

Filed for intro on 02/01/95
Senate Bill _____
By

House Bill No.HB0308
By Ritchie, II

AN ACT to amend Tennessee Code Annotated, Title 39, relative to sex offenses.

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

SECTION 1. Tennessee Code Annotated, Title 39, Chapter 13, is amended by adding a new part thereto consisting of Sections 2 through 10 of this act.

SECTION 2. The title of this act shall be known and may be cited as the "Tennessee Standardized Treatment Program for Sex Offenders."

SECTION 3. The general assembly hereby declares that the comprehensive evaluation, identification, treatment, and continued monitoring of sex offenders who are subject to the supervision of the criminal justice system is necessary in order to work toward the elimination of recidivism by such offenders.

Therefore, the general assembly hereby creates a program which standardizes the evaluation, identification, treatment, and continued monitoring of sex offenders at each stage of the criminal justice system so that such offenders will curtail recidivistic behavior, and the protection of victims and potential victims will be enhanced. The general assembly hereby recognizes that some sex offenders cannot or will not respond to treatment and that, in creating

the program described in this act, the general assembly does not intend to imply that all sex offenders can be successful in treatment.

SECTION 4. As used in this part, unless the context otherwise requires:

(1) "Board" means the sex offender treatment board created in Section 5 of this act.

(2) "Sex offender" means any person who is convicted in the state of Tennessee, on or after January 1, 1996, of any sex offense or of any criminal offense, if such person has previously been convicted of a sex offense in the state of Tennessee, or if such person has previously been convicted in any other jurisdiction of any offense which would constitute a sex offense, or if such person has a history of any sex offenses.

(3) "Sex offense" means any felony or misdemeanor offense described as follows:

(A) Aggravated rape, as defined in Section 39-13-502;

(B) Rape, as defined in Section 39-13-503;

(C) Aggravated sexual battery, as defined in Section 39-13-504;

(D) Sexual battery, as defined in Section 39-13-505;

(E) Statutory rape, as defined in Section 39-13-506;

(F) Incest, as defined in Section 39-15-302; and

(G) Criminal attempt, conspiracy, or solicitation to commit any of the offenses specified in this subsection.

(4) "Treatment" means therapy and supervision of any sex offender which conforms to the standards created by the board pursuant to Section 5 of this act.

SECTION 5.

(a) There is hereby created, in the department of correction, a sex offender treatment board which shall consist of twelve (12) members. The membership of the board shall consist of the following persons:

(1) One (1) member representing the judicial branch appointed by the chief justice of the supreme court;

(2) Two (2) members representing the department of correction appointed by the commissioner of correction;

(3) One (1) member representing the Tennessee bureau of investigation appointed by the director;

(4) One (1) member representing the department of human services appointed by the commissioner of human services;

(5) One (1) member appointed by the commissioner of correction who is a licensed mental health professional with recognizable expertise in the treatment of sex offenders;

(6) One (1) member appointed by the commissioner of correction who is a district attorney;

(7) One (1) member appointed by the commissioner of correction who is a member of a community corrections advisory board;

(8) One (1) member appointed by the commissioner of correction who is a public defender;

(9) One (1) member appointed by the commissioner of correction who is a representative of law enforcement; and

(10) Two (2) members appointed by the commissioner of correction who are recognized experts in the field of sex abuse and who can represent sex abuse victims and victims' rights organizations.

(b) The commissioner of correction shall appoint a presiding officer for the board from among the board members appointed pursuant to subsection (a). The presiding officer shall serve as such at the pleasure of the commissioner.

(c)

(1) Any member of the board who is appointed pursuant to subdivisions (1) through (4) of subsection (a) shall serve at the pleasure of the official who appointed such member, for a term which shall not exceed four (4) years. Such members shall serve without additional compensation.

(2) Any member of the board created in subsection (a) of this section who is appointed pursuant to subdivisions (5) through (10) of subsection (a) shall serve for a term of four (4) years. Such members shall serve without compensation.

(d) The board shall carry out the following duties:

(1) Prior to January 1, 1996, the board shall develop and prescribe a standardized procedure for the evaluation and identification of sex offenders. Such procedure shall provide for an evaluation and identification of the offender and recommend behavior management monitoring and treatment based upon the knowledge that sex offenders are extremely habituated and that there is no known cure for the propensity to commit sex abuse. The board shall develop and implement measures of success based upon a no-cure policy for intervention. The board shall develop and implement methods of intervention for sex offenders which have as a priority the physical and psychological safety of victims and potential victims and which are appropriate to the needs of the particular offender, provided there is no reduction of the safety of victims and potential victims.

(2) Prior to January 1, 1996, the board shall develop guidelines and standards for a system of programs for the treatment of sex offenders which can be utilized by offenders who are placed on probation, incarcerated with the department of correction, placed on parole, or placed in community corrections. The programs developed shall be as flexible as possible so that such programs

may be utilized by each offender to prevent the offender from harming victims and potential victims. Such programs shall be structured in a manner that the programs provide a continuing monitoring process as well as a continuum of treatment programs for each offender as that offender proceeds through the criminal justice system and may include, but shall not be limited to, polygraph examinations by therapists and probation officers, group counseling, individual counseling, outpatient treatment, inpatient treatment, or treatment in a therapeutic community. Such programs shall be developed in a manner that, to the extent possible, the programs may be accessed by all offenders in the criminal justice system. The procedures for evaluation, identification, treatment, and continued monitoring required to be developed shall be implemented only to the extent that funds are available in the sex offender surcharge fund created in Section 10 of this act.

(3) The board shall develop a plan for the allocation of moneys deposited in the sex offender surcharge fund created pursuant to Section 10 of this act among the judicial branch, the department of correction, and the department of human services. In addition, the board shall coordinate the expenditure of funds from the sex offender surcharge fund with any funds expended by any of the departments defined in this subdivision for the identification, evaluation, and treatment of sex offenders. The plan developed pursuant to this section shall be submitted to the general assembly on or before January 1, 1996. For the fiscal year beginning July 1, 1996, the general assembly shall appropriate moneys from the sex offender surcharge fund in accordance with such plan.

(4) The board shall research and analyze the effectiveness of the evaluation, identification, and treatment procedures and programs developed pursuant to this act. The board shall also develop and prescribe a system for

tracking offenders who have been subjected to evaluation, identification, and treatment pursuant to this act. In addition, the board shall develop a system for monitoring offender behaviors and offender adherence to prescribed behavioral changes. The results of such tracking and behavioral monitoring shall be a part of any analysis made pursuant to this subdivision.

(e) The board and the individual members thereof shall be immune from any liability, whether civil or criminal, for the good faith performance of the duties of the board.

SECTION 6.

(a) On and after January 1, 1996, each sex offender who is to be considered for probation shall be required to submit to an evaluation for treatment, an evaluation for risk, procedures required for monitoring of behavior to protect victims and potential victims, and an identification under the procedure developed pursuant to Section 5 (d)(1).

(b) The evaluation and identification required by subsection (a) shall be at the expense of the person evaluated, based upon such person's ability to pay for such treatment.

SECTION 7.

(a) Each sex offender sentenced by the court for an offense committed on or after January 1, 1996, shall be required, as a part of any sentence to probation, community corrections, or incarceration with the department of correction, to undergo treatment to the extent appropriate to such offender based upon the recommendations of the evaluation and identification made pursuant to Section 6 of this act, or based upon any subsequent recommendations by the department of correction, the judicial branch or the department of human services, whichever is appropriate. Any such treatment and

monitoring shall be at such person's own expense, based upon such person's ability to pay for such treatment.

(b) Each sex offender placed on parole by the state board of parole on or after January 1, 1996, shall be required, as a condition of such parole, to undergo treatment to the extent appropriate to such offender based upon the recommendations of the evaluation and identification pursuant to Section 6 of this act or any evaluation or subsequent reevaluation regarding such person during the person's incarceration or any period of parole. Any such treatment shall be at such person's expense, based upon such person's ability to pay for such treatment.

SECTION 8. The department of correction, the judicial branch, or the department of human services shall not employ or contract with any individual or entity to provide treatment services pursuant to this act unless the treatment services to be provided by such individual or entity conforms with the standards developed pursuant to Section 5 (d)(2) of this act.

SECTION 9. On or before March 1, 1997, the board shall make a report to a joint meeting of the judiciary committees of the senate and the house of representatives regarding the implementation of this act, the standardized procedures developed pursuant to this act, and the results of the programs created by this act.

SECTION 10.

(a) As used in this section, unless the context otherwise requires, "convicted" and "conviction" means a plea of guilty, including a plea of guilty entered pursuant to a deferred sentence or a verdict of guilty by a judge or jury, and includes a plea of no contest accepted by the court.

(b) On and after July 1, 1995, each person who is convicted of a sex offense shall be required to pay a surcharge to the clerk of the court in which the conviction occurs. Such surcharge shall be in the following amounts:

(1) For each Class A felony of which a person is convicted, three thousand dollars (\$3,000.00);

(2) For each Class B felony of which a person is convicted, two thousand dollars (\$2,000.00);

(3) For each Class C felony of which a person is convicted, one thousand five hundred dollars (\$1,500.00);

(4) for each Class D felony of which a person is convicted, one thousand dollars (\$1,000.00);

(5) for each Class E felony of which a person is convicted, seven hundred fifty dollars (\$750.00);

(6) for each Class A misdemeanor of which a person is convicted, five hundred dollars (\$500.00);

(c) The clerk of the court shall allocate the surcharge required by subsection (b) of this section as follows:

(1) Five percent (5%) of the surcharge paid shall be retained by the clerk for administrative costs incurred pursuant to this subsection.

(2) Ninety-five percent (95%) of the surcharge paid shall be transferred to the state treasurer who shall credit the same to the sex offender surcharge fund created pursuant to subsection (d) of this section.

(d) There is hereby created in the state treasury a sex offender surcharge fund which shall consist of moneys received by the state treasurer, pursuant to this act. All interest derived from the deposit and investment of this fund shall be credited to the general fund. Any moneys not appropriated by the general assembly shall remain in the sex offender surcharge fund and shall not be transferred or revert to the general fund of the state at the end of any fiscal year. All moneys in the fund shall be subject to annual appropriation by the general assembly to the judicial branch, the department of

correction, and the department of human services after consideration of the plan developed pursuant to Section 5 (d)(3) of this act to cover the direct and indirect costs associated with the evaluation, identification, and treatment and the continued monitoring of sex offenders.

(e) The court may waive all or any portion of the surcharge required by this section if the court finds that a person convicted of a sex offense is indigent or financially unable to pay all or any portion of such surcharge. The court shall waive only that portion of the surcharge which the court has found that the person convicted of a sex offense is financially unable to pay.

SECTION 11. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of the act which can be given effect without the invalid provision or application, and to that end the provision of this act are declared to be severable.

SECTION 12. For the purpose of making the required board appointments and organizing the board, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect on July 1, 1995, the public welfare requiring it.

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