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HOUSE BILL 8005 of the Second Extraordinary Session

By Lamberth

AN ACT to amend Tennessee Code Annotated, Title 8;
Title 38; Title 39 and Title 40, relative to criminal
law.

WHEREAS, Tennesseans have the right to engage in peaceful assembly and protests, and many peaceful protests and demonstrations have occurred across Tennessee in recent weeks, including on and around government property, but some protests on and around government property, including the State Capitol grounds have resulted in vandalism and defacement of property, overnight camping on public property in violation of state law, and other risks to public safety; and

WHEREAS, the rights to free speech and assembly are guaranteed under the First Amendment to the United States Constitution; and

WHEREAS, persons who abuse these fundamental liberties by committing violent or destructive acts endanger the safety and well-being of those who exercise that right to affect positive change in public policy; and

WHEREAS, this legislation is needed to safeguard the right of all Tennesseans to peacefully demonstrate by protecting the safety of state employees and the public and preventing damage or destruction to public and private property, including the prosecution of offenses committed against law enforcement, first responders, state employees and contractors, public officials, and public and private property; and

WHEREAS, this legislation is needed to establish a uniform framework of laws that will protect the rights of all Tennesseans to peacefully demonstrate; now, therefore,

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

SECTION 1. Tennessee Code Annotated, Section 39-11-106(a)(38), is amended by adding the following as a new subdivision (E):

(E) For a violation of § 39-14-408(b)(1), the value of the property includes the fair market value of repairing, cleaning, and restoring the property;

SECTION 2. Tennessee Code Annotated, Title 39, Chapter 13, Part 1, is amended by adding the following language as a new section:

(a) A person commits assault against a first responder, who is discharging or attempting to discharge the first responder's official duties, who:

(1) Knowingly causes bodily injury to a first responder; or

(2) Knowingly causes physical contact with a first responder and a reasonable person would regard the contact as extremely offensive or provocative, including, but not limited to, spitting, throwing, or otherwise transferring bodily fluids, bodily pathogens, or human waste onto the person of a first responder.

(b) A person commits aggravated assault against a first responder, who is discharging or attempting to discharge the first responder's official duties, who knowingly commits an assault under subsection (a), and the assault:

(1) Results in serious bodily injury to the first responder;

(2) Results in the death of the first responder;

(3) Involved the use or display of a deadly weapon; or

(4) Involved strangulation or attempted strangulation.

(c)

(1) Assault under subsection (a) is a Class A misdemeanor, and includes a fine of five thousand dollars (\$5,000) and a mandatory minimum sentence of thirty (30) days incarceration. The defendant shall not be eligible for release from confinement until the defendant has served the entire thirty-day mandatory minimum sentence.

(2) Aggravated assault under subsection (b) is a Class C felony, and includes a fine of fifteen thousand dollars (\$15,000) and a mandatory minimum sentence of ninety (90) days incarceration. The defendant shall not be eligible for release from confinement until the defendant has served the entire ninety-day mandatory minimum sentence.

(d) For purposes of this section, "first responder":

(1) Means a law enforcement officer, firefighter, emergency services personnel, or other person who responds to calls for emergency assistance from a 911 call; and

(2) Includes capitol police officers, Tennessee highway patrol officers, Tennessee bureau of investigation agents, Tennessee wildlife resources agency officers, and park rangers employed by the division of parks and recreation in the department of environment and conservation.

SECTION 3. Tennessee Code Annotated, Section 39-13-102(e)(1)(B), is amended by deleting the subdivision and substituting the following:

(B) Notwithstanding the authorized fines established in § 40-35-111, a violation of this section is punishable by a fine not to exceed fifteen thousand dollars (\$15,000), in addition to any other punishment authorized by § 40-35-111.

SECTION 4. Tennessee Code Annotated, Section 39-14-408, is amended by deleting subdivision (c)(1) and substituting instead the following:

(1)

(A) A person violating subdivision (b)(1) or (b)(3) is a principal under § 39-11-401 and shall be punished as for theft under § 39-14-105, after determining value under § 39-11-106.

(B) In addition to any sentence imposed for a violation of subdivision (b)(1) or (b)(3), the court shall include an order of restitution for any property damage or loss incurred as a result of the offense.

(C) A defendant arrested for a violation of subdivision (b)(1) or (b)(3) is subject to § 40-11-153.

SECTION 5. Tennessee Code Annotated, Section 39-17-301(2)(A), is amended by deleting the language "Assembling with or joining" and substituting instead the language "Joining".

SECTION 6. Tennessee Code Annotated, Section 39-17-301(2)(B), is amended by deleting the language "Being present,".

SECTION 7. Tennessee Code Annotated, Section 39-17-302, is amended by deleting subsection (b) and substituting instead the following:

(b) A defendant arrested for a violation of this section is subject to § 40-11-153.

(c) A violation of this section is a Class A misdemeanor. In any sentence imposed for a violation of this section, the court shall include a mandatory minimum sentence of thirty (30) days of incarceration and an order of restitution for any property damage or loss incurred as a result of the offense.

SECTION 8. Tennessee Code Annotated, Section 39-17-303, is amended by deleting subsection (b) and substituting instead the following:

(b) A defendant arrested for a violation of this section is subject to § 40-11-153.

(c) A violation of this section is a Class E felony. In any sentence imposed for a violation of this section, the court shall include a mandatory minimum sentence of forty-five (45) days of incarceration. In any sentence imposed for a violation of this section, the court shall include an order of restitution for any injury, property damage, or loss incurred as a result of the offense.

SECTION 9. Tennessee Code Annotated, Section 39-17-304, is amended by deleting subsection (b) and substituting instead the following:

(b) A person arrested for a violation of this section is subject to § 40-11-153.

(c) A violation of this section is a Class A misdemeanor. In any sentence imposed for a violation of this section, the court shall include an order of restitution for any property damage or loss incurred as a result of the offense.

SECTION 10. Tennessee Code Annotated, Section 39-17-306, is amended by deleting subsection (b) and substituting instead the following:

(b) A violation of this section is a Class A misdemeanor.

SECTION 11. Tennessee Code Annotated, Section 39-17-307, is amended by deleting subsection (c) and substituting instead the following:

(1)

(A) A violation of subdivision (a)(1) is a Class A misdemeanor.

(B) A defendant arrested for a violation of subdivision (a)(1) is subject to § 40-11-153.

(2) A violation of subdivision (a)(2) is a Class C misdemeanor.

SECTION 12. Tennessee Code Annotated, Section 39-14-412, is amended by deleting subsection (c) and substituting instead the following:

(c)

(1) A violation of subsection (a) is a Class B misdemeanor. All violations shall be punished by at least twenty-five (25) hours of community service work to be determined by the court.

(2) A violation of subsection (b) is a Class A misdemeanor. In any sentence imposed for a violation of subsection (b), the court shall include an

order of restitution for any property damage or loss incurred as a result of the offense.

SECTION 13. Tennessee Code Annotated, Section 39-14-414, is amended by deleting subsection (b) and substituting instead the following:

(b) As used in this section, "camping" means at any time between ten o'clock p.m. (10:00 p.m.) and seven o'clock a.m. (7:00 a.m.):

(1) Erecting, placing, maintaining, leaving, allowing to remain, or using a piece of furniture, tent, raised tarp, or other temporary shelter, structure, or furniture;

(2) Sleeping or making preparation to sleep, including laying down a sleeping bag, blanket, or other material used for bedding;

(3) Placing or storing personal belongings for future use, including storing food for consumption;

(4) Carrying on cooking activities, whether by fire or use of artificial means, such as a propane stove or other heat-producing portable cooking equipment;

(5) Making a fire or preparing to make a fire; or

(6) Doing any digging or earth breaking.

SECTION 14. Tennessee Code Annotated, Section 39-14-414(d), is amended by deleting the subsection and substituting instead the following:

(d)

(1) It is an offense for a person to engage in camping on property owned by the state knowing that the area on which the camping occurs is not specifically designated for use as a camping area by the department or agency responsible for the land.

(2) The department, agency, official, or officials responsible for the operation, protection, or maintenance of the property may designate an area as a camping area by means of signage, advertisement, or other notice designed to make known its availability for camping. However, a person shall not be guilty of a violation of subdivision (d)(1) unless the person received a warning not to engage in camping from an official responsible for the protection of the property in question and continued to engage in camping or returned within twenty-four (24) hours of the warning to continue to engage in camping.

(3) A person is not guilty of a violation of subdivision (d)(1) if the person was given permission or authorization by the department, agency, official, or officials responsible for the operation, protection, or maintenance of the property to engage in camping on the property.

(4) Any items used to commit a violation of this section, including items abandoned at the location of the offense, are subject to confiscation, seizure, and claiming in accordance with subsection (e).

SECTION 15. Tennessee Code Annotated, Section 39-14-414(e), is amended by deleting the subsection and substituting instead the following:

(e) Any property subject to confiscation or seizure under subsection (d), unclaimed in connection with a violation of subsection (d), or left unattended after arrest or issuance of a citation for camping in violation of subsection (d), and taken into state custody shall be held by the state agency or its agent in a secure location for a period of ninety (90) days. Notice containing the contact information of the state agency or agent holding the property must be posted at the nearest reasonable location to the place from which the property was removed. If the property is not claimed within ninety (90) days of being taken into custody, the property is deemed abandoned and the agency or agent

may dispose of the property, unless the property is needed for evidence in a criminal proceeding. If a person claiming any such property within ninety (90) days of the property being taken into custody produces identification and signs a release form providing such person's name and contact information and swearing under oath that the property belongs to the person, the state agency or agent shall return the property to the person, unless the property is needed for evidence in a criminal proceeding, in which case it shall be returned following the conclusion of that proceeding. The state agency or agent may charge such persons a reasonable storage fee for storing the property. The state and state employees, agents, and contractors are immune from liability for confiscation of property in compliance with this subsection (e).

SECTION 16. Tennessee Code Annotated, Section 39-14-414, is amended by deleting subsection (f) and substituting instead the following:

(f) A violation of this section is a Class E felony. In any sentence imposed for a violation of this section, the court shall include a mandatory minimum sentence of thirty (30) days of incarceration and an order of restitution for any property damage or loss incurred as a result of the offense.

SECTION 17. Tennessee Code Annotated, Section 39-14-414, is amended by adding the following as new, appropriately designated subsections:

() A defendant arrested for a violation of this section is subject to § 40-11-153.

SECTION 18. Tennessee Code Annotated, Title 40, Chapter 11, Part 1, is amended by adding the following new section:

40-11-153.

(a) Any defendant arrested for the offense of unauthorized camping on state property, as defined in § 39-14-414, vandalism, as described in § 39-14-408(b)(1), rioting, as defined in § 39-17-302, aggravated rioting, as defined in § 39-17-303, inciting

to riot, as defined in § 39-17-304, or obstructing a highway, as described in § 39-17-307(a)(1) shall not be released within twelve (12) hours of the time of arrest. The magistrate or other official duly authorized to release the defendant may, however, release the defendant in less than twelve (12) hours if the official finds that the defendant is not likely to immediately resume the criminal behavior based on the circumstances of the arrest and the defendant's prior criminal history, if any.

(b) The findings of the magistrate or other official duly authorized to release the defendant must be reduced to writing. The written findings must be attached to the warrant and shall be preserved as a permanent part of the record. The arresting officer shall make official note of the time of the arrest in order to establish the beginning of the twelve-hour period required by this section.

SECTION 19. Tennessee Code Annotated, Title 8, Chapter 6, Part 1, is amended by adding the following as a new section:

(a) The attorney general and reporter has the authority to conduct an investigation and has the authority to initiate a criminal prosecution whenever the attorney general and reporter receives information sufficient to constitute probable cause to investigate a violation of any state criminal law if:

(1)

(A) The victim is a state employee who was acting in the employee's official capacity at the time of the violation;

(B) State property was damaged or destroyed as a result of the violation; or

(C) The administration of state government was delayed by the violation at a significant cost to the state; and

(2) The district attorney general with jurisdiction over the violation has indicated an intention not to investigate or prosecute the violation.

(b) If the attorney general and reporter initiates a criminal prosecution pursuant to the authority of this section, the attorney general and reporter, or a deputy or assistant attorney general, has the authority to exercise all of the powers and perform all of the duties before any court or grand jury with respect to such prosecution that the appropriate district attorney general would otherwise be authorized or required by law to exercise or perform.

(c) If the attorney general and reporter initiates a criminal prosecution pursuant to this section, the appropriate district attorney general shall fully cooperate with the attorney general and reporter and participate in the prosecution to the extent requested or approved by the attorney general and reporter.

(d) If the attorney general and reporter concludes that an investigation or prosecution should be initiated pursuant to this section, the attorney general and reporter may, after giving notice to the executive director of the district attorneys general conference, request appointment as district attorney general pro tem by an appropriate court pursuant to § 8-7-106(a). The executive director may appear before the court to be heard on the request for appointment.

(e) The attorney general and reporter is authorized to request the director of the Tennessee bureau of investigation to furnish such assistance as may be required by the attorney general and reporter in the performance of the attorney general and reporter's duties under this section. The Tennessee bureau of investigation is authorized to provide to the attorney general and reporter such assistance as the attorney general and reporter may request pursuant to this section.

SECTION 20. This act shall take effect October 1, 2020, the public welfare requiring it, and applies to offenses committed on or after that date.