

Alternative Sentencing Factors

The following sentencing considerations in Tennessee Code Annotated section 40-35-103(1) should be used to determine whether alternative sentencing is appropriate:

- (A) Confinement is necessary to protect society by restraining a defendant who has a long history of criminal conduct;
- (B) Confinement is necessary to avoid depreciating the seriousness of the offense or confinement is particularly suited to provide an effective deterrence to others likely to commit similar offenses; or
- (C) Measures less restrictive than confinement have frequently or recently been applied unsuccessfully to the defendant.

In evaluating the suitability of probation, the trial court should consider the same factors applicable to diversion:

- (1) the defendant's amenability to correction;
- (2) the circumstances of the offense;
- (3) the defendant's criminal record;
- (4) the defendant's social history;
- (5) the defendant's physical and mental health; and

(6) special and general deterrence value.

Before a trial court can deny diversion/probation based solely on the basis of the offense, “the circumstances of the offense as particularly committed in the case under consideration must demonstrate that the defendant committed the offense in some manner more egregious than is contemplated simply by the elements of the offense.” *State v. Trent*, 533 S.W.3d 282, 292-293 (Tenn. 2017).