

State of Tennessee
PUBLIC CHAPTER NO. 727

SENATE BILL NO. 2248

By Norris, Faulk, Yager, Kelsey

Substituted for: House Bill No. 2386

By McCormick, Haynes, Fitzhugh

AN ACT to amend Tennessee Code Annotated, Title 4; Title 38; Title 39; Title 40; Title 41 and Title 55, relative to the transfer from the board of probation and parole to the Department of Correction of certain functions relating to probation and parole services and the community correction grant program.

WHEREAS, currently the supervision of felony offenders released on probation and parole and the administration of the community corrections grant program are duties and responsibilities of the board of probation and parole, while the supervision of felony offenders incarcerated in the Department of Correction is a duty and responsibility of the Department of Correction; and

WHEREAS, the consolidation of these duties and responsibilities in a single agency will result in increased stability, increased efficiency and continuity of supervision delivery and rehabilitative efforts; and

WHEREAS, it is appropriate that these duties and responsibilities be performed under the authority of the Department of Correction; now, therefore,

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

SECTION 1. Tennessee Code Annotated, Section 4-3-104, is amended by adding the following language as a new, appropriately designated subsection:

() References to the board of probation and parole are deemed referenced to the board of parole.

SECTION 2. Tennessee Code Annotated, Section 4-3-1016, is amended by deleting subdivisions (9), (10) and (11) of subsection (d) and substituting instead the following:

(9) Department of Correction, community correction program grants, created or referenced in Title 40, Chapter 36, Part 3;

(10) Department of Correction, supervision and rehabilitation accumulated fees, created or referenced in Title 40, Chapter 28, Part 2;

(11) Department of Correction, GPS offender tracking fees, created or referenced in Title 40, Chapter 28, Part 2;

SECTION 3. Tennessee Code Annotated, Title 4, Chapter 6, Part 1, is amended by adding the following language as a new, appropriately designated subsection:

() The initial transfer of any career service employee pursuant to the transfer of probation and parole field services and the administration of the community corrections program from the board of parole to the Department of Correction shall not result in any impairment, interruption or diminution of employee rights, salary, benefits, leave accumulation or employment. The Commissioner of Human Resources is authorized to determine if there has been any impairment of rights, salary, benefits, leave accumulation or employment as a result of the initial transfer. Any career service employee may seek redress of any such determination through a request for declaratory order by the Commissioner of Human Resources pursuant to § 4-5-223.

SECTION 4. Tennessee Code Annotated, Section 38-6-116, is amended by deleting subsection (b)(1) in its entirety and renumbering the remaining sections accordingly.

SECTION 5. Tennessee Code Annotated, Section 39-13-524(d), is amended by deleting the subsection in its entirety and by substituting instead the following language:

(d)(1) A person on community supervision shall be under the jurisdiction, supervision and control of the Department of Correction in the same manner as a person under parole supervision. The department is authorized on an individual basis to establish such conditions of community supervision as are necessary to protect the public from the person's committing a new sex offense, as well as promoting the rehabilitation of the person.

(2) The department is authorized to impose and enforce a supervision and rehabilitation fee upon a person on community supervision similar to the fee imposed by § 40-28-201. To the extent possible, the department shall set the fee in an amount that will substantially defray the cost of the community supervision program. The department shall also establish a fee waiver procedure for hardship cases and indigency.

SECTION 6. Tennessee Code Annotated, Section 39-13-703(2), is amended by deleting the language "board of probation and parole" and by substituting instead the language "Department of Correction".

SECTION 7. Tennessee Code Annotated, Section 39-16-409, is amended by deleting the language "board" and "board of probation and parole" wherever it appears and substituting in its place the language "Department of Correction".

SECTION 8. Tennessee Code Annotated, Section 39-17-1315(a), is amended by deleting subdivision (1) in its entirety and by substituting instead the following:

(1) The following persons may carry handguns at all times pursuant to a written directive by the executive supervisor of the organization to which the person is or was attached or employed, regardless of the person's regular duty hours or assignments:

(A) Any law enforcement officer, police officer, bonded and sworn deputy sheriff, director, commissioner, county magistrate or retired law enforcement officer who is bonded and who, at the time of receiving the written directive, has successfully completed and, except for a law enforcement officer who has retired in good standing as certified by the chief law enforcement officer of the organization from which the officer retired, continues to successfully complete on an annual basis a firearm training program of at least eight (8) hours duration;

(B) Any director or full-time employee of the Tennessee Emergency Management Agency in the performance of the director's or employee's duty;

(C) Any duly authorized representative or full-time employee of the Department of Correction who has been specifically designated by the commissioner of the department to execute warrants issued pursuant to § 40-28-121 or § 40-35-311 or to perform such other duties as specifically designated by the commissioner; or

(D) Any other officer or person authorized to carry handguns by this, or any other law of this state.

A copy of the written directive shall be retained as a portion of the records of the particular law enforcement agency that shall issue the directive. Nothing in this subdivision (a)(1) shall prevent federal officers from carrying firearms as prescribed by federal law.

SECTION 9. Tennessee Code Annotated, Section 40-9-124, is amended by deleting the language "parole board" and by substituting instead the language "director of probation and parole".

SECTION 10. Tennessee Code Annotated, Section 40-11-116, is amended by deleting the language "board of probation and parole" and by substituting instead the language "Department of Correction".

SECTION 11. Tennessee Code Annotated, Section 40-15-104, is amended by deleting the language "board of probation and parole" wherever it appears and by substituting instead the language "Department of Correction".

SECTION 12. Tennessee Code Annotated, Section 40-22-108, is amended by deleting the language "board of probation and parole" and by substituting instead the language "Department of Correction".

SECTION 13. Tennessee Code Annotated, Section 40-28-102, is amended by deleting the section in its entirety and by substituting instead the following:

As used in this chapter, unless the context otherwise requires:

- (1) "Board" means the board of parole;
- (2) "Commissioner" means the Commissioner of Correction;
- (3) "Department" means the Department of Correction;
- (4) "Executive director" means the officer employed by the board as the chief administrative officer of the agency;
- (5) "Notification," as used in this part, may include telephone, facsimile and Internet communications.
- (6) "Parole" means the release of a prisoner to the community by the board prior to the expiration of the prisoner's term subject to conditions imposed by the board and to supervision by the department, or when a court or other authority has issued a warrant against the prisoner and the board, in its discretion, has released the prisoner to answer the warrant of the court or authority; and
- (7) "Probation and parole officer" means a probation and parole officer employed by the department.

SECTION 14. Tennessee Code Annotated, Section 40-28-104, is amended by deleting subsection (a) in its entirety and by substituting instead the following:

- (a)(1) The authority to select and recommend to the appropriate state officials the employment or transfer of all personnel required for the operation of the board, except, however, the initial transfer of any career service employee pursuant to the merger of probation and parole field services and community corrections pursuant to this chapter shall not result in any impairment, interruption or diminution of employee rights, salary, benefits, leave accumulation or employment. The Commissioner of Human Resources is authorized to determine if there has been any impairment of rights, salary, benefits, leave accumulation or employment as a result of the initial transfer. Any career service employee may seek redress of any such determination through a request for declaratory order by the Commissioner of Human Resources pursuant to § 4-5-223;
- (2) The authority to promulgate reasonable substantive and procedural rules in accordance with the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5;
- (3) The authority to develop and implement guidelines for granting or denying parole, which guidelines shall be reviewed and reevaluated by the board at least annually and copies of the guidelines shall be provided to the governor, the Commissioner of Correction and the appropriate standing committees of the general assembly;
- (4) The authority to prescribe all forms to be used by the board in the transaction of its business;
- (5) The authority to adopt an official seal by which its acts and proceedings shall be authenticated, and of which a court or other officials concerned with actions of the board shall take judicial notice. The certificate of the chair of the board, under seal and attested to by the executive director, shall be accepted in any judicial or administrative proceeding as adequate and sufficient proof of the acts and proceedings of the board so described therein;
- (6) The authority to employ other employees and to incur such other expenses, within the limits of appropriations, as may be necessary for the proper discharge of its duties;
- (7) The authority to issue subpoenas subject to the provisions of this chapter;
- (8) The duty to cooperate with other state agencies in developing and promoting effective parole programs;

(9) The duty to keep appropriate records of all its official actions and to make them accessible in accordance with law and the regulations of the board;

(10) The duty, upon the request of the governor, to consider and to make nonbinding recommendations concerning all requests for exonerations, pardons, reprieves or commutations. The board shall have discretion to make either favorable or unfavorable recommendations based upon its application of guidelines and criteria adopted by the governor;

(11) The duty to adopt written long-range goals and objectives. The goals and objectives shall be reaffirmed or changed, as appropriate, by the board at least once each year;

(12) The duty to adopt written policies and procedures to govern its internal operations, taking into consideration the policies and procedures as are reflected in the management standards of the *Manual of Standards for Adult Parole Authorities*, published by the Commission on Accreditation for Corrections and the American Correctional Association or other authorities that it may wish to consult, it being the legislative intent that the board have authority to freely adopt policies and procedures to meet its own particular needs. Prior to final board adoption of the policies and procedures and prior to change, a draft be submitted to the attorney general and reporter for review and comment; and

(13) The authority to employ staff attorneys who are licensed to practice law in the state and to employ others as the board may deem necessary.

SECTION 15. Tennessee Code Annotated, Section 40-28-106, is amended by deleting subsection (e) in its entirety and substituting instead the following:

(e)(1) In order to assure access to complete and adequate records on all inmates under consideration by the board, the board shall assist the Department of Correction and any other cooperating officials or agencies of the criminal justice system in identifying records needs of each agency in the criminal justice system and in the development of procedures to assure that the records are secured and maintained by the appropriate agencies, including official documentary statements of the circumstances surrounding the commission of a crime, prior criminal history, social history, community background assessments, psychological and health assessments, and other information useful in the evaluation and classification of inmates.

(2) The board shall develop a comprehensive parole summary report form for completion by institutional staff or others mutually agreed by the board and the commissioner who shall assure that the reports required are completed prior to parole hearings.

SECTION 16. Tennessee Code Annotated, Section 40-28-107, is amended by deleting subsection (e) in its entirety and substituting instead the following:

(e) The board shall provide notification to those officials listed in subsection (c) in the event of an inmate's release due to exoneration, commutation of sentence, or the granting of a pardon by the governor.

SECTION 17. Tennessee Code Annotated, Title 40, Chapter 28, is amended by deleting Section 40-28-108 in its entirety.

SECTION 18. Tennessee Code Annotated, Title 40, Chapter 28, is amended by deleting Section 40-28-109 in its entirety.

SECTION 19. Tennessee Code Annotated, Title 40, Chapter 28, is amended by deleting Section 40-28-110 in its entirety.

SECTION 20. Tennessee Code Annotated, Title 40, Chapter 28, is amended by deleting Section 40-28-111 in its entirety.

SECTION 21. Tennessee Code Annotated, Title 40, Chapter 28, is amended by deleting Section 40-28-112 in its entirety.

SECTION 22. Tennessee Code Annotated, Section 40-28-114, is amended by deleting the language "within the board of probation and parole" and substituting instead the language "within the Department of Correction".

SECTION 23. Tennessee Code Annotated, Section 40-28-115, is amended by deleting the section in its entirety and substituting instead the following:

(a) Every person sentenced to an indeterminate sentence and confined in a state prison, after having served a period of time equal to the minimum sentence imposed by the court for the crime of which the person was convicted, shall be subject to the jurisdiction of the board. The time of release shall be discretionary with the board, but no such person shall be released before serving the minimum sentence nor before serving one (1) year.

(b)(1) Every person sentenced to a determinate sentence and confined in a state prison, after having served a period of time equal to one half (1/2) of the sentence imposed by the court for the crime for which the person was convicted, but in no event less than one (1) year, shall likewise be subject to parole in the same manner provided for those sentenced to an indeterminate sentence.

(2) The parole eligibility for each person who commits a crime on or after July 1, 1982, shall be determined by the criteria listed in the Criminal Sentencing Reform Act of 1982 [repealed].

(c) The action of the board in releasing prisoners shall be deemed a judicial function and shall not be reviewable if done according to law.

(d) If a prisoner has been accorded a bona fide offer of employment, the board may release the prisoner on probationary parole under either of the following conditions:

(1) At any time not more than six (6) months before the prisoner's date of eligibility for parole as provided in this chapter if, after all credit for good conduct, that eligibility shall occur more than eighteen (18) months and less than five (5) years from the date of sentence; or

(2) At any time not more than one (1) year before the prisoner's date of eligibility for parole as provided in this chapter if, after all credit for good conduct, that eligibility shall occur more than five (5) years from the date of sentence.

(e) The prisoner shall at all times during probationary parole be under the jurisdiction of the board and the supervision of the department. The board may revoke the probationary parole for any reason satisfactory to it.

(f) Notwithstanding any other provision of this chapter relating to parole eligibility, and when acting pursuant to the Tennessee Contract Sentencing Act of 1979, compiled in Chapter 34 of this title, the board of parole is authorized to release a prisoner on parole on the date specified in a sentencing agreement entered into by the prisoner, the board and the Department of Correction. In granting parole, the board may impose any conditions and limitations that the board deems necessary.

(g)(1) The general assembly declares it to be public policy that no person shall be granted parole, notwithstanding any law, rule or regulation to the contrary, until the person has successfully completed a test requiring that individual to master certain basic and other skills. The test shall include as a minimum requirement scoring at an eighth-grade reading level. This requirement shall not apply to any person certified by the commissioner of correction or the commissioner's designee as being so intellectually disabled or mentally ill as to be incapable of learning at the required levels. Furthermore, this subsection (g) shall not apply to the following:

(A) Persons who are incarcerated in county jails or workhouses;

(B) Persons who are in the custody of the Department of Correction for less than one (1) year; or

(C) Persons who have high school diplomas or the equivalent.

(2) The commissioner or the commissioner's designee, the board of parole and the state board of education shall jointly formulate policies and procedures to implement this subsection (g).

(3) The provisions of this subsection (g) shall be inapplicable to any inmate or group of inmates if the commissioner determines that its effectuation will increase the system's inmate population and if the commissioner so certifies the determination to the governor.

(h)(1) The Department of Correction shall not certify an inmate for a parole grant hearing, other than an initial grant hearing, if, at the time the Department of Correction would otherwise have certified the inmate as eligible, the inmate is classified as close custody. This decertification shall continue for the duration of the classification, and for a period of one (1) year thereafter.

(2) The Department of Correction shall not certify an inmate for a parole grant hearing, other than an initial grant hearing, if, at the time the Department of Correction would otherwise have certified the inmate as eligible, the inmate is classified as maximum custody. This decertification shall continue for the duration of the classification, and for a period of two (2) years thereafter.

SECTION 24. Tennessee Code Annotated, Section 40-28-116, is amended by deleting subdivision (a)(1) in its entirety and substituting instead the following:

(a)(1) The board has the power to cause to be released on parole any person the department has declared eligible for parole consideration.

SECTION 25. Tennessee Code Annotated, Section 40-28-118, is amended by deleting the section in its entirety and substituting instead the following:

(a) Subject to other provisions of law, the board is charged with the duty of determining what prisoners serving a felony sentence of more than two (2) years or consecutive felony sentences equaling a term greater than two (2) years in state prisons, jails and county workhouses may be released on parole and when and under what conditions.

(b) When the director of probation and parole issues a warrant for the retaking of a parolee pursuant to § 40-28-607, the board is charged with determining whether violation of parole conditions exists in specific cases and of deciding the action to be taken in reference to the violation.

(c) It is also the duty of the members of the board to study the prisoners confined in the prisons, workhouses and jails when they are eligible for parole consideration so as to determine their ultimate fitness to be paroled.

SECTION 26. Tennessee Code Annotated, Section 40-28-119, is amended by deleting the section in its entirety and substituting instead the following:

(a) The board shall cause to be kept records which may include social, physical, mental, psychiatric and criminal information for every inmate considered for or released.

(b) The board may make rules, as it deems proper, as to the privacy of the record and of the records of its employment bureau, and their use by others than the board and its staff.

SECTION 27. Tennessee Code Annotated, Section 40-28-120, is amended by deleting the section in its entirety.

SECTION 28. Tennessee Code Annotated, Section 40-28-121, is amended by deleting the section in its entirety and substituting instead the following:

(a) Upon the issuance of a warrant under § 40-28-607, any officer authorized to serve criminal process, or any peace officer to whom a warrant is delivered, shall execute the warrant by taking the prisoner and returning the prisoner to a prison, workhouse or jail to be held to await the action of the board.

(b) Upon the arrest of a parolee pursuant to subsection (a), unless waived in writing, a preliminary hearing shall be conducted to determine whether probable cause exists to believe that the parolee has violated the conditions of parole in an important respect. Indictment by a grand jury or a finding of probable cause or a waiver of a probable cause hearing or a conviction in any federal or state court of competent jurisdiction for any felony or misdemeanor committed after parole shall constitute "probable cause" and no further proof shall be necessary at the preliminary hearing. If a parole revocation hearing is held within fourteen (14) days of the service of the warrant, a preliminary hearing will not be necessary.

(c) Written notice of the violations alleged and the time, place and purpose of the hearing shall be given the parolee a reasonable time before the hearing.

(d) The preliminary hearing shall be conducted by a hearing officer, appointed by the chair of the board.

SECTION 29. Tennessee Code Annotated, Section 40-28-122, is amended by deleting subsection (a) in its entirety.

SECTION 30. Tennessee Code Annotated, Section 40-28-122, is further amended by deleting subsection (b) in its entirety and by substituting instead the following:

(b) When the director of probation and parole issues a warrant for the retaking of a parolee pursuant to § 40-28-607, the board is charged with determining whether violation of parole conditions exists in specific cases and of deciding the action to be taken in reference to the violation. After being notified that a warrant has been executed and a probable cause hearing has been held or waived, the board shall, as soon as practicable, hold a parole revocation hearing and consider the case of the parole violator, who shall be given an opportunity to appear personally before a board member or hearing officer and explain the charges made. A probable cause hearing shall not be necessary if a parole revocation hearing is held within fourteen (14) days of the service of the warrant.

SECTION 31. Tennessee Code Annotated, Section 40-28-123, is amended by deleting subsection (b) in its entirety and by substituting instead the following:

(b)(1) Any prisoner who is convicted in this state of any felony except escape, and when the felony is committed while the prisoner is assigned to any work release, educational release, restitution release or other program whereby the prisoner enjoys the privilege of supervised release into the community, including, but not limited to, participation in any programs authorized by § 41-21-208 or § 41-21-227, the prisoner shall serve the remainder of the term without benefit of parole eligibility or further participation in any of these programs. The department shall have the authority to penalize or punish prisoners who escape from any of the above programs in accordance with department policy.

(2) As a prerequisite to any inmate's placement in a program described in subdivision (b)(1), the department shall read and provide the inmate with a copy of subdivision (b)(1). The inmate shall then give written acknowledgement of receipt of the copy and shall signify comprehension of the provisions contained in it. A permanent file, hardcopy or electronic, of these acknowledgements shall be maintained by the department.

SECTION 32. Tennessee Code Annotated, Section 40-28-124, is amended by deleting the section in its entirety.

SECTION 33. Tennessee Code Annotated, Section 40-28-125, is amended by deleting the section in its entirety.

SECTION 34. Tennessee Code Annotated, Section 40-28-126, is amended by deleting the language "director of probation and parole" in section (b) and substituting instead the language "board".

SECTION 35. Tennessee Code Annotated, Section 40-28-130, is amended by deleting the section in its entirety.

SECTION 36. Tennessee Code Annotated, Section 40-28-201, is amended by deleting the section in its entirety and substituting instead the following:

(a)(1) Except in those cases waived by the director as hardship cases, any person who is placed on parole or any person who is granted suspension of sentence and probation by a court of competent jurisdiction, and who is under the supervision of the department, and based on the person's ability to pay, shall be required to contribute fifteen dollars (\$15.00) per month toward the cost of the person's supervision and rehabilitation. The contribution shall be deposited in the Department of Correction supervision and rehabilitation fund established pursuant to § 40-28-203. The provisions of this subdivision (a)(1) shall also apply to any probationer or parolee transferred to the State of Tennessee from another state under the supervision of the interstate compact for the supervision of adult offenders, compiled as Part 4 of this chapter. In addition, any offender who is under the supervision of the department who requests to transfer residence to another state under the interstate compact for the supervision of adult offenders, compiled in Part 4 of this chapter, shall pay to the department an application fee for the transfer.

(2) In addition to the other charges and fees imposed by this section, any person who is under the supervision of the department and is enrolled in an electronic monitoring and tracking supervision program shall be required to contribute funds as

the department deems necessary and reasonable to cover the applicable costs of the program. The provisions of this subdivision (a)(2) shall also apply to any probationer or parolee for violation of a serious offense or sexually violent offense, as defined in § 40-39-202, transferred to the State of Tennessee from another state under the interstate compact for supervision of adult offenders, compiled as Part 4 of this chapter.

(3) The department shall make an investigation of the financial and other circumstances of the following persons:

(A) Any person who is placed on parole;

(B) Any person who is granted suspension of sentence and probation by a court of competent jurisdiction; or

(C) Any person who is participating in any program in which the person is permitted in an environment away from the direct, constant, and immediate supervision of the department, whether community-based or otherwise, and who is under the supervision of the department.

Based on the person's ability to pay, the department shall require the person to pay thirty dollars (\$30.00) for each month or portion of a month the person remains under the supervision of the department, to the criminal injuries compensation fund established in § 40-24-107, beginning thirty (30) days from the date of suspension of sentence, date of parole, or in the case of an employed releasee, the date of employment. The payment required under this subdivision (a)(3) shall not exceed ten percent (10%) of the offender's net income. In cases of hardship as set forth in § 40-28-202, the department may modify the payment required by this item to an appropriate amount given the nature and magnitude of the hardship.

(4) Except in those cases waived by the Department of Correction as hardship cases, any inmate who is participating in any Department of Correction program whereby the person is permitted in an environment away from the direct, constant, and immediate supervision of the Department of Correction, whether community-based or otherwise (the inmate shall be referred to as "employed releasee" in this part), and who is under the supervision of the department, and based on the inmate's ability to pay, shall be required to contribute five dollars (\$5.00) per month toward the cost of the inmate's supervision and rehabilitation. The Department of Correction shall deposit the contribution as departmental revenue of the institution.

(b)(1) The sums shall be deducted by the parolee or probationer from the person's monthly net earned income and shall be delivered to the department on or before the fifth day of each month, or as provided in §§ 40-28-203 and 40-28-204 before the tenth day of each month. In the case of an employed releasee, the contributions shall be made through existing revenue deduction procedures.

(2) By prior agreement between an employer and employee, an employer may deduct the amount necessary to satisfy the contributions required pursuant to this section, from the monthly earned income of the parolee, probationer or other employed releasee, and remit the amount to the department by the fifth day of each month.

(3) The responsibility of assuring the contributions shall remain that of the parolee, probationer or employed releasee.

(c) In the event of more than two (2) months' arrearage or delinquency in making either or both of the contributions, the arrearage or delinquency shall constitute sufficient ground for revocation of the parole, probation or other release program of the person in arrears.

(d) Separate records shall be maintained of those funds contributed toward the cost of a person's supervision and rehabilitation by the department and those funds contributed to the criminal injuries compensation fund.

SECTION 37. Tennessee Code Annotated, Section 40-28-202, is amended by deleting the word "board" in subsection 6 and substituting in its place the word "department".

SECTION 38. Tennessee Code Annotated, Section 40-28-203, is amended by deleting the section in its entirety and substituting instead the following:

(a) There is established a Department of Correction supervision and rehabilitation fund.

(b) All funds collected for defraying of the costs of supervision and rehabilitation pursuant to § 40-28-201(a)(1) and (a)(2) shall be paid over to the department before the tenth day of each month for deposit in the fund established by this section.

(c) The purpose of the fund is to promote the safety of the public by ensuring better supervision of individuals released into the community. All the funds shall be withdrawn or expended only for the purpose of employing additional probation and parole personnel, mandatory random drug screening for all persons covered by § 40-28-201(a)(1) and (a)(2), continuing education and training of existing personnel, establishing additional programs whereby an offender may become gainfully employed for the purpose of learning a trade, supporting the person's family and making restitution to the victim, and establishing and providing office and operational supplies for programs to facilitate the inmate's safe and productive return to the general public upon the expiration of the person's parole or probation.

(d)(1) Monies retained in the supervision and rehabilitation fund shall be invested by the state treasurer under appropriate rules and regulations, to the end that adequate funds will be available for the purposes of this section.

(2) Revenues that are produced for the supervision and rehabilitation fund shall not revert to the state general fund and shall not be subject to impoundment or allotment reserve, but shall be managed on a revolving no-quarter basis.

SECTION 39. Tennessee Code Annotated, Section 40-28-204, is amended by deleting the language "board of probation and parole" and by substituting instead the language "department".

SECTION 40. Tennessee Code Annotated, Section 40-28-205, is amended by deleting the section in its entirety and substituting instead the following:

(a)(1) Notwithstanding any law to the contrary, upon expiration of the term of probation or parole supervision, if any portion of a fee prescribed by § 39-13-705, § 40-28-201, § 40-35-303 or § 40-39-305 remains unpaid and has not been waived by the department or sentencing judge, then the department or its agent may convert the unpaid balance into a civil judgment in accordance with the procedure set forth in this section.

(2) Within the twelve-month period following the expiration of the term of probation or parole supervision, the department or its agent may file a certified copy of the parole certificate, probation certificate or other court document that imposes a statutory duty to pay a supervision fee, along with an affidavit certifying the amount of fees that remain unpaid with an appropriate civil court having jurisdiction over the total amount of the unpaid balance.

(3) When the department or its agent files a certified copy of the parole certificate, probation certificate or other court document imposing a statutory supervision fee, and the affidavit certifying the unpaid balance with the civil court, the department or its agent shall have the defendant personally served in accordance with the Tennessee Rules of Civil Procedure. The service shall give notice to the defendant of the department's intent to convert the unpaid balance of supervision fees to a civil judgment, include a copy of the documents filed with the court evidencing the duty to pay the supervision fees, and include a statement as to the amount of unpaid fees the department alleges the defendant still owes.

(4) Upon being served, the defendant shall be permitted to file an answer in accordance with the Tennessee Rules of Civil Procedure.

(b)(1) The department may retain an agent to collect, institute proceedings to collect or establish an in-house collection procedure to collect unpaid supervision fees as provided for in this section. If an agent is used, the department shall utilize state competitive bidding procedures to select and retain the agent.

(2) The agent may be paid an amount not exceeding forty percent (40%) of the sums collected as consideration for collecting the unpaid fees.

(3) The written contract between the agent and the department shall include a provision specifying whether the agent may institute an action to collect the unpaid supervision fees in a judicial proceeding.

SECTION 41. Tennessee Code Annotated, Section 40-28-402, is amended by deleting the language "board of probation and parole" in subsection (b) and by substituting instead the language "Department of Correction".

SECTION 42. Tennessee Code Annotated, Title 40, Chapter 28, Part 4, is amended by adding the following as a new, appropriately numbered section:

§ 40-28-403. Interstate compact for adult supervision registry

The Department of Correction shall maintain a database consisting of a registry and associated information of those persons who have been placed on probation or parole in another state but are residing in Tennessee pursuant to the compact for out-of-state supervision, compiled in this part. The registry shall include, at a minimum, the name of the offender and, for each probationer or parolee approved for residence in this state under the interstate compact after May 30, 1997, the offender's photograph. The database shall be placed and maintained on the State of Tennessee's Internet Web site.

SECTION 43. Tennessee Code Annotated, Title 40, Chapter 28, is amended by adding the following as a new, appropriately designated part:

40-28-601. Supervision of Parolees

(a) The department is charged with the duty of supervising all prisoners released on parole from the prisons of the state, workhouses, jails or those accepted through the interstate compact, and of making investigation as may be necessary in connection therewith.

(b) A probation and parole officer may, with the consent of the director, suspend direct supervision of a parolee after a successful two-year period of supervision. The parolee shall continue on parole and be subject to all rules and conditions of parole. A parolee who violates the rules and conditions may be subject to reinstatement of direct supervision or revocation of parole.

40-28-602. Director of probation and parole – Qualifications – Duties

(a) The commissioner shall appoint a director of probation and parole who shall devote full-time and capacities to the duties of the office. The director shall have at least five (5) years of related administrative experience or a Bachelor's or advanced degree in any of the following fields: penology, corrections work, law enforcement, law, vocational education, public administration, rehabilitation or social work, medicine or the behavioral sciences. Under the supervision of the commissioner or designee, the director of probation and parole shall:

(1) Formulate methods of investigation, evaluation and supervision of persons under the supervision of the department;

(2) Develop and implement various techniques relating to the casework of probation and parole officers, including, but not limited to, interviewing, organization of records, analysis of information, development of plans for supervision and the coordination of efforts by individuals and other governmental agencies involving the treatment and rehabilitation of persons released on parole;

(3) Assist the commissioner in promulgating rules and regulations for the guidance of the probation and parole officers in the conduct of their work;

(4) Supervise the work of the probation and parole officers;

(5) Cooperate fully with state courts of criminal jurisdiction in all matters relating to persons who have been released on parole; and

(6) Establish conditions of supervision for and supervise sex offenders sentenced to community supervision for life pursuant to § 39-13-524.

(b) Nothing in this part shall be construed to diminish the authority of the courts to impose conditions of supervision on probationers under their jurisdiction pursuant to § 40-35-303(d).

(c) The director of probation and parole shall have the authority, upon request of the governor, to issue warrants authorizing the arrest and return to their former

places of incarceration of persons who are reasonably believed to have violated the conditions of their grants of executive clemency.

§ 40-28-603. Parole and probation officers; appointment

The commissioner shall appoint probation and parole officers who shall be supervised by the director of probation and parole. The probation and parole officers shall be placed within districts or other locations as may be designated by the commissioner, and shall devote their full time and capacities to the duties of their office.

§ 40-28-604. Probation and parole officers; qualifications

No person shall be eligible for the position of probation and parole officer who has not received a Bachelor's degree from an accredited college or university or had at least four (4) years of qualifying full-time professional experience.

§ 40-28-605. Parole and probation officers; powers and duties

The duties of probation and parole officers shall be to supervise, investigate and check on the conduct, behavior and progress of parolees and persons placed on probation by the courts or pursuant to § 40-25-501(a)(3), and assigned to them for supervision and shall make to the director or court, as appropriate, a report of the investigations, and shall perform other duties and functions as the director of probation and parole may direct.

§ 40-28-606. Officers and employees; compensation and salaries

The director of probation and parole and the probation and parole officers shall have their compensation fixed and shall be paid as other state officials and state employees are paid.

§ 40-28-607. Report of violation of parole – Declaration of delinquency

(a) If the probation and parole officer having charge of a paroled prisoner has reasonable cause to believe that the prisoner has violated the conditions of parole in an important respect, the officer shall report the facts to the director of probation and parole. The director or the director's designee shall review the reports and may issue a warrant for the retaking of the prisoner if the director or the director's designee agrees that parole may have been violated in an important respect. The governor shall have the power to issue requisition for the person if the person has departed from the state.

(b) Whenever there is reasonable cause to believe that a parolee has violated parole and a parole violation warrant has been issued, the director of probation and parole may declare the parolee to be delinquent and the parolee will stop earning credit for service of the parolee's sentence from the date the warrant was issued until the removal of delinquency by the board.

§ 40-28-608. Relief from further reports – Permission to leave state or county

The director may relieve a prisoner on parole from making further reports and may permit the prisoner to leave the state or county, if satisfied that this is for the best interests of society.

§ 40-28-609. Final discharge of parolee

(a) Whenever the director is satisfied that a parolee has kept the conditions of parole in a satisfactory manner, the director shall issue to the parolee a certificate of final discharge. This final discharge from parole will be granted only after a parolee has completed the maximum sentence imposed, less diminution allowed for good and honor time and incentive time and sentence credits earned and retained. If a parolee is not eligible for a certificate of discharge because of a pending violation, parole will expire at the end of the maximum sentence less diminution for good and honor time, incentive time and sentence credits earned and retained, plus delinquent time.

(b) This is in no way to be construed as permitting a discharge from parole for parolees with a life sentence.

§ 40-28-610. Special alternative incarceration

(a) In addition to any other terms or conditions of probation, the trial judge may provide that probationers sentenced to a period of time of not less than one (1) year nor more than six (6) years on probation as a condition of probation must satisfactorily complete a program of incarceration in a special alternative incarceration unit of the department for a period of ninety (90) days from the time of initial incarceration in the unit. Notwithstanding any other provision of the law to the contrary, these probationers shall not be entitled to have their time in the special alternative incarceration unit reduced by sentence credits of any sort.

(b) Before a court can place this condition upon the sentence, the director of probation and parole must certify to the sentencing court that the probationer is qualified for the treatment in that the individual is not physically or mentally handicapped in a way that would prevent the individual from strenuous physical activity, that the individual has no obvious contagious diseases, that the individual is not less than seventeen (17) years of age nor more than twenty-five (25) years of age at the time of sentencing, and that the department has approved the placement of the individual in the special alternative incarceration unit.

(c) In every case where an individual is sentenced under the terms of this section, the clerk of the sentencing court shall, within five (5) working days, mail to the department a certified copy of the sentence and indictment, a personal history statement, and an affidavit of the custodian provided by the sheriff of the county.

(d) The department will arrange with the sheriff's office in the county of incarceration to have the individual delivered to the designated facility within a specific date not less than fifteen (15) days after receipt by the department of the documents provided by the clerk of the court under this section.

(e) At any time during the individual's incarceration in the unit, but at least five (5) days prior to the individual's expected date of release, the department will certify to the trial court whether the individual has satisfactorily completed this condition of probation.

(f) Upon the receipt of a satisfactory report of performance in the program from the department, the trial court shall release the individual from confinement in the special alternative incarceration unit. However, the receipt of an unsatisfactory report will be grounds for revocation of the probated sentence as would any other violation of a condition or term of probation.

(g) The provisions of this section shall be subject to funding availability and availability of a suitable facility within the department.

(h) Nothing in this section shall be construed to limit the current authority of a trial judge to sentence a defendant to an initial period of incarceration at a jail or workhouse as a condition of probation in accordance with the provisions of the Criminal Sentencing Reform Act of 1982 [repealed] or the Criminal Sentencing Reform Act of 1989, when applicable, compiled in Chapter 35 of this title, or in conjunction with a community-based program in accordance with the provisions of the Tennessee Community Corrections Act of 1985, compiled in Chapter 36 of this title.

SECTION 44. Tennessee Code Annotated, Title 40, Chapter 35, is amended by deleting the language "board of probation and parole" wherever it appears and by substituting instead the language "Department of Correction".

SECTION 45. Tennessee Code Annotated, Section 40-35-501, is amended by deleting the language of subsection (p) in its entirety and by substituting instead the following language:

(p) Notwithstanding any other provision of this chapter relating to release eligibility and when acting pursuant to the Tennessee Contract Sentencing Act of 1979, compiled in Chapter 34 of this title, the board of parole is authorized to grant a prisoner parole as specified in a sentence agreement entered into by the prisoner and the board. In granting the parole, the board may impose any conditions and limitations that the board deems necessary.

SECTION 46. Tennessee Code Annotated, Title 40, Chapter 36, is amended by deleting the language "board of probation and parole" wherever it appears and by substituting instead the language "Department of Correction".

SECTION 47. Tennessee Code Annotated, Section 40-39-202, is amended by deleting the language "the board" in subsection (3) and by substituting instead the language "the Department of Correction".

SECTION 48. Tennessee Code Annotated, Section 40-39-203, is amended by deleting the language "the board" in subsection (a)(5) and by substituting instead the language "the Department of Correction".

SECTION 49. Tennessee Code Annotated, Section 40-39-208, is amended by deleting the language "board of probation and parole" in subsection (g) and by substituting instead the language "Department of Correction".

SECTION 50. Tennessee Code Annotated, Section 40-39-301, is amended by deleting the language "board of probation and parole" wherever it appears and by substituting instead the language "Department of Correction".

SECTION 51. Tennessee Code Annotated, Section 40-39-302, is amended by changing all references to the board of probation and parole or board to the Department of Correction.

SECTION 52. Tennessee Code Annotated, Section 40-39-303, is amended by deleting the section in its entirety and by substituting instead the following:

(a) Notwithstanding any other provision of law, the board of parole may require, as a mandatory condition of release for any person convicted of a sexual offense as defined in § 40-39-301, that any person so released be enrolled in a satellite-based monitoring program for the full extent of the person's term of parole, consistent with the requirements of § 40-39-302.

(b) The board of parole may require, as a mandatory condition of release for any person convicted of a serious offense as defined in this chapter or for other offenders as the board deems appropriate, that the person be enrolled in a satellite-based monitoring program for the full extent of the person's term of parole, consistent with the requirements of § 40-39-302.

(c) Offender participation in a location tracking and crime correlation based monitoring and supervision program under this section shall be at the discretion of the department or as mandated by the board of parole and shall conform to the participant payment requirements stated in § 40-39-305 and be based upon the person's ability to pay.

SECTION 53. Tennessee Code Annotated, Section 40-39-305, is amended by deleting the section in its entirety and by substituting instead the following:

(a) The Department of Correction is authorized to assess a daily or monthly fee, as the department deems reasonable and necessary to effectuate the purposes of this program, from serious offenders and violent sexual offenders who are required by the board or the department to participate in the sexual offender monitoring program described in § 40-39-302. This fee is intended to offset only the costs associated with the time-correlated tracking of the geographic location of subjects using the location tracking crime correlation system. Fees assessed by the department pursuant to this program may be collected in accordance with § 40-39-302(b)(3).

(b) The department may waive all or any portion of the fees required by this section if it determines that an offender is indigent or financially unable to pay all or any portion of the fee. The department shall waive only that portion of the surcharge which the offender is financially unable to pay.

SECTION 54. Tennessee Code Annotated, Section 41-1-412, is amended by deleting the section in its entirety and by substituting instead the following language:

(a) The trial courts and the Department of Correction shall coordinate efforts to prepare offenders for reentry into society. To that end, it is the intent of the general assembly that validated risks/needs assessment instruments shall be used to develop offender reentry plans.

(b) In preparing presentence reports in accordance with § 40-35-207, the Department of Correction shall include information identifying the defendant's risks and needs as determined through the use of a validated assessment instrument, along with recommended treatment programs to address the risks and needs and enhance the defendant's opportunity for successful reentry into the community.

(c) The Department of Correction shall develop an individual treatment/supervision plan for each offender in its custody or under its supervision to enhance the offender's opportunity for successful reentry into the community. The plan shall be developed using a validated instrument to evaluate the individual risks and needs of the offender.

SECTION 55. Tennessee Code Annotated, Section 41-1-413, is amended by deleting the language "board of probation and parole" and by substituting instead "Department of Correction".

SECTION 56. Tennessee Code Annotated, Section 41-9-101, is amended by deleting the language "board of probation and parole" wherever it appears and by substituting instead "Department of Correction".

SECTION 57. Tennessee Code Annotated, Section 55-10-403, is amended by deleting the language "board of probation and parole" and by substituting instead the language "Department of Correction".

SECTION 58. Tennessee Code Annotated, Section 40-35-503, is amended by deleting the language "board of paroles" wherever it appears and by substituting instead the language "board of parole".

SECTION 59. Tennessee Code Annotated, Section 40-35-504, is amended by deleting the section in its entirety and by substituting instead the following:

40-35-504.

(a) When the board of parole determines that an eligible inmate should be granted parole, the inmate may be placed on supervised parole under the prescribed conditions and in accordance with § 40-28-118. If it is determined that an eligible inmate should not be granted parole, the board shall thereupon inform the inmate, in writing, of the date the inmate will be reconsidered for parole.

(b) A defendant convicted of a felony who has been admitted to parole shall be supervised by the Department of Correction and shall make periodic reports to an assigned parole officer for not less than one (1) year. Thereafter, the defendant may be relieved from making any further periodic reports if the parole officer, with the consent of the director of probation and parole, determines that:

(1) The defendant has abided by the terms of parole in a satisfactory manner;

(2) There is a reasonable likelihood that the defendant will remain at liberty without violating the law; and

(3) Relief from further periodic reporting is not incompatible with the welfare of society.

(c) A defendant relieved from reporting shall still be considered to be within the jurisdiction of the board and the Department of Correction or the local jail or workhouse authorities and shall be subject to termination of parole status for the remainder of the sentence originally imposed. The director of probation and parole may reinstitute required periodic reporting at any time.

(d) A defendant who violates the terms of parole is subject to the terms of §§ 40-28-120 – 40-28-123, which shall govern the termination of parole.

(e) If a defendant who has been placed on parole is convicted of a felony committed while on parole, the board, in its discretion, may revoke the defendant's parole and require the defendant to serve the remainder of the sentence originally imposed, or a portion of the original sentence as the board may determine, before the defendant begins serving the sentence for the crime committed while on parole.

(f) Upon revocation of supervised or unsupervised parole by the board under subsection (d) or (e), the time a defendant spent on parole shall not be considered as service of the sentence unless the board determines to grant all or part of the time to the defendant.

SECTION 60. Tennessee Code Annotated, Section 40-39-202, is amended by deleting subdivision (1) in its entirety and by renumbering the remaining subdivisions accordingly.

SECTION 61. Tennessee Code Annotated, Section 40-39-204(a), is amended by deleting the language "private contractors with TDOC and the board" and by substituting instead the language "and private contractors with TDOC".

SECTION 62. Tennessee Code Annotated, Section 40-39-205(c)(1)(A), is amended by deleting the language "the board" and by substituting instead the language "the Department of Correction".

SECTION 63. This act shall take effect July 1, 2012, the public welfare requiring it. Implementation of the act shall be fully accomplished on or before January 1, 2013.

SENATE BILL NO. 2248

PASSED: March 19, 2012

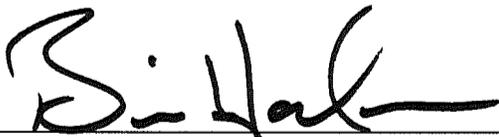


RON RAMSEY
SPEAKER OF THE SENATE



BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 11th day of April 2012



BILL HASLAM, GOVERNOR