

Amendment No. 2 to HB0784

Hazlewood
Signature of Sponsor

AMEND Senate Bill No. 767

House Bill No. 784*

by deleting the language "evidence-based" in SECTION 7 of the bill as amended by amendment #5598 and substituting "validated".

AND FURTHER AMEND by deleting SECTIONS 24 and 25 and substituting:

SECTION 24. Tennessee Code Annotated, Section 40-35-311(d), is amended by designating the existing language as subdivision (1) and adding the following new subdivisions:

(2) Notwithstanding subdivision (d)(1), the trial judge shall not revoke probation, whether temporarily under subdivision (e)(1) or otherwise, based upon one (1) instance of technical violation or violations.

(3) As used in this subsection (d), "technical violation" means an act that violates the terms or conditions of probation but does not constitute a new felony, new class A misdemeanor, zero tolerance violation as defined by the department of correction community supervision sanction matrix, or absconding.

SECTION 25. Tennessee Code Annotated, Section 40-35-311, is amended by deleting subsection (e) and substituting:

(e)

(1) If the trial judge revokes a defendant's probation and suspension of sentence after finding, by a preponderance of the evidence, that the defendant engaged in conduct that is a second or subsequent instance of a technical violation pursuant to subdivision (d)(2), then the trial judge may temporarily revoke the probation and suspension of sentence by an order duly entered upon the minutes of the court, and:

(A) Impose a term of incarceration not to exceed:

(i) Fifteen (15) days for a first revocation;

(ii) Thirty (30) days for a second revocation;

(iii) Ninety (90) days for a third revocation; or

(iv) The remainder of the sentence for a fourth or

subsequent revocation; or

(B) Resentence the defendant for the remainder of the unexpired term to a sentence of probation that includes the condition of participating in a community-based alternative to incarceration as provided in § 40-35-104(c)(9); provided, that the violation of probation and suspension is a technical violation and does not involve the commission of a new offense.

(2) If the trial judge revokes a defendant's probation and suspension of sentence after finding, by a preponderance of the evidence, that the defendant has committed a new felony, new Class A misdemeanor, zero tolerance violation as defined by the department of correction community supervision sanction matrix, or absconding, then the trial judge may revoke the probation and suspension of sentence by an order duly entered upon the minutes of the court, and cause the defendant to commence the execution of the judgment as originally entered, which may be reduced by an amount of time not to exceed the amount of time the defendant has successfully served on probation and suspension of sentence prior to the violation.

(3) If the trial judge revokes a defendant's probation and suspension of sentence, then the defendant has the right to appeal.