

Amendment No. 5 to HB0430

Hardaway
Signature of Sponsor

AMEND Senate Bill No. 624

House Bill No. 430*

by deleting all language after the enacting clause and substituting:

SECTION 1. Tennessee Code Annotated, Section 37-1-102(b)(5), is amended by adding the following new subdivision (b)(5)(C) and redesignating the current subdivision (b)(5)(C) and subsequent subdivisions accordingly:

(C) A person under twenty-four (24) years of age for the limited purpose of remaining under the jurisdiction of the juvenile court while serving a sentence as a serious youthful offender pursuant to § 37-1-131(g);

SECTION 2. Tennessee Code Annotated, Section 37-1-131, is amended by adding the following new subsections:

(g)

(1) The court shall classify a child fourteen (14) years of age or older as a serious youthful offender if:

(A) The child is adjudicated delinquent for an offense listed in subdivision (g)(2)(A) or (g)(2)(B), or an attempt to commit an offense listed in subdivision (g)(2)(A) or (g)(2)(B);

(B) The child is adjudicated delinquent for an offense listed in subdivisions (g)(2)(C)-(P) and the child has a prior adjudication of delinquency for any offense listed in subdivision (g)(2); or

(C) The child has been adjudicated delinquent for an offense listed in subdivisions (g)(2)(C)-(P) and the district attorney general has asked the court to classify the child as a serious youthful offender.

(2) This subsection (g) applies to delinquent acts committed by a child that, if committed by an adult, would constitute:

(A) First degree murder, as defined in § 39-13-202, if the child was fourteen (14) years of age or older but less than sixteen (16) years of age at the time of the commission of the offense;

(B) Second degree murder, as defined in § 39-13-210, if the child was fourteen (14) years of age or older but less than sixteen (16) years of age at the time of the commission of the offense;

(C) Rape, as defined in § 39-13-503;

(D) Aggravated rape, as defined in § 39-13-502;

(E) Rape of a child, as defined in § 39-13-522;

(F) Aggravated rape of a child, as defined in § 39-13-531;

(G) Aggravated robbery, as defined in § 39-13-402;

(H) Especially aggravated robbery, as defined in § 39-13-403;

(I) Especially aggravated burglary, as defined in § 39-13-1004;

(J) Aggravated kidnapping, as defined in § 39-13-304;

(K) Especially aggravated kidnapping, as defined in § 39-13-305;

(L) Commission of an act of terrorism, as defined in § 39-13-805;

(M) Carjacking, as defined in § 39-13-404;

(N) Aggravated child abuse or aggravated child neglect or endangerment, as defined in § 39-15-402;

(O) Any other Class A or Class B felony offense involving the use of a deadly weapon during the commission of the offense; or

(P) Criminal attempt, under § 39-12-101, to commit any Class A felony offense listed in this subdivision (g)(2).

(3) The court may impose any of the dispositions set forth in subsection (a), or a combination of any such dispositions, upon a juvenile classified as a

serious youthful offender; provided, that notwithstanding another law to the contrary, the disposition must be for a fixed period of time that does not end before the serious youthful offender's nineteenth birthday. If the court commits the serious youthful offender to the custody of the department, then the time credits set forth in § 37-1-137(h) must not apply to shorten the time of a serious youthful offender's disposition imposed pursuant to this subdivision (g)(3).

(4) In addition to the disposition imposed pursuant to subdivision (g)(3), the court shall impose an additional disposition to be served after the serious youthful offender turns nineteen (19) years of age, and which ends on or before the offender's twenty-fourth birthday. The minimum additional disposition beyond the serious youthful offender's nineteenth birthday must be:

(A) Four (4) years if the juvenile is adjudicated delinquent for an act that would be a Class A felony if committed by an adult; or

(B) Three (3) years if the juvenile is adjudicated delinquent for an act that would be a Class B felony if committed by an adult.

(5)

(A) The court may stay the additional disposition imposed pursuant to subdivision (g)(4).

(B) If the additional disposition is stayed, then the court shall conduct a hearing within four (4) months of the serious youthful offender's nineteenth birthday to review the offender's circumstances and determine whether the stayed additional disposition should be invoked. The court shall consider whether the serious youthful offender has:

(i) Committed another delinquent act;

(ii) Engaged in other conduct that creates a substantial safety risk;

(iii) Failed to meet the conditions of supervision during the determinate disposition prior to the hearing;

(iv) Failed to:

(a) Attend school regularly with passing grades;

(b) Graduate from high school;

(c) Obtain a high school equivalency credential approved by the state board of education; or

(d) Regularly attend a Tennessee college of applied technology with passing grades; or

(v) Failed to obtain regular employment or enroll in an institution of higher education, if the offender has graduated from high school or obtained a high school equivalency credential approved by the state board of education.

(C) If the court finds any three (3) of the circumstances set forth in subdivision (g)(5)(B)(i)-(v), then the court shall invoke the additional disposition.

(6)

(A) If the court revokes the stay, then the court may order the serious youthful offender to serve the additional disposition as originally imposed or the court may modify the length of the additional disposition, subject to the minimum requirements set forth in subdivision (g)(4); and

(B) If the court imposes an additional disposition beyond a serious youthful offender's nineteenth birthday, then the court shall enter an order on or before the offender's nineteenth birthday committing the offender to the supervision of the department of correction to serve the additional sentence imposed by the juvenile court. Under no circumstances shall the serious youthful offender remain in the custody of

the department of children's services beyond the offender's nineteenth birthday.

(7) If the court determines that the additional disposition should not be invoked, then the juvenile court shall enter an order terminating supervision as of the serious youthful offender's nineteenth birthday.

(8) The court shall make or cause to be made an audio recording of a hearing conducted pursuant to this subsection (g). The recording must include all proceedings in open court and such other proceedings as the judge may direct and must be preserved as part of the record of the hearing.

(9) A serious youthful offender supervised in a secure facility must be housed separate and removed from the general population. In determining the secure facility location of the serious youthful offender, the commissioner of correction shall take into consideration the proximity of the facility to the offender's home.

(10) During the time of any disposition served after the serious youthful offender's nineteenth birthday, the juvenile court has the same powers as a trial court, including, but not limited to, the authority to preside over probation revocation proceedings pursuant to § 40-35-311. If the offender is found to have violated the conditions of probation or committed a new offense, then the juvenile court may impose any consequences that may be imposed on an adult offender serving a period of probation, and the court is not limited to the disposition authorized in this section.

(h) A child shall not be sentenced as a serious youthful offender unless they have been afforded the right to experts, investigators, and other support services.

(i) A juvenile offender shall not be sentenced to serve in an adult facility unless the juvenile offender was given the right to a jury trial.

SECTION 3. Tennessee Code Annotated, Section 37-1-134(a)(1)(A)(i), is amended by designating the current language as subdivision (a)(1)(A)(i)(a) and adding the following new subdivision (a)(1)(A)(i)(b):

(a) Fourteen (14) years of age or more but less than sixteen (16) years of age at the time of the alleged conduct and charged with first degree murder or second degree murder or attempted first or second degree murder;

SECTION 4. Tennessee Code Annotated, Section 37-1-134(a)(1)(A)(ii), is amended by deleting "first degree murder, second degree murder,".

SECTION 5. Tennessee Code Annotated, Section 37-1-134(a)(1)(A)(iv), is amended by deleting "alleged conduct" and substituting "alleged conduct and charged with an offense other than first degree murder or second degree murder or attempted first or second degree murder".

SECTION 6. Tennessee Code Annotated, Title 37, Chapter 1, Part 1, is amended by adding the following as a new section:

(a)

(1) If a child is alleged to have committed an offense or engaged in conduct that is designated a crime or public offense under the laws of this state, and the child meets the criteria listed in subdivision (a)(2), then the court, before a hearing on the merits of the petition, shall conduct a hearing to determine whether the child should be transferred to a criminal court of competent jurisdiction to be tried as an adult.

(2) Subdivision (a)(1) applies if the child was sixteen (16) years of age or older at the time of the alleged conduct and charged with the offense of:

(A) First degree murder;

(B) Second degree murder; or

(C) Attempted first or second degree murder.

(3) A hearing pursuant to subdivision (a)(1) must be held in conformity with §§ 37-1-124, 37-1-126, and 37-1-127.

(4) The court shall provide reasonable notice in writing of the time, place, and purpose of the hearing to the child and the child's parents, guardian, or other custodian at least fourteen (14) days prior to the hearing.

(b)

(1) Except as provided in subdivision (b)(2), the child must be transferred and tried as an adult in criminal court if the juvenile court finds probable cause to believe that:

(A) The child committed the delinquent act as alleged; and

(B) The child is not committable to an institution for the developmentally disabled or mentally ill.

(2) The district attorney general shall not seek, nor shall any child tried as an adult in criminal court receive, a sentence of death or mandatory imprisonment for life without the possibility of parole.

(3) If the juvenile court determines that the child must be transferred to criminal court to be tried as an adult, then the court shall enter a written order detailing the court's findings of fact and conclusions of law. Following entry of the order, the child is subject to indictment, presentation, or information for the offense charged.

(4) If the juvenile court determines that the child must not be transferred to criminal court to be tried as an adult, then the court shall enter a written order detailing the court's findings of fact and conclusions of law.

(5) Pursuant to § 37-1-159, the criminal court, or court having criminal jurisdiction, may review the juvenile court's determination.

(c) Section 37-1-134(c)-(h) apply to a juvenile transferred to criminal court under this section.

(d) When a child transferred under this section is detained, the juvenile court shall order confinement in a local juvenile detention facility or a juvenile detention facility

with which it contracts, except that the juvenile court may order confinement in an adult detention facility separate and removed from adult detainees if the sheriff affirms to the court that the adult detention facility has the ability to comply with the requirements of § 37-1-116, and that the population of the adult detention facility does not exceed the capacity of the facility. The court having adult criminal jurisdiction may thereafter order detention in an adult detention facility separate and removed from adult detainees; provided, however, that during the period while such child is detained separately from adult detainees, the child must otherwise abide by the same regulations and policies governing conditions of imprisonment that apply to adult detainees who are charged with similar offenses. Similar regulations and policies governing educational opportunities for adults must be implemented for a child so detained, but such regulations and policies do not affect or alter the manner in which a local education agency is required to provide educational services to a child under the federal Individuals with Disabilities Education Act, compiled in 20 U.S.C. § 1471 et seq.

(e) A person who is transferred under this section and who was sixteen (16) years of age or older at the time of the offense and is subsequently convicted and committed must be housed in a juvenile correctional facility unless the committing court orders commitment to an adult facility. A person committed to an adult facility under this section must be housed separate and removed from adult inmates. In exercising the commissioner's discretion under § 41-1-403 to determine the institutional location of any such person, the commissioner of correction shall take into consideration the proximity of the institution to the person's home. However, during any period while the person is confined separately from adult inmates within a regional facility, the person shall otherwise abide by the same regulations and policies governing conditions of imprisonment that apply to adult inmates who are confined for similar offenses. Similar regulations and policies governing educational opportunities for adults must be implemented for a child so detained, but the regulations and policies must not affect or

alter the manner in which a local education agency is required to provide educational services to a child under the federal Individuals with Disabilities Education Act (20 U.S.C. § 1471 et seq.).

SECTION 7. Tennessee Code Annotated, Section 37-1-159, is amended by deleting subsection (g) and substituting:

(g)

(1) The criminal court, or court having criminal jurisdiction, shall review a juvenile court's determination pursuant to Section 6, upon motion of the child or the prosecution.

(2) If a motion to appeal is filed, then the clerk of the juvenile court shall file the record on appeal no later than fifteen (15) days after the entry of the juvenile court's order.

(3) The criminal court or court having criminal jurisdiction shall conduct a de novo review of the juvenile court's determination, and the court's review must be expedited. The review by the criminal court or court having criminal jurisdiction is a review of the record only and must be conducted without an evidentiary hearing.

(4) The state shall serve and file a brief no later than fifteen (15) days after the date on which the record is filed with the clerk of the criminal court or court having criminal jurisdiction. Counsel for the child shall serve and file a brief within fifteen (15) days after the state's brief is filed with the clerk. Reply briefs are not permitted. The criminal court or court having criminal jurisdiction must issue a decision within forty-five (45) days after the date on which the record is filed with the clerk of the criminal court or court having criminal jurisdiction.

(5) If a motion to appeal is filed, then the juvenile court's jurisdiction over the alleged delinquent conduct under de novo review by the criminal court or court having criminal jurisdiction pursuant to this subsection (g) is automatically

stayed until the review by the criminal court or court having criminal jurisdiction is completed.

(h) Appeals in all other civil matters heard by the juvenile court are governed by the Tennessee Rules of Appellate Procedure.

SECTION 8. This act takes effect July 1, 2024, the public welfare requiring it, and applies to acts committed on or after that date.