

Amendment No. 1 to SB2194

Bell
Signature of Sponsor

AMEND Senate Bill No. 2194

House Bill No. 2261*

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. This act shall be known and may be cited as the "Reentry Stabilization Act of 2020."

SECTION 2. Tennessee Code Annotated, Title 40, Chapter 35, Part 5, is amended by adding the following as a new section:

40-35-5__.

(a) There is created within the department of correction the office of reentry services.

(b) The purpose of the office is to promote the successful reentry of criminal offenders whose sentences have expired, including, but not limited to:

(1) Serving as a clearinghouse of resources to assist in successful reentry;

(2) Coordinating the provision of post-release resources and services to offenders and related persons;

(3) Using case workers to serve as a point of contact to offenders and related persons to encourage successful reentry; and

(4) Working with other departments, agencies, and entities, including nonprofit public benefit corporations, to coordinate reentry services for offenders and related persons.

(c) Any department, agency, board, commission, or other division of state government may provide staff and other assistance to the office, and all departments,

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agencies, boards, commissions, and other divisions of state government must fully cooperate with the office and provide staff support and other assistance as reasonably required, subject to existing law.

SECTION 3. Tennessee Code Annotated, Section 40-28-115(i), is amended by deleting the language "ten (10)" and substituting instead "six (6)".

SECTION 4. Tennessee Code Annotated, Section 40-28-116(b), is amended by deleting the period at the end of the subsection and substituting instead the following:

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

SECTION 5. Tennessee Code Annotated, Section 40-28-122(c)(1), is amended by deleting the subdivision and substituting instead the following:

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

(A) For a revocation of parole that does not involve a new felony, new Class A misdemeanor, or absconding, require the prisoner to temporarily serve a term of incarceration not to exceed:

- (i) Fifteen (15) days for the first revocation;
- (ii) Thirty (30) days for the second revocation;
- (iii) Ninety (90) days for the third revocation; or

(iv) One (1) year, or the remainder of the prisoner's sentence,

whichever is shorter, for a fourth or subsequent revocation; or

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

SECTION 6. Tennessee Code Annotated, Section 40-29-107, is amended by deleting subsections (a) through (l), substituting instead the following, and redesignating the remaining subsections accordingly:

(a) The department of correction shall develop a certificate of employability application that may be submitted by a defendant who has been convicted of a felony offense. A defendant may apply for a certificate of employability no more than fifteen (15) days prior to the expiration of a defendant's incarceration or at any time during or after a defendant's period of probation or parole. The department shall issue a certificate of employability to a defendant if:

(1) Since the defendant's conviction for a felony, the defendant has demonstrated a strong work ethic and an honest character;

(2) The defendant pursued technical and educational opportunities, where appropriate, during or, if applicable, after the defendant's incarceration;

(3) The defendant has not been convicted of a violent offense, as defined in § 40-35-120(d), or, if the defendant has been convicted of a violent offense, at least five (5) years have passed since the defendant was released from incarceration for the violent offense and the defendant has not been convicted of a new criminal offense during that time; and

(4) Granting the certificate of employability would not pose an unreasonable risk to public safety or the safety of any individual.

(b) At least thirty (30) days before issuing a certificate of employability to a defendant, the department shall notify the district attorney general in the judicial district in which the defendant was convicted so that the district attorney general may provide any comments regarding whether a certificate should be issued.

(c) Upon receiving an application for a certificate of employability, the department shall notify any known victims of crimes perpetrated by the defendant by sending notice to the last known address of such victims, if known.

(d) The commissioner of correction, or an assistant commissioner who has been designated by the commissioner, has the sole discretion to determine whether the criteria under subsection (a) for issuing a certificate of employability have been met.

(e) The department shall revoke a certificate of employability issued under this section if the defendant to whom the certificate of employability was issued is convicted of a felony offense or domestic assault under § 39-13-111 committed subsequent to the issuance of the certificate of employability.

(f) A cause of action may not be brought against the state based upon the department of correction's issuance or revocation of a certificate of employability.

SECTION 7. Tennessee Code Annotated, Title 40, Chapter 29, Part 1, is amended by adding the following as a new section:

40-29-1__.

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

(b) In a cause of action against an employer or contracting party for negligent hiring, training, retention, or supervision of an employee or independent contractor,

evidence that the employee or independent contractor has been previously convicted of a criminal offense is not admissible.

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

(1)

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

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

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

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

(2)

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

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

(C) The employer or contracting party should have reasonably foreseen that the position for which the employee or independent

contractor was being hired would involve managing the funds or property of a person other than the employer or contracting party.

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

SECTION 8. Tennessee Code Annotated, Section 40-35-503, is amended by adding the following as new subsections:

(i)

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

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

(A)

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

(ii) Is currently serving a sentence for a nonviolent felony offense, as defined in § 40-36-102;

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

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

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

(E) Has not been convicted of a violent sexual offense, as defined in § 40-39-202(31); sexual offense, as defined in § 40-24-108(b)(2) or § 40-39-202(20); or sex offense, as defined in § 39-13-703(3).

(3) Nothing in this subsection (i) eliminates or affects the requirements of § 40-35-503(c) or § 40-28-116(a)(2).

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

SECTION 9. Tennessee Code Annotated, Section 40-35-503(b)(2), is amended by adding the following language before the semicolon:

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

SECTION 10. Tennessee Code Annotated, Section 40-35-503(g), is amended by deleting the second sentence of the subsection.

SECTION 11. Tennessee Code Annotated, Title 40, Chapter 35, Part 5, is amended by adding the following as a new section:

40-35-506.

(a) As used in this section:

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

(A) Is serving a felony sentence for an offense that occurred on or after July 1, 2020;

(B) Is eligible for parole consideration;

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

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

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

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

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

(A) Is serving a felony sentence for an offense that occurred on or after July 1, 2020;

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

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

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

(b)

(1) The department of correction shall determine whether an inmate is an eligible inmate. Notwithstanding § 40-35-503, an eligible inmate shall be released on mandatory reentry supervision one (1) year prior to the inmate's sentence expiration date as calculated by the department or, if the inmate is not eligible for parole one (1) year prior to the inmate's sentence expiration date,

upon reaching the inmate's release eligibility date. Upon release, an eligible inmate shall be subject to mandatory reentry supervision until the inmate's sentence expiration date. The release shall be under the terms and conditions established by the department of correction. The board of parole shall issue a certificate of mandatory reentry supervision to such offenders.

(2) Eligible inmates released on mandatory reentry supervision shall be considered released on parole and shall be supervised and subject to violations or revocation under title 40, chapter 28 to the same extent as discretionary parolees. All provisions relative to imposition of graduated sanctions under title 40, chapter 28 apply to eligible inmates released on mandatory reentry supervision.

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

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

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

(d) Mandatory reentry supervision under this section constitutes release into the community under the direct or indirect supervision of any state or local governmental

authority or a private entity contracting with the state or a local government for purposes of § 40-35-114(13).

SECTION 12. Tennessee Code Annotated, Section 40-35-210, is amended by adding the following new subsection:

(g) When the court imposes a sentence for a defendant who has been convicted of a felony offense that occurred on or after July 1, 2020, the court shall specify in its order that the defendant may be subject to an additional year of mandatory reentry supervision pursuant to § 40-35-506 if, at the time of release, the defendant is an ineligible offender, as defined in § 40-35-506.

SECTION 13. Tennessee Code Annotated, Title 40, Chapter 35, Part 5, is amended by adding the following as a new section:

40-35-507.

Prior to expiration of a defendant's sentence and release from incarceration or parole supervision, the defendant must be assigned a caseworker from the office of reentry services created by Section 1 of this act. A defendant has no obligations with respect to the office of reentry services. Any interaction between the defendant and the office of reentry services and the office's caseworkers is voluntary on the part of the defendant and provided only to assist in the defendant's successful reentry.

SECTION 14. Tennessee Code Annotated, Section 62-76-104(b)(4)(B), is amended by deleting the language "there shall be a rebuttable presumption that the conviction relates to the fitness of the applicant, licensee, certificate holder, or registrant engaged in the applicable occupation, profession, business, or trade" and substituting instead:

the licensing authority shall, based upon the factors in subdivision (b)(4)(A), determine whether granting or renewing a license, certificate, or registration to the applicant, licensee, certificate holder, or registrant would increase the risk that individual poses to public safety. If granting or renewing a license,

certificate, or registration to the applicant, licensee, certificate holder, or registrant would increase the risk that individual poses to public safety, the licensing authority shall not grant or renew the license, certificate, or registration.

SECTION 15. If any provision of this act or its application to any person or circumstance is held invalid, then 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 shall be severable.

SECTION 16. Sections 3-5 and 8-11 of this act shall take effect July 1, 2020, the public welfare requiring it, and apply to parole determinations made on or after that date. Section 13 of this act shall take effect January 1, 2021, the public welfare requiring it. Sections 6 and 7 of this act shall take effect upon becoming law, the public welfare requiring it, and apply to actions accruing on or after that date. All other sections of this act shall take effect upon becoming a law, the public welfare requiring it.