

HOUSE BILL 2576

By McCormick

AN ACT to amend Tennessee Code Annotated, Title 36, Chapter 3, Part 6; Title 39, Chapter 13, Part 1; Title 39, Chapter 14, Part 1; Title 40, Chapter 28; Title 40, Chapter 35 and Title 41, Chapter 1, Part 4, relative to public safety.

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

SECTION 1. This act shall be known and cited as the "Public Safety Act of 2016."

SECTION 2. Tennessee Code Annotated, Section 36-3-619, is amended by adding the following language as a new, appropriately designated subsection:

Pursuant to § 36-3-602, a law enforcement officer responding to an incident of domestic abuse shall have the authority to pursue an order of protection on behalf of the domestic abuse victim, regardless of the time of day, whether or not the domestic abuse victim requests the officer to pursue the order, and whether or not an arrest has been made.

SECTION 3. Tennessee Code Annotated, Section 36-3-602, is amended by adding the following language as new subsections (b) and (c) and renumbering the remaining subsections accordingly:

(b) At all times outside of the court's normal operating hours, the presiding judge in each judicial district shall be responsible for making available an official authorized to issue an order of protection at the request of a law enforcement officer on behalf of a domestic abuse victim.

(c) When a law enforcement officer makes an arrest and has probable cause to believe the respondent used or attempted to use deadly force against the domestic abuse victim, an automatic order of protection shall be issued at the respondent's initial

appearance after the arrest by an official authorized to issue such orders. The domestic abuse victim need not be present when the order of protection is issued. A hearing shall be held within fifteen (15) days of service of the order on the respondent pursuant to § 36-3-605.

SECTION 4. Tennessee Code Annotated, Section 39-13-111(c)(3), is amended by deleting the subdivision in its entirety and substituting instead the following language:

(3) A third or subsequent conviction for domestic assault committed in a manner prohibited by § 39-13-101(a)(1) is punishable by a fine of not less than one thousand one hundred dollars (\$1,100) nor more than five thousand dollars (\$5,000), and by confinement in the county jail or workhouse for not less than ninety (90) consecutive days, nor more than eleven (11) months and twenty-nine (29) days; provided, however, that when the domestic abuse victim's relationship with the defendant falls within the categories defined in (a)(1) or (a)(3), or the victim is the adult or minor child of any person in such categories, a third or subsequent conviction for domestic assault committed in a manner prohibited by § 39-13-101(a)(1) is a Class E felony, with a mandatory confinement of not less than ninety (90) consecutive days in the county jail or workhouse.

SECTION 5. Tennessee Code Annotated, Section 39-14-105(a), is amended by deleting the subsection in its entirety and substituting instead the following language:

(a) Theft of property or services is:

(1) A Class A misdemeanor if the value of the property or services obtained is one thousand dollars (\$1,000) or less;

(2) A Class E felony if the value of the property or services obtained is more than one thousand dollars (\$1,000) but less than two thousand five hundred dollars (\$2,500);

(3) A Class D felony if the value of the property or services obtained is more than two thousand five hundred dollars (\$2,500) but less than ten thousand dollars (\$10,000);

(4) A Class C felony if the value of the property or services obtained is ten thousand dollars (\$10,000) or more but less than sixty thousand dollars (\$60,000);

(5) A Class B felony if the value of the property or services obtained is sixty thousand dollars (\$60,000) or more but less than two hundred fifty thousand dollars (\$250,000); and

(6) A Class A felony if the value of the property or services obtained is two hundred fifty thousand dollars (\$250,000) or more.

SECTION 6. Tennessee Code Annotated, Section 40-35-104(c)(8)(B), is amended by deleting the language "one thousand dollars (\$1,000)" and substituting instead the language "two thousand five hundred dollars (\$2,500)".

SECTION 7. Tennessee Code Annotated, Section 40-35-207(a), is amended by deleting subdivisions (9) and (10) and substituting instead the following language:

(9) Information to assist the court in deciding whether to sentence an eligible defendant to 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;

(10) The results of the validated risk and needs assessment; and

(11) Any other matters the court directs to be included.

SECTION 8. Tennessee Code Annotated, Section 40-35-207, is amended by adding the following as a new subsection:

(d) As used in this section, "validated risk and needs assessment" means a determination of a person's risk to reoffend and the needs that, when addressed, reduce the risk to reoffend through the use of an actuarial assessment tool designated by the department that assesses the dynamic and static factors that drive criminal behavior.

SECTION 9. Tennessee Code Annotated, Section 40-35-210(b), is amended by deleting the subsection in its entirety and substituting instead the following language:

(b) To determine the specific sentence and the appropriate combination of sentencing alternatives that shall be imposed on the defendant, the court shall consider the following:

- (1) The evidence, if any, received at the trial and the sentencing hearing;
- (2) The presentence report;
- (3) The principles of sentencing and arguments as to sentencing alternatives;
- (4) The nature and characteristics of the criminal conduct involved;
- (5) Evidence and information offered by the parties on the mitigating and enhancement factors set out in §§ 40-35-113 and 40-35-114;
- (6) Any statistical information provided by the administrative office of the courts as to sentencing practices for similar offenses in Tennessee;
- (7) Any statement the defendant wishes to make in the defendant's own behalf about sentencing; and
- (8) The result of the validated risk and needs assessment conducted by the department and contained in the presentence report.

SECTION 10. Tennessee Code Annotated, Section 40-35-210(f), is amended by deleting the subsection in its entirety and substituting instead the following language:

A sentence must be based on evidence in the record of the trial, the sentencing hearing, the presentence report, the validated risk and needs assessment, and the record of prior felony convictions filed by the district attorney general with the court, as required by § 40-35-202(a).

SECTION 11. Tennessee Code Annotated, Section 40-35-311, is amended by adding the following language as a new, appropriately designation subsection:

(f) The court shall direct the presentence service officer to prepare and submit an updated validated risk and needs assessment for the offender. The court shall consider the results of such assessment in determining the appropriate disposition of the probation violation charge.

SECTION 12. Tennessee Code Annotated, Section 40-35-501, is amended by adding the following language as new subsections:

(t)

(1) When the violation is a Class A, B, or C felony, there shall be no release eligibility for a person committing the sale, manufacture, or distribution of a controlled substance, as defined in § 39-17-417, on or after January 1, 2017, until the person has served eighty five percent (85%) of the sentence imposed by the court, less sentence credits earned and retained, if the person has at least two (2) prior convictions for the sale, manufacture, or distribution of a controlled substance, as defined in § 39-17-417. No sentence reduction credits authorized by § 41-21-236, or any other provision of law, shall operate to reduce below seventy percent (70%) the percentage of sentence imposed by the court such person must serve before becoming release eligible.

(2)

(A) "Prior conviction" means, for purposes of this subsection, unless the context otherwise requires, that the person serves and is released or discharged from, or is serving, a separate period of incarceration or supervision for the commission of the sale, manufacture, or distribution of a controlled substance.

(B) "Prior conviction" includes convictions under the laws of any other state, government or country that, if committed in this state, would constitute the offense of the sale, manufacture, or distribution of a controlled substance. If an offense involving the sale, manufacture, or distribution of a controlled substance in a jurisdiction other than this state is not identified as the sale, manufacture, or distribution of a controlled substance in this state, it shall be considered a prior conviction if the elements of the felony are the same as the elements for the sale, manufacture, or distribution of a controlled substance.

(3) "Separate period of incarceration or supervision" includes a sentence to any of the sentence alternatives set out in § 40-35-104(c)(3)-(9). The sale, manufacture, or distribution of a controlled substance shall be considered as having been committed after a separate period of incarceration or supervision if it is committed while the person was:

(A) On probation, parole, community correction supervision, or supervised release for the sale, manufacture, or distribution of a controlled substance;

(B) Incarcerated for the sale, manufacture, or distribution of a controlled substance;

(C) Assigned to a program where the person enjoys the privilege of supervised release into the community, including, but not limited to, work release, education release, restitution release or medical furlough for the sale, manufacture, or distribution of a controlled substance; or

(D) On escape status from any correctional institution when incarcerated for the sale, manufacture, or distribution of a controlled substance.

(u)

(1) There shall be no release eligibility for a person committing aggravated burglary, as defined in § 39-14-403, on or after January 1, 2017, until the person has served eighty five percent (85%) of the sentence imposed by the court, less sentence credits earned and retained, if the person has at least two (2) prior convictions for aggravated burglary or especially aggravated burglary prior to or at the time of committing aggravated burglary. No sentence reduction credits authorized by § 41-21-236, or any other provision of law, shall operate to reduce below seventy percent (70%) the percentage of sentence imposed by the court such person must serve before becoming release eligible.

(2)

(A) "Prior conviction" means, for purposes of this subsection, unless the context otherwise requires, that the person serves and is released or discharged from, or is serving, a separate period of incarceration or supervision for the commission of aggravated burglary as defined in § 39-14-403 or especially aggravated burglary as defined in § 39-14-404.

(B) "Prior conviction" includes convictions under the laws of any other state, government, or country that, if committed in this state, would constitute aggravated burglary or especially aggravated burglary. If an offense involving a burglary in a jurisdiction other than this state is not identified as aggravated burglary or especially aggravated burglary in this

state, it shall be considered a prior conviction if the elements of the felony are the same as the elements for aggravated burglary or especially aggravated burglary.

(3) "Separate period of incarceration or supervision" includes a sentence to any of the sentence alternatives set out in § 40-35-104(c)(3)-(9). An aggravated burglary or especially aggravated burglary shall be considered as having been committed after a separate period of incarceration or supervision if the aggravated burglary or especially aggravated burglary is committed while the person was:

(A) On probation, parole, community correction supervision, or supervised release for aggravated burglary or especially aggravated burglary;

(B) Incarcerated for aggravated burglary or especially aggravated burglary;

(C) Assigned to a program where the person enjoys the privilege of supervised release into the community, including, but not limited to, work release, education release, restitution release or medical furlough for aggravated burglary or especially aggravated burglary; or

(D) On escape status from any correctional institution when incarcerated for aggravated burglary or especially aggravated burglary.

(v)

(1) There shall be no release eligibility for a person committing especially aggravated burglary as defined in § 39-14-404, on or after January 1, 2017, until the person has served eighty five percent (85%) of the sentence imposed by the court, less sentence credits earned and



retained, if the person has at least two (2) prior convictions for aggravated burglary or especially aggravated burglary prior to or at the time of committing especially aggravated burglary. No sentence reduction credits authorized by § 41-21-236, or any other provision of law, shall operate to reduce below seventy percent (70%) the percentage of sentence imposed by the court such person must serve before becoming release eligible.

(2)

(A) "Prior conviction" means, for purposes of this subsection, unless the context otherwise requires, that the person serves and is released or discharged from, or is serving, a separate period of incarceration or supervision for the commission of aggravated burglary, as defined in § 39-14-403, or especially aggravated burglary, as defined in § 39-14-404.

(B) "Prior conviction" includes convictions under the laws of any other state, government, or country that, if committed in this state, would constitute aggravated burglary or especially aggravated burglary. If an offense involving a burglary in a jurisdiction other than this state is not identified as aggravated burglary or especially aggravated burglary in this state, it shall be considered a prior conviction if the elements of the felony are the same as the elements for aggravated burglary or especially aggravated burglary.

(3) "Separate period of incarceration or supervision" includes a sentence to any of the sentence alternatives set out in § 40-35-104(c)(3)-(9). An

aggravated burglary or especially aggravated burglary shall be considered as having been committed after a separate period of incarceration or supervision if the aggravated burglary or especially aggravated burglary is committed while the person was:

(A) On probation, parole, community correction supervision, or supervised release for aggravated burglary or especially aggravated burglary;

(B) Incarcerated for aggravated burglary or especially aggravated burglary;

(C) Assigned to a program where the person enjoys the privilege of supervised release into the community, including, but not limited to, work release, education release, restitution release or medical furlough for aggravated burglary or especially aggravated burglary; or

(D) On escape status from any correctional institution when incarcerated for aggravated burglary or especially aggravated burglary.

SECTION 13. Tennessee Code Annotated, Title 41, Chapter 1, is amended by adding the following language as a new, appropriately designated section:

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(a) As used in this section, "validated risk and needs assessment" means a determination of a person's risk to reoffend and the needs that, when addressed, reduce the risk to reoffend through the use of an actuarial assessment tool that assesses the dynamic and static factors that drive criminal behavior.

(b) The department of correction, county correctional facilities, and community corrections agencies shall perform a validated risk and needs assessment on each

felony offender under its supervision or custody upon receipt of the person and at least annually throughout the period of supervision or custody.

(c) The validated risk and needs assessment shall be used by the department, county correctional facilities, community corrections agencies, the board of parole, and the courts in making decisions and recommendations on programming and treatment options and post-prison supervision conditions for those who have been incarcerated.

(d) Portions of the validated risk and needs assessment shall be shared with community providers upon release, as deemed appropriate by the department, while respecting the privacy rights of the offender.

SECTION 14. Tennessee Code Annotated, Title 40, Chapter 28, is amended by adding the following language as a new part 7:

**40-28-701. Definitions.**

As used in this part:

(1) "Chief supervision officer" means the correctional administrator for each region of the state or any other person designated by the commissioner;

(2) "Community supervision" means:

(A) The placement of a defendant under a continuum of programs and sanctions, with conditions imposed by a court for a specified period during which a sentence of imprisonment or confinement, imprisonment and fine, or confinement and fine, is probated and the imposition of sentence is suspended in whole or in part; or

(B) The placement of an individual under a continuum of programs and sanctions after release from prison or jail, with conditions imposed by the releasing authority for a specified period;

(3) "Court" means a court of record having original criminal jurisdiction;

(4) "Graduated sanction" means any of a wide range of non-prison offender accountability measures and programs, including, but not limited to, electronic supervision tools; drug and alcohol testing or monitoring; day or evening reporting centers; restitution centers; forfeiture of earned compliance credits; rehabilitative interventions such as substance abuse or mental health treatment; reporting requirements to supervision officers; community service or work crews; secure or unsecure residential treatment facilities or halfway houses; and short-term or intermittent incarceration; and

(5) "Positive reinforcement" means any of a wide range of rewards and incentives, including, but not limited to, awarding certificates of achievement, reducing reporting requirements, deferring a monthly supervision fee payment, awarding earned compliance credits, removing supervision conditions such as home detention or curfew, or asking the offender to be a mentor to others.

(6) "Supervised individual" means an individual placed on probation by a court or serving a period of parole or post-release supervision from prison or jail for a felony offense;

(7) "Supervision officer" means a person appointed or employed by the department to supervise individuals placed on community supervision;

**40-28-702. Policy on Community Supervision.**

Supervised individuals shall be subject to:

(1) Violation revocation proceedings and possible incarceration for failure to comply with the conditions of supervision when such failure constitutes a significant risk to prior victims of the supervised individual or the community at large and cannot be appropriately managed in the community; or

(2) Sanctions other than revocation and incarceration as appropriate to the severity of the violation behavior, the risk of future criminal behavior by the offender, and the need for, and availability of, interventions which may assist the offender to remain compliant and crime-free in the community.

**40-28-703. System of Graduated Sanctions.**

(a) The department shall adopt a single system of graduated sanctions for violations of the conditions of community supervision. The system shall set forth a menu of presumptive sanctions for the most common types of supervision violations, including, but not limited to: failure to report; failure to pay fines, fees, and victim restitution; failure to participate in a required program or service; failure to complete community service; violation of a protective or no contact order; and failure to refrain from the use of alcohol or controlled substances. The system of sanctions shall take into account factors such as the severity of the current violation, the supervised individual's previous criminal record, the number and severity of any previous supervision violations, the supervised individual's assessed risk level, and the extent to which graduated sanctions were imposed for previous violations. The system shall also define positive reinforcements that supervised individuals will receive for compliance with conditions of supervision. The system shall clearly specify as to each type of sanction whether the supervised individual has the option to object and seek administrative review of the sanction.

(b) The department shall establish by rule an administrative process to review and approve or reject, prior to imposition, graduated sanctions that deviate from those prescribed.

(c) The department shall establish by rule an administrative process to review graduated sanctions contested by supervised individuals under § 40-28-705. The review

shall be conducted by the chief supervision officer, who shall be impartial and trained to hear cases regarding graduated sanctions for violations of supervision conditions.

**40-28-704. Conditions of Community Supervision.**

For individuals placed on supervised probation, the judge of the court having jurisdiction of the case shall determine the conditions of community supervision, which shall include as a condition that the department supervising the individual may, in accordance with § 40-28-705, impose graduated sanctions adopted by the department for violations of the conditions of community supervision.

**40-28-705. Authority to Impose Graduated Sanctions.**

(a) Notwithstanding any rule or law to the contrary, the department may:

(1) Modify the conditions of community supervision for the limited purpose of imposing graduated sanctions; and

(2) Place a supervised individual who violates the conditions of community supervision in a state or local correctional or detention facility or residential center for a period of not less than one (1) day nor more than thirty (30) days; provided, that such placement may not exceed thirty (30) days in any one (1) calendar year.

(b) A supervision officer intending to modify the conditions of community supervision by imposing a graduated sanction shall issue to the supervised individual a notice of the intended sanction. The notice shall inform the supervised individual of the technical violation or violations alleged, the date or dates of the violation or violations, and the graduated sanction to be imposed.

(c) The imposition of a graduated sanction or sanctions by a community supervision officer must comport with the system of graduated sanctions adopted by the department under § 40-28-703. Upon receipt of the notice, the supervised individual

shall immediately accept the sanction or, if permitted under the system of graduated sanctions, object to the sanction or sanctions proposed by the officer. The failure of the supervised individual to comply with a sanction shall constitute a violation of probation, parole, or post release supervision. If the supervised individual objects to the imposition of the sanction or sanctions, when permitted by the system of graduated sanctions, the individual is entitled to an administrative review to be conducted by the department within five (5) days of the issuance of the notice. If the department affirms the recommendation contained in the notice, then the sanction or sanctions shall become effective immediately.

(d) If the graduated sanction involves confinement in a correctional or detention facility, confinement must be approved by the chief supervision officer, but the supervised individual may be detained for up to four (4) hours while such approval is obtained. If the supervised individual is employed, the supervision officer shall, to the extent feasible, impose this sanction on weekend days or other days and times when the supervised individual is not working.

(e) A sanction that confines a supervised individual in a correctional or detention facility for a period of more than thirty (30) consecutive days, or extends the term of community supervision, may not be imposed as a graduated sanction, except pursuant to an order of the court or the releasing authority.

(f) A notice of a graduated sanction may not be issued for any violation of probation, parole, or post-release supervision which could warrant an additional, separate felony charge. Notwithstanding this subsection (f), a notice of a graduated sanction may be issued for a positive drug test.

(g) Upon successful completion of a graduated sanction or sanctions, a court shall not revoke the term of community supervision or impose additional sanctions for the same violation.

(h) If a supervision officer modifies the conditions of community supervision by imposing a graduated sanction, the officer shall:

(1) Deliver a copy of the modified conditions to the supervised individual;

(2) File a copy of the modified conditions with the sentencing court or releasing authority; and

(3) Note the date of delivery of the copy in the supervised individual's file.

#### **40-28-706. Monitoring Graduated Sanctions.**

The chief supervision officer shall review confinement sanctions recommended by supervision officers on a quarterly basis to assess any disparities that may exist among officers, evaluate the effectiveness of the sanction as measured by the supervised individuals' subsequent conduct, and monitor the impact on the department's number and type of revocations for violations of the conditions of supervision.

SECTION 15. The headings to sections, chapters, and parts in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 16. If any provision of this act or the application of any provision of this act to any person or circumstance is held invalid, the invalidity shall 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 declared to be severable.

SECTION 17. This act shall take effect January 1, 2017, the public welfare requiring it.