

PUBLIC CHAPTER NO. 1090**HOUSE BILL NO. 2813**

By Representatives Odom, Harwell, Sontany, Camper, Rich, Watson, Stewart, Casada, Mike Turner, John DeBerry, Gilmore, Moore, Todd, Montgomery, Shepard, Hardaway, Lundberg, Cooper, Coleman, Bell, Bone, Shaw, Fraley, Towns, Ty Cobb, Winningham, McDonald, Pruitt, Richardson, Litz, Dean, Naifeh, Fitzhugh, Harry Brooks, Roach, Ford, Harrison, Favors, Brown, Sargent, Barker and Mr. Speaker Williams

Substituted for: Senate Bill No. 3431

By Senators Henry, Norris, Black, Herron, Kelsey, Barnes, Jackson, Finney, Marrero, Ford, Burks and Mr. Speaker Ramsey

AN ACT to amend Tennessee Code Annotated, Title 40, Chapter 35, relative to sentencing.

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

SECTION 1. The General Assembly finds and declares that deterrence and punishment of violent crime is a matter of compelling public interest that requires the highest priority when allocating scarce public resources for the purpose of imprisoning criminals. To ensure that sufficient prison space is available for certain violent offenders to serve a sentence of sufficient length to longer remove them as a threat to society and to deter others from committing these offenses, it is in the public's best interest that certain non-violent property offenders currently serving prison sentences for less serious offenses be given alternative sentences not involving continuous confinement. By doing so, these property offenders are able to work in order to pay restitution to the victims of their crimes without using scarce prison beds thereby permitting longer sentences for those offenders who do threaten public safety.

SECTION 2. Tennessee Code Annotated, Title 40, Chapter 35, Part 1, is amended by adding the following as a new section:

Section 40-35-122

(a) Notwithstanding any provision of law to the contrary, except as provided in subsection (b), the judge sentencing a defendant who commits a non-violent property offense, as defined in subsection (c), on or after July 1, 2010, shall not be authorized to impose the sentencing alternatives of continuous confinement in a local jail or the department of correction as authorized by § 40-35-104(c)(5), (c)(6), or (c)(8). However, the judge may sentence the defendant to any of the other sentencing alternatives authorized by § 40-35-104(c), which include, but are not limited to, periodic confinement, work release, community corrections, probation, or judicial diversion.

(b)

(1) A defendant convicted of an offense set out in subsection (c) may be sentenced to any of the sentencing alternatives authorized by § 40-35-104(c), including a period of continuous confinement, if the sentencing judge determines the defendant:

(A) Has at least one (1) prior conviction at the time the subsection (c) offense is committed; or

(B) Violated the terms and conditions of the alternative sentence originally imposed upon the defendant pursuant to subsection (a).

(2) As used in this subsection:

(A) "Prior conviction" means that the defendant serves and is released or discharged from, is serving, or is on escape status from a separate period of incarceration or supervision for the commission of a felony offense prior to or at the time of committing an offense on or after July 1, 2010, listed in subsection (c);

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

(C) "Separate period of incarceration or supervision" includes a sentence to any of the sentencing alternatives set out in § 40-35-104(c)(3)-(9).

(c) As used in this section, a "non-violent property offense" is:

(1) Forgery under § 39-14-114, where the amount of the forgery is less than one thousand dollars (\$1,000);

(2) Attempted forgery under §§ 39-12-101 and 39-14-114, where the amount of the forgery is one thousand dollars (\$1,000) or more but less than ten thousand dollars (\$10,000);

(3) Criminal simulation under § 39-14-115, where the amount is less than one thousand dollars (\$1,000) ;

(4) Attempted criminal simulation under §§ 39-12-101 and 39-14-115, where the amount is one thousand dollars (\$1,000) or more but less than ten thousand dollars (\$10,000);

(5) Facilitating criminal simulation under §§ 39-11-403 and 39-14-115, where the amount is one thousand dollars (\$1,000) or more but less than ten thousand dollars (\$10,000);

(6) Felony theft of services under § 39-14-104, where the amount of the theft is less than one thousand dollars (\$1,000);

(7) Shoplifting under §§ 39-14-103 or 39-14-146, where the amount taken is less than one thousand dollars (\$1,000);

(8) Felony fraudulent use of a credit card under § 39-14-118, where the amount of the theft is less than one thousand dollars (\$1,000);

(9) Felony passing worthless checks under § 39-14-121 where the amount of the check is less than one thousand dollars (\$1,000);

(10) Passing forged checks under § 39-14-114, where the amount of the forgery is less than one thousand dollars (\$1,000);

(11) Felony theft of property under § 39-14-103, where the amount of the theft is less than one thousand dollars (\$1,000);

(12) Attempted theft of property under §§ 39-12-101 and 39-14-103, where the amount of the attempted theft is one thousand dollars (\$1,000) or more but less than ten thousand dollars (\$10,000);

(13) Facilitating the theft of property under §§ 39-11-403 and 39-14-103, where the amount of the property is one thousand dollars (\$1,000) or more but less than ten thousand dollars (\$10,000);

(14) Conspiracy to commit theft of property under §§ 39-12-103 and 39-14-103, where the amount of the property is one thousand dollars (\$1,000) or more but less than ten thousand dollars (\$10,000);

(15) Felony vandalism under § 39-14-408, where the amount of the vandalism is less than one thousand dollars (\$1,000);

(16) Fraudulent transfer of a motor vehicle under § 39-14-147;

(17) Attempted burglary other than a habitation under §§ 39-12-101 and 39-14-402(a)(1), (a)(2) or (a)(3);

(18) Burglary of an auto under § 39-14-402(a)(4); and

(19) Burning personal property under § 39-14-303.

SECTION 3. Tennessee Code Annotated, Section 40-35-501, is amended by designating subdivision (k)(1) as (k)(2) and by adding the following new (k)(1):

There shall be no release eligibility for a person committing aggravated robbery, as defined in § 39-13-402(a)(1), on or after July 1, 2010, 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 provision of 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.

SECTION 4. This act shall take effect July 1, 2010, the public welfare requiring it.

PASSED: June 4, 2010


KENT WILLIAMS, SPEAKER
HOUSE OF REPRESENTATIVES


RON RAMSEY
SPEAKER OF THE SENATE

APPROVED this 23rd day of June 2010


PHIL BREDESEN, GOVERNOR