

# Tennessee Criminal Sentencing Act of 1982: **PRACTICE AND PROCEDURE**

By  
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## **Introduction**

Sentencing is perhaps the most important aspect of the criminal justice system. Because of the inability of a jury to have all the appropriate information, most states and the federal government have long trusted sentencing to the judge. Tennessee will join these jurisdictions when the Sentencing Reform Act becomes effective July 1, 1982.

The Sentencing Act is the product of many different viewpoints as to how best to impose sanctions on those who

violate the law. The Act was initiated by the Governor and a bipartisan group of legislators in the fall of 1981. It was intended to replace earlier legislation that had been rendered obsolete by new developments in the criminal law. Prosecutors, defense lawyers and judges participated in working out compromises in language and concepts to produce a relatively simple sentencing system.

Because of the importance of the new sentencing Act to the bench and bar this article has been written to discuss

the highlights of the Act from a practical standpoint. It is not, however, intended as a detailed discussion of all of the provisions. The article is structured to follow all of the provisions. The article is structured to follow the application of the Act through the various stages of a case from general sessions court, indictment, trial, sentencing and appeal.

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### In General

The Tennessee Criminal Sentencing Reform Act of 1982 alters the manner in which defendants are sentenced upon conviction for criminal offenses. There are nine primary features of the Act: (1) The defendant's constitutional right to a jury trial is retained but the jury's function is limited to the initial question of the defendant's guilt or innocence. (2) The defendant's sentence is decided by a judge in a separate sentencing hearing conducted after the trial if the defendant is found guilty. (3) The jury still sentences in capital cases as well as sentencing hearings on the habitual criminal statute. The jury also sets the fine. (4) All sentences are determinate in nature; there are no indeterminate sentences. (5) There are specific guidelines for the judge to follow in determining the appropriate length and manner of service of the sentence imposed by the judge. (6) There is no "good or honor time" credit on a defendant's sentence. While the entire sentence may not necessarily be served in confinement the defendant is responsible for the entire sentence imposed by the judge. (7) Parole, work release and other types of programs are retained under this act but a specific percentage of the sentence must be served in confinement prior to eligibility for these programs. (8) The

act authorizes the Department of Correction to construct regional workhouses as an alternative to incarceration in the penitentiary but it is the judge who determines which defendant may be placed in a regional workhouse. (9) The sentencing determination may be appealed with conviction to the appellate courts by the defendant. The State also has a right to appeal the sentence under more limited circumstances.

While the primary alteration in present procedure is the imposition of the sentence by the judge rather than the jury, the Act attempts to preserve as much as possible those elements of criminal procedure familiar to the bench and bar. The Act does not change the jurisdiction of any court. The statutory range of punishment for existing crimes is not altered although the sentences are determinate rather than indeterminate in nature. There is no alteration in procedure regarding the defendant's trial on guilt or innocence except that the jury no longer has the function of imposing sentence. Further, while the eligibility for probation has been slightly expanded, the Act retains the authority of the judge to suspend a sentence and impose probation with reasonable conditions.

In imposing the actual determinate sentence for a particular crime, the judge has a set of guidelines set forth in the Act to arrive at an appropriate punishment. With respect to the number of years imposed on felony sentences, ignoring for the moment the question of probation, the Act introduces several new concepts. First, all existing criminal penalties are divided into two categories called "Range One" and "Range Two". Range One sentences are the minimum statutory sentences up to approximately twice the statutory minimum. Range Two sentences are sentences approximately double the minimum up to the statutory maximum. For example, first degree burglary carries

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five to fifteen years. Range One would be a determinate sentence anywhere from five to ten years and a Range Two sentence would be anywhere from ten years up to fifteen years.

The more serious offender will receive a specific sentence in Range Two and the less serious offender will receive a sentence within Range One. While the Act sets forth the criteria for Range One or Range Two the actual sentence imposed within these ranges is within the discretion of the court.

Once the specific length of the sentence is imposed within the appropriate range, the judge will then decide how the sentence is to be served. The available options under this Act are increased somewhat, and the judge may sentence the defendant to probation, the workhouse/jail, penitentiary or a combination of these places.

To assist the judge in making the appropriate sentencing determination presentence reports are to be prepared which are similar to the present probation reports. However, pre-sentence reports are not required in cases where there is a "plea bargain" agreement or in misdemeanor cases.

### Effective Date of the Act

The Act is designed to take effect on July 1, 1982. It will apply, however, only to crimes which occur after July 1, 1982. In other words, if a crime is committed before that date but is tried after that date the present procedure and law will be applied including but not limited to jury sentencing.

It is anticipated that the new judge sentencing procedure will probably not come into play until felony cases perpe-

trated after July 1, 1982 get to criminal courts in the early Fall. Sentencing in misdemeanor cases, however, will probably occur shortly after the Act takes effect.

### General Sessions Court Procedures

The Act will have no application to arrest warrants. Consequently, the existing arrest warrant forms will not have to be altered in any manner. Since the Act does not change the distinction between felonies and misdemeanors the initial appearance before the magistrate will be the same as under present law. Nor will the Act have any affect upon the setting of bail by the magistrate or the General Sessions or Criminal Court judge.

The procedure for handling felony cases in General Sessions Court will remain exactly the same as under present law. Preliminary hearings for felonies and misdemeanor cases where the defendant does not waive his right to a jury trial will not be altered.

In those cases where the defendant does waive his right to a preliminary hearing and consents to a trial by the General Sessions judge the actual hearing of the proof will be identical. The major change, however, will be in the manner in which the sentences are imposed for misdemeanor cases.

Under §40-43-302 the court has the discretion to conduct a separate sentencing hearing in misdemeanor cases. In other words there is no requirement for a pre-sentence report or a separate sentencing hearing even where the question of sentence is disputed. The only right of the parties under such circumstances is that the court must allow

a reasonable opportunity for the defense and State to be heard on the question of the length of any sentence and the manner in which the sentence is to be served.

Whatever sentence is imposed for a misdemeanor the judge must be aware that the defendant will be responsible for the entire sentence, day for day. There are no longer any incentive, good or honor time credits on a misdemeanor sentence. Thus, if a defendant gets sixty days for a misdemeanor he is responsible for the entire sixty day period.

In imposing a misdemeanor sentence the judge is responsible for imposing a specific percentage of the sentence which must be served in actual confinement. This percentage is a specific percentage between zero percent and seventy-five percent. Section 40-43-302 provides that if no percentage is expressed in the judgement then the percentage shall be considered zero percent.

Even if the court orders probation a specific percentage must be fixed because, if probation is later revoked, the court may not increase the amount of sentence. When the defendant has served the required percentage the sheriff may place the defendant in such programs as work release and related programs. The Act does not change the authority for placing misdemeanor defendants in programs except defendants are no longer entitled to any credit on their sentence for participation in such programs.

The court may also order probation instead of confinement as is presently the law. In addition, the court may order the defendant to serve a specific portion of the sentence in actual confinement or may require that the defendant serve the sentence on nonconsecutive days. This is somewhat similar to present law and is explained in more detail under the following sections dealing with felony sentencing.

### Indictment Practice

The Act does not change any of the current procedures with respect to the preparation or the return of indictments with a single exception. Under §40-43-109 where a crime carries an enhanced punishment for a second or subsequent violation of the same law the indictment need not charge the enhanced punishment provision. For example, under T.C.A. §39-4235 a second offense shoplifting carries up to one year. Under current practice the fact that there has been a previous shoplifting conviction is normally charged in the indictment to bring the defendant within the provisions of the enhanced punishment provision. Under the Act the fact that the defendant has been previously convicted of shoplifting is not charged in the indictment and a normal shoplifting indictment is returned. After the indictment is returned the District Attorney files a notice with the Court and the defendant that an enhanced punishment is being sought for a second violation of the shoplifting law. This notice requirement is discussed in more detail under the next section.

### Pre-Trial Motion Practice

Under the terms of the Act the District Attorney is required to file a notice with the court and the defendant indicating that if the defendant is convicted an enhanced punishment or a Range Two punishment will be sought by the State. There are three types of enhanced punishment provisions which require the notice.

First, if the District Attorney is requesting a greater punishment for a second or subsequent violation of the law then notice of this fact must be given under §40-43-109. The notice should simply indicate that the defendant has been convicted the previous number of times and that an enhanced punishment is being requested.

Second, if the District Attorney is requesting a sentence in Range Two

because the defendant is a "persistent offender" under §40-43-106, notice of this fact must be given.

Third, if the District Attorney is requesting that the defendant be sentenced under Range Two for an especially aggravated offense under §40-43-107 then notice of this fact must be given.

Under §40-43-202 if the District Attorney determines that a defendant should be sentenced to an enhanced punishment for a second or subsequent violation of the crime charged or for an especially aggravated offense or as a persistent offender the notice shall be filed with the court and defense counsel before trial or before the guilty plea. The notice must set forth the nature of the prior felony convictions relied on, the dates of the convictions, the identity of the courts of the convictions, the nature of the release status from the prior felony convictions and the nature of any injury or threat of injury relied upon to establish that the defendant has committed an especially aggravated offense.

The notice provisions under the Act are somewhat similar to the notice provisions under the habitual criminal statute and simply require the State to give notice that should the defendant be convicted a higher punishment will be sought.

In addition to the required notice, the court has the discretion to require that the defense and the State file notice prior to trial of any enhancement or mitigating factors which should be considered by the court upon a conviction. This provision under §40-43-202(b) is discretionary with the court and is intended to provide the court with information that might be relevant during the guilt phase of the trial which might have some bearing on the sentence should a conviction occur.

Finally, pre-trial motion practice under the Act also requires the parties to

notify the court whether the court should instruct the jury as to the range of punishment authorized for each charged and lesser included offense. Under §40-43-201(b) the motion *must* be filed prior to the selection of the jury. It should be noted that the requirement of the instruction on the range of punishment is a controversial area of the Act and was incorporated into the final bill as a compromise feature.

#### Trial Procedure

In all criminal cases the judge imposes the sentence except in capital cases and in instances of the habitual criminal statute. Consequently there is no change in the current trial procedure under the Act with respect to the defendant's guilt or innocence. The only possible alteration would occur where the defense or the State has requested that the range of punishment be instructed to the jury in which case appropriate instructions are given during the main charge of the court. Where the defendant is convicted of a Class X felony the court must immediately revoke bail even before the sentencing hearing occurs. See §40-43-601(b)(3).

While the judge imposes the sentence the jury must fix any statutory fine in excess of fifty dollars. The fine, if any, is returned with the verdict of guilt but the judge has authority to remit any or all of the fine at the sentencing hearing.

#### Capital Cases and Habitual Criminal Convictions

In those cases where the defendant has been convicted of murder in the first degree and the State is seeking the death penalty the jury imposes the sentence. Under these circumstances the same jury who considered guilt or innocence is retained and an immediate sentencing hearing is conducted on the death penalty question as is currently provided by law.

Where the defendant is charged with being an habitual criminal the identical jury is retained and an immediate

hearing is held on whether or not the defendant is an habitual criminal. If the defendant is acquitted as an habitual criminal then a sentencing hearing is conducted by the court to impose a sentence for the underlying offense. See §40-43-203(d).

#### **Guilty Pleas**

The Act does not change the traditional manner in which guilty pleas are taken in criminal cases. If the District Attorney and the defendant are agreed as to all the specifics of a particular sentence and this agreement is acceptable with the court then an immediate sentence may be imposed upon acceptance of the guilty plea. In other words, no pre-sentence or sentencing hearing is necessary unless the court determines to hold a sentencing hearing. See §40-43-203(b). While presentence reports are desirable for the Department of Corrections, fiscal considerations may prohibit such reports in plea bargained cases.

#### **Pre-Sentence Procedure**

After conviction in those cases where a sentencing hearing is necessary the court fixes a time for the actual sentencing hearing. The sentencing hearing must be held within thirty days of the finding of guilt under §40-43-209(a). In those circumstances where a continuance of the sentencing hearing is requested based on a delay of the availability of the pre-sentence report, the court may continue the sentencing hearing between five and thirty days. A further continuance may be granted in the discretion of the court. See §40-43-209(a).

#### **Pre-Sentence Report**

After the defendant is convicted and prior to the actual sentencing hearing a pre-sentence report is prepared by the existing probation officers. See §40-43-205(a). The judge may require preparation of the report prior to trial but the report may not be disclosed until after the trial. The pre-sentence report is similar to the existing probation re-

ports and must contain certain information including the circumstances of the offense, the defendant's background, the defendant's prior convictions, and the existence of any aggravating or mitigating factors.

The pre-sentence report must be filed with the court and complete copies must be available to the District Attorney and the defense attorney within at least five days of the sentencing hearing itself. See §40-43-208.

#### **Sentencing Hearing**

At the sentencing hearing the District Attorney is the first party to present any evidence and then the defendant may present evidence. From the State's standpoint the District Attorney will put on evidence concerning the defendant's prior convictions if an enhanced punishment is being sought. The victim of the crime may also testify. In general, the defense lawyer will attempt to mitigate the crime and argue for a lesser sentence and/or probation. The parties may introduce certified copies of documents such as prior convictions, and testimony is not required from the actual clerk of the court where the conviction occurred.

The control of the sentencing hearing is in the discretion of the court. The rules of evidence apply except that reliable hearsay is admissible but illegally obtained evidence is not.

The sentencing hearing must be recorded by the court reporter as is the case in any criminal matter.

Once the court determines that a particular sentence is appropriate the court must give its reasons for imposing a specific sentence. The reasons of the court need *not* be in writing but must be stated orally on the record.

In imposing a sentence the court must specify which sentencing alternatives apply. Under §40-43-209(e) the judgement on sentencing must specify (1) the type of offense for which the sentence is imposed; (2) whether the

offense is especially aggravated or the defendant is a persistent offender, or both; (3) whether the defendant is sentenced as an especially mitigated offender; (4) whether the sentence is to a local jail; (5) whether the sentence is to a local workhouse; (6) whether the sentence is to a regional workhouse; (7) whether the sentence is to the Department of Corrections; (8) whether the sentence is to probation supervision; (9) whether the sentence is to confinement or periodic confinement followed by a period of probation supervision; (10) whether the sentences run concurrently or consecutively; and (11) the amount of any pretrial jail credit.

The above findings take into account all of the sentencing alternatives. Obviously not all situations would apply in each case but the above "check list" would give the judge some idea of the options available in each case. All of the above sentencing options are discussed in the following sections.

#### Determining the Sentence "Range"

The first decision that a judge must make in imposing a sentence is to decide which "range" the sentence falls in. The "range" determines the possible number of years that may be imposed on a particular sentence. For purposes of this discussion the number of years imposed does not necessarily mean that the defendant will actually serve the sentence but a specific number of years is required to be imposed in all cases and the "range" determination is the first issue.

The Act does not change the number of years available for punishment on any particular offense. For example, burglary in the first degree carries five to fifteen years. This is not altered by the Act except for the fact that all sentences are now determinate in nature. In other words, a specific number of years must be imposed for a burglary conviction. This could be five, six, seven, eight years, all the way up to and

including fifteen years for burglary in the first degree.

The Act divides the statutory number of years into two "ranges". The first "range" is called "Range One". Range One sentences are to be imposed on the least serious offender or for an offender who has little if any prior record. A Range Two sentence is imposed on a defendant who has committed a crime in a serious manner and also for a defendant who has a lot of prior convictions.

The Range One sentence is approximately the lower half of the statutory number of years and a Range Two sentence is approximately the upper half of the statutory number of years provided for a violation of a criminal statute.

The definition of a Range One sentence is stated in §40-43-109 as a specific number of years which is not less than the minimum sentence established by law and not more than the minimum sentence plus one-half of the difference between the maximum and minimum sentences. For example, burglary in the first degree carries five to fifteen years. The least number of years would be the minimum sentence of five years plus one-half of the difference between the maximum and minimum sentences. The maximum (15) is subtracted from the minimum (5) which leaves a figure of ten. One half of ten is five which is added to the statutory minimum of five which leaves a figure of ten years. This latter figure establishes the greatest number of years which may be imposed for a Range One sentence. Thus, a Range One sentence for burglary in the first degree could be any number of years between five and ten years. Suppose a statute carried a sentence of not less than four nor more than ten years. The least number of years for a Range One sentence would be four years. The difference between four and ten years is six which is divided by two which yields three years. The three year figure is added to the minimum of four which

yields seven years. Thus, a Range One sentence for a crime carrying not less than four nor more than ten would be a specific number of years between four and seven years.

A Range Two sentence is the minimum sentence plus one half of the difference between the maximum and minimum sentence up to the statutory maximum. Burglary in the first degree carries five to fifteen years. The difference between the maximum and minimum sentence is ten years, divided by two which yields five years. This is added to the minimum sentence which yields a total of ten years which establishes the least amount of time available for a Range Two sentence. The greatest number of years for a Range Two sentence is all the way up to the statutory maximum. Thus, a Range Two sentence for burglary in the first degree would be a specific number of years between ten and fifteen years. For a crime that carries four to ten years the Range Two sentence is determined by subtracting four from ten which yields six, which in turn is divided by two which yields a figure of three. This three years is added to the minimum of four which yields seven. Thus, the least number of years for a Range Two sentence would be seven years and the greatest number of years would be ten years.

In making the calculations for a Range One sentence if the mathematical process yields a fractional portion of a year then the figure is reduced to the nearest whole year by rounding down. A Range Two sentence which results in a fractional portion of a year is rounded up to the nearest whole year. For example, grand larceny carries three to ten years. A Range One sentence would have the least number of years at three. The greatest number of years for Range One would be subtracting three from ten which yields seven which divided by two yields three and a half. This three and a half is rounded down to

three which is added to the statutory minimum of three which produces six years. Thus, the Range One sentence for grand larceny would be a specific sentence of between three and six years.

A Range Two sentence for grand larceny would be the statutory maximum down to the minimum plus one half of the difference between three and ten which yields three and a half. Since this is a Range Two sentence it is rounded up to four which is added to the minimum sentence which produces seven years. Thus a Range Two sentence for grand larceny would be seven to ten years.

Other examples would be:

A one to five year statute would carry a Range One of one to three and a Range Two of three to five.

A statute carrying one to ten years would have a Range One of one to five and a Range Two of six to ten.

A statute carrying two to ten years would have a Range One of two to six and a Range Two of six to ten.

A statute carrying three to twenty-one years would have a Range One of three to twelve and a Range Two of twelve to twenty-one.

Because of the peculiarities of some of the existing punishments in the Tennessee Code certain additional considerations have been made by the Act. First, the law states that where a sentence carries one year as the statutory minimum then the judge may impose a misdemeanor sentence of eleven months and twenty-nine days or less. This provision is still the law under the Act but the concept does not enter into the calculation of determining the Range One or Range Two. Second, many of the Class X crimes carry a maximum sentence of life imprisonment. For the sole and exclusive purpose of determining a Range One or Range Two sentence a life sentence is determined to be sixty years, §40-43-109(d). This



sixty year figure has nothing whatsoever to do with parole or limiting in any fashion the ability of the court to impose more than sixty years. Rather, the sixty year figure is just a mathematical term to calculate Range One and Range Two sentences where a life sentence is the highest figure. For example, armed robbery carries ten years to life. If one considers life as sixty years then a Range One sentence would be between ten years and thirty-five years. A Range Two sentence would be thirty-five years up to life. Another example would include aggravated rape where the statutory punishment is between twenty years and life. A Range One sentence for aggravated rape would be between twenty and forty years and a Range Two sentence would be between forty years and life.

The calculation of the Range One and Range Two sentence exists as a matter of law. The real question is which defendant should receive a sentence within Range One and which defendant should receive a sentence within Range Two. In general, a Range One sentence is available for a defendant who is classified as a "mitigated" offender or for a defendant who is not otherwise classified as either mitigated, aggravated or persistent. A Range Two sentence is available for a defendant who is classified as an aggravated or persistent offender or both. While these classifications will be discussed in more detail below it is important to realize the consequences of the various classifications. A mitigated offender has a parole date of twenty percent of his sentence; an unclassified defendant has a parole date of thirty percent; a persistent offender has a parole date of forty percent; an aggravated offender has a parole date of forty percent; and, a defendant who is both aggravated and persistent has a parole date of fifty percent.

**Range One Sentence:  
"Standard" Defendant**

Under the Act there are various clas-

sifications of individuals for purposes of sentencing. A "standard" defendant is not defined as such in the Act but for purposes of this discussion would be any defendant who is not otherwise classified as a "mitigated", "aggravated", or "persistent" offender. A "standard" defendant is someone who will receive a Range One sentence and whose parole date would be thirty percent. It is anticipated that most defendants will fall into this classification.

Stated in another fashion, if the court does not declare the defendant a "mitigated" offender or the court does not find the defendant to be either "aggravated" or "persistent" then the court would simply impose the sentence within Range One and no further notation need be made. Since the defendant has not been specifically classified then the Department of Corrections knows that the person is eligible for parole and related programs after serving thirty percent of the actual sentence imposed.

**Range One Sentence:  
"Mitigated Offender"**

In certain cases the judge may decide that a defendant who should otherwise be sentenced in Range One has committed the crime in an extremely mitigated fashion. Under these circumstances the judge would specifically declare the defendant to be a "mitigated" offender. The consequences of this classification are that the defendant would have a parole date of twenty percent of the actual sentence imposed. See §40-43-501(b).

The criteria for a mitigated offender are set forth in §40-43-108. These include the fact that the defendant has no prior felony convictions, has no prior misdemeanor convictions of six months or more and where the court finds "extreme mitigating factors in the commission of the offense and a minimum of enhancement factors."

**Range Two Sentences:  
"Persistent" Offender**

A Range Two sentence is available for two types of defendants. One of

these types is classified as a "persistent" offender. Basically a "persistent" offender is someone who has several prior felony convictions. This defendant must receive a sentence within Range Two and would have a parole date of forty percent.

Section 40-43-106 defines a persistent offender as a defendant who has two prior felony convictions within the last five years or four prior felony convictions within the last ten years.

The time limitations imposed on the prior convictions begin to run from the commission of the convicted offense and not when the sentencing hearing occurs. Further, the time that a defendant was incarcerated on a previous conviction does not count towards the time limitation. The time a defendant was on parole does, however, count within the time limitation.

For example, suppose the defendant commits a crime on January 1, 1984. He has two prior convictions. The first prior conviction occurred on January 1, 1980. This is well within the five year time limitation and would count as one prior conviction. His second prior conviction occurred on January 1, 1974 and he was sentenced to ten years in prison. Assume that he only served one year and the remaining nine years were on parole. Under this circumstance the 1974 conviction would not count as a prior conviction for purposes of two prior felonies within the last five years. However, assume that the defendant was sentenced to ten years on January 1, 1974 and served five years and was paroled on January 1, 1979. Under this circumstance the 1974 conviction would count as one of the prior convictions required within the last five years.

There are a few exclusions to the prior conviction requirements under a persistent offender. First, a disposition in juvenile court, unless it resulted in a "bind over" and conviction in adult criminal court, would not count as a prior conviction. Further, where there are

two convictions where the crimes occur on the same day would not necessarily count as two prior convictions. It is important to note that this latter exclusion requires that the *crimes* occurred on the same day rather than the convictions occurring on the same day. For example, suppose the defendant commits burglary on January 1 and another January 4. He pleads guilty to both burglaries on March 1. Even though the convictions occurred on the same day they related to crimes which occurred on different days and would thus be considered two previous convictions.

Where the judge finds a defendant to be a persistent offender beyond a reasonable doubt in the sentencing hearing the judge must specify the defendant to be a persistent offender in the judgment papers. Once this is done the defendant is eligible for parole and related programs after serving forty percent of the sentence.

#### Range Two: "Aggravated" Offender

Under §40-43-107 a defendant may be classified as committing an "especially aggravated offense". If the judge finds that an especially aggravated offense has been committed by the defendant then he is so declared in the sentencing hearing and must be sentenced within Range Two. The parole date for this type of offense is forty percent.

There are four different types of situations where a defendant could be declared to have committed an especially aggravated offense. The first is where the crime results in death or bodily injury to a person where the defendant has been previously convicted of the felony that resulted in death or bodily injury to another person. The second circumstance would be where a defendant commits a crime where he wilfully inflicts serious bodily injury upon another person. The third circumstance is where the defendant commits a crime while he is on bail, parole, probation or work release. The fourth circumstance is where a defendant is incarcerated and

commits a felony that results in death or bodily injury to another person.

There are two exclusions to the above four categories. Under §40-43-107(f)(1) where the *punishment* provisions of the crime charged in the indictment are already enhanced by circumstances identical to the aggravated offender provision then those particular circumstances would not apply. In other words, if a crime provides for an enhanced punishment for someone who commits a crime on work release then the defendant could not be sentenced as an aggravated offender unless he met one or more of the other criteria of being an aggravated offender. The author cannot specify any one particular statute where this particular exclusion would apply but it was included due to the possibility of a crime carrying an aggravating factor where there was already an identical aggravating factor present under the Act. This specific provision was included because many crimes are scattered throughout the entire criminal code and this would avoid possible double jeopardy provisions from coming into play with respect to a double enhancement of punishment for identical circumstances.

The second exclusion under §40-43-107(f)(2) would apply where the *definition* of the crime includes a factor which would make a defendant an aggravated offender. For example, if a defendant is convicted of second degree murder he will of necessity have imposed serious bodily injury upon another person. Consequently this circumstance would not apply in and of itself to enhance the crime to Range Two. However, the defendant could be deemed to have committed an especially aggravated offense if one of the other criteria existed. For example, if the murder occurred while the defendant was on parole then his sentence would be imposed within Range Two.

### Determining the Specific Number of Years

Once the judge has determined the appropriate range and whether the defendant is mitigated, standard, aggravated or persistent, the judge then must determine the specific number of years the defendant is to be sentenced to. This determination is discretionary with the court but the judge must consider all of the factors surrounding the commission of the offense as well as the defendant himself. There is a list of mitigating factors under §40-43-110 and a listing of enhancement factors under §40-43-111. These factors look to the defendant and the manner in which he committed the crime. Obviously, if there are few mitigating factors and many enhancement factors then the defendant should receive a sentence at the higher end of the appropriate range of punishment. Conversely, if there are many mitigating factors and few enhancement factors then the defendant should receive a sentence at the lower end of the appropriate range.

Once the court has determined the appropriate number of years a defendant should serve this number is specified in the judgement. It must be noted, however, that all sentences are determinate in nature and only one number is imposed for a sentence for each particular crime.

### Determining the Manner in Which the Sentence Should Be Served

After the judge has decided the specific length of the sentence within the appropriate range then the judge determines where the defendant will serve his sentence or whether the defendant may be placed on full or partial probation. This act increases the number of options that the judge may exercise in determining the manner in which the defendant serves the sentence.

In making a decision as to whether the sentence should be served, and, if so,

how long and in which type of institution, the Act creates certain principals of sentencing. The purposes of the Act are to punish a defendant by assuring the imposition of a sentence he deserves in relation to the seriousness of the offense. Further, the Act is created to assure the fair and consistent treatment of all defendants and to prevent crime and promote respect for the law. These purposes are stated in more detail in §40-43-102.

In general, the judge may place the defendant on full probation immediately after sentencing or probation may be provided after the defendant serves a portion of the sentence in full or partial confinement. Where the judge decides that probation is inappropriate the defendant may be sentenced to the jail or workhouse (where the sentence is less than six years) or the defendant may be sentenced to the Department of Corrections.

While these options will be discussed in more detail below it is important to note that all sentences are determinate in nature and there are no longer any good, honor or incentive credits for a sentence. In other words, if a defendant receives a sentence of seven years then he is responsible for the entire seven year period of time. The judge fixes a certain percentage of the sentence within which the defendant will be eligible for release programs such as work release and parole. However, until such time as the defendant actually serves this percentage in sentences involving confinement then the defendant is actually "locked up" and is not allowed to participate in any program whatsoever.

#### Probation

The Act broadens somewhat the eligibility for probation from present law. In general, probation *consideration* is automatic without the filing of a "petition for probation". A defendant is not eligible for probation if the sentence im-

posed is more than ten years, if the crime is a Class X felony, a violation of certain drug statutes or a second or subsequent conviction for burglary.

If the judge determines that an otherwise eligible defendant should be granted probation then the court may suspend the sentence and place the defendant on supervised probation for an appropriate number of years. The court may also impose specific conditions of probation which also include restitution.

The Act does not change the provisions for a violation of probation and the current law would apply.

#### Periodic Confinement

Under §40-43-307 the judge may order that the defendant serve a portion of his sentence in periodic confinement such as on week-ends. The judge specifies in the order that the defendant will serve a specific amount of time and then the remainder of the sentence is served on probation supervision.

#### "Split" Confinement

Under §40-43-306 the judge may impose a specific sentence and require the defendant serve a portion of that sentence with the remainder on probation supervision. The judge must specify that the initial confinement be served either in the jail or workhouse but split confinement is not available for sentences to the Department of Correction. Further, the maximum amount of time which may be served in a split confinement situation is one year. However, the court may specify that the defendant could be eligible for any and all rehabilitative programs of the jail or workhouse, except parole, after serving a specified portion of the sentence which is indicated by the court. In other words, if the judge wanted a person to be immediately eligible for work release the judge could so specify in the judgment papers.

Once the defendant has served the

appropriate amount of time he is then placed on probation supervision through the court. Split confinement does not involve parole by the Parole Board and a defendant sentenced under §40-43-306 is within the jurisdiction of the court.

#### **Confinement in a Jail, Workhouse, or Regional Workhouse**

Where the judge does not order probation and where the sentence is not specified as the Department of Corrections confinement may be imposed in the jail, workhouse or regional workhouse. The eligibility for such jail or workhouse sentences has been increased from five to six years. In other words, if a defendant receives a sentence of six years or less then the judge has the authority to transfer the sentence from the penitentiary to the jail or workhouse at the time of sentencing.

In addition to the normal jail or workhouse sentences a new provision has been enacted for purposes of "regional" workhouses. These regional workhouses are institutions constructed by the Department of Corrections. At the time of this writing no such institutions have been built but it is anticipated that certain minimum security institutions may be designated by the Commissioner of Corrections as "regional" workhouses.

If the judge determines that a person should go to a jail or workhouse the judgement papers should so reflect. The advantage of a sentence in a jail or workhouse is that the defendant might be eligible for programs earlier than would otherwise occur should the sentence be imposed in the Department of Corrections. A specification of earlier eligibility must be made in the judgement papers and the defendant would be eligible for all programs such as work release earlier than normal with the exception of parole.

An additional advantage of a jail or workhouse sentence is that the judge

retains jurisdiction over the defendant for the entire duration of the sentence and the defendant may go back to court and petition for probation or a modification of his sentence. This is similar to present law with respect to jail or workhouse sentences.

#### **Sentences to the Department of Corrections**

The judge may also impose a sentence to the Tennessee Department of Corrections. In this respect the sentencing works exactly as under present law. The defendant is sentenced to the Department of Corrections for a specific number of years and once the judgement becomes final in the trial court the judge loses any and all authority to modify the sentence in any respect.

#### **Post-Sentencing Procedure**

After the judge has imposed a specific sentence within the appropriate range a written or oral order of these findings must be made. See §40-43-209(e). In addition the presentence report, if any, is forwarded to the institution where the defendant is to be confined. See §40-43-209(d).

#### **Motion for New Trial and Appeal**

After the court has imposed sentence the time for filing a motion for new trial begins to run. The Act does not change the existing thirty day rule in this regard. Thus, all motions for new trial must be filed within thirty days from the date of conviction of the offense or the date of the sentence imposed, whichever is last. See §40-43-401.

Following the overruling of the motion for a new trial the defendant may appeal his conviction and the propriety of the sentence to the Tennessee Court of Criminal Appeals. The appellate court will have the authority to modify the sentence if it is legally erroneous or constitutes an abuse of discretion.

To a more limited extent the State also has the right of appellate review independent of that of the defendant's appeal. The State may appeal whether

the sentences were to probation, whether the sentences should have been run consecutively, and whether the judge imposed the sentence within the correct range. On an appeal of the State the appellate court will not be able to modify the specific number of years imposed by the trial judge unless the judge imposed the sentence within the wrong range. As a check on unwarranted appeals by the State the appellate court will have the authority to actually reduce the sentence imposed by the trial judge.

#### Release (Parole) Eligibility

One of the most important concepts under the sentencing act is that all sentences are determinate in nature and that there are no longer any good or honor or incentive credits on the sentences imposed. In other words, if the judge imposes a ten year sentence then the defendant is responsible for the entire ten years to the State. While eligibility for parole and work release are retained under this act the manner in which a defendant becomes eligible for these programs is drastically altered.

Under prior law a defendant received certain good and honor time credits on his sentence from which his parole eligibility date was calculated. A defendant's work release eligibility was calculated from the parole date. Under the Act *all* programs including parole are classified under the general category of "release eligibility". In other words all of the programs whereby a defendant may be released either partially or totally from confinement are grouped together for a single eligibility date. Prior to becoming eligible on this date the defendant must serve his sentence in actual confinement. When this date arrives the defendant is granted a hearing by the parole board and, if appropriate, he is then allowed to participate in programs such as work release and/or parole.

Under the Act the release eligibility

date [RED] is fixed by law at a specific percentage of the actual sentence imposed. A defendant who is classified as a mitigated offender has a RED of twenty percent. A defendant who is a "standard" defendant has a RED of thirty percent. A defendant who is classified as either an aggravated or persistent offender has a RED of forty percent. A defendant who is both an aggravated and persistent offender has a RED of fifty percent.

It must be remembered that the percentage stated in the Act for each particular classification is an actual percentage of the sentence imposed by the judge undiminished by sentencing credits of any sort. For example, a defendant who has been given forty years for armed robbery and who is also classified as an aggravated offender would have a RED of sixteen years. If this defendant were granted parole after sixteen years he would be responsible for his sentence for the remaining twenty-four years.

The RED specified in the act is the earliest percentage of time a defendant may be considered for a release program. If the defendant violates any of the rules and regulations of the Department of Correction or the institution to which he is otherwise assigned then the RED may be increased by the Commissioner of Corrections or the sheriff up to and including the total amount of the sentence. This is somewhat similar to the prior procedure of removing good and honor time credits from a defendant's sentence.

In instances where a defendant receives consecutive sentences then the RED for each sentence is added together to determine the total amount of time which must be served in confinement prior to eligibility for programs. The RED for a life sentence is thirty years.

Once a defendant reaches the RED period by serving the required amount

of time the parole board conducts a hearing and determines whether or not the defendant should be granted release eligibility status. The District Attorney and the judge must be notified of the hearing. If this release status is granted the defendant may be placed on work release or placed in a minimum security institution or placed on supervised parole. In the event he is placed on supervised parole the period of supervision is at least two years and this period may be extended. Even after the defendant completes the period of supervised parole he is still subject to revocation for violation of the terms of his parole.

The release classification status is not a right and the parole board may decline to grant release status if the parole board feels that the person will not conform to the release programs, if release would deprecate the seriousness of the crime, if release would have an adverse affect on institutional discipline or if continued incarceration would enhance the defendant's capacity to lead a law abiding life when given release status at a later time. If the board determines that eligibility is appropriate it must provide written reasons.

#### Conclusion

While the Sentencing Act may at first seem complicated by the addition of new concepts the sentencing procedure itself is basically very simple. For the first time all sentences are determinate in nature and the release eligibility date for all programs is a specific percentage of the sentence actually imposed. There are certain guidelines to aid the judge in making a rational sentencing determination but, in the final analysis, the ultimate decision as to what should be done with a particular defendant is left with the court.

In addition to judge sentencing the Act substantially changes the number of sentencing options available to the trial court. Too often, under present

law, defendants were either given probation or sent to the penitentiary when a middle ground would have been more appropriate but was unavailable. In short, the "either/or" choice put serious criminals on the street or incarcerated less dangerous offenders.

This Act is intended to broaden the opportunity of the court to impose reasonable sanctions on the defendant who has his first minor brush with the law. The Act does not intend for every "first offender" to be given full probation. Experience indicates that perhaps a brief period of incarceration followed by a period of probation is enough to get most defendant's attention. Long periods of confinement are not always needed to protect society or punish every defendant who has violated the law. To this extent the new sentencing provisions will probably expand the number of persons who are retained within the jurisdiction of the court either in local workhouses or on supervised probation.

While the less serious offender may be subject to broader based options the dangerous, violent and repeat offender will be exposed to longer periods of incarceration. This is accomplished by allowing a defendant's prior record to have a substantial influence on the sentence. Experience also indicates that most crime is committed by a few repeat offenders; whether crimes of violence or property crimes. Long incarceration of these individuals will, at the least, protect society.

It is anticipated that minor defects and possible inconsistencies in the Act will become apparent when courts apply the provisions to actual cases. These problems can be remedied in future sessions of the legislature. However, on balance, the new act should go a long way toward making Tennessee's criminal justice system more rational and effective in imposing sanctions on those who violate the law.

## APPENDIX

### Factual Example of the Act

The following hypothetical fact situation will illustrate how the Act operates. Assume that four defendants, Abe, Bob, Calvin and Don are all convicted of first degree burglary of the same home. This crime carries a sentence of five to fifteen years and, under the Act, the sentences are determinate.

At the sentencing hearing for Abe the proof established that Abe assisted in breaking out the door to the victim's home and helped take out some of the items. Abe is 22 years old and has been arrested twice before for misdemeanors and was convicted when he was 18 of petit larceny. The judge determines that Abe will receive a sentence within Range One because Abe does not fit the aggravated or persistent offender category. A sentence within Range One for burglary in the first degree would be anywhere between five and ten years. After considering all the facts and circumstances surrounding the crime and Abe's background the judge decides that six years is appropriate for the offense. However, Abe has a job and there is a possibility that he might be able to make restitution to the victim. The judge also decides that immediate probation for Abe is not appropriate since burglary is such a serious offense in that county. The judge sentences Abe to six years but transfers the sentence to the workhouse and specifies that Abe will be immediately eligible for work release programs. Abe is sent to a regional workhouse and after he arrives there the authorities place him on work release and he continues to work and pays a certain portion of his income to the victim of the crime. After Abe serves thirty percent of the actual sentence imposed by the judge Abe becomes eligible for parole and is released from the institution on supervised parole. Even though Abe has been released on parole

he is still responsible for the remainder of the entire six year sentence and any further violation of the law or a violation of the terms of his parole will result in his parole being revoked and a return to the institution.

At the sentencing hearing for the defendant Bob, the proof reveals that Bob is 18 years of age and has never been arrested or convicted of any crime. The proof further establishes that Bob was the driver of the vehicle used in the burglary and that he neither broke into the house nor got anything from the crime. However, he is still legally guilty of first degree burglary. The court finds that since he does not fit the aggravated or persistent offender category that the sentence must be imposed within Range One which means that the judge can sentence Bob anywhere between five and ten years. The judge decides that Bob should receive the minimum sentence of five years and further that Bob is an extremely mitigated offender since his participation in the crime was so minor. Should Bob serve this sentence he would be eligible for release programs after serving twenty percent of the sentence. The judge determines, however, that immediate probation is appropriate. The judge therefore imposes the five year sentence but suspends it and places Bob on probation supervision with the added condition of restitution to the victims.

At the sentencing hearing for Calvin the proof develops that Calvin was the ring leader of this operation and that Calvin has four prior felony convictions within the last ten years. The judge finds that Calvin is a "persistent offender" and must impose a sentence between ten and fifteen years. The judge further finds that since Calvin instigated the entire crime and due to his prior lengthy record that a maximum of fifteen years is appropriate for the offense. The judge imposes a fifteen year



sentence and sentences Calvin to the Department of Corrections. Since the judge has declared Calvin a persistent offender the release eligibility for all programs such as work release or parole will come only after Calvin has served forty percent of the actual sentence imposed. In this case, forty percent of the fifteen years would be six years. Calvin must serve six calendar years in confinement for this burglary. However, Calvin attempted to escape while he is in the penitentiary and the Commissioner of Corrections, after a hearing, moves Calvin's release date up to eighty percent for a violation of the rules of the prison.

The last defendant, Don, also has a sentencing hearing after being convicted of the first degree burglary. At the sentencing hearing the judge determines that Don committed this burglary while he was on work release from a previous grand larceny conviction. Consequently, Don is considered to have committed an especially aggravated offense since he was on a release program when he committed the new crime. The judge must therefore sentence Don between ten and fifteen years which is the appropriate sentencing range for an aggravated offender. The judge decides that ten years is the appropriate sentence for this particular crime. Don is sentenced to the Tennessee Department of Corrections and must serve an actual forty percent of his sentence before he becomes eligible for any programs. After serving four years in the penitentiary Don is paroled but a few months later he is convicted of an armed robbery. At the sentencing hearing on this new conviction the judge finds that Don is an aggravated offender since he committed the armed robbery while on parole. The Court further finds that Don is a persistent offender since he now has two prior felony convictions. The Court finds that Don is now an aggravated and a persistent offender and Don will have to serve fifty percent of

any sentence imposed before being eligible for any release programs.

#### Outline of Steps in Sentencing

The main article discussed the specifics of the Sentencing Act. This portion of the appendix outlines the various steps in most sentencing determinations. Obviously, not all steps will be applicable in all cases. The procedure should be followed for *each* conviction.

##### *Step One* (Enhanced Punishment)

Has the defendant been convicted of an offense which carries an enhanced punishment for a second or subsequent violation of the same law, e.g. shoplifting, second offense? If not, go to step two. If so, the State must prove the required number of previous convictions to establish the enhanced punishment. If the State establishes the previous convictions the defendant is subject to the higher punishment for the subsequent violation, e.g. third offense shoplifting with a sentence of one to five years. Go to step two.

##### *Step Two* (Notice of Persistent or Aggravated Offender)

Has the State filed notice that the defendant is a persistent or aggravated offender? If not, go to step six. If notice as a persistent offender has been filed go to step three. If notice of an aggravated offender has been filed, go to step four.

##### *Step Three* (Persistent Offender)

If the notice of the persistent offender has been filed the State must establish the requisite number of convictions to bring the defendant into the persistent offender category. If sufficient prior convictions are established the defendant must be sentenced as a persistent offender and the sentence must be imposed within Range Two. Go to step five. If the defendant is not found to be a persistent offender go to step four.

##### *Step Four* (Aggravated Offender)

If notice of the aggravated offense has been filed the State must establish the required prior conviction, the degree of harm, the status of the defendant at the time of the crime and/or

whether the defendant committed the crime on parole, work release, bail or probation. If these criteria are met the defendant must be sentenced as an aggravated offender and the sentence must be imposed within Range Two. Go to step five. If the defendant is found not to be an aggravated offender, go to step six.

**Step Five (Range Two Sentence)**

If the defendant is either an aggravated and/or a persistent offender the sentence must be imposed within Range Two which is the top half of the statutory punishment. Thus, burglary in the first degree carries five to fifteen years. Range Two is a determinate sentence between ten and fifteen years. The judge examines all the circumstances of the defendant and the crime and fixes a specific term of years within Range Two. Go to step eight.

**Step Six (Range One Sentence)**

If the defendant is neither an aggravated or persistent offender the judge must impose a sentence within Range One. This is the lower half of the statutory penalties. Thus a Range One is five to ten years for burglary in the first degree. The judge examines all the facts of the crime and the circumstances of the offense and imposes a specific determinate sentence within Range One. Go to step seven.

**Step Seven (Mitigated or Unclassified Offender)**

The judge determines if the defendant should be classified as a mitigated offender. If so, the defendant is given a Range One sentence and adjudged a mitigated offender. Go to step eight. If the defendant is not a mitigated offender the defendant is given a sentence within Range One. Go to step eight.

**Step Eight**

The court has already imposed a specific sentence within the appropriate range. The judge must specify the specific sentence and whether the defendant is a mitigated, aggravated and/or persistent offender. The release eligibil-

ity dates need not be stated unless an earlier date is allowed for certain types of confinement. The release date for a mitigated offender is 20%, an unspecified offender is 30%, a persistent or aggravated offender is 40%, and a persistent and aggravated offender is 50%. Even if probation is contemplated the designations as to the type of offender must be stated. In all instances go to step nine.

**Step Nine (Probation)**

Having already determined the specific length of the sentence, the judge must now determine the manner in which the sentence will be served. Is the defendant eligible for probation? The probation eligibility standards are set forth in §40-43-303(a). If the defendant is eligible for probation the judge determines whether probation is appropriate. If full probation is appropriate, the judge suspends the sentence and places the defendant on probation for a period of time. Go to step seventeen. If full probation is not appropriate, go to step ten.

**Step Ten (Partial Confinement and Partial Probation)**

The judge may determine that a portion of the sentence should be served before probation goes into effect. This may be periodic confinement, e.g. on weekends, step eleven; or a full confinement, step twelve, followed by probation. These partial confinements must be served in the workhouse and *not* the Department of Corrections.

**Step Eleven (Periodic Confinement)**

If periodic confinement is appropriate the judge directs what portions of months or days the defendant must serve before being granted probation. For example the defendant is sentenced to one year and must serve the weekends in jail with the intermediate and remaining time on probation. Go to step twelve.

**Step Twelve (Split Confinement)**

The judge may determine that the defendant serve a portion of the sentence

in confinement prior to being placed on probation. The judge specifies what portion of the sentence is to confinement (up to one year) and what portion is on probation. Under a split confinement sentence the judge must specify what portion of the sentence must be served before the defendant becomes eligible for programs such as work release. The percentage can be as low as 0% or as high as 100%. Obviously, a defendant would not want a split confinement with a 100% RED if a full confinement would give him a lower RED. Go to step thirteen.

*Step Thirteen* (Sentence to Jail, Workhouse or Regional Workhouse)

If the sentence is more than six years, go to step sixteen. If the sentence is six years or less the judge may transfer the sentence to the jail, workhouse or regional workhouse. If transfer is not appropriate go to step sixteen. If transfer is appropriate, the judge determines whether the sentence will be to the local jail or workhouse, step fourteen, or to a regional workhouse, step fifteen.

*Step Fourteen* (Local Jail or Workhouse)

If the judge determines that the sentence should be served in a local jail or workhouse, the judge orders the transfer. The judge may order that the RED be earlier than what would be the normal release date. A sentence to the local jail or workhouse gives the court continuing jurisdiction over the defendant's sentence and the sentence may be subsequently modified. Go to step seventeen.

*Step Fifteen* (Regional Workhouse)

When such institutions become available, the judge may sentence the defendant to a workhouse operated by the Department of Corrections. A sentence to a regional workhouse is identical to a local jail or workhouse sentence. Go to step seventeen.

*Step Sixteen* (Department of Correction)

If the defendant has not been granted

probation or is otherwise ineligible for such and, in cases where a workhouse sentence is not imposed, the sentence is to the Department of Correction. Once imposed the sentence may not be altered. Go to step seventeen.

*Step Seventeen* (Fines)

If the jury has imposed a fine the judge may include all or a part of the fine as part of the sentence. Go to step eighteen.

*Step Eighteen* (Concurrent or Consecutive Sentences)

If the defendant has more than one conviction in the same court or has pending sentences from other courts the judge must order whether the sentences are concurrent or consecutive. The Act does not change the law as to whether consecutive sentences are appropriate. Go to step nineteen.

*Step Nineteen*

The judge must give reasons, either in writing or orally on the record, as to why the sentence length, the manner and place of sentence were imposed. Go to step twenty.

*Step Twenty*

In cases where full probation is ordered, final sentence of the court is pronounced. Go to step twenty-two. If no full probation, go to step twenty-one.

*Step Twenty-One*

In all cases where even partial confinement is ordered, the defendant's jail credit must be awarded. Where there is a presentence report available it must be sent to the authority having custody of the defendant. Final sentence is pronounced. Go to step twenty-two.

*Step Twenty-Two* (Motion for New Trial)

The defendant has thirty days within which to file the motion for a new trial "on the issue of guilt and on any sentencing issue." The motion for new trial is conducted in the present manner except the court entertains any modifications in the sentence. Go to step twenty-three.

*Step Twenty-Three* (Appeal)

When the motion for a new trial is overruled the time for an appeal begins to run. If the state anticipates no motion for a new trial by the defense and wishes to appeal a sentence, the notice of appeal should be filed after the sentence is pronounced.

**Sample Sentencing Form—General Sessions Court**

In the General Sessions Court of \_\_\_\_\_ County, Tennessee  
STATE OF TENNESSEE  
VS. Warrant # \_\_\_\_\_  
\_\_\_\_\_  
(Defendant)

**ORDER**

The Defendant was convicted of the crime of *(name of crime)*, on *(month) (day)*, 19*(year)*. The Defendant is sentenced to *(number of days or months)*.

Check One of the Following and Fill Out:

**Probation** The Defendant's sentence is suspended for *(number of days or months)* and the defendant is placed on probation supervision.

**Split Sentence** The Defendant is to be confined in the jail or workhouse and his release eligibility date is fixed at *(0%-100%)*. After serving *(number of days or months)*, the remainder of the defendant's sentence is suspended for *(number of days or months)* and the Defendant is to be placed on probation supervision.

**Periodic Confinement** The defendant is to be confined on periodic days: *(state days, such as 10 weekends, every other days, etc.)*, during nonconfinement days of said period the defendant is to be supervised by a probation officer. After service of said sentence, the remainder thereof is suspended for *(number of days or months)* and the defendant is to be continued on probation supervision.

**Full Confinement** The Defendant is to be confined in the jail or workhouse for the period of confinement and his release eligibility date for this offense is

fixed at *(0%-75%)* of the sentence imposed after which time the defendant shall become eligible for consideration for placement in administrative programs operated by the jail or workhouse as provided by law.

The Defendant's fine is fixed at \$\_\_\_\_\_.

The sentence imposed is to run [~~strike one~~] (concurrently) (consecutively) with sentences [~~strike one~~] (already being served) (sentences imposed in case numbers \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.)

IT IS SO ORDERED, this the \_\_\_\_\_ day of *(month)*, 19\_\_\_\_.

\_\_\_\_\_  
JUDGE

**Sample Sentencing Form—Criminal Court**

In the Criminal Court of \_\_\_\_\_ County, Tennessee  
STATE OF TENNESSEE  
VS. Case # \_\_\_\_\_  
\_\_\_\_\_  
(Defendant)

**ORDER OF SENTENCE IMPOSED**

The Clerk of the Court is directed to prepare a judgement reflecting the following actions taken with respect to the sentence imposed on the following conviction:

1. Conviction: *(Name of Crime)*
2. Number of months, days and/or years imposed: \_\_\_\_\_.
3. Amount of fine (if any): \_\_\_\_\_
4. The defendant is a: (check one)
  - Mitigated Offender (20%)
  - Aggravated Offender (40%)
  - Persistent Offender (40%)
  - Aggravated Offender and Persistent Offender (50%)
  - None of the above (30%)

[Check one of the following that apply and fill out]

5a. The sentence is suspended for *(years)* and the defendant is placed on probation supervision.

[ ] 5b. The defendant is to be confined in the local jail or workhouse with a release eligibility date of (0-100%). After serving (*number of days, months or years*), the remainder of the sentence is suspended for (*number of days, months or years*), and the defendant is to be placed on probation supervision.

[ ] 5c. The defendant is to be confined in the jail or workhouse on periodic days: (*state days, such as 10 weekends, every other day, etc.*). During nonconfinement days of said period the defendant is to be supervised by a probation officer. After service of said sentence, the remainder thereof is suspended for (*number of days, months or years*) and the defendant is to be continued on probation supervision.

[ ] 5d. The defendant's sentence is transferred to the local jail or workhouse. (Optional: The defendant's release eligibility date is fixed an \_\_\_\_% for all programs except parole. [Note: This option will allow an earlier eligibility date than fixed in number 4 above]).

[ ] 5e.\* The defendant's sentence is

transferred to the regional workhouse operated by the Department of Corrections. (Optional: The defendant's release eligibility date is fixed at \_\_\_\_% for all programs except parole. [Note: This option will allow an earlier eligibility date than fixed in number 4 above]).

\*At present no institutions have yet been designated regional workhouses.

[ ] 5f. The Defendant is sentenced to the Tennessee Department of Corrections.

6. The sentence is to run [strike one] (Concurrently) (consecutively) with the following convictions:

7. The defendant is to be awarded any pretrial jail credit on this sentence.

8. The Clerk of the Court is directed to forward a copy of the presentence report to the (Sheriff) (Department of Correction) along with the judgement papers.

IT IS SO ORDERED, this the \_\_\_\_ day of (*month*), 19\_\_\_\_.

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JUDGE