

West's Tennessee Code Annotated

Title 40. Criminal Procedure

Chapter 35. Tennessee Criminal Sentencing Reform Act of 1989 (Refs & Annos)

Part 1. General Provisions

T. C. A. § 40-35-102

§ 40-35-102. Purpose and intent

Effective: August 11, 2010

Currentness

The foremost purpose of this chapter is to promote justice, as manifested by § 40-35-103. In so doing, the following principles are adopted:

(1) Every defendant shall be punished by the imposition of a sentence justly deserved in relation to the seriousness of the offense;

(2) This chapter is to assure fair and consistent treatment of all defendants by eliminating unjustified disparity in sentencing and providing a fair sense of predictability of the criminal law and its sanctions;

(3) Punishment shall be imposed to prevent crime and promote respect for the law by:

(A) Providing an effective general deterrent to those likely to violate the criminal laws of this state;

(B) Restraining defendants with a lengthy history of criminal conduct;

(C) Encouraging effective rehabilitation of those defendants, where reasonably feasible, by promoting the use of alternative sentencing and correctional programs that elicit voluntary cooperation of defendants; and

(D) Encouraging restitution to victims where appropriate;

(4) Sentencing should exclude all considerations respecting race, gender, creed, religion, national origin and social status of the individual;

(5) In recognition that state prison capacities and the funds to build and maintain them are limited, convicted felons committing the most severe offenses, possessing criminal histories evincing a clear disregard for the laws and morals of society and evincing failure of past efforts at rehabilitation shall be given first priority regarding sentencing involving incarceration; and

(6)(A) A defendant who does not fall within the parameters of subdivision (5), and who is an especially mitigated or standard offender convicted of a Class C, D or E felony, should be considered as a favorable candidate for alternative sentencing options in the absence of evidence to the contrary; however, a defendant's prior convictions shall be considered evidence to the contrary and, therefore, a defendant who is being sentenced for a third or subsequent felony conviction involving separate periods of incarceration or supervision shall not be considered a favorable candidate for alternative sentencing;

(B) As used in subdivision (6)(A), "separate periods of incarceration or supervision" means that the defendant serves and is released or discharged from a period of incarceration or supervision for the commission of a felony prior to committing another felony;

(C) If a defendant with at least three (3) felony convictions is otherwise eligible, that defendant may still be considered a favorable candidate for any alternative sentencing that is within the jurisdiction of and deemed appropriate by a drug court;

(D) A court shall consider, but is not bound by, the advisory sentencing guideline in this subdivision (6).

Credits

1989 Pub.Acts, c. 591, § 6; 1990 Pub.Acts, c. 980, § 21; 1994 Pub.Acts, c. 736, § 1, eff. April 11, 1994; 2005 Pub.Acts, c. 353, § 1, eff. June 7, 2005; 2007 Pub.Acts, c. 512, § 1, eff. July 1, 2007.

Editors' Notes

COMMENTS OF THE TENNESSEE SENTENCING COMMISSION

These purposes should be read in conjunction with § 39-11-101 which sets forth the objectives of the criminal code. The sentencing purposes, in general, are similar to those under prior law and govern all sentencing determinations.

Subdivision (1) requires that the sentence imposed must bear a relationship to the seriousness of the offense.

Subdivision (2) states the designated purpose of eliminating unjustified disparity in sentencing and thereby providing predictability.

Subdivision (3) is similar to prior law but adds restitution as an additional factor. The commission believes restitution should be ordered in all appropriate cases.

Subdivision (4) restates the obvious purpose that considerations of race, gender, and social status are irrelevant to sentencing determinations. In 1994, creed, religion and national origin were added.

The importance of subdivision (5) is that, for the first time, Tennessee recognizes that scarce prison resources should enter into the sentencing evaluation for those convicted of violating the law.

Subdivision (6) provides that a defendant who does not fall within the parameters of the preceding subdivision and who is an especially mitigated or standard offender convicted of a Class C, D or E felony is “presumed to be a favorable candidate for alternative sentencing in the absence of evidence to the contrary.” This “presumption” is one of several sentencing presumptions found throughout the Sentencing Reform Act of 1989.

Notes of Decisions (223)

T. C. A. § 40-35-102, TN ST § 40-35-102

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