

Appendix E: The Public Safety Act of 2016 (Public Chapter No. 906)

DRAFT



State of Tennessee

PUBLIC CHAPTER NO. 906

HOUSE BILL NO. 2576

By Representatives McCormick, Kevin Brooks, Lamberth, Todd, Hardaway, Akbari,
Camper, Daniel

Substituted for: Senate Bill No. 2567

By Senators Norris, Kelsey, Overbey, Jackson, Massey, Stevens

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

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

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

SECTION 2. Tennessee Code Annotated, Section 36-3-602, is amended by adding the following language as a new subsection (c) and renumbering the remaining subsection accordingly:

(c)

(1) A temporary order of protection shall be issued against a respondent pursuant to § 36-3-605 if, at the respondent's initial appearance following an arrest for a crime involving domestic abuse, the court finds there is probable cause to believe the respondent either:

(A) Caused serious bodily injury, as defined in § 39-11-106, to the alleged domestic abuse victim; or

(B) Used or displayed a deadly weapon, as defined in § 39-11-106.

(2) The alleged domestic abuse victim does not need to be present at the time the temporary order of protection is issued.

(3) A hearing on whether the temporary order of protection should be dissolved, extended, or modified shall be held within fifteen (15) days of service of the temporary order of protection upon the respondent. The domestic abuse victim shall have the right to notice of the hearing and the right to be present at the hearing. The procedures set forth in § 36-3-605 shall apply.

(4) The temporary order of protection may include any relief available under an ex parte order of protection issued pursuant to § 36-3-605.

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

(1) For good cause shown, the court may issue an ex parte order of protection pursuant to § 36-3-605 upon a sworn petition filed by a law enforcement officer responding to an incident of domestic abuse who asserts in the petition reasonable grounds to believe that a person is in immediate and present danger of abuse, as defined in § 36-3-601, and that the person has consented to the filing in writing; provided, that the person on whose behalf the law enforcement officer seeks the ex parte order of protection shall be considered the petitioner for purposes of this part.

(2) The law enforcement officer may seek on behalf of the person the ex parte order regardless of the time of day and whether or not an arrest has been made.

(3) If an ex parte order is issued pursuant to this section outside of the issuing court's normal operating hours:

(A) The law enforcement officer, judge, or judicial official shall cause the petition and order to be filed with the court as soon as practicable after issuance, but no later than two (2) business days after issuance; and

(B) The law enforcement officer shall use reasonable efforts to notify the person on whose behalf the petition was filed and provide the person with a copy of the ex parte order as soon as practicable after issuance.

(4) The court shall cause a copy of the petition, a notice of the date set for the hearing, and a copy of the ex parte order of protection to be served upon the respondent in accordance with § 36-3-605(c). A hearing on whether or not the ex parte order of protection should be dissolved, extended, or modified shall be held within fifteen (15) days of service of the order on the respondent. The person who consented to the filing shall be given notice of the hearing and the right to be present at the hearing. The procedures set forth in § 36-3-605 shall apply.

(5) Law enforcement officers shall not be subject to civil liability under this section for failure to file a petition or for any statement made or act performed in filing the petition, if done in good faith.

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

(3) A third or subsequent conviction for domestic assault committed in a manner prohibited by § 39-13-101(a)(1) is punishable by a fine of not less than one thousand one hundred dollars (\$1,100) nor more than five thousand dollars (\$5,000), and by confinement in the county jail or workhouse for not less than ninety (90) consecutive days, nor more than eleven (11) months and twenty-nine (29) days; provided, however, that if the domestic assault victim's relationship with the defendant falls within the categories defined in subdivision (a)(1) or (a)(3), or the victim is the minor child of any person in such categories, and the defendant has at least two (2) prior convictions for domestic assault committed in a manner prohibited by § 39-13-101(a)(1) prior to or at the time of committing the offense, the offense is a Class E felony, with a mandatory confinement of not less than ninety (90) consecutive days in the county jail or workhouse.

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

(a) Theft of property or services is:

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

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

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

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

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

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

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

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

(9) Information to assist the court in deciding whether to sentence an eligible defendant to an available and appropriate community-based alternative to incarceration as provided in chapter 36 of this title and in imposing the terms and conditions for any such sentence;

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

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

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

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

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

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

(1) The evidence, if any, received at the trial and the sentencing hearing;

(2) The presentence report;

(3) The principles of sentencing and arguments as to sentencing alternatives;

(4) The nature and characteristics of the criminal conduct involved;

(5) Evidence and information offered by the parties on the mitigating and enhancement factors set out in §§ 40-35-113 and 40-35-114;

(6) Any statistical information provided by the administrative office of the courts as to sentencing practices for similar offenses in Tennessee;

(7) Any statement the defendant wishes to make on the defendant's own behalf about sentencing; and

(8) The result of the validated risk and needs assessment conducted by the department and contained in the presentence report.

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

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

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

(f) The court may consider the results of an offender's validated risk and needs assessment in determining the appropriate disposition of the probation violation charge and may request an updated validated risk and needs assessment be performed.

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

(t)

(1) For the offenses listed in subdivision (t)(2) committed on or after January 1, 2017, there shall be no release eligibility until the person has served eighty-five percent (85%) of the sentence imposed by the court, less sentence credits earned and retained. However, no sentence reduction credits authorized by § 41-21-236, or any other law, shall operate to reduce below seventy percent (70%) the percentage of sentence imposed by the court such person must serve before becoming release eligible.

(2) The offenses to which this subsection (t) is applicable are:

(A) The manufacture, delivery, or sale of a controlled substance, pursuant to § 39-17-417, where the instant offense is classified as a Class A, B, or C felony and the person has two (2) or more prior convictions for the manufacture, delivery, or sale of a controlled substance classified as a Class A, B, or C felony, pursuant to § 39-17-417, prior to or at the time of committing the instant offense; and

(B) Aggravated burglary, pursuant to § 39-14-403, or especially aggravated burglary, pursuant to § 39-14-404, if the person has two (2) or more prior convictions for either aggravated burglary, pursuant to § 39-14-403, especially aggravated burglary, pursuant to § 39-14-404, or a combination of the two (2) offenses prior to or at the time of committing the instant offense.

(3) For purposes of this subsection (t):

(A)

(i) "Prior conviction" means, unless the context otherwise requires, that the person serves and is released or discharged from, or is serving, a separate period of incarceration or supervision for the commission of the applicable offense listed in subdivision (t)(2)(A) or (t)(2)(B);

(ii) "Prior conviction" includes convictions under the laws of any other state, government, or country that, if committed in this state, would constitute the applicable offense listed in subdivision (t)(2)(A) or (t)(2)(B). If a relevant offense in a jurisdiction other than this state is not identified as the applicable offense listed in subdivision (t)(2)(A) or (t)(2)(B) in this state, it shall be considered a prior conviction if the elements of the felony are the same as the elements in this state; and

(B) "Separate period of incarceration or supervision" includes a sentence to any of the sentence alternatives set out in § 40-35-104(c)(3)-(9). The applicable offense listed in subdivision (t)(2)(A) or (t)(2)(B) shall

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

(i) On probation, parole, community correction supervision, or supervised release for the applicable offense listed in subdivision (t)(2)(A) or (t)(2)(B);

(ii) Incarcerated for the applicable offense listed in subdivision (t)(2)(A) or (t)(2)(B);

(iii) Assigned to a program where the person enjoys the privilege of supervised release into the community, including, but not limited to, work release, education release, restitution release, or medical furlough for the applicable offense listed in subdivision (t)(2)(A) or (t)(2)(B); or

(iv) On escape status from any correctional institution when incarcerated for the applicable offense listed in subdivision (t)(2)(A) or (t)(2)(B).

(4) For purposes of this subsection (t), a prior conviction shall not be considered if ten (10) or more years have elapsed between the date of the instant conviction and the date of any immediately preceding conviction for the relevant offense. If, however, the date of a prior conviction is within ten (10) years of the date of the instant conviction, and the instant conviction is for an offense that occurs on or after January 1, 2017, then every conviction for such offense occurring within ten (10) years of the date of the immediately preceding conviction shall be considered in determining the number of prior offenses. However, in no event shall a conviction occurring more than twenty (20) years from the date of the instant conviction be considered a prior offense for the purposes of this subsection (t).

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

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

(b) The department of correction and community corrections agencies shall perform a validated risk and needs assessment on each felony offender under its supervision or custody upon receipt of the person and at least annually throughout the period of supervision or custody.

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

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

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

40-28-701. Definitions.

As used in this part:

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

(2)

(A) "Community supervision" means:

(i) The placement of a defendant on probation by a court for a specified period during which the sentence is suspended in whole or in part; or

(ii) The placement by the board of parole of an individual on parole after release from prison or jail, with conditions imposed by the board for a specified period; and

(B) "Community supervision" does not mean community supervision for life imposed pursuant to § 39-13-524;

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

(4) "Graduated sanction" means any of a wide range of non-prison offender accountability measures and programs, including, but not limited to, electronic supervision tools; drug and alcohol testing or monitoring; day or evening reporting centers; rehabilitative interventions such as substance abuse or mental health treatment; reporting requirements to probation and parole officers; community service or work crews; and residential treatment facilities;

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

(6) "Probation and parole officer" means a person appointed or employed by the department to supervise individuals placed on community supervision; and

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

40-28-702. Policy on Community Supervision.

Supervised individuals shall be subject to:

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

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

40-28-703. System of Graduated Sanctions.

(a) The department shall adopt a single system of graduated sanctions for violations of the conditions of community supervision. The system shall set forth a menu of presumptive sanctions for the most common types of supervision violations, including, but not limited to: failure to report; failure to pay fines and fees; failure to participate in a required program or service; failure to complete community service; and failure to refrain from the use of alcohol or controlled substances. The system of sanctions shall take into account factors such as the severity of the current violation, the supervised individual's previous criminal record, the number and severity of any previous supervision violations, the supervised individual's assessed risk level, and the extent to which graduated sanctions were imposed for previous violations. The system shall also define positive reinforcements that supervised individuals will receive for compliance with conditions of supervision. The system shall clearly specify as to each type of sanction whether the

supervised individual has the option to object and seek administrative review of the sanction.

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

(c) The department shall establish by policy an administrative process to review graduated sanctions contested by supervised individuals under § 40-28-705. The review shall be conducted by the chief supervision officer, who shall be impartial and trained to hear cases regarding graduated sanctions for violations of supervision conditions.

(d) The department shall establish and maintain a program of initial and ongoing training regarding the system of graduated sanctions for probation and parole officers.

40-28-704. Conditions of Community Supervision.

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

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

(a) Notwithstanding any rule or law to the contrary, the department may impose graduated sanctions.

(b) A probation and parole officer intending to impose a graduated sanction shall issue to the supervised individual a notice of the intended sanction. The notice shall inform the supervised individual of the violation or violations alleged, the date or dates of the violation or violations, and the graduated sanction to be imposed.

(c) The imposition of a graduated sanction or sanctions by a probation and parole officer must comport with the system of graduated sanctions adopted by the department under § 40-28-703. Upon receipt of the notice, the supervised individual shall immediately accept the sanction or, if permitted under the system of graduated sanctions, object to the sanction or sanctions proposed by the probation and parole officer. The failure of the supervised individual to comply with a sanction shall constitute a violation of probation, parole, or post-release supervision. If the supervised individual objects to the imposition of the sanction or sanctions, when permitted by the system of graduated sanctions, the individual is entitled to an administrative review to be conducted by the department within five (5) days of the issuance of the notice. If the department affirms the recommendation contained in the notice, the sanction or sanctions shall become effective immediately.

(d)

(1) A notice of a graduated sanction may not be issued for any violation of probation or parole that could warrant an additional, separate felony charge or Class A misdemeanor charge.

(2) Notwithstanding subdivision (d)(1), a notice of a graduated sanction may be issued for a positive drug test.

(e) Upon successful completion of a graduated sanction or sanctions, a court shall not revoke the term of community supervision or impose additional sanctions for the same violation. Notwithstanding this subsection (e), a court may consider an individual's supervision and sanctions history when adjudicating subsequent violations.

(f) The department shall regularly provide notice of sanctions imposed upon probationers to the sentencing court and the prosecutor's office for each jurisdiction.

(g) If a probation and parole officer imposes a graduated sanction, the officer shall:

- (1) Deliver a copy of the sanction to the supervised individual; and
- (2) Note the date of delivery of the copy in the supervised individual's file.

40-28-706. Monitoring Graduated Sanctions.

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

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

SECTION 16. If any provision of this act or the application of any provision of this act to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are declared to be severable.

SECTION 17. For the purpose of promulgating rules, policies, forms, and procedures and making necessary provisions for the implementation of this act, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2017, the public welfare requiring it.

DRAFT

HOUSE BILL NO. 2576

PASSED: April 19, 2016



BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES



RON RAMSEY
SPEAKER OF THE SENATE

APPROVED this 27th day of April 2016



BILL HASLAM, GOVERNOR