

SENATE BILL 767

By Johnson

AN ACT to amend Tennessee Code Annotated, Title 4; Title 8, Chapter 4, Part 1; Section 16-3-810; Title 16, Chapter 22; Title 16, Chapter 3; Title 39; Title 40 and Title 41, relative to alternatives to incarceration.

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

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 (iii):

(iii) 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 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 :

(c) 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 as defined in § 40-36-102, 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 new subsections:

(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).

(g) All sentences to a community-based alternative to incarceration in accordance with chapter 36 of this title imposed prior to October 1, 2021, shall be supervised by the department of correction, subject to the same terms and conditions, including that the court retains the authority to:

(1) Alter or amend at any time the length, terms, or conditions of the sentence imposed;

(2) Place the offender on supervised or unsupervised probation. Failure to comply with the terms of probation subjects the offender to revocation proceedings conducted by the court pursuant to § 40-35-311. If the offender is incarcerated as a result of revocation, then the offender must receive credit only for actual time served in the community-based alternative program; or

(3) Revoke the sentence imposed at any time due to the conduct of the defendant or the termination or modification of the program to which the defendant has been sentenced, in which case the court may resentence the defendant to any appropriate sentencing alternative, including incarceration, for any period of time up to the maximum sentence provided for the offense committed, less any time actually served in any community-based alternative to

incarceration. Such resentencing shall be conducted in compliance with § 40-35-210.

SECTION 11. Tennessee Code Annotated, Title 40, Chapter 36, is amended by deleting the chapter and substituting:

40-36-101. 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.

40-36-102. As used in this chapter, unless the context indicates otherwise:

(1) "Community-based alternative to incarceration" means a day reporting center program, recovery and treatment program, or other appropriate community-based program in lieu of incarceration in state penal institutions or local correctional facilities;

(2) "Day reporting center" means a highly structured, non-residential, and phase-based program that combines supervision, treatment, and reentry services for moderate to high-risk offenders with a substance abuse issue or co-occurring mental health issue;

(3) "Local correctional facility" means a detention facility, county or municipal jail, or workhouse operated by the county sheriff or the county government for the housing of pretrial offenders, convicted misdemeanants, or convicted felons; and

(4) "State penal institution" means a secure correctional facility operated by, or under contract with, the department of correction to house felony offenders.

40-36-103. The department of correction may contract with entities and organizations, including local governments, to create or operate community-based alternatives to incarceration for offenders sentenced to probation under § 40-35-303.

40-36-104.

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

(1) Construction, renovation, or operation of local correctional facilities; provided, however, that this subdivision (a)(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.

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

40-36-105. The department of correction may conduct evaluations of contractors 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

will be determined by the department. Contractors 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 to evaluate the community-based alternative to incarceration and its stated goals, including:

- (1) The number of individuals admitted to the community-based alternative to incarceration;
- (2) The ratio of staff members to offenders;
- (3) The number of successful completions of the community-based alternative to incarceration;
- (4) The average time for an individual to successfully complete the community-based alternative to incarceration;
- (5) 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
- (6) The average time an individual spends in the community-based alternative to incarceration before a new arrest, conviction, or revocation.

40-36-106.

(a) The department of correction may promulgate rules to effectuate this chapter. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) The supreme court shall coordinate with the department of correction in updating its uniform judgment document promulgated in accordance with § 40-35-209(f) to ensure consistency with this chapter.

SECTION 12. Tennessee Code Annotated, Section 8-4-115(i)(1)(O), is amended by deleting the language "or to community correction".

SECTION 13. Tennessee Code Annotated, Section 39-13-523(a)(7)(A), is amended by deleting the language ", parole or community correction supervision" and substituting the language "or parole supervision".

SECTION 14. Tennessee Code Annotated, Section 39-13-704(a), is amended by deleting the language "thirteen (13) members" and substituting the language "twelve (12) members".

SECTION 15. Tennessee Code Annotated, Section 39-13-704, is amended by deleting subdivision (a)(7).

SECTION 16. Tennessee Code Annotated, Section 39-13-706(a), is amended by deleting the language ", community corrections,".

SECTION 17. Tennessee Code Annotated, Section 39-17-308(b)(1), is amended by deleting the language "community correction".

SECTION 18. Tennessee Code Annotated, Section 39-17-1324(e)(2), is amended by deleting the language "community correction pursuant to title 40, chapter 36,".

SECTION 19. Tennessee Code Annotated, Section 39-17-1324(i)(3)(A), is amended by deleting the language ", parole or community correction supervision" and substituting the language "or parole supervision".

SECTION 20. Tennessee Code Annotated, Section 39-17-1350, is amended by deleting subsection (g).

SECTION 21. Tennessee Code Annotated, Section 39-17-1363(b), is amended by deleting the language ", community correction".

SECTION 22. Tennessee Code Annotated, Section 40-9-124, is amended by deleting the language "probation pursuant to § 40-35-501(a)(3), or has escaped from or broken the

terms of a sentence to any community based alternative to incarceration pursuant to chapter 36 of this title" and substituting the language "or probation pursuant to § 40-35-501(a)(3)", by deleting the language "or placement in the community-based alternative to incarceration," and by deleting the last sentence.

SECTION 23. Tennessee Code Annotated, Section 40-11-130(b)(1), is amended by deleting the language "community correction,".

SECTION 24. Tennessee Code Annotated, Section 40-11-130(b)(2), is amended by deleting the language ", community correction" wherever it appears.

SECTION 25. Tennessee Code Annotated, Section 40-28-610(h), is amended by deleting the language ", or in conjunction with a community-based program in accordance with the Tennessee Community Corrections Act of 1985, compiled in chapter 36 of this title".

SECTION 26. Tennessee Code Annotated, Section 40-29-106(a), is amended by deleting the language "pretrial or judicial diversion or community correction supervision" and substituting the language "or pretrial or judicial diversion".

SECTION 27. Tennessee Code Annotated, Section 40-35-114, is amended by deleting subdivision (13)(E).

SECTION 28. Tennessee Code Annotated, Section 40-35-120(e)(2), is amended by deleting the language "a community correction program pursuant to chapter 36 of this title, a sentence to".

SECTION 29. Tennessee Code Annotated, Section 40-35-122(a), is amended by deleting the language "community corrections,".

SECTION 30. Tennessee Code Annotated, Section 40-35-207(a)(9), is amended by deleting the language "an available and appropriate community-based alternative to incarceration as provided in chapter 36 of this title and in imposing the terms and conditions for any such sentence" and substituting the language "probation, including the condition of

participating in a community-based alternative to incarceration as provided in § 40-35-104(c)(9)".

SECTION 31. Tennessee Code Annotated, Section 40-35-209, is amended by deleting subdivision (e)(1)(N).

SECTION 32. Tennessee Code Annotated, Section 40-35-303(a), is amended by deleting the last sentence.

SECTION 33. 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 34. 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 the language "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 35. Tennessee Code Annotated, Section 40-35-321(b), is amended by deleting the language "or community correction if either" and substituting the language "if probation".

SECTION 36. Tennessee Code Annotated, Section 40-35-321(d)(1), is amended by deleting the language "or community correction if either" and substituting the language "if probation".

SECTION 37. Tennessee Code Annotated, Section 40-35-501(a)(7)(B)(ii), is amended by deleting the language "to any community-based alternative to incarceration authorized by chapter 36 of this title" and substituting the language "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 38. Tennessee Code Annotated, Section 40-35-501(k)(4)(A), is amended by deleting the language ", parole or community correction supervision" and substituting the language "or parole supervision".

SECTION 39. Tennessee Code Annotated, Section 40-35-501(u)(3)(B)(i), is amended by deleting the language "community correction supervision,".

SECTION 40. Tennessee Code Annotated, Section 40-35-501(w), is amended by deleting the language ", probation, or community correction supervision" and substituting the language "or probation supervision".

SECTION 41. Tennessee Code Annotated, Section 40-35-503(h), is amended by deleting the language ", as defined in § 40-36-102," and adding the following language 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 that term is 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 42. Tennessee Code Annotated, Section 40-39-207(g)(2)(C)(i), is amended by deleting the language ", parole or community correction" and substituting the language "or parole".

SECTION 43. Tennessee Code Annotated, Section 41-1-126(b), is amended by deleting the language "and community corrections agencies".

SECTION 44. Tennessee Code Annotated, Section 41-1-126(c), is amended by deleting the language "community corrections agencies,".

SECTION 45. Tennessee Code Annotated, Section 40-35-303(c)(1), is amended by adding the following language at the end of the subdivision:

The period of probation imposed shall not exceed eight (8) years for a felony offense, including cases where a period of probation is imposed after a period of confinement and the period of probation and period of confinement in total exceed eight (8) years. 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 46. 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 in excess of 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 in ensuring 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 in excess of one (1) year.

SECTION 47. 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 the provisions of § 40-35-311, to revoke and annul 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 reduce 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 has resulted in a judgment of 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 48. Tennessee Code Annotated, Section 40-35-310(b), is amended by deleting the language "restore the original judgment" and substituting the language "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 49. Tennessee Code Annotated, Section 40-35-311(d), is amended by designating the existing language as subdivision (1) and adding the following subdivisions :

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

(3) As used in this section, "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 50. Tennessee Code Annotated, Section 40-35-311, is amended by deleting subsection (e) and substituting:

(e)

(1) If the trial judge revokes the defendant's probation and suspension of sentence based upon a finding, by a preponderance of the evidence, that the defendant engaged in conduct that is a technical violation, then the trial judge may temporarily revoke the probation and suspension of sentence by order duly entered upon the minutes of the court, and:

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

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

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

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

(iv) One (1) year or the remainder of the sentence,

whichever is shorter, 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 the defendant's probation and suspension of sentence based upon a 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 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 the defendant's probation and suspension of sentence, then the defendant has the right to appeal.

SECTION 51. 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 52. Sections 3 through 8 and 45 through 50 of this act take effect July 1, 2021, the public welfare requiring it, and apply to court determinations made on or after that date. Sections 9 through 44 of this act take effect October 1, 2021, the public welfare requiring it, and apply to court determinations made on or after that date. All other sections of this act take effect upon becoming a law, the public welfare requiring it.