



New Tennessee Law: Allowing Court Review of Old Drug-Free Zone Sentences HB 1449 (Public Chapter No. 927, effective April 29, 2022)

Background: In 2020, the Tennessee legislature passed a major reform of Tennessee’s over-broad drug-free zone sentencing law (SB 2734). In 2022, the legislature passed another bill (HB 1449; Public Chapter No. 927) to make those reforms retroactively applicable to anyone sentenced to a drug-free school zone sentence before September 1, 2020.

Who HB 1449 helps: People in Tennessee state prisons who were sentenced to drug-free school zone sentences before September 1, 2020. This new law does not reduce sentences for people sentenced for federal crimes in federal courts, or for people who did not receive a sentence for a Tennessee drug-free school zone conviction. No sentence reductions are automatic.

How retroactivity works: Starting April 29, 2022, approximately 400 people in Tennessee state prisons may file a motion in the court that sentenced them and ask for a reduction of their drug-free school zone sentence. Motions may also be filed by the district attorney or the court.

The person must prove that their drug-free zone sentence would be shorter if they had been sentenced after September 1, 2020, under the new law AND that their overall sentence (i.e., their total sentence for all current convictions) would be shorter if the court granted a reduction. For example, if a person is serving life for a murder charge and 8 years for a drug-free zone charge, changing the drug-free zone sentence will not release the person sooner, and the court can deny the person’s motion.

The court can only grant a sentence reduction if doing so is in the interests of justice. When deciding this, the court will consider the person’s

- Plea agreement, including other charges that were dismissed
- Behavior and rehabilitation in prison.

Courts are not required to reduce any sentences. Reducing a sentence is entirely up to the court.

When to file the motion in court: People can only file in court **once** for a sentence reduction – if their motion is denied, they cannot file another motion later on. Also, if the person filed a clemency application on or after December 2, 2021, using the Tennessee Department of Corrections’ (TDOC) expedited clemency review process (see below) for drug-free school zone offenders, AND the governor denied that clemency application, the person cannot file a motion in court.

In other words, it is important that people file a motion in court seeking a sentence reduction **BEFORE** they file a clemency application using the TDOC expedited clemency review process. If a person has already filed an expedited clemency application after December 2, 2021, the incarcerated person should contact the TDOC and ask that their expedited clemency application



be withdrawn. If the court denies the motion in court for a reduced sentence, the person can then reapply under the TDOC's expedited clemency process.

Getting legal help for a retroactivity motion: HB 1449 allows people who file motions to be represented by attorneys. If a person files a motion for a sentence reduction and cannot afford an attorney, the court must appoint one to help them. People can seek legal help by contacting

Tennessee Association of Criminal Defense Lawyers
2 International Plaza, Suite 406
Nashville, TN 37217
Phone: 615-329-1338
Fax: 615-329-1339
Email: office@tacdl.com

Getting a drug-free zone sentence reduced through clemency: There are two ways to seek clemency (a reduction of sentence by the governor) for people serving drug-free zone sentences:

- 1. The usual way, by applying to the Board of Parole.** People sentenced for a drug-free zone offense, regardless of when the offense occurred, may file an application for clemency with the Board of Parole at any time. The Board processes and reviews the application before making a recommendation to the governor, and this process takes a great deal of time. The application for clemency using this process is here: <https://www.tn.gov/content/dam/tn/boardofparole/documents/BP-0044%20Application%20for%20Commutation%20form%201.5.2021.pdf>
- 2. The expedited process, by applying to the TDOC.** People sentenced for a drug-free zone offense before September 1, 2020, may file an expedited clemency request with the TDOC anytime on or after December 2, 2021, using this form: <https://www.tn.gov/correction/drug-free-school-zone-convictions.html>. The TDOC reviews the application and sends it directly to the governor, so this process is much faster than applying to the Board of Parole.

Using either process, only the governor can grant clemency, and clemency is not guaranteed.

Getting the benefit of all chances to reduce a drug-free zone sentence: Again, if a person filed an expedited clemency application with the TDOC after December 2, 2021, **AND** the governor denied that application, the person **cannot** file a motion for a sentence reduction in court under HB 1449. To get the benefit of both opportunities for a sentence reduction (filing a motion in court and using the expedited clemency process), people should file a motion for a sentence reduction in court first, and submit an application for expedited clemency to the TDOC second.

For those who have already filed clemency applications after December 2, 2021, and not had that application denied yet, the incarcerated person or their attorney can ask the TDOC to withdraw their clemency application while they file their sentence reduction motion in court. If their court motion is denied, they can then contact TDOC again and reapply for expedited clemency, using this form: <https://www.tn.gov/correction/drug-free-school-zone-convictions.html>.

If a person filed for clemency **before** December 2, 2021, using the usual clemency process in which the Board of Parole reviews the application, and that application **has not** been denied yet, the person does **not** need to withdraw that clemency application before they go to court to file a motion for a sentence reduction under HB 1449.

How SB 2734 changed Tennessee’s drug-free zone sentencing law: Numerous changes were made to the drug-free zone sentencing law in the 2020 reform. That reform

- **Makes the mandatory sentencing enhancement optional for courts and creates a presumption that the enhanced sentence does NOT apply.** Since September 1, 2020, to impose the mandatory minimum sentence, the court must find that the drug offense occurred in the zone and “exposed vulnerable persons to the distractions and dangers that are incident to the occurrence of illegal drug activity.” For example, the mandatory enhanced sentence no longer applies to offenses that did not involve or harm children.
- **Reduces the overbroad drug-free zones from 1,000 feet to 500 feet** of or within the area between the relevant zone property and a federal highway, whichever is less.
- **Allows people sentenced for a drug-free zone offense to receive earned time, and be eligible for parole,** unless the court imposes the mandatory minimum enhanced sentence.

When filing a motion for a sentence reduction in court, people may want to explain how the facts of their case would not require a mandatory minimum sentence under the new law – e.g., because of where the offense occurred and whether there were children present. People may also want to include in their motions a calculation of how much earned time they should have credited to their sentence if it is reduced, and the date they would become parole eligible under the new law.

Legal Disclaimer: FAMM encourages people to seek legal help for drafting and submitting their motions in court. FAMM does not provide legal representation, legal advice, or referrals to attorneys. Nothing in this factsheet should be considered legal advice.