

Amendment No. 1 to HB0784

Curcio

Signature of Sponsor

AMEND Senate Bill No. 767

House Bill No. 784*

by deleting all language after the enacting clause and substituting:

SECTION 1. Tennessee Code Annotated, Section 16-22-103, is amended by deleting subdivision (4)(A)(i)(c) and substituting:

(c) The person committed a felony involving the use of force against the person of another; or

SECTION 2. Tennessee Code Annotated, Section 16-22-103(4)(A), is amended by adding the following as a new subdivision:

() Is convicted of domestic assault under § 39-13-111;

SECTION 3. Tennessee Code Annotated, Section 39-17-418(c)(2)(B)(i), is amended by adding the language "or another licensed treatment program" after the word "services".

SECTION 4. Tennessee Code Annotated, Section 39-17-418(c)(2)(B)(ii), is amended by adding the language "or program" after the word "court".

SECTION 5. Tennessee Code Annotated, Section 39-17-418(c)(2)(B), is amended by adding the following as a new subdivision:

() For persons sentenced under subdivision (c)(2)(A) with clinical assessment results indicating the need to participate in a drug or recovery court or treatment program, the court shall strongly consider ordering service of the sentence through participation in a drug or recovery court or program permitted under subdivision (c)(2)(B)(i) instead of through confinement, unless the court determines the person is not suitable for, or otherwise cannot participate in, such a court or program.

SECTION 6. Tennessee Code Annotated, Section 40-11-115(a), is amended by adding the following language at the end of the subsection:

If the magistrate orders that the person be released pending trial, then the magistrate shall impose the least restrictive conditions of release that will reasonably ensure the appearance of the person as required and the safety of the community.

SECTION 7. Tennessee Code Annotated, Section 40-11-115, is amended by deleting subsection (b) and substituting:

(b) In determining under subsection (a) whether or not a defendant shall be released, and if so, the least restrictive conditions of release that will reasonably ensure the appearance of the defendant as required and the safety of the community, the magistrate must consider any available results of an evidence-based pretrial risk assessment conducted regarding the defendant for use in the jurisdiction and the defendant's financial resources. In making this determination, the magistrate may also consider:

- (1) The defendant's length of residence in the community;
- (2) The defendant's employment status;
- (3) The defendant's prior criminal record, including prior releases on recognizance or bail;
- (4) Whether, at the time of being charged with the offense, the defendant was on release pending trial, sentencing, or appeal in connection with another offense;

(5) The nature of the offense, the apparent probability of conviction, and the likely sentence, insofar as these factors are relevant to the risk of nonappearance;

(6) Any substance use or mental health issues that would be better addressed in a community-based treatment program; and

(7) Any other factors indicating the defendant's ties to the community or bearing on the defendant's risk of willful failure to appear.

SECTION 8. Tennessee Code Annotated, Section 40-11-115, is amended by adding the following as a new subsection:

() Any person charged only with a violation of § 55-50-504 whose driving privilege was cancelled, suspended, or revoked under § 40-24-105 solely because of a failure to pay litigation taxes, court costs, or fines assessed as a result of the disposition of any offense under the criminal laws of this state, and who does not have a prior conviction for failure to appear under § 39-16-609 within the previous ten (10) years, must be ordered released pending trial on the person's personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the magistrate.

SECTION 9. Tennessee Code Annotated, Section 40-35-104, is amended by deleting subdivision (c)(9) and substituting:

(9) A community-based alternative to incarceration as a condition of probation, such as participation in a day reporting center program, a recovery and treatment program, or another appropriate community-based program. A defendant may be ordered to participate in a recovery and treatment program only if such a program is indicated by the results of a clinical assessment.

SECTION 10. Tennessee Code Annotated, Section 40-35-104, is amended by adding the following as a new subsection:

(f) The court shall strongly consider utilizing available and appropriate sentencing alternatives for any defendant who, as appropriately documented, including through a validated risk and needs assessment under § 40-35-207(a)(10), has a behavioral health need, such as a mental illness as defined in § 33-1-101, or is chemically dependent as defined in § 16-22-103. The court has sole discretion whether to utilize available sentencing alternatives under this subsection (f).

SECTION 11. Tennessee Code Annotated, Section 40-36-106(a)(1), is amended by adding the following new subdivisions:

(G) Persons who have not been convicted of a sexual offense under title 39, chapter 13, part 5;

(H) Persons who do not meet the definition of a sexual offender or violent sexual offender under § 40-39-202; and

(I) Persons who are not required to serve a sentence of community supervision for life under § 39-13-524.

SECTION 12. Tennessee Code Annotated, Section 40-36-103, is amended by deleting the section and substituting:

The purposes of this chapter are to:

(1) Establish a mechanism for using state funds to contract with local governments and qualified private entities to develop community-based alternatives to incarceration that provide a treatment-centered pathway for offenders, thereby reserving state penal institution, local jail, or workhouse bed space for other offenders;

(2) Facilitate the growth of treatment-centered pathways to alleviate geographical disparities in Tennessee with respect to the availability of such pathways available to judges at sentencing; and

(3) Reduce the number of felony offenders committed to state penal institutions, local jails, and workhouses for whom a treatment-centered pathway

and appropriate evidence-based community supervision will result in less recidivism and more effective outcomes.

SECTION 13. Tennessee Code Annotated, Section 40-36-104(3), is amended by deleting the subdivision and renumbering the remaining subsections.

SECTION 14. Tennessee Code Annotated, Section 40-36-104, is amended by redesignating the current language as subsection (a) and adding the following as new subsections:

(b) Funds awarded under this chapter, including funds paid pursuant to contracts entered in accordance with this chapter, must not be used to supplant existing state or local government funds and must not be used for:

(1) Construction, renovation, or operation of local correctional facilities; provided, however, that this subdivision (b)(1) does not prohibit the use of such funds to expand jail-based programs for offenders sentenced to split confinement in conjunction with a sentence of probation under chapter 35 of this title;

(2) Construction, renovation, or operation of state facilities; or

(3) Salaries of state probation and parole officers.

(c) Administrative costs connected with the expenditure of funds awarded under this chapter shall not exceed a percentage amount established by the department of correction.

(d) Funding under this chapter shall be appropriated on an annual basis and any unspent moneys shall be returned to the department of correction to be used for reallocation to other programs administered by the department of correction as authorized under this chapter.

SECTION 15. Tennessee Code Annotated, Section 40-36-105(8), is amended by deleting the subdivision and substituting instead:

(8) The department of correction may conduct evaluations of funding recipients under this chapter, annually or as often as needed, to ensure accountability and to

measure the efficiency of the community-based alternatives to incarceration conducted under this chapter, and contractors must participate in the evaluations. The form and methods of the evaluations must be determined by the department. Funding recipients under this chapter must substantially comply with the standards and administrative regulations of the department defining the effectiveness of a community-based alternative to incarceration and must maintain, collect, and provide to the department, annually or as otherwise requested, any information required by the department for evaluation, which may include, but is not limited to:

- (A) The number of individuals admitted to the community-based alternative to incarceration;
- (B) The ratio of staff members to offenders;
- (C) The number of successful completions of the community-based alternative to incarceration;
- (D) The average time for an individual to successfully complete the community-based alternative to incarceration;
- (E) The number of individuals in the community-based alternative to incarceration who have incurred a new arrest, new conviction, or revocation of a community correction sentence, including the type of arrest, conviction, or revocation and the underlying conduct resulting in the arrest, conviction, or revocation; and
- (F) The average time an individual spends in the community-based alternative to incarceration before a new arrest, conviction, or revocation.

SECTION 16. Tennessee Code Annotated, Section 39-13-704(a), is amended by deleting the language "thirteen (13) members" and substituting the language "twelve (12) members" and by deleting subdivision (a)(7).

SECTION 17. Tennessee Code Annotated, Section 40-35-303(d), is amended by adding the following as a new subdivision:

() Participation in a day reporting center program, recovery and treatment program, or another appropriate community-based program;

SECTION 18. Tennessee Code Annotated, Section 40-35-310(b), is amended by deleting the language "to any community-based alternative to incarceration authorized by chapter 36 of this title" and substituting "to a sentence of probation, including the condition of participating in a community-based alternative to incarceration as provided in § 40-35-104(c)(9)".

SECTION 19. Tennessee Code Annotated, Section 40-35-503(h), is amended by deleting the language ", as defined in § 40-36-102," and adding the following at the end of the subsection:

As used in this subsection (h), "nonviolent felony offense" means a felony offense that does not involve serious bodily injury, as defined in § 39-11-106, or death to a victim or bystander, does not involve threats reasonably calculated to produce such results, and does not involve sexual contact or sexual penetration as those terms are defined in § 39-13-501.

SECTION 20. Tennessee Code Annotated, Section 40-35-303(c)(1), is amended by adding the following language at the end of the subdivision:

If the court imposes a period of probation for only one (1) conviction, then the period of probation shall not exceed eight (8) years, including instances where a period of probation is imposed after a period of confinement. If the court imposes a period of probation for more than one (1) conviction, then the total period of probation imposed shall not exceed ten (10) years.

SECTION 21. Tennessee Code Annotated, Section 40-35-308, is amended by deleting subsection (c) and substituting:

(c)

(1) Notwithstanding the actual sentence imposed under § 40-35-303(c), at the conclusion of a probation revocation hearing, the court shall have the

authority to extend the defendant's period of probation supervision for a period not exceeding one (1) year upon determining on the record that:

(A) The defendant has repeatedly and intentionally failed to comply with court-ordered treatment programming;

(B) The defendant has intentionally violated the conditions of probation regarding contact with the victim or the victim's family; or

(C) The defendant has intentionally failed to comply with restitution orders despite having the ability to pay the restitution owed, and extending the period of probation would be more effective than other available options to ensure that the defendant pays the remaining amount of restitution owed.

(2) For each subsequent determination that the defendant has violated a provision or provisions of subdivision (c)(1), the court may extend probation for an additional period not exceeding one (1) year.

SECTION 22. Tennessee Code Annotated, Section 40-35-310, is amended by deleting subsection (a) and substituting:

(a) The trial judge shall possess the power, at any time within the maximum time that was directed and ordered by the court for the suspension, in accordance with § 40-35-311, to revoke the suspension. The trial judge may order the original judgment to be in full force and effect from the date of the revocation of the suspension and may give credit against the original judgment by the amount of time the defendant has successfully served on probation and suspension of sentence prior to the violation or a portion of that amount of time. If the trial judge revokes the suspension due to conduct by the defendant that resulted in a conviction against the defendant during the defendant's period of probation, then the trial judge may order that the term of imprisonment imposed by the original judgment be served consecutively to any sentence that was imposed upon the conviction.

SECTION 23. Tennessee Code Annotated, Section 40-35-310(b), is amended by deleting the language "restore the original judgment" and substituting "restore the original judgment, 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,".

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, 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, 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.

SECTION 26. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 27. This act shall take effect July 1, 2021, the public welfare requiring it, and apply to court determinations made on or after that date.