



## Allowing Court Review of Old Drug-Free Zone Sentences HB 1449 (Rep. Curcio) / SB 1528 (Sen. Roberts)

**Background:** In 2020, the Tennessee legislature passed a major rewrite of Tennessee’s overbroad drug-free zone sentencing law (SB 2734) by a vote of 88-4 in the House of Representatives and a vote of 31-0 in the Senate. The law went into effect on September 1, 2020, but it was not retroactive. SB 2734 substantially rewrote Tennessee’s drug-free zone sentencing law by

- **Making the mandatory sentencing enhancement optional for courts and creating 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 children.
- **Reducing 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.
- **Allowing 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.

**What HB 1449/SB 1528 would do:** There are approximately 400 people in state prisons serving the old drug-free zone sentences that the legislature overwhelmingly voted to revise in 2020. HB 1449/SB 1528 would allow those people, the district attorneys, or the courts to petition the court for a review and possible adjustment of a sentence to conform to the new law. The bill includes many safeguards to protect the public and preserve court resources:

- Every petition must be reviewed individually by the court at a hearing
- The district attorneys’ office may object to a sentence adjustment
- No sentence adjustment is automatic or guaranteed
- The court can adjust a sentence only if doing so is in the interests of justice
- The court must consider the incarcerated person’s
  - Plea agreement, including other charges that were dismissed
  - Behavior and rehabilitation in prison
  - Other current sentences – the court does not need to hold a hearing and consider a petition if changing the drug-free zone sentence would not release the person from prison earlier.
- If the person sought clemency after December 2, 2021, and was denied, the person cannot petition the court for a sentence adjustment.
- A person may only petition the court once for a sentence review and adjustment.

## **Benefits of Retroactivity:**

- **Public safety:** Many people currently serving drug-free zone sentences have served a significant period of time, are rehabilitated, and can be safely returned to their families and communities. This frees up limited prison beds for more dangerous and serious offenders, making everyone safer.
- **Cost savings:** Mandatory drug-free zone sentences are often two, three, or four times longer than sentences under the new law. These excessive sentences are costly to taxpayers, and releasing some people earlier will save money that can be better spent elsewhere to protect the public. These cost savings will outweigh the cost of reviewing sentences in the courts.
- **Fairness for all:** Getting a fair punishment should not depend on something as arbitrary as the date a person went to court. Ensuring fair punishments for all increases respect for the justice system. The legislature changed the drug-free zone law because it was unfair:
  - o There was wide bipartisan agreement that the law was too broad, produced unjust and absurd results, and punished people arbitrarily and excessively;
  - o The law was not being applied equally across the state, so people living in Knoxville might receive a mandatory sentence that someone in Nashville would not even face; and
  - o The mandatory sentences disproportionately applied to people of color – often punishing people much longer solely because of where they lived.

**Why Retroactivity is Needed in Addition to Clemency:** On December 2, 2021, Governor Lee announced an expedited clemency process for people convicted of drug-free zone offenses that occurred before September 1, 2020. Nonetheless, the legislature should pass HB 1449 because

- **Courts can more easily review old sentences.** Many judges and prosecutors remember drug-free zone sentences that struck them as unfair or excessive, and they can quickly access the documents and files needed to review these sentences.
- **Court review is a more transparent process than seeking clemency.** A review of a drug-free zone sentence under HB 1449/SB 1528 happens in open court, on the record, with the participation of the judge and prosecutor. Clemency is a needed alternative but is less transparent and includes fewer people in the sentence review process.
- **Splitting the burden of sentence review is more efficient.** There are only about 400 people in prison that would be eligible for a sentence review if HB 1449/SB 1528 is passed. Allowing both the governor and the courts to review these sentences will split the workload, expedite resentencing, and generate cost savings sooner.