

## 1. THE SENTENCING COMMISSION

**Q.** What year was the commission established? Has the commission essentially retained its original form or has it changed substantially or been abolished?

Tennessee does not have an active sentencing commission. The Tennessee Sentencing Commission was abolished in 1995, due to concerns that it was encroaching on legislative prerogatives.<sup>1</sup> A temporary Task Force on the Use of Enhancement Factors in Criminal Sentencing was established by the governor in 2004 to study the impact of *Blakely v. Washington* on the administration of criminal justice in Tennessee and to recommend changes to rectify the constitutionality of the State's sentencing structure.<sup>2</sup> The task force dissolved in 2015. A second task force, the Governor's Task Force on Sentencing and Recidivism, was established in 2014 to make recommendations to reduce recidivism and identify "changes to sentencing laws and practices that . . . more effectively use criminal justice resources to reduce crime and address the growth of the prison and jail population."<sup>3</sup> The task force completed its final report in 2015.

**Q.** Membership: who appoints them, for what terms, with what required qualifications?

Tennessee's most recent Governor's Task Force on Sentencing and Recidivism, which lasted from 2014 to 2015, included: "six members of the legislature, five current and former district attorneys general, three sheriffs and police chiefs, a county mayor, five executive branch officials, three judges, one public defender, one victim advocate, one community programming provider, and two representatives of the business community."<sup>4</sup>

**Q.** Is the commission an independent agency, or is it located in or hosted by some other state agency?

Tennessee no longer has a sentencing commission.

**Q.** How many staff does the commission have? Are they dedicated to the commission, or shared with another agency?

Tennessee no longer has a sentencing commission.

**Q.** What is the commission's current statutory mandate?

Tennessee no longer has a sentencing commission.

**Q.** Do statutes and/or guidelines identify management of prison and jail resources as a goal?

The 1989 Criminal Sentencing Reform Act, and the current sentencing statutes which are still based on that act, recognize that "state prison capacities and the funds to build and maintain them are limited." They adopt the principle that only the most serious offenders with histories of failed rehabilitation efforts should be given priority in sentencing that involves incarceration.<sup>5</sup> A defendant whose offense is not one of certain more severe offenses should, by recommendation of the advisory sentencing guidelines, be considered as a favorable candidate for alternative sentencing options.<sup>6</sup> However, prior convictions weigh against this, and the guidelines advise that a defendant being sentenced to a third or later separate felony should not be considered as such.<sup>7</sup> Courts should consider, but are not bound by, these recommendations as to alternative sentencing.<sup>8</sup> Separately, defendants who are sentenced to shorter periods of incarceration often must be placed in local, non-department of correction facilities.<sup>9</sup>

**Q.** Are sentencing practices studied by means of annual or other regular data sets? If so, are those data sets made available to outside researchers?

Tennessee has no active sentencing commission or equivalent body that carries out regular studies of sentencing practices.

## 2. THE GUIDELINES

### Q. When were the guidelines first implemented?

The Criminal Sentencing Reform Act of 1989, which came into effect on November 1, 1989, established presumptive sentencing guidelines within the statutory sentencing scheme.<sup>10</sup> In 2005 the presumptive guidelines were converted to advisory guidelines, to resolve constitutional concerns raised by *Blakely v. Washington*.<sup>11</sup>

### Q. In recent years, have they been modified at least once a year?

The guidelines' presumptive rules, which were made purely advisory by the 2005 Sentencing Reform Act, are not revised annually.

### Q. Do the commission's recommended initial or modified guidelines require affirmative legislative approval, or do they take effect subject to legislative override?

The guidelines are contained in the sentencing statutes, which require legislative approval to be modified.

### Q. Do the sentencing guidelines only apply to felonies, or are some misdemeanors and other lesser offenses also covered? Are some felonies excluded (e.g., those subject to life and/or death penalty)?

The advisory guidelines only apply to felonies.<sup>12</sup> While the guidelines generally recommend sentences within ranges of punishment defined by crime class and prior record category, repeat violent offenders must be sentenced to life imprisonment.<sup>13</sup>

### Q. Is a grid used? Are there multiple grids? How many severity levels does the grid contain?

A sentencing matrix, whose sentence ranges correspond to statutory sentence ranges, was prepared in tandem with the Criminal Sentencing Reform Act of 1989. There is only one matrix, containing 25 cells that define the allowable sentencing range for those offenders; there are five offense severity levels, corresponding to the five felony classes (A through E),<sup>14</sup>

and five criminal history categories (from "Mitigated"<sup>15</sup> to "Career").<sup>16</sup>

### Q. How is the presumptive sentence determined?

Using the sentencing matrix, the applicable range can be determined by finding the cell that is at the intersection of the offender's felony class and criminal history category. The felony class is found by referencing statutory provisions that assign all felonies to classes A (most severe) through E (least severe).<sup>17</sup> The criminal history category is found in statutes that define five groups of offenders: especially mitigated, standard, multiple, persistent, and career offenders.<sup>18</sup> Each of the latter categories corresponds to one of five columns along the horizontal axis of the matrix; the five felony classes are listed along the vertical axis. In 15 of the 25 cells on the matrix the sentencing court may choose among several sentence types: an executed prison term within the applicable cell range; a suspended prison sentence within the range combined with probation; or in some cases, an alternative sentence (including fines, restitution, and/or a local jail term).<sup>19</sup> Probation is never allowed for certain crimes, nor is it allowed if the court imposes a prison sentence longer than ten years.<sup>20</sup> Unlike most sentencing guidelines grids, the prison sentence durations provided in each cell of the matrix are mandatory – the court may not impose a prison duration outside of the range.<sup>21</sup> This means that probation is always precluded in the ten cells of the matrix where the minimum term is greater than ten years. It also means that judges may not "depart" upward from the top of the cell range or downward below the range, as to prison duration, even if aggravating or mitigating offense facts are present.

The original 1989 Criminal Sentencing Reform Act guidelines included two presumptive rules: 1) An offender falling into one of six cells in the lower left part of the matrix (two lowest criminal history categories, three lowest felony classes) was "presumed to be a favorable candidate for alternative sentencing options in the absence of evidence to the contrary;"<sup>22</sup> 2) In choosing the duration of imprisonment within the applicable matrix cell range, judges were in most cases directed to start at the bottom of the range and adjust upward based on a weighing of statutory aggravating and mitigating factors.<sup>23</sup> In 2005 the Tennessee legislature converted these two rules from presumptive to advisory,<sup>24</sup> in order to bring Tennessee's sentencing

scheme into compliance with *Blakely v. Washington* and *United States v. Booker*.<sup>25</sup> Accordingly, courts may now impose any prison sentence within the applicable matrix cell range, a probationary sentence if authorized, or an alternative sentence if that is not barred by other statutes.<sup>26</sup>

**Q.** Is the choice among types of sentences regulated by a “disposition” or other prison in/out line? Are “out” sentences accompanied by suspended execution of prison or suspended imposition of sentence? By definitive preclusion or prison for those cases?

The sentencing matrix has no disposition line per se. However, such a line is implicit in guidelines rules that encourage non-prison sanctions in specified cells of the matrix, and which forbid probation in matrix cells with a high minimum prison duration. Specifically, the guidelines advise that the following offenders “should be considered” as favorable candidates for alternative sentencing: offenders in the two lowest criminal history categories (“especially mitigated” or “standard”), convicted of Class C, D, or E felonies and not possessing, “criminal histories evincing a clear disregard for the laws and morals of society and evincing failure of past efforts at rehabilitation.”<sup>27</sup> Probation is only allowed if the court imposes and then suspends a prison term not exceeding ten years;<sup>28</sup> in ten matrix cells at the top and upper right corner of the matrix, the minimum allowable prison term is greater than ten years.

A probationary sentence must always be accompanied by a suspended-execution prison sentence, but some kinds of alternative sentence (fines, restitution, jail sentences) may be imposed without probation and suspended prison.<sup>29</sup> If a defendant violates his probation, “within the maximum time that was directed and ordered by the court for the suspension,” a judge may revoke the probation and the suspension of sentence. The judge may then order that the term of imprisonment imposed by the original judgment be served or, if the violation does not involve commission of a new offense, may “resentence the defendant for the remainder of the unexpired term to any community-based alternative to incarceration authorized” by the statute.<sup>30</sup>

**Q.** Are there border boxes or other categories permitting multiple sentence types?

There are no border boxes per se since there is no disposition line on the Tennessee matrix. However, probation is allowed (with some exceptions) in 15 of the 25 cells on the matrix,<sup>31</sup> and since the guidelines are purely advisory, judges may sentence an offender falling into one of those cells to either probation or any prison sentence permitted by the matrix cell range. In addition, the guidelines advise that offenders falling into six cells in the lower left corner of the matrix should be “considered” as favorable candidates for alternative sentencing options; yet judges retain discretion to impose prison in any case falling into one of those cells.<sup>32</sup>

**Q.** Are the guidelines purely advisory, or are they legally binding?

Prior to 2005 the guidelines contained two legally binding (presumptive) provisions, one recommending alternative sentences for low-history-low-severity offenders, and the other recommending that, in the absence of aggravating circumstances, judges should impose the minimum prison duration authorized for the applicable matrix cell.<sup>33</sup> Both of these recommendations are now purely advisory and are not binding on judges.<sup>34</sup>

In some respects, however, the Tennessee system restricts the discretion of sentencing judges more than is the case in some legally binding guidelines systems. In most of the latter systems (e.g., Minnesota and Washington) the sentencing ranges shown on the grid, for each combination of offense severity and criminal history, operate within a broader statutory range for the conviction offense; judges may sentence above or below the grid range if they meet the applicable standards for upward or downward departure. But in Tennessee, the prison sentence durations provided in each matrix cell are mandatory – the court may not sentence outside of the range even if aggravating or mitigating offense facts are present.<sup>35</sup>

### 3. DEPARTURES AND SIMILAR ADJUSTMENTS TO GENERALLY-RECOMMENDED SENTENCES

**Q.** What is the overall/general standard for departure?

The guidelines are purely advisory; they recommend only that certain offenders be “considered” as favorable candidates for alternative sentencing options, and that the minimum sentence within a statutory sentencing range should be the starting point for determining a sentence.<sup>36</sup> A sentence length selected from the sentencing range, “should [then] be adjusted, as appropriate, by the presence or absence of mitigating and enhancement factors” set out in the statute.<sup>37</sup> Even though presumptive sentences were eliminated by the 2005 Sentencing Reform Act, judges are still required to, “place on the record, either orally or in writing, what enhancement or mitigating factors were considered, if any, as well as the reasons for the sentence, in order to ensure fair and consistent sentencing.”<sup>38</sup>

**Q.** Are there lists of aggravating and mitigating circumstances permitting departure? If so, are such lists non-exclusive? Is there a list of prohibited factors?

The sentencing statutes provide lists of mitigating and enhancement factors, which judges are directed to consider.<sup>39</sup> However, there is no such thing as “departure” under the current guidelines, which contain a mix of purely advisory rules and mandatory prison-duration ranges.<sup>40</sup>

**Q.** Do the guidelines expressly address mitigations based on a guilty plea, acceptance of responsibility, and/or providing assistance to law enforcement?

The guidelines neither forbid nor expressly authorize mitigations based on a guilty plea or acceptance of responsibility, but these are perhaps allowed under the catch-all provision, permitting mitigation based on “[a]ny other factor consistent with the purposes of this chapter.”<sup>41</sup> The statutory mitigating factors do include that “the defendant assisted the authorities in uncovering offenses committed by other persons or in

detecting or apprehending other persons who had committed the offenses,” and, “the defendant assisted the authorities in locating or recovering any property or person involved in the crime.”<sup>42</sup>

**Q.** Are there limits on the degree of durational (length-of-custody) departure?

There is no such thing as a durational “departure,” since all prison sentences must fall within the range prescribed by statute for that degree of felony combined with the offender’s criminal history category.<sup>43</sup> The guidelines recommend that a court impose the “minimum sentence within the range of punishment” for any crime and adjust the sentence in the presence of mitigating or enhancement factors,<sup>44</sup> but these recommendations are purely advisory.

**Q.** Are there limits on the availability of dispositional departure (executed-prison vs. stayed sentence)?

The guidelines encourage non-prison sentences for certain offenders, but this provision is purely advisory; there is therefore, no such thing as a dispositional departure.

### 4. PRISON RELEASE DISCRETION

**Q.** Does the jurisdiction utilize parole release discretion or has it been abolished for all or most offenders?

Tennessee does utilize parole release discretion. Inmates with felony sentences of more than two years, or consecutive felony sentences equaling a term greater than two years, are eligible for parole consideration.<sup>45</sup> Defendants with felony sentences of two years or less, whose sentences are not part of a consecutive sentence term of greater than two years, “shall have the remainder of their original sentence suspended upon reaching their release eligibility date.”<sup>46</sup> In addition to sentences of life without parole, there is no parole release discretion for defendants committing certain very serious offenses enumerated in the statute.<sup>47</sup>

**Q.** Does this jurisdiction have a “truth in sentencing” law, limiting the extent of early release?

Generally, an inmate with a felony sentence is not eligible for parole until reaching his or her release eligibility date, which is determined by a formula that depends on the inmate’s criminal history category. For example, “[r]elease eligibility for each defendant sentenced as a Range I standard offender shall occur after service of thirty percent . . . of the actual sentence imposed less sentence credits earned and retained by the defendant.”<sup>48</sup> The lowest percentage of time served before release eligibility (for especially mitigated offenders) is 20%, and certain severe crimes require an inmate to serve 100% of a sentence minus sentence credits earned and retained.<sup>49</sup> For those latter crimes, sentence credits shall not reduce the sentence imposed by the court by more than 15%.<sup>50</sup> In no case shall an inmate confined in a state prison be released before serving one year.<sup>51</sup>

**Q.** Do recommended and imposed sentences under the guidelines set the minimum time to serve in prison, the maximum, both the minimum and maximum, a target/recommended/expected prison duration, or some other combination of these parameters?

Both the allowable prison-length ranges shown on the matrix, and the specific term selected by the judge, represent the maximum prison term the offender will serve. The minimum term is usually implicit in these numbers, due to the operation of formulas that specify the minimum percent of the maximum that must be served prior to first parole eligibility.<sup>52</sup>

**Q.** Is the period of post-prison supervision independent of any unserved prison term?

The parole term generally equals the unserved prison term remaining at the time of parole.<sup>53</sup> In the case of revocation of parole, the board of parole may determine if time spent on parole counts toward service of the original sentence.<sup>54</sup>

**Q.** What good-time credits do prisoners earn? Is program participation considered?

Generally, an offender serving a prison term may receive a sentence reduction of up to eight days each month served for good institutional behavior, and up to eight days for satisfactory performance in work, educational and/or vocational training programs, for a total of up to 16 days of credit per month.<sup>55</sup> Also, the department of corrections should grant educational good time credit of 60 days to, “any qualifying prisoner who successfully receives a high school equivalency credential or a high school diploma, a two-year or four-year college degree, or a two-year or four-year certification in applied sciences, or who receives a vocational education diploma as provided and defined by the department.”<sup>56</sup>

**Q.** Are prisoners subject to exceptional, “second-look” releasing mechanisms?

The commissioner of corrections may grant a furlough of indeterminate duration to inmates who, due to their medical condition, are in imminent peril of death, and to “inmates who can no longer take care of themselves in a prison environment due to severe physical or psychological deterioration.”<sup>57</sup>

## 5. RELATIONSHIP TO CRIMINAL LAWS

**Q.** Did the guidelines replace some or all previous statutory maxima?

The authorized maxima shown in each cell of the matrix replaced and consolidated the much larger number of maxima that applied to various crimes prior to implementation of the 1989 Sentencing Reform Act.<sup>58</sup>

**Q.** Are guidelines built on top of (i.e., equal to or more severe than) any remaining mandatory minima, or are they set independently and overridden whenever a mandatory applies?

The Sentencing Reform Act replaced pre-existing statutory minima and maxima with the prison-duration ranges shown for each cell on the matrix.<sup>59</sup>

**Q.** Are some “mandatory” minima subject to case-specific “departure” or other exceptions?

A sentence must be within the appropriate statutory sentence range, and judges do not have authority to “depart” and sentence below the floor of that range, even with mitigating factors.<sup>60</sup>

## 6. CRIMINAL HISTORY SCORING

**Q.** What are the major components of the criminal history score?

Defendants are categorized as especially mitigated, standard, multiple, persistent, or career offenders depending on number and type of their prior felony convictions.<sup>61</sup> For example, a multiple offender is one who has two to four prior felony convictions of the same class as the conviction offense, or within the next two lower classes, except that only one prior felony is required if it was Class A and the current offense is either Class A or Class B.<sup>62</sup> Defendants are then sentenced within the sentencing range designated for that criminal history category and the class of felony for which they were convicted.<sup>63</sup>

**Q.** Does the jurisdiction utilize “decay”/washout rules, that is, do old convictions count less or drop out? Which older convictions decay, when, and how?

“All prior felony convictions” are relevant when determining a defendant’s felony classification, regardless of how far back in time the conviction was entered.<sup>64</sup>

**Q.** Do the Guidelines include any other significant limitations on how criminal history can be used (e.g., limits on eligibility for high-history categories; adjustments for older offenders)?

For offenders convicted of the highest-severity felonies (classes A, B, and C), eligibility for the highest criminal history category (“career offenders”) is limited to offenders whose prior felonies were also of high severity (excluding classes D and E, and sometimes C).<sup>65</sup>

## 7. MULTIPLE CURRENT OFFENSES

**Q.** Are consecutive sentences limited? If so, how (e.g. prohibited, permissive, or mandatory in certain cases; limits on total duration; use of a multiple-counts enhancement formula)?

A judge may order sentences to run consecutively if she finds by a preponderance of the evidence that one of seven criteria are met.<sup>66</sup> If none of the seven criteria is met, a judge must sentence concurrently, unless a consecutive sentence is specifically required by statute or the Tennessee Rules of Criminal Procedure.<sup>67</sup>

**Q.** In consecutive sentencing, how is the offender’s criminal history taken into account?

A court should order a sentence within the range that is appropriate for each offense, and then order the sentences be served either consecutively or “cumulatively.”<sup>68</sup>

## 8. ENFORCEMENT MECHANISMS (LOCATION ON THE “ADVISORY”-TO-“MANDATORY” CONTINUUM)

**Q.** Are recommended sentences enforced by prosecution and defense sentence appeals?

The recommendations and sentencing factors contained in the guidelines are merely advisory, and a judge’s failure to follow or properly weigh them generally does not provide grounds for appeal.<sup>69</sup> As long as a sentence falls within the statutorily permitted range and “the record sufficiently reflects the trial court’s consideration of the purposes and principles of sentencing,” the sentence is entitled to a presumption of reasonableness and is reviewed on appeal under an abuse of discretion standard.<sup>70</sup> The Tennessee Supreme Court has indicated that an abuse of discretion occurs when there is an “absence of any substantial evidence to support” the decision being appealed.<sup>71</sup>

**Q.** Are other enforcement methods used (e.g., required reasons for departure; published judge-specific departure rates; narrow permitted sentencing alternatives and/or ranges)?

The trial court is required to "place on the record, either orally or in writing, what enhancement or mitigating factors were considered, if any, as well as the reasons for the sentence, in order to ensure fair and consistent sentencing."<sup>72</sup> If the sentencing court's statement of reasons is inadequate, the appellate court can either review the decision de novo, or remand to the sentencing court.<sup>73</sup>

**Q.** Are some deviations from the guidelines not deemed departures?

Judges are not required to follow the advisory guidelines, and not following them does not constitute a "departure."

**Q.** Do some deviations require especially strong justification? Or minimal justification?

Judges are not required to follow the advisory guidelines, and not following them requires no particular justification beyond the requirement to place, on the record, a statement of which enhancement or mitigating factors were considered, if any, as well as the reasons for the sentence.

<sup>1</sup> Tenn. State Gov't, *Final Report of Governor's Task Force on Sentencing and Recidivism: Recommendations for Criminal Justice Reform in Tennessee* ("Final Report") at 24 (Sept. 2015), [https://storage.googleapis.com/vera-web-assets/downloads/Publications/final-report-to-the-tennessee-governors-task-force-on-sentencing-and-recidivism/legacy\\_downloads/tennessee-governors-task-force-sentencing-corrections-vera-report-final.pdf](https://storage.googleapis.com/vera-web-assets/downloads/Publications/final-report-to-the-tennessee-governors-task-force-on-sentencing-and-recidivism/legacy_downloads/tennessee-governors-task-force-sentencing-corrections-vera-report-final.pdf).

<sup>2</sup> Tenn. State Gov't, *Impact of the Criminal Sentencing Reform Act of 2005 on Tennessee's Criminal Justice System: A Report of the Governor's Task Force on the Use of Enhancement Factors in Criminal Sentencing* ("2006 Task Force Report") at 1 (Oct. 2006), [http://www.tncourts.gov/sites/default/files/docs/task\\_force\\_annual\\_report\\_2006.pdf](http://www.tncourts.gov/sites/default/files/docs/task_force_annual_report_2006.pdf).

<sup>3</sup> Final Report, *supra* note 1, at 3.

<sup>4</sup> *Id.*

<sup>5</sup> 1989 Tenn. Pub. Ch. 591; Tenn. Code Ann. § 40-35-102(5) (2017).

<sup>6</sup> Tenn. Code Ann. § 40-35-102(6).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* § 40-35-104(b).

<sup>10</sup> 1989 Tenn. Pub. Ch. 591 § 121.

<sup>11</sup> See *Blakely v. Washington*, 542 U.S. 296 (2004); 2006 Task Force Report, *supra* note 2, at 1.

<sup>12</sup> See Tenn. Code Ann. §§ 40-35-102(6)(A), -210(c).

<sup>13</sup> "Repeat violent offender" is defined at length in the code. *Id.* § 40-35-120.

<sup>14</sup> *Id.* § 40-35-110.

<sup>15</sup> The statutory provision defining this criminal history category refers to "especially mitigated" offenders. See *id.* § 40-35-109.

<sup>16</sup> *Id.* § 40-35-105 to -109.

<sup>17</sup> *Id.* § 40-35-110; see generally Title 39, Tenn. Code Ann., defining crimes.

<sup>18</sup> Tenn. Code Ann. §§ 40-35-105 to -109.

<sup>19</sup> *Id.* §§ 40-35-104 (alternative sentences), -210(c) (prison duration), and -303(c)(1) (suspended-execution prison sentence, with probation). See also *id.*, §§ 40-36-101 et seq. (non-prison alternatives under the Community Corrections Act).

<sup>20</sup> *Id.* § 40-35-303(a).

<sup>21</sup> *Id.* § 40-35-210(c).

<sup>22</sup> *State v. Bise*, 380 S.W.3d 682, 698–99, 707–08 (Tenn. 2012) (quoting the Sentencing Act pre-2005 revisions).

<sup>23</sup> *Id.* at 692.

<sup>24</sup> Tenn. Code Ann. §§ 40-35-102(6)(A), 40-35-210(c).

<sup>25</sup> *Bise*, 380 S.W.3d at 698.

<sup>26</sup> See *State v. King*, 432 S.W.3d 316, 321–22 (Tenn. 2014); *id.* at 708.

<sup>27</sup> Tenn. Code Ann. § 40-35-102(5), (6)(A).

<sup>28</sup> *Id.* § 40-35-303(a).

<sup>29</sup> *Id.* §§ 40-35-104 (alternative sentences), -303(c) (suspended-execution prison term required whenever the court places the offender on probation).

<sup>30</sup> *Id.* §§ 40-35-310, -311(e)(1).

<sup>31</sup> *Id.* § 40-35-112 (range of authorized prison sentences for each matrix cell, ten of which have a range floor greater than ten years); *id.* § 40-35-303(a) (probation allowed, except for listed crimes, if the judge imposes and suspends a prison sentence of 10 years or less).

<sup>32</sup> *Id.* § 40-35-102(6)(A) (alternative sentences recommended for an "especially mitigated" or "standard" offender convicted of a Class C, D or E felony); *id.* § 40-35-112 (authorized prison terms for each matrix cell).

<sup>33</sup> *State v. Bise*, 380 S.W.3d 682, 691–92 (Tenn. 2012).

<sup>34</sup> Tenn. Code Ann. § 40-35-102(6)(A) (alternative sentences); Tenn. Code Ann. § 40-35-210(c) (use of minimum authorized prison term); *State v. Bise*, 380 S.W.3d at 708.

<sup>35</sup> Tenn. Code Ann. § 40-35-210(c).

<sup>36</sup> *Id.* §§ 40-35-102(6)(A), -210(c)(1).

<sup>37</sup> *Id.* § 40-35-210(c)(2).

<sup>38</sup> *State v. Bise*, 380 S.W.3d 682, 698–99 (Tenn. 2012).

<sup>39</sup> Tenn. Code Ann. §§ 40-35-113, -114.

<sup>40</sup> *Id.* § 40-35-102(6)(A) (advisory recommendation to consider alternative sentences for certain offenders); *id.* § 40-35-210(c) (advisory recommendation to use the minimum authorized prison term within the applicable matrix range); *id.* § 40-35-210(c)(1) (requirement to sentence within the applicable matrix range).

<sup>41</sup> *Id.* § 40-35-113(13). The Tennessee Sentencing Commission commentary, appended to this code section, refers readers to code § 40-35-102 (purposes and intent of the 1989 Sentencing Reform Act) and § 40-35-103 (principles to implement the Act's purposes).

<sup>42</sup> *Id.* §§ 40-35-113(9)–(10).

<sup>43</sup> *Id.* § 40-35-210(c).

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* § 40-35-501(a)(2).

<sup>46</sup> *Id.* § 40-35-501(a)(3).

<sup>47</sup> See *id.* § 40-35-501(a)(2), (i)(2). Those two subsections lay out the broad rules and categories of offenders not entitled to parole release discretion. Other, more offense-specific instances can be found throughout § 40-35-501.

<sup>48</sup> *Id.* § 40-35-501(c).

<sup>49</sup> *Id.* § 40-35-501(b)–(u).

<sup>50</sup> *Id.* § 40-35-501(i)(1).

<sup>51</sup> *Id.* § 40-28-115(a).

<sup>52</sup> On the matrix, these minima are the "RED %" and "RED yrs" figures shown in each matrix cell; "RED" refers to Release Eligibility Date.

<sup>53</sup> See Tenn. Code Ann. § 40-35-504(c), (e).

<sup>54</sup> *Id.* § 40-35-504(f).

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<sup>55</sup> *Id.* § 41-21-236(a)(1), (a)(2)(A).

<sup>56</sup> *Id.* § 41-21-236(a)(2)(B)(i).

<sup>57</sup> *Id.* § 41-21-227(a), (b), (i)(1)–(2).

<sup>58</sup> *Id.* § 40-35-111 (comments of Tennessee Sentencing Commission).

<sup>59</sup> *Id.*

<sup>60</sup> See *id.* § 40-35-210(c); *State v. Bise*, 380 S.W.3d 682, 709 (Tenn. 2012).

<sup>61</sup> See, e.g., Tenn. Code Ann. §§ 40-35-105 to -109.

<sup>62</sup> *Id.* § 40-35-106.

<sup>63</sup> *Id.* § 40-35-210(c).

<sup>64</sup> See, e.g., *id.* § 40-35-106(b)(2).

<sup>65</sup> *Id.* § 40-35-108.

<sup>66</sup> *Id.* § 40-35-115(a)–(b).

<sup>67</sup> *Id.* § 40-35-115(d); Tenn. R. Crim. P. Rule 32(c). A judge is also allowed to order that a sentence for failure to appear be served consecutively to the sentence received for the offense for which the defendant failed to appear. Tenn. Code Ann. § 39-16-609(f).

<sup>68</sup> See, e.g., *State v. Dowell*, 2013 Tenn. Crim. App. LEXIS 355, at \*63–64 (Crim. App. Apr. 30, 2013); *State v. Murphy*, 2012 Tenn. Crim. App. LEXIS 308, at \*20 (Crim. App. May 9, 2012); *State v. Torrence*, 1999 Tenn. Crim. App. LEXIS 776, at \*1 (Crim. App. Aug. 3, 1999).

<sup>69</sup> *State v. Bise*, 380 S.W.3d 682, 698–99 (Tenn. 2012); *State v. Wiggins*, 2010 Tenn. Crim. App. LEXIS 529, at \*27 (Crim. App. June 22, 2010).

<sup>70</sup> *State v. King*, 432 S.W.3d 316, 322 (Tenn. 2012) (citing *Bise*, 380 S.W.3d at 706–07).

<sup>71</sup> *State v. King*, 432 S.W.3d at 327 (quoting *State v. Curry*, 988 S.W.2d 153, 158 (Tenn. 1999)).

<sup>72</sup> Tenn. Code Ann. § 40-35-210(e); *Bise*, 380 S.W.3d at 698–99.

<sup>73</sup> *State v. Pollard*, 432 S.W.3d 851, 863–64 (Tenn. 2013).