

STATE OF TENNESSEE

PUBLIC CHAPTER NO. 203

SENATE BILL NO. 946

By Tracy

Substituted for: House Bill No. 215

By Harmon, Favors, Hardaway, Maddox, Hackworth

AN ACT to amend Tennessee Code Annotated, Title 40, Chapter 35, relative to the revocation of probation.

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

SECTION 1. Tennessee Code Annotated, Section 40-35-501, is amended by deleting subdivision (a)(7) and substituting instead the following:

(7)(A) The court is authorized to revoke probation pursuant to the revocation proceedings of § 40-35-311. If the sentencing court revokes probation, the sentencing court may cause the defendant to commence the execution of the judgment as originally entered, less any credit for time served, plus any sentence credits earned and retained by the inmate. Any defendant whose probation has been revoked pursuant to this subsection (a) is not eligible for release on the same sentence pursuant to the terms of subdivision (a)(3).

(B) Nothing in subdivision (7)(A), prohibits the sentencing court from:

(i) Suspending the original sentence at any time prior to its expiration, notwithstanding whether the offender is incarcerated in a local jail or a prison; or

(ii) Resentencing the defendant for the remainder of the unexpired sentence to any community-based alternative to incarceration authorized by Chapter 36 of this title, provided the violation of probation is a technical one and does not involve the commission of a new offense.

SECTION 2. Tennessee Code Annotated, Section 40-35-310, is amended by deleting the section in its entirety and substituting instead the following:

(a) The trial judge shall possess the power, at any time within the maximum time that was directed and ordered by the court for the suspension, after proceeding as provided in § 40-35-311, to revoke and annul the suspension, and in such cases the trial judge may order the original judgment so rendered to be in full force and effect from the date of the revocation of the

suspension, and that it be executed accordingly; provided, that in any case of revocation of suspension on account of conduct by the defendant that has resulted in a judgment of conviction against the defendant during the defendant's period of probation, the trial judge may order that the term of imprisonment imposed by the original judgment be served consecutively to any sentence that was imposed upon the conviction.

(b) In addition to the power to restore the original judgment when suspension of sentence is revoked, the trial judge may also resentence the defendant for the remainder of the unexpired term to any community-based alternative to incarceration authorized by Chapter 36, provided the violation of the defendant's suspension of sentence is a technical one and does not involve the commission of a new offense.

SECTION 3. Tennessee Code Annotated, Section 40-35-311, is amended by deleting subsection (e) and substituting instead the following:

(e) If the trial judge should find that the defendant has violated the conditions of probation and suspension by a preponderance of the evidence, the trial judge shall have the right by order duly entered upon the minutes of the court, to revoke the probation and suspension of sentence, and:

(1) Cause the defendant to commence the execution of the judgment as originally entered, or otherwise in accordance with § 40-35-310; or

(2) Resentence the defendant for the remainder of the unexpired term to any community-based alternative to incarceration authorized by Chapter 36 of this title, provided the violation of probation and suspension is a technical one and does not involve the commission of a new offense.

If the trial judge does revoke the defendant's probation and suspension, the defendant has the right to appeal.

SECTION 4. This act shall take effect July 1, 2009, the public welfare requiring it.

PASSED: April 30, 2009



RON RAMSEY
SPEAKER OF THE SENATE



KENT WILLIAMS, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 13th day of May 2009



PHIL BREDESEN, GOVERNOR