both **Sexual Battery by an Authority Figure** and **Aggravated Sexual Battery** will place a criminal defendant on the Sex Offender Registry as a Violent Sexual Offender, which means that a convicted defendant will be on the Sexual Offender Registry for life and also have Community Supervision for life. Tenn. Code Ann. § 39-13-524.

Question #5: Can I get a diversion on this offense?

If you've done some research online (perhaps on my website, which is located at MemphisDiversions.com), then you know that judicial diversion is a wonderful program that allows individuals with little to no criminal background to enter a guilty plea in a manner that avoids future jail time and the eventual expunction of the criminal charge upon the successful completion of a probationary period. Tenn. Code Ann. § 40-35-313.

After the criminal defendant enters a guilty plea, the sentence is suspended and the charge would show on a criminal background check as a pending offense (not a conviction). If the criminal defendant is successful, he or she has achieved the same result as winning at trial.

Sexual Battery is eligible for diversion, but the heightened offenses are not.

Question #6: What defenses are unavailable?

The most obvious defense is that the alleged offense never happened. This offense rarely leaves forensic evidence, so in the absence of eye witnesses, the result of the trial will turn mostly on your testimony (assuming that you testify) in comparison to the testimony of the alleged witness – whoever is more credible will prevail.

There is also a potential defense as it relates to the consent: the statute says that “sexual contact is accomplished with the consent of the victim and the defendant knows or has reason to know at the time of the contact that the victim did not consent” (Emphasis added).

Let’s break that down further:

- 1) Knows: If an alleged victim says “don’t touch me,” then you have actual knowledge – pretty clear.
- 2) Or has reason to know: If the circumstances of the encounter are that you just met a person, and with no provocation or encouragement, you reach out and place her hand on the person’s buttocks and squeeze it ... well, you might not have explicitly been told ‘no’ beforehand, but you had a pretty good idea that this was not acceptable.

(And this should be obvious, but dressing provocatively, flirting, etc., still doesn’t entitle a defendant to start grabbing things without asking first.) However, if you and the alleged (adult) victim are in a heated make-out session and it seems like

both individuals are ready to take the action further, and then the alleged victim shrieks when you touch the alleged victim sexually, then perhaps the touching was reasonable based on the circumstances. (Perhaps not).

- 3) At the time: This requirement is more interesting. One can certainly imagine a scenario where an alleged victim consented at the time of the touching, but then later removed consent on ‘the morning after.’ Certainly, the alleged victim can remove further consent, but the revocation of consent does not make the previously consented touching retroactively unlawful.

This all assumes that the victim is an adult who has the capacity to consent, and is in no way mentally defective, mentally incapacitated, or physically helpless.

Question #7: What is the Rape Shield Law

and how will it affect the case?

The Rape Shield law is a rule of evidence that determines the admissibility of the alleged victim's sexual behavior when a defendant is charged with certain sexual offenses. See Tennessee Rule of Evidence 412.

Generally speaking, reputation testimony, opinion testimony, and specific instances of a victim's sexual behavior are all 'shielded,' or inadmissible from court proceedings. This means that the jury will not be able to hear any of this information regarding the victim's sexual behavior. The rule makes a distinction between evidence of sexual activity between the alleged victim and the defendant and evidence of sexual activity between the alleged victim and other sexual partners.

Why does it exist? This rule was put into effect because some defendants might introduce this evidence in an attempt to shame the victim or make the victim's morality the

central issue in the case. Additionally, the rule may make more victims hesitant to report sexual offenses for fear that their personal sex lives will become public. One can certainly understand that a rape victim who has had multiple sexual partners in his or her personal life should not fear that such information would be made public during the rape trial when it has nothing to do with whether or not a rape occurred.

Does it go too far? While this rule achieves positive social aims, some people feel that the rule goes too far when it denies the jury from being able to hear whether the victim has made false accusations in the past, as this might certainly be relevant in determining whether the alleged victim is making a false claim in the present case. Other people do not believe that the rule goes too far and believe that it should be even more expansive.

When does it apply? This rule applies not only to the actual trial, but also to the preliminary hearing, depositions, and other proceedings. This rule applies when a defendant is accused of certain sexual offenses, as listed below. In the few exceptions where evidence of the victim's sexual behavior is

admissible, there are additional conditions that must be met. The defense attorney must comply with a pre-trial procedure if this testimony is to be admitted, wherein the court can determine whether the evidence will be used for a permissible purpose.

Tennessee Rule of Evidence 412: Sex Offense Cases; Relevance of Victim’s Sexual Behavior.

“Notwithstanding any other provision of law, in a criminal trial, preliminary hearing, deposition, or other proceeding in which a person is accused of ... 39-13-506 [statutory rape] ..., or the attempt to commit any such offense, the following rules apply:

(a) Definition of sexual behavior. In this rule “sexual behavior” means sexual activity of the alleged victim other than the sexual act at issue in the case.

(b) Reputation or opinion. Reputation or opinion evidence of the sexual behavior of an alleged victim of such offense is inadmissible unless admitted in accordance with the procedures in subdivision (d) of this Rule and required by the Tennessee or United States Constitution.

(c) Specific instances of conduct. Evidence of specific instances of a victim’s sexual behavior is inadmissible unless admitted in accordance with the

procedures in subdivision (d) of this rule, and the evidence is:

(1) Required by the Tennessee or United States Constitution, or

(2) Offered by the defendant on the issue of credibility of the victim, provided the prosecutor or victim has presented evidence as to the victim's sexual behavior, and only to the extent needed to rebut the specific evidence presented by the prosecutor or victim, or

(3) If the sexual behavior was with the accused, on the issue of consent, or

(4) If the sexual behavior was with persons other than the accused,

(i) to rebut or explain scientific or medical evidence, or

(ii) to prove or explain the source of semen, injury, disease, or knowledge of sexual matters, or

(iii) to prove consent if the evidence is of a pattern of sexual behavior so distinctive and so closely resembling the accused's version of the alleged encounter with the victim that it tends to prove that the victim consented to the act charged or behaved in such a manner as to lead the defendant reasonably to believe that the victim consented."

Question #8: Could law enforcement seize my house or car over this?

Yes. If a criminal defendant was found to have committed a sexual battery against a minor, the real or personal property is subject to judicial forfeiture. The offense must be committed against a person under eighteen (18) years of age on or after July 1, 2006. Tenn. Code Ann. § 39-13-530.

Sexual Battery Statutes

Sexual Battery

Tenn. Code Ann. § 39-13-505:

(a) Sexual battery is unlawful sexual contact with a victim by the defendant or the defendant by a victim accompanied by any of the following circumstances:

(1) Force or coercion is used to accomplish the act;

(2) The sexual contact is accomplished without the consent of the victim and the defendant knows or

has reason to know at the time of the contact that the victim did not consent;

(3) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or

(4) The sexual contact is accomplished by fraud.

(b) As used in this section, "coercion" means the threat of kidnapping, extortion, force or violence to be performed immediately or in the future.

(c) Sexual battery is a Class E felony.

Sexual Battery by an Authority Figure

Tenn. Code Ann. § 39-13-527:

(a) Sexual battery by an authority figure is unlawful sexual contact with a victim by the defendant or the defendant by a victim accompanied by the following circumstances:

(1) The victim was, at the time of the offense, thirteen (13) years of age or older but less than eighteen (18) years of age; or

(2) The victim was, at the time of the offense, mentally defective, mentally incapacitated or physically helpless, regardless of age; and,

(3)

(A) The defendant was at the time of the offense in a position of trust, or had supervisory or disciplinary power over the victim by virtue of the

defendant's legal, professional or occupational status and used the position of trust or power to accomplish the sexual contact; or

(B) The defendant had, at the time of the offense, parental or custodial authority over the victim and used the authority to accomplish the sexual contact.

(b) Sexual battery by an authority figure is a Class C felony.

Aggravated Sexual Battery

Tenn. Code Ann. § 39-13-504:

(a) Aggravated sexual battery is unlawful sexual contact with a victim by the defendant or the defendant by a victim accompanied by any of the following circumstances:

(1) Force or coercion is used to accomplish the act and the defendant is armed with a weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a weapon;

(2) The defendant causes bodily injury to the victim;

(3) The defendant is aided or abetted by one (1) or more other persons; and

(A) Force or coercion is used to accomplish the act; or

(B) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or

(4) The victim is less than thirteen (13) years of age.

(b) Aggravated sexual battery is a Class B felony.

Notes

Booking and processing date: _____

Court date: _____

Court division: _____

Potential favorable witnesses: _____

Questions for the attorney: _____

Special Offer

If you found this consumer guide to be helpful and would like to read more, please contact me using the information below to request my book, 10 Mistakes that Can Sabotage Your Criminal Case.

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About the Author

J. Jeffrey Lee is one of only five Certified Criminal Trial Specialists in Memphis, Tennessee. He has been certified as a Criminal Trial Specialist by the Tennessee Commission on C.L.E. and Specialization and Certified as a Criminal Trial Specialist by the National Board of Trial Advocacy.

He has attended the Tennessee Criminal Defense College on numerous occasions, along with the renowned National Criminal Defense College in Macon, Georgia. He was recently inducted into The National Trial Lawyers Top 100 Trial Lawyers. He has also been selected as a 2015 Mid-South Rising Star by Super Lawyers. However, the distinction that gives J. Jeffrey Lee the greatest pleasure is the Client's Choice award from AVVO, and the "10 Best" Client Satisfaction Award from the American Institute of Criminal Law Attorneys, because that means that his clients are pleased with the representation he provides. He is a member of TACDL (Tennessee Association of Criminal Defense Lawyers) and NACDL (National Association of Criminal Defense Lawyers).

Mr. Lee began as an Assistant Public Defender in the 25th Judicial District of Tennessee (Lauderdale, Tipton, Fayette, Hardeman, and McNairy Counties). His responsibilities included representing the indigent accused in General Sessions Court, Circuit Court, and the Court of Criminal Appeals. He performed a variety of matters, including preliminary hearings, suppression hearings, jury and bench trials, appeals, revocation hearings, and post-conviction hearings.

After working as a public defender, he formed his own law practice and he has recently narrowed and focused his practice in the area of serious felonies and sex crimes in an effort to serve an underrepresented and marginalized group of defendants who desperately need a first-rate defense.

The Law Office of J. Jeffrey Lee primarily serves the greater Memphis area. If you or someone you love needs legal representation, please contact the author.

Testimonials

“Mr. Lee was an astounding criminal defense lawyer for my needs. He was professional, prompt, available, dependable, and reliable. He kept me informed and responsive throughout the court dates and situations. He was able to deliver better results than I imagined! Thank you for your dedicated service!”

— Mrs. M Y

“Very Good Person to be around and make you feel comfortable, very knowledgeable and professional. I would definitely use his services again if needed and would recommend him to future clients.”

— Kandice

“I actually got his contact information from a close friend of mine and he had suggested Jeff right off the bat. The first time talking to Jeff he knew exactly what needed to be done for this court date to go smoothly and well in my favor. His knowledge and calm collective way of handling my case was exactly what I was

looking for. Thanks again Jeff I really appreciate your help!”

— Kris

“This attorney provides services that are of a high caliber. He has handled two different cases for me over the past couple of years. He kept me informed of each step involved with this case. Additionally, he explained the worst case outcome and the best case outcome. Thanks to his tenacity, we came out with the best case outcome! I recommended him to several people during the course of my legal case.”

— Federal Crime Client

“Mr. Lee impressed me from the moment I retained him...actually before I gave him any payment at all!! He was accessible throughout my entire legal issue. He not only got my case dismissed, he helped me get my case expunged. I never even had the chance to be nervous that he would not show up on time. He always showed up early and was extremely prompt with all of my paperwork. I trust Mr. Lee and am very comfortable and confident to recommend him to anyone facing any type of

legal issue. I am also happy to say that I found a friend in Jeff and did not feel like just another client. :-)"

— Anonymous

"Jeff took good care of my case. Right from the onset he told me I could get a diversion, and that is what eventually happened. He took care of paperwork effectively, met me promptly at court appointments, and helped me out in court when the judge was pondering why a higher-level offence wasn't issued. He knows what he's doing, and if he didn't know something I would trust him to become knowledgeable in order to help a client."

— Aaron

"Mr. Lee helped me make the best of a very stressful situation. I was simultaneously facing college graduation and jail time (not that they are related.) I was on the fence between being on top of the world and losing it all. Mr. Lee pushed me back towards the former I would definitely hire him again!"

— Adam

Awards



CLIENT SATISFACTION AWARD

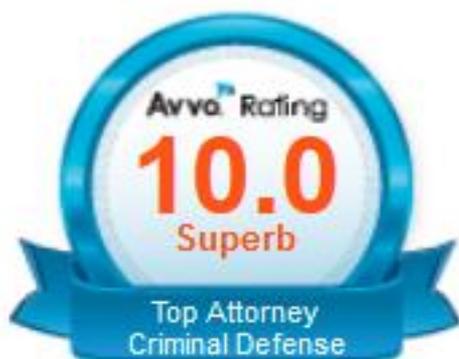
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Still have questions?

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