

HOUSE BILL 1429

By McCormick

AN ACT to amend Tennessee Code Annotated, Title 40, Chapter 35, Part 3 and Title 55, Chapter 10, Part 4, relative to probation options for certain DUI offenders.

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

SECTION 1. Tennessee Code Annotated, Section 55-10-402, is amended by deleting subdivision (a)(2) in its entirety and substituting instead the following:

(2)

(A) Any person violating § 55-10-401, shall, upon conviction for a second offense, be sentenced to serve in the county jail or workhouse not less than forty-five (45) consecutive days nor more than eleven (11) months and twenty-nine (29) days.

(B) After sentencing the person to a period of confinement pursuant to subdivision (A), as a condition of probation, the judge may order the person to participate in a substance abuse treatment program, which includes any aftercare recommended by the treatment program, licensed or certified by the department of mental health and substance abuse services, which includes a certified drug court or DUI court, if the person first:

- (i) Completes a clinical substance abuse assessment conducted pursuant to subsection (h); and
- (ii) Serves at least fifteen (15) days of the period of incarceration imposed in the county jail or workhouse.

SECTION 2. Tennessee Code Annotated, Section 55-10-402, is amended by deleting subdivision (a)(3) in its entirety and substituting instead the following:

(3)

(A) Any person violating § 55-10-401, shall, upon conviction for third offense, be sentenced to serve in the county jail or workhouse not less than one hundred twenty (120) consecutive days nor more than eleven (11) months and twenty-nine (29) days.

(B) After sentencing the person to a period of confinement pursuant to subdivision (A), as a condition of probation the judge may order the person to participate in a substance abuse treatment program, which includes any aftercare recommended by the treatment program, licensed or certified by the department of mental health and substance abuse services, which includes a certified drug court or DUI court, if the person first:

(i) Completes a clinical substance abuse assessment conducted pursuant to subsection (h); and

(ii) Serves at least sixty (60) days of the period of incarceration imposed in the county jail or workhouse.

SECTION 3. Tennessee Code Annotated, Section 55-10-402(h), is amended by deleting the subsection in its entirety and substituting instead the following:

(h)

(1) The clinical substance abuse assessment required before a person is ordered to participate in a substance abuse treatment program as a condition of probation pursuant to subdivisions (a)(2) or (a)(3), shall be administered to the person by qualified alcohol and drug abuse treatment personnel, as that term is defined by rules promulgated by the department of mental health and substance abuse services. If the assessment determines the person is in need of

substance abuse treatment, the court may, using the assessment to determine the appropriate level of care, order the person referred to an appropriate substance abuse treatment program licensed or certified by the department of mental health and substance abuse service, including a certified drug court or DUI court.

(2) A person ordered to attend a substance abuse treatment program pursuant to subdivisions (a)(2) or (a)(3) shall receive sentence reduction credits from the period of incarceration imposed by the court as follows:

(A) Day-for-day credit for the period of time the person spends in a residential treatment program; and

(B) One (1) day of credit for every nine (9) hours of successfully completed intensive outpatient treatment.

(3)

(A) Upon the successful completion of the substance abuse treatment program, the program provider shall notify the court of the fact that treatment was successfully completed and the number of days the person spent in residential treatment, or the number of hours spent in intensive outpatient treatment, whichever is applicable. The court shall calculate the sentence reduction credits the person has earned based upon the service provider's report.

(B) If the person ceases to attend the substance abuse treatment program, the service provider shall notify the court of the person's absence within three (3) business days of the date the provider knew or should have known of such absence. If the person fails to successfully

complete the program for any other reason, the provider shall notify the court of such failure.

(4) A person who does not successfully complete the substance abuse treatment program to which the person is ordered is in violation of his or her probation, and the court shall order the person committed to the county jail or workhouse for service of the full period of the mandatory minimum confinement required by law and any portion of confinement in excess of the minimum imposed by the court that the court deems necessary. The person shall receive no sentence reduction credits for any time spent in the substance abuse treatment program prior to failure to complete the program.

(5) Upon successful completion of a substance abuse treatment program, the person shall be required to report to the county jail or workhouse to serve the remainder of any mandatory period of confinement required by law and imposed by the court. Failure to do so is a violation of the person's probation.

(6) If a person voluntarily attends residential treatment after arrest but before sentencing, the person may receive sentence reduction credits for completion of residential treatment if the person is ordered to treatment by the judge as a condition of probation. However, before commencing any court-ordered treatment program, the person must undergo a clinical substance abuse assessment as provided in subdivision (1) of this subsection, serve the mandatory minimum sentence provided in § 55-10-402(a)(2)(B) and (a)(3)(B), and follow the recommendations of the assessment.

(7) If the court orders intensive outpatient treatment, it may also order:

(A) The use of transdermal monitoring devices or other alternative alcohol or drug monitoring devices;

(B) The use of electronic monitoring with random alcohol or drug testing;

(C) The use of a global positioning monitoring system pursuant to § 40-11-152; or

(D) The use of any other monitoring device the court believes necessary to ensure the person complies with the results of the assessment and the conditions of probation.

SECTION 4. Tennessee Code Annotated, Section 55-10-402, is amended by adding the following language as new subsections:

(i)

(1) Ordering a person to treatment as a condition of probation pursuant to subsection (a)(2), (a)(3), and (h) for a second or third violation of § 55-10-401 is solely within the discretion of the judge as an available sentencing option. Failure to grant such person such treatment is not appealable, except for abuse of discretion.

(2) Nothing in this section shall be construed as creating a right for a person convicted of a second or third violation of § 55-10-401 to receive:

(A) A clinical substance abuse assessment;

(B) Intensive outpatient treatment;

(C) Residential treatment;

(D) Enrollment in a state certified treatment program, including drug court or DUI court; or

(E) Any sentence reduction credits for substance abuse treatment that would reduce the period of incarceration imposed by the court other than those earned and retained pursuant to § 55-10-402(h)(2)(A) and (B).

(3) Nothing in this section authorizing a judge to order any of the options specified in subdivision (2) shall be construed to affect or limit any restrictions a judge may place or is required to place on a person convicted of a second or third violation of § 55-10-401 by other provisions of law, including the use of an ignition interlock device under § 55-10-409.

(j)

(1) The court is not empowered to order the expenditure of public funds to provide treatment. However, if a person ordered to participate in such a program is indigent, the court may allow the person, subject to availability of services, to enter any program that provides the treatment without cost to an individual. When making a finding as to the indigency of an accused, the court shall take into consideration:

(A) The nature of the program services rendered;

(B) The usual and customary charges for rendering such program services in the community;

(C) The income of the person regardless of source;

(D) The poverty level guidelines compiled and published by the United States department of labor;

(E) The ownership or equity of any real or personal property of the person; and

(F) Any other circumstances presented to the court that are relevant to the issue of indigency.

(2) If a person ordered to participate is not indigent and participates in a program that provides treatment without cost to an individual, that person shall be obligated to pay for treatment in the same manner as provided in § 33-2-1102.

If a person ordered to participate, participates in a court approved private treatment program, that person shall be responsible for the cost and fees involved with the program.

SECTION 5. Tennessee Code Annotated, Section 40-35-303, is amended by adding the following new subdivision to subsection (c)(2)(C):

(v) A second or third violation of § 55-10-401 if the judge orders a substance abuse treatment program as a condition of probation pursuant to § 55-10-402(a)(2)(B) or (a)(3)(B).

SECTION 6. This act shall take July 1, 2014, the public welfare requiring it and shall apply to any person committing a second or third violation of § 55-10-401 on or after such date. If a person commits a second or third violation of § 55-10-401 prior to such date, but the conviction for such offense does not occur until after July 1, 2014, the person shall elect to the judge at the time of conviction whether to come within the provisions of this act or be sentenced in accordance with the law in effect at the time the offense was committed.