

SENATE BILL 1854

By Harris

AN ACT to amend Tennessee Code Annotated, Title 4 and Title 40, to create the Tennessee sentencing commission.

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

SECTION 1. Tennessee Code Annotated, Title 40, is amended by adding Sections 2-13 of this act as a new chapter.

SECTION 2. This chapter shall be known and may be cited as the "Tennessee Sentencing Commission Act of 2016."

SECTION 3. There is created a sentencing commission, referred to in this chapter as "the commission", composed of the commissioner of correction and fifteen (15) additional members, as follows:

(1) Two (2) members who are active trial judges of courts having criminal jurisdiction, to be appointed by the judicial conference;

(2) One (1) member of the court of criminal appeals, to be appointed by the judges of such court;

(3) One (1) member who is a general sessions judge, to be appointed by the general sessions judges conference;

(4) One (1) member who is a district attorney general, to be appointed by the district attorneys general conference;

(5) One (1) member who is a practicing attorney having substantial recent experience representing criminal defendants, to be appointed jointly by the Tennessee Association of Criminal Defense Lawyers and the Tennessee Trial Lawyers Association;

(6) One (1) member who is an active law enforcement officer, to be appointed by the Tennessee Sheriffs' Association;

(7) The governor, speaker of the senate, and speaker of the house of representatives shall each appoint one (1) member from the public at large;

(8) The chair of the senate judiciary committee and the chair of the criminal justice committee of the house of representatives, or their designees;

(9) The chair of the board of parole;

(10) The executive secretary of the Tennessee code commission, or the secretary's designee; and

(11) The attorney general and reporter, who shall serve as an ex officio non-voting member.

SECTION 4.

(a)

(1) The members of the commission shall serve for staggered terms of six (6) years or until they cease to hold the office or position that qualified them for appointment and until their successors are appointed and have been qualified.

(2) In making the initial appointments, one (1) of the trial judges, the speaker of the house of representatives's appointment, and the governor's appointment shall be appointed for six-year terms.

(3) The speaker of the senate's appointment, the district attorney general, the court of criminal appeals judge, and the defense attorney shall be appointed for four-year terms.

(4) The other trial judge, the general sessions judge, and the law enforcement official shall be appointed for two-year terms.

(5) Successors shall be appointed in the manner provided for the members first appointed, and a vacancy occurring before the expiration of a term shall be similarly filled for the unexpired term.

(6) A member of the commission may be removed only for disability, neglect of duty, incompetence, or malfeasance in office. Before removal, the member shall be entitled to a hearing.

(b) The membership shall elect one (1) of its members as chair.

(c) Members of the commission not employed by the state or its political subdivisions shall be reimbursed for travel expenses in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

(d) The commission shall be administratively attached to the administrative office of the courts, but for all purposes other than administration shall be considered independent.

SECTION 5. The commission shall have three (3) primary duties and other secondary duties essential to accomplishing the primary duties. The commission may establish subcommittees or advisory committees to accomplish the duties imposed by this chapter. It is the legislative intent that the commission attach priority to accomplishing the primary duties in the following order:

(1) The classification of criminal offenses as described in Section 7 and the formulation of sentencing guidelines as described in Section 8; and

(2) The revision of the penal code as described in Section 6.

SECTION 6.

(a) The commission shall revise or cause to be revised the penal code of this state. It is the legislative intent that such revision should include the updating and

modernizing of the present penal code and the consolidation of certain types of offenses. Such revision should also attempt to repeal archaic, obsolete, or superfluous criminal statutes.

(b) "Cause to be revised" as used in subsection (a) includes the authority to enter into contractual agreements to accomplish the duties imposed by this section.

SECTION 7.

(a)

(1) The commission shall classify all remaining criminal offenses on the basis of their severity into not more than five (5) categories of felonies and not more than three (3) categories of misdemeanors.

(2) In determining the proper category for each felony and misdemeanor, the commission shall consider, to the extent that they have relevance, the following:

(A) The nature and degree of harm likely to be caused by the offense, including whether it involves property, irreplaceable property, a person, a number of persons, or a breach of the public trust;

(B) The deterrent effect a particular classification may have on the commission of the offense by others;

(C) The current incidence of the offense in the state as a whole;
and

(D) The victims' rights and the citizens' individual rights.

(b) For each classification of felonies and misdemeanors formulated pursuant to subsection (a), the commission shall assign a suggested range of punishment for such classification. Unless necessary to promote uniformity in sentencing based upon the

severity of the offense or stay within the capacity of the prison system, the commission shall take into consideration the current range of punishment for each offense.

SECTION 8.

(a) The commission shall establish and adopt guidelines for use by a sentencing court in determining the appropriate sentence to be imposed in a criminal case, including:

(1) A determination whether to impose a sentence to probation, a fine, other sentencing alternatives, or a term of imprisonment;

(2) Based upon the combination of offense and defendant characteristics in each case, a determination as to the presumptively appropriate length of a term of probation, other sentencing alternatives, or a term of imprisonment; and

(3) A determination whether multiple sentences to terms of imprisonment should be ordered to run concurrently or consecutively.

(b) For a sentence involving community supervision, the commission shall propose a maximum term of confinement to be imposed if the defendant violates the conditions of supervision.

(c) To the extent possible, sentencing guidelines shall be consistent with the sentencing considerations set out in §§ 40-35-102 and 40-35-103, and a prison capacity figure arrived at by taking ninety-five percent (95%) of the present constitutional capacity of the prison system and adding any new prison beds constructed in accordance with American Correction Association (ACA) standards.

(d) In adopting sentencing guidelines, the commission shall take into account characteristics of offenses and of defendants that relate to the sentencing considerations set out in §§ 40-35-102 and 40-35-103. The commission shall consider:

(1) The nature and characteristics of the offense;

(2) The severity of the offense in relation to other offenses;

(3) The characteristics of the defendant that mitigate or aggravate the seriousness of the defendant's criminal conduct and the punishment deserved therefor;

(4) The defendant's number of prior convictions;

(5) The available resources and constitutional capacity of the department of correction; and

(6) The victims' rights and citizens' individual rights.

(e) The commission shall include with each set of guidelines a statement of its estimate of the effect of the guidelines on the department of correction both in terms of economic resources and inmate population.

(f) When imposing a sentence under chapter 35 of this title, the court shall either impose a sentence under sentencing guidelines formulated and adopted pursuant to this chapter or make written findings of fact and conclusions to support the departure from the guidelines. Such determination shall be a part of the record and shall be appealable by either party. On appeal, the review by the appellate court shall be de novo on the record.

(g) The Tennessee code commission shall, upon approval by the general assembly, publish the sentencing guidelines formulated pursuant to this section in the appropriate volume of this code.

SECTION 9.

(a) The commission shall have the secondary duty of collecting, developing, and maintaining statistical information relating to sentencing so that the primary duties of the commission will be formulated using data that is valid, accurate, and relevant to this state.

(b) The commission shall have the authority to apply for, accept, and use any gifts or grants or financial or other aid in any form from the federal government or any agency or instrumentality thereof or from the state or from any other source, including private associations, foundations, or corporations to accomplish any of the duties set out in this chapter.

(c) The commission is also authorized to perform all other duties necessary and proper in discharging its responsibilities.

SECTION 10.

(a) The commission may employ an executive director having appropriate training and experience to assist the commission in the performance of its duties. Such director shall be responsible for compiling the work of the commission and drafting suggested legislation incorporating the commission's findings for submission to the general assembly.

(b) The commission may employ such other staff as is necessary for the performance of its duties.

SECTION 11.

(a) Once the primary duties of the commission have been accomplished, it shall have a continuing duty to monitor and review the criminal justice system in this state to ensure that sentencing remains uniform and consistent.

(b) Upon the enactment by the general assembly of a revised penal code formulated by the commission pursuant to this chapter, all proposed legislation introduced after such date that amends, repeals, or creates a criminal offense or that would otherwise affect the new penal code shall be reviewed by the commission. The commission shall meet each year within ten (10) days after the last day for filing general bills in the general assembly for the purpose of reviewing all such bills filed. Upon

completion of the review, the commission shall determine whether such proposal is compatible and consistent with the new penal code and report its information to the judiciary committee of the senate and the criminal justice committee of the house of representatives.

(c) Upon the adoption of a system for the classification of offenses formulated pursuant to this chapter, the commission shall also review all proposed legislation that creates a new criminal offense, changes the classification of an offense, or changes the range of punishment for a particular classification. In the case of a new criminal offense, the commission shall determine whether the proposal places the offense in the correct classification based upon the considerations and principles set out in Section 7. If the proposal does not assign the offense to a classification, it shall be the duty of the commission to recommend the proper classification placement. In the case of proposed changes in the classification of an offense or changes in the range of punishment for a classification, the commission shall determine whether such a proposed change is consistent with the considerations and principles set out in Section 7. The commission shall convene to review and make recommendations in the same manner as is provided in subsection (b).

SECTION 12.

(a) The sentencing guidelines established pursuant to Section 8 shall be submitted to the judiciary committee of the senate and the criminal justice committee of the house of representatives by October 1, 2018. In order to maintain essential consistency and uniformity throughout the entire sentencing system developed by the commission, sentencing guidelines formulated pursuant to Section 8 shall be transmitted to the general assembly in the form of a joint resolution.

(b) Legislation effectuating the classification and ranges of punishment for felonies and misdemeanors required by Section 7 shall be submitted to the judiciary committee of the senate and the criminal justice committee of the house of representatives by October 1, 2018.

(c) Legislation effectuating the proposed revision of the penal code as required by Section 6 shall be submitted to the judiciary committee of the senate and the criminal justice committee of the house of representatives by October 1, 2019.

SECTION 13. The commission shall have access to data compiled by the department of correction including use of the correction population simulation model. The commission shall have the authority to require whatever entity that has control of such model to apply it to a given fact, situation, or theoretical change in the sentencing law when requested to do so by the chair of the commission, the executive director, or the commission as a whole.

SECTION 14. Notwithstanding the provisions of Tennessee Code Annotated, Section 4-29-118, or any other law to the contrary, the sentencing commission created by Section 3 of this act shall be assigned a termination date of June 30, 2018, for purposes of the Tennessee Governmental Entity Review Law, compiled in title 4, chapter 29.

SECTION 15. For the purpose of appointing sentencing commission members as provided in Section 3 and for the purpose of the commission employing an executive director and other staff as provided in Section 10, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, it shall take effect on July 1, 2016, the public welfare requiring it.