

SENATE BILL 768

By Johnson

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 3, Part 12; Title 40; Title 41, Chapter 4; Title 41, Chapter 8; Title 49, Chapter 11; Title 49, Chapter 8; Title 55, Chapter 50 and Section 62-76-104, relative to offender reentry.

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

SECTION 1. This act is known and may be cited as the "Reentry Success Act of 2021."

SECTION 2. Tennessee Code Annotated, Section 40-28-503(a), is amended by deleting the subsection and substituting instead the following:

(a) The board shall establish a policy governing attendance at board hearings and submission and use of victim impact statements and other impact statements. Copies of the policy shall be available upon request. The policy shall govern:

- (1) The requirement that those requesting notification of parole and parole revocation hearings keep the board advised of their current addresses and telephone numbers;
- (2) Instructions for attending and participating in parole and parole revocation hearings, including instructions for submitting an impact statement video;
- (3) The limitations on attendance as set forth in § 40-28-502;
- (4) Reasonable limitations on oral presentations and videos; and
- (5) Information about board discretion to investigate victim impact statements and other impact statements.

SECTION 3. Tennessee Code Annotated, Section 40-28-503, is amended by adding the following as new subsections:

(c)

(1) The board shall establish a digital function that a victim or other impacted person may use to electronically submit an impact statement video to be considered at an inmate's parole hearing or parole revocation. The digital function must allow the victim or other impacted person to submit a video of the victim or other impacted person presenting an impact statement as otherwise permitted by this part. The board may impose reasonable restrictions regarding the length of such impact statement videos.

(2) The digital function must allow a victim or other impacted person to indicate whether the victim or other impacted person would like the impact statement video to be resubmitted to any future parole hearings involving the same inmate and offense. If the victim or other impacted person indicates that the victim or other impacted person would like the video resubmitted to any future parole hearings involving the same inmate and offense, the board shall consider the video at such future hearings without further request from the victim or other impacted person, except that, prior to consideration at a subsequent parole hearing, the board shall notify the victim or other impacted person, in the same manner that notice is provided pursuant to § 40-28-505(b)(4), that the video will be considered at the hearing unless the victim or other impacted person informs the board, in writing or using the digital function, that the victim or other impacted person no longer wishes to have the video considered. A victim or other impacted person may inform the board at any time, in writing or using the digital function, that the victim or other impacted person no longer wishes to have a

previously submitted video considered by the board. If a victim or other impacted person informs the board that the victim or other impacted person no longer wishes to have a previously submitted video considered by the board using the digital function, the digital function must provide the victim or other impacted person the opportunity to indicate whether the victim or other impacted person will be submitting a new impact statement video, and whether the victim or other impacted person is opposed to, in favor of, or indifferent to the granting of parole to the inmate.

(3) Any impact statement video is subject to the board's policies established pursuant to § 40-28-503 and the board's rules governing the privacy of board records pursuant to § 40-28-119.

(d) As used in this section, "victim" includes both victims and victim representatives, as those terms are defined in § 40-38-203.

SECTION 4. Tennessee Code Annotated, Section 40-28-504, is amended by deleting the section and substituting:

(a) The board shall receive and consider victim impact statements, including victim impact statement videos.

(b) Written victim impact statements and victim impact statement videos are confidential and must not be made available to the public.

(c) Assertions made in a victim impact statement may be investigated and verified by the board.

(d) As used in this section, "victim" includes both victims and victim representatives, as those terms are defined in § 40-38-203.

SECTION 5. Tennessee Code Annotated, Section 55-50-321(a), is amended by designating the existing language as subdivision (1) and adding the following as a new subdivision (2):

(2) The nonrefundable two-dollar application fee required under subdivision (a)(1) is not required in the case of applications for restricted driver licenses under § 40-24-105(b).

SECTION 6. Tennessee Code Annotated, Section 40-24-105(b)(3)(D), is amended by deleting the language "and paying the application fee to the department".

SECTION 7. Tennessee Code Annotated, Section 40-24-105(b)(4)(B), is amended by deleting the language ", together with an application fee of sixty-five dollars (\$65.00),".

SECTION 8. Tennessee Code Annotated, Section 40-24-105(b)(5)(E), is amended by deleting the language ", together with an application fee of sixty-five dollars (\$65.00),".

SECTION 9. Tennessee Code Annotated, Section 40-28-115(i), is amended by deleting the language "ten (10)" and substituting the language "six (6)".

SECTION 10. Tennessee Code Annotated, Section 40-28-116(b), is amended by deleting the period at the end of the subsection and substituting:

; except that the board shall not require a condition or limitation to be completed prior to release on parole unless the department of correction recommends completion of the condition or limitation prior to release on parole.

SECTION 11. Tennessee Code Annotated, Section 40-28-122(c)(1), is amended by deleting the subdivision and substituting:

(1) The board shall, within a reasonable time, act upon the charges, and may, if it sees fit:

(A) For a revocation of parole that does not involve a new felony, new Class A misdemeanor, or absconding, require the prisoner to temporarily serve 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 prisoner's sentence, whichever is shorter, for a fourth or subsequent revocation; or

(B) For a revocation of parole that involves a new felony, new Class A misdemeanor, or absconding, require the prisoner to serve out in prison the balance of the maximum term for which the prisoner was originally sentenced, calculated from the date of delinquency, or such part thereof, as it may determine, or impose a punishment as the board deems proper, subject to § 40-28-123.

SECTION 12. Tennessee Code Annotated, Section 40-35-503, is amended by adding the following as new subsections:

(i)

(1) Notwithstanding subsection (b), there is a presumption that an eligible inmate must be released on parole, except for good cause shown, upon the inmate reaching the inmate's release eligibility date or any subsequent parole hearing.

(2) For purposes of this subsection (i), "eligible inmate" means an inmate who:

(A)

(i) Is currently serving a sentence for a Class E or Class D felony offense; or

(ii) Is currently serving a sentence for a felony that is not classified as a violent offense under § 40-35-120(b);

(B) Is determined to be low risk to reoffend or most appropriately supervised in the community under the most recent validated risk and needs assessment performed under § 41-1-126;

(C) Has successfully completed the programming recommended by the department of correction based on a validated risk and needs assessment performed under § 41-1-126 or can complete any recommended programming while on parole supervision;

(D) Has not received a serious disciplinary violation within one (1) year of the inmate's parole hearing. As used in this subdivision (i)(2)(D), "serious disciplinary violation" means a Class A or Class B disciplinary offense under department of correction policy; and

(E) Has not been convicted of a violent sexual offense, as defined in § 40-39-202; sexual offense, as defined in § 40-24-108(b) or § 40-39-202; or sex offense, as defined in § 39-13-703.

(3) This subsection (i) does not eliminate or affect the requirements of subsection (c) or § 40-28-116(a)(2).

(j) Upon declining to grant parole in any case, the board shall state in writing the reason for declining parole and how the inmate can improve the inmate's chance of being released on parole in the future.

SECTION 13. Tennessee Code Annotated, Section 40-35-503(b)(2), is amended by adding the following language before the semicolon:

, except that the board's finding that the release from custody at the time would depreciate the seriousness of the crime or promote disrespect for the law shall not be the sole basis for denying parole

SECTION 14. Tennessee Code Annotated, Section 40-35-503(g), is amended by deleting the second sentence of the subsection.

SECTION 15. Tennessee Code Annotated, Title 40, Chapter 35, Part 5, is amended by adding the following as a new section:

40-35-506.

(a) As used in this section:

(1) "Eligible inmate" means an inmate who:

(A) Is serving a felony sentence for an offense that occurred on or after July 1, 2021;

(B) Is eligible for parole consideration;

(C) Has one (1) year or less remaining until expiration of all sentences that the inmate is serving or set to serve or reaches the inmate's release eligibility date with less than one (1) year remaining until expiration;

(D) Does not have an active detainer for new or untried charges or sentences to serve in other jurisdictions;

(E) Has not been classified as maximum or close custody for disciplinary reasons in the previous two (2) years; and

(F) If the inmate has previously had the inmate's probation or parole revoked, has served at least six (6) months since returning to custody after revocation of probation or parole; and

(2) "Ineligible inmate" means an inmate who:

(A) Is serving a felony sentence for an offense that occurred on or after July 1, 2021;

(B) Does not satisfy all of the criteria listed in subdivisions (a)(1)(B)-(F);

(C) Does not have an active detainer for new or untried charges or sentences to serve in other jurisdictions; and

(D) Is incarcerated when the inmate's sentence expires.

(b)

(1) The department of correction shall determine whether an inmate is an eligible inmate. Notwithstanding § 40-35-503, an eligible inmate must be released on mandatory reentry supervision one (1) year prior to the inmate's sentence expiration date as calculated by the department or, if the inmate is not eligible for parole one (1) year prior to the inmate's sentence expiration date, upon reaching the inmate's release eligibility date. Upon release, an eligible inmate is subject to mandatory reentry supervision until the inmate's sentence expiration date. The release must be under the terms and conditions established by the department of correction. The board of parole shall issue a certificate of mandatory reentry supervision to such offenders.

(2) Eligible inmates released on mandatory reentry supervision must be considered released on parole and must be supervised and subject to violations or revocation under chapter 28 of this title to the same extent as discretionary parolees. All provisions relative to imposition of graduated sanctions under chapter 28 of this title apply to eligible inmates released on mandatory reentry supervision.

(3) Upon the issuance of a violation warrant regarding an eligible inmate, the inmate does not earn credit toward completion of the sentence until the removal of the delinquency.

(4) Mandatory reentry supervision for eligible inmates is not a commutation of sentence or any other form of executive clemency.

(c) Notwithstanding § 40-35-111, upon expiration of an ineligible inmate's sentence of confinement, the inmate must be released and subject to mandatory reentry supervision for a period of one (1) year following the inmate's sentence expiration date under conditions to be prescribed by the department of correction. Noncriminal, technical violations of supervision conditions by ineligible inmates shall not result in revocation of supervision or incarceration. The mandatory reentry supervision period must be calculated by the department of correction.

(d) Mandatory reentry supervision under this section constitutes release into the community under the direct or indirect supervision of any state or local governmental authority or a private entity contracting with the state or a local government for purposes of § 40-35-114(13).

SECTION 16. Tennessee Code Annotated, Section 40-35-210, is amended by adding the following as a new subsection:

() When the court accepts a plea of guilty or nolo contendere or imposes a sentence for a defendant who has been convicted of a felony offense that occurred on or after July 1, 2021, the court shall specify in its order that the defendant may be subject to an additional year of mandatory reentry supervision pursuant to § 40-35-506 if, at the time of release, the defendant is an ineligible offender, as defined in § 40-35-506.

SECTION 17. Tennessee Code Annotated, Title 40, Chapter 29, Part 1, is amended by adding the following as a new section:

40-29-108.

(a) A cause of action may not be brought against an employer or contracting party for negligent hiring, training, retention, or supervision of an employee or independent contractor based solely upon the fact that the employee or independent contractor has been previously convicted of a criminal offense.

(b) In a cause of action against an employer or contracting party for negligent hiring, training, retention, or supervision of an employee or independent contractor, evidence that the employee or independent contractor has been previously convicted of a criminal offense is not admissible.

(c) Subsections (a) and (b) do not apply when:

(1)

(A) The employer or contracting party knew or reasonably should have known of the employee's or independent contractor's prior conviction; and

(B) The employee or independent contractor was previously convicted of:

(i) An offense that was committed while performing duties substantially similar to those reasonably expected to be performed in the employment or under the contract, or under conditions substantially similar to those reasonably expected to be encountered in the employment or under the contract; or

(ii) A violent offense, as defined in § 40-35-120(b) or a violent sexual offense, as defined in § 40-39-202; or

(2)

(A) The cause of action concerns the misuse by an employee or independent contractor of the funds or property of a person other than the employer or contracting party;

(B) On the date the employee or independent contractor was hired, the employee or independent contractor had been previously convicted of an offense an element of which includes fraud or the misuse of funds or property; and

(C) The employer or contracting party should have reasonably foreseen that the position for which the employee or independent contractor was being hired would involve managing the funds or property of a person other than the employer or contracting party.

(d) This section does not create a cause of action or expand an existing cause of action.

SECTION 18. Tennessee Code Annotated, Section 41-8-106, is amended by adding the following new subsection:

(i)

(1) In addition to the reimbursement or compensation provided under subsection (c) and subdivision (g)(2), the department shall pay an accreditation stipend to eligible counties for each convicted felon housed by the county for which the county receives reimbursement or compensation provided under subsection (c) and subdivision (g)(2), as provided in subdivision (i)(3).

(2) For purposes of this subsection (i):

(A) "Eligible county" means a county that applies to the department for the accreditation stipend and that the department determines meets the following eligibility criteria:

(i) The county houses convicted felons pursuant to a contract with the state or while they are awaiting transfer to a state facility;

(ii) All felony offenders housed by the county are administered a department-approved validated risk-needs assessment upon admission;

(iii) The county provides evidence-based programming to felony offenders that matches the risks and needs of the offender, as determined through a department-approved validated risk-needs assessment;

(iv) All felony offenders housed by the county are eligible to participate in evidence-based programming that is matched to the offender's risks and needs;

(v) The county makes reasonable efforts to select evidence-based programming that fits the demonstrated needs of the county's felony offender population by serving a substantial portion of the offenders, rather than a narrow subset of offenders;

(vi) The county is compliant with, or making reasonable efforts to comply with, the federal Prison Rape Elimination Act of 2003 (P.L. 108-79); and

(vii) The county achieves tier 1 or tier 2 accreditation by the Tennessee corrections institute pursuant to subdivision (i)(3);
and

(B) "Evidence-based programming" means a program or programs shown by scientific research to effectively reduce recidivism

rates and increase an offender's likelihood of success following release from incarceration, including programs focused on education, vocational training, mental health, substance abuse rehabilitation, or building healthy relationships. The department shall maintain a resource information center webpage providing resources regarding approved evidence-based programming.

(3)

(A) The amount of the accreditation stipend provided to eligible counties under this subsection (i), which is in addition to the amount set annually in the appropriations act for each convicted felon housed by the county for which the county receives reimbursement or compensation provided under subsection (c) and subdivision (g)(2), is:

(i) Three dollars (\$3.00) per day for each convicted felon housed by the county for which the county receives reimbursement or compensation under subsection (c) and subdivision (g)(2), if the county has achieved tier 1 accreditation from the Tennessee corrections institute; and

(ii) Six dollars (\$6.00) per day for each convicted felon housed by the county for which the county receives reimbursement or compensation under subsection (c) and subdivision (g)(2), if the county has achieved tier 2 accreditation from the Tennessee corrections institute.

(B) For purposes of subdivision (i)(3)(A), the board of control of the Tennessee corrections institute shall determine tier 1 and tier 2 accreditation standards by rule. Such rules must be promulgated

pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(C) In order to change the amount of reimbursement or compensation provided under subdivision (i)(3)(A), a county must achieve the accreditation tier warranting the change in the fiscal year prior to the fiscal year in which the change in reimbursement or compensation will occur and provide the department notice of the proposed change in reimbursement or compensation at least six (6) months prior to the proposed effective date of the change in reimbursement or compensation.

(4) In order to maintain the accreditation stipend, an eligible county must provide annual documentation to the department that a satisfactory percentage of the felons who enroll in the evidence-based programming complete the programming in a timely manner, as determined by the department based on the historical completion outcomes for the particular programming. The department must establish the documentation and reporting requirements and provide the requirements to each eligible county receiving an accreditation stipend.

(5) A county's receipt of an accreditation stipend is conditioned upon the county maintaining eligibility and compliance with this subsection (i) warranting the stipend. If a county fails to maintain eligibility and compliance with this subsection (i) warranting the stipend, the department may withhold stipend payments to the county or adjust the amount of such payments, as appropriate. In the case of material noncompliance or ineligibility under this subsection (i), as determined by the commissioner, the department may require the county to repay any stipend payments made to the county during the period of material noncompliance or ineligibility.

(6) After an accreditation stipend has been paid to a county for three (3) years, the department shall annually review the recidivism rates of felons housed in that county to determine whether the implementation of the programming has been effective in reducing recidivism rates. If the evidence-based programming at issue does not impact the recidivism rate by a satisfactory percentage, as determined by the department based upon the length of time that the programming has been utilized and the program's historical outcomes, the department may require that the county develop a corrective action plan that is satisfactory to the department in order to continue receiving the accreditation stipend.

(7) In implementing evidence-based programming for the felony offender population, an eligible county may implement more than one (1) evidence-based program.

(8) The office of criminal justice programs in the department of finance and administration shall provide information to eligible counties regarding federal grant dollars that may be available to support the implementation of evidence-based programming or other programs or projects to improve offender outcomes.

(9) A county shall not prohibit the county's misdemeanor offender population from participating in evidence-based programming when programming capacity remains following the enrollment of felony offenders whose risks and needs are matched to the programming. Counties are encouraged to provide evidence-based programming to misdemeanor offenders that matches the risks and needs of the offender, as determined through a department-approved validated risk-needs assessment. The state is not responsible for any costs of incarceration or programming for misdemeanor offenders. However,

misdemeanor offenders may utilize evidence-based programming capacity that has been paid for using the accreditation stipend provided under this subsection (i).

(10) The commissioner is authorized to promulgate rules to implement and effectuate this subsection (i), pursuant to the Uniform Administrative Procedures Act.

(11) Tennessee's community colleges, established pursuant to title 49, chapter 8, and Tennessee's colleges of applied technology, established pursuant to title 49, chapter 11, part 4, are authorized and encouraged to assist counties in the development of evidence-based programming for felony offenders housed by counties that identify appropriate job training and workforce development programs for that county's region. Counties that wish to implement postsecondary programming in the facilities housing felony offenders are encouraged to work with the department and the board of regents established in title 49, chapter 8, part 2, in doing so.

SECTION 19. Tennessee Code Annotated, Section 41-4-140(a), is amended by adding the following as a new subdivision (4) and redesignating the current subdivision (a)(4) accordingly:

(4) Inspect local jails, lock-ups, and workhouses to determine whether a county has achieved tier 1 or tier 2 accreditation by the Tennessee corrections institute pursuant to § 41-8-106(i) and report such determinations to the department of correction;

SECTION 20. Tennessee Code Annotated, Title 49, Chapter 8, Part 2, is amended by adding the following as a new section:

In addition to all other authorized functions of the community colleges and state colleges of applied technology within the board of regents, such facilities are authorized

to contract and partner with local governments for the purpose of providing educational and workforce development programs to assist with reducing recidivism rates of criminal offenders held in local correctional facilities and improving opportunities for successful reentry upon release from incarceration.

SECTION 21. Tennessee Code Annotated, Section 49-11-404(a), is amended by adding the following as a new subdivision:

() Sheriff's department or other official or department charged with oversight of a county jail or workhouse for the purpose of developing reentry programs to effectively reduce the recidivism rate of felons and increase the likelihood of successful reintegration into society following release of individuals from incarceration.

SECTION 22. Tennessee Code Annotated, Section 62-76-104(b)(4), is amended by deleting the subdivision and substituting:

(4) In considering whether to deny an application for a license, certificate, or registration to an applicant pursuant to subdivision (b)(1), or whether to refuse to renew a license, certificate, or registration on the basis of a criminal conviction, the licensing authority must consider:

(A) The relationship between the nature of the crime and the purposes of regulating the occupation, profession, business, or trade for which the license, certificate, or registration is sought;

(B) The relationship between the crime and the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the occupation, profession, business, or trade;

(C) Any evidence of rehabilitation or treatment undertaken by the individual that might mitigate against the relationship of crime to the occupation, profession, business, or trade; and

(D) Any applicable federal laws regarding an individual's participation in the occupation, profession, business, or trade.

SECTION 23. Tennessee Code Annotated, Section 62-76-104(b), is amended by deleting the language "subdivision (b)(4)(A)" wherever it appears and substituting the language "subdivision (b)(4)".

SECTION 24. 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 25. Sections 5 through 8 of this act take effect July 1, 2021, the public welfare requiring it. Sections 9 through 15 of this act take effect July 1, 2021, the public welfare requiring it, and apply to parole determinations made on or after that date. Sections 2 through 4 of this act take effect upon becoming a law for purposes of establishing the digital function for electronically submitting an impact statement video, and for all other purposes, take effect January 1, 2022, the public welfare requiring it. Section 17 of this act takes effect upon becoming a law, the public welfare requiring it, and applies to actions accruing on or after that date. Sections 18 through 20 of this act take effect upon becoming a law, the public welfare requiring it, for the purpose of promulgating rules, and for all other purposes, take effect July 1, 2021, the public welfare requiring it. All other sections of this act take effect upon becoming a law, the public welfare requiring it.