

HOUSE BILL 1129

By Hardaway

AN ACT to amend Tennessee Code Annotated, Title 39;
Title 40 and Title 49, relative to the creation of
crime free school zones.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Crime-Free School Zone Act".

SECTION 2. Tennessee Code Annotated, Section 39-17-432, is amended by deleting the section in its entirety.

SECTION 3. Tennessee Code Annotated, Title 40, Chapter 35, Part 1, is amended by adding the following as a new section thereto:

§ 40-35-122.

(a) It is the intent of this section to create crime-free zones for the purpose of providing vulnerable persons in this state an environment in which they can learn, play and enjoy themselves without the distractions and dangers that are incident to the occurrence of illegal activities. The enhanced and mandatory minimum sentences required by this section for offenses occurring in a crime-free zone are necessary to serve as a deterrent to such unacceptable conduct.

(b)

(1) A violation of any offense specified in subdivision (2) or a conspiracy to violate the section, that occurs on the grounds or facilities of any school or within one thousand feet (1,000') of the real property that comprises a public or private elementary school, middle school, secondary school, preschool, child care agency, or public library, recreational center or park shall be punished one

(1) classification higher than is provided by law for such violation. If the offense in subdivision (b)(2) is a Class A felony, it shall be classified as a Class A felony, however, the presumptive sentence and fine shall be the maximum within the range.

(2) The offenses to which subdivision (1) are applicable are:

(A) A violation of § 39-17-417;

(B) Any sexual offense as prohibited by title 39, chapter 13, part 5;

(C) Any offense involving a firearm prohibited by title 39, chapter 17, part 13, if subsection (b) is not already an essential element of the offense;

(D) Any felony involving a deadly weapon as defined by § 39-11-106(a)(5); and

(E) Carjacking as prohibited by § 39-13-404.

(3) In addition to any other penalty imposed by this section, a person convicted of violating subsection (b) shall also be subject to the following:

(A) Upon conviction of a Class E felony, a fine of not more than ten thousand dollars (\$10,000);

(B) Upon conviction of a Class D felony, a fine of not more than twenty thousand dollars (\$20,000);

(C) Upon conviction of a Class C felony, a fine of not more than forty thousand dollars (\$40,000);

(D) Upon conviction of a Class B felony, a fine of not more than sixty thousand dollars (\$60,000); and

(E) Upon conviction of a Class A felony, a fine of not more than one hundred thousand dollars (\$100,000).

(4) A person convicted of violating subsection (b), and whose violation is for the offense set out in subsection (b)(2)(A), and whose violation occurred within the prohibited zone of a preschool, childcare center, public library, recreational center or park shall not be subject to the classification increase required by subdivision (b)(1), but shall be subject to the additional fines imposed by this section.

(5) Notwithstanding the provisions of (b)(1), a person convicted of violating subsection (b), and whose violation is for any offense set out in (b)(2)(B) – (E) and whose violation occurred within any zone prohibited by subsection (b) shall not be subject to the classification increase required by subdivision (b)(1), but shall be subject to the additional fines imposed by this section.

(c) Notwithstanding any other provision of law or the sentence imposed by the court to the contrary, a defendant sentenced for a violation of subsection (b) and whose violation is for the offense set out in (b)(2)(A) shall be required to serve at least the minimum sentence for the defendant's appropriate range of sentence. Any sentence reduction credits for which the defendant may be eligible or which the defendant may earn shall not operate to permit or allow the release of the defendant prior to full service of the minimum sentence.

(d) Notwithstanding the sentence imposed by the court, the provisions of title 40, chapter 35, part 5, relative to release eligibility status and parole, shall not apply to or authorize the release of a defendant sentenced for a violation of subsection (b) and whose violation is for the offense set out in (b)(2)(A) prior to service of the entire minimum sentence for the defendant's appropriate range of sentence.

(e) Nothing in the provisions of title 38, chapter 1, part 4, shall give either the governor or the board of probation and parole the authority to release or cause the release of a defendant sentenced for a violation of subsection (b) and whose violation is for the offense set out in (b)(2)(A) prior to service of the entire minimum sentence for the defendant's appropriate range of sentence.

(f) Nothing in this section shall be construed as prohibiting the judge from sentencing a defendant who violated subsection (b) to any authorized term of incarceration in excess of the minimum sentence for the defendant's appropriate range of sentence.

(g) The sentence of a defendant who, as the result of a single act, violates subsection (b), whose violation is for the offense set out in subsection (b)(2)(A), and who violates § 39-17-417(k), may only be enhanced one (1) time under those sections for each act. The state must elect under which section it intends to seek enhancement of the defendant's sentence and shall provide notice of the election pursuant to § 40-35-202.

SECTION 4. This act shall take effect July 1, 2009, the public welfare requiring it.