

HOUSE BILL 458

By Carr

AN ACT to amend Tennessee Code Annotated, Title 55,
Chapter 10, Part 4 and Title 69, Chapter 9, Part 2,
relative to boating under the influence.

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

SECTION 1. Tennessee Code Annotated, Section 69-9-217(b)(2), is amended by deleting the subdivision and substituting the following:

(2) "Drugs producing stimulating effects on the central nervous system" includes any controlled substance, controlled substance analogue, drug, or combination of drug substances affecting the central nervous system, that impairs the person of the clearness of mind or the control of oneself that the person would otherwise possess; and

SECTION 2. Tennessee Code Annotated, Section 69-9-217(f)(1), is amended by deleting the subdivision and substituting the following:

(1) Except as may be required by a search warrant or other court order, if the person placed under arrest is requested by a law enforcement officer to submit to one (1) or more tests for the purpose of determining the alcoholic or drug content of the person's blood, including, but not limited to, one (1) or more breath tests or blood tests, or both types of tests, advised of the consequences for refusing to do so, and refuses to submit, the operator shall be charged with a violation of subdivision (d)(1). This section does not prohibit a law enforcement officer from seeking a search warrant or court order for one (1) or more breath tests or blood tests, or both types of tests.

SECTION 3. Tennessee Code Annotated, Section 69-9-217(f)(2), is amended by deleting the language "six (6) months" and substituting "twelve (12) months".

SECTION 4. Tennessee Code Annotated, Section 69-9-219(c), is amended by deleting the subsection and substituting the following:

(1)

(A) Except as otherwise provided in this subdivision (c)(1), a person who violates § 69-9-217(a) commits a Class A misdemeanor.

(B)

(i) Except as provided in subdivision (c)(1)(H), a person violating § 69-9-217(a), shall, upon conviction for the first offense, be sentenced to serve in the county jail or workhouse not less than forty-eight (48) consecutive hours nor more than eleven (11) months and twenty-nine (29) days.

(ii) A person violating § 69-9-217(a), upon conviction for the first offense with a blood alcohol concentration of twenty-hundredths of one percent (0.20%) or more, shall serve a minimum of seven (7) consecutive days rather than forty-eight (48) hours.

(C)

(i) Except as provided in subdivision (c)(1)(H), a person violating § 69-9-217(a) shall, upon conviction for a second offense, be sentenced to serve in the county jail or workhouse not less than forty-five (45) consecutive days nor more than eleven (11) months and twenty-nine (29) days.

(ii) After sentencing the person to a period of confinement pursuant to subdivision (c)(1)(C)(i), as a condition of probation, the judge may order the person to participate in a substance abuse treatment program, which includes any aftercare recommended by the treatment

program, licensed or certified by the department of mental health and substance abuse services, which includes a certified drug court or DUI court, if the person first:

(a) Completes a clinical substance abuse assessment conducted pursuant to § 55-10-402(h); and

(b) Serves at least twenty-five (25) days of the period of incarceration imposed in the county jail or workhouse.

(D)

(i) Except as provided in subdivision (c)(1)(H), a person violating § 69-9-217(a) shall, upon conviction for a third offense, be sentenced to serve in the county jail or workhouse not less than one hundred twenty (120) consecutive days nor more than eleven (11) months and twenty-nine (29) days.

(ii) After sentencing the person to a period of confinement pursuant to subdivision (c)(1)(D)(i), as a condition of probation, the judge may order the person to participate in a substance abuse treatment program, which includes any aftercare recommended by the treatment program, licensed or certified by the department of mental health and substance abuse services, which includes a certified drug court or DUI court, if the person first:

(a) Completes a clinical substance abuse assessment conducted pursuant to § 55-10-402(h); and

(b) Serves at least sixty-five (65) days of the period of incarceration imposed in the county jail or workhouse.

(E) Except as provided in subdivision (c)(1)(H), a person violating § 69-9-217(a), upon conviction for a fourth offense, shall be sentenced as a felon to serve not less than one hundred fifty (150) consecutive days nor more than the maximum punishment authorized for the appropriate range of a Class E felony.

(F) Except as provided in subdivision (c)(1)(H), a person violating § 69-9-217(a), upon conviction for a fifth offense and for which prior convictions for vehicular assault under § 39-13-106, aggravated vehicular assault under § 39-13-115, vehicular homicide under § 39-13-213(a)(2), or aggravated vehicular homicide under § 39-13-218 are to be included, shall be sentenced as a felon to serve not less than the minimum sentence of imprisonment established in subdivision (c)(1)(E) for a fourth offender, and not more than the maximum punishment authorized for the appropriate range of a Class D felony.

(G) Except as provided in subdivision (c)(1)(H), a sixth or subsequent conviction for violating § 69-9-217(a), including any other applicable prior conviction described in subdivision (c)(1)(F), is a Class C felony and any person sentenced under this subdivision (c)(1)(G) shall be sentenced to serve no less than the minimum sentence of imprisonment established in subdivision (c)(1)(E) for a fourth offender, and not more than the maximum punishment authorized for the appropriate range of a Class C felony.

(H)

(i) If a person is convicted of a violation of § 69-9-217(a), and at the time of the offense, the person was accompanied by a child under eighteen (18) years of age, the person's sentence shall be enhanced by a mandatory minimum period of incarceration of thirty (30) days. The

incarceration enhancement shall be served in addition to any period of incarceration received for the violation of § 69-9-217(a).

(ii) Notwithstanding subdivisions (c)(1)(A) - (G), if, at the time of the offense, the person was accompanied by a child under eighteen (18) years of age, and the child suffers serious bodily injury as the proximate result of the violation of § 69-9-217(a), the person commits a Class D felony and shall be punished as provided in § 39-13-106 for vehicular assault.

(iii) Notwithstanding subdivisions (c)(1)(A) - (G), if, at the time of the offense, the person was accompanied by a child under eighteen (18) years of age, and the child is killed as the proximate result of the violation of § 69-9-217(a), the person commits a Class B felony and shall be punished as provided in § 39-13-213(b)(2) for vehicular homicide involving intoxication.

(iv) Subdivisions (c)(1)(H)(i) - (iii) constitute an enhanced sentence, not a new offense.

(1) If a person is convicted of a violation of § 69-9-217(a), the sentencing court shall suspend the person's privilege to operate any vessel subject to registration or any commercial vessel, as defined in § 69-9-217(b), for a period of twelve (12) months.

(2) The court, in its discretion, may require a person convicted of a violation of § 69-9-217(a) to remove litter from public areas, playgrounds, picnic ramps, and areas giving the public access to the public waters of the state or to work in a recycling center or other appropriate location for any prescribed period of time in addition to any of the penalties otherwise provided in this section. A person sentenced to remove litter under

this subdivision (c)(2) shall be allowed to do so at a time other than that person's regular hours of employment.

(3)

(A) The court may order any person convicted of a violation of § 69-9-217(a) to be subject to monitoring using one (1) or more of the following:

(i) Transdermal monitoring device or other alternative alcohol or drug monitoring device;

(ii) Electronic monitoring with random alcohol or drug testing;

(iii) Global positioning monitoring system, as defined in § 40-11-152. If the court determines that the person is indigent, the court shall order the person to pay any portion of the costs of such a system for which the person has the ability to pay, as determined by the court. Any portion of the costs of such a system that the person is unable to pay shall come from the electronic monitoring indigency fund established pursuant to § 55-10-419, subject to the availability of funds; or

(iv) Any other monitoring device the court believes necessary to ensure the person complies with the conditions of probation and, if applicable, the results of the clinical substance abuse assessment.

(B) If the court orders a person to be subject to monitoring as provided in subdivision (c)(3)(A), the court, the department of correction, or any other agency, department, program, group, private entity, or association that is responsible for the supervision of such person shall:

(i) Require periodic reporting by the person for verification of the proper operation of the monitoring device;

(ii) Require the person to have the device monitored for proper use and accuracy by an entity approved by the supervising entity at least every thirty (30) days, or more frequently as the circumstances may require; and

(iii) Immediately notify the court of any of the person's violations of this subdivision (c)(3), which shall be considered a violation of the conditions of probation.

(4)

(A) An offender sentenced to a period of incarceration for a violation of § 69-9-217(a), shall be required to commence service of the sentence within thirty (30) days of conviction or, if space is not immediately available in the appropriate municipal or county jail or workhouse within such time, as soon as such space is available. The sheriff or chief administrative officer of a local jail or workhouse may use alternative facilities, as defined in § 55-10-402(f), for the incarceration of an offender convicted of a violation of § 69-9-217(a).

(B) Nothing in this subdivision (c)(4) gives an offender a right to serve a sentence for a violation of § 69-9-217(a) in an alternative facility or within a specified period of time. Failure of a sheriff or chief administrative officer of a jail to require an offender to serve the sentence within a certain period of time or in a certain facility or type of facility does not invalidate the sentence.

(5) Notwithstanding this section to the contrary, in counties with a metropolitan form of government and a population in excess of five hundred thousand (500,000), according to the 2020 federal census or any subsequent federal census, the judge exercising criminal jurisdiction may sentence a person convicted of violating § 69-9-217(a) for the first time to perform two hundred (200) hours of public service work in a

supervised public service program in lieu of the minimum period of confinement required by subdivision (c)(1)(B).

(6)

(A) For purposes of this section, a person whose convictions for violating § 69-9-217(a) occur more than ten (10) years apart is not considered a multiple offender and the penalties imposed upon multiple offenders by subdivisions (c)(1) and (2) do not apply to such person.

(B) For purposes of determining if a person convicted of § 69-9-217(a) is a repeat or multiple offender, a prior conviction for driving under the influence of an intoxicant under § 55-10-401, vehicular assault under § 39-13-106, aggravated vehicular assault under § 39-13-115, vehicular homicide under § 39-13-213(a)(2), or aggravated vehicular homicide under § 39-13-218, must be treated the same as a prior conviction for boating under the influence under § 69-9-217(a) if the person was convicted of the prior offense within ten (10) years of the date of the present violation.

(7) A person charged with a violation of § 69-9-217(a) is not eligible for suspension of prosecution and dismissal of charges pursuant to §§ 40-15-102 — 40-15-105 or any other pretrial diversion program, nor is a person convicted under § 69-9-217(a) eligible for suspension of sentence or probation pursuant to title 40, chapter 35, part 3, or any other law authorizing suspension of sentence or probation, until such time as the person has fully served day for day at least the minimum sentence provided by law.

(8) All persons sentenced under subdivision (c)(1) or (c)(2) shall be required to serve the difference between the time actually served and the maximum sentence on

probation. The judge, in the judge's discretion, may impose any conditions of probation that are reasonably related to the offense but shall impose the following conditions:

(A) Participation in an alcohol safety boating under the influence (BUI) school program, if available;

(B) Upon the second or subsequent conviction for violating § 69-9-217(a), participation in a program of rehabilitation at an alcohol treatment facility, if available; and

(C) The payment of restitution to any person suffering physical injury or personal losses as the result of such offense, if such person is economically capable of making such restitution.

(9)

(A) Any person convicted under § 69-9-217(a) of an initial or subsequent offense shall be advised in writing of the penalty for second and subsequent convictions and, in addition, when pronouncing sentence, the judge shall advise the defendant of the penalties for additional offenses.

(B) In the prosecution of second or subsequent offenders, the indictment or charging instrument must allege each prior conviction for violation of § 69-9-217(a), driving under the influence of an intoxicant under § 55-10-401, vehicular assault under § 39-13-106, aggravated vehicular assault under § 39-13-115, vehicular homicide under § 39-13-213(a)(2), or aggravated vehicular homicide under § 39-13-218, setting forth the time and place of each prior conviction.

(10) In addition to all other fines, fees, costs, and punishments, in any county having a county-operated blood alcohol concentration testing facility, a blood alcohol concentration (BAC) test fee in the amount of seventeen dollars and fifty cents (\$17.50) must be assessed upon conviction of an offense of operating a vessel subject to

registration for each offender who has taken a breath-alcohol test on an evidential breath testing unit provided, maintained, and administered by a law enforcement agency in the counties or where breath, blood, or urine has been analyzed by a publicly funded forensic laboratory. This fee must be collected by the clerks of various courts of the counties and forwarded to the county trustee on a monthly basis, and designated for exclusive use by the law enforcement testing unit of the counties if the BAC test was conducted on an evidential breath-testing unit. If the blood alcohol test was conducted by a publicly funded forensic laboratory, the fee shall be collected by the clerks of the various courts of the counties and forwarded to the county trustee on a monthly basis, and designated for exclusive use by the publicly funded forensic laboratory.

(11) No person arrested under this subsection (c) shall be subject to strip searches or body cavity searches, or both, unless the arresting officer has probable cause to believe the arrested person may be concealing a weapon or contraband, or both, in such person's body cavity. "Contraband" includes, but is not limited to, illegal drugs.

(12) In addition to all other fines, fees, costs, and punishments now prescribed by law, an ignition interlock fee of forty dollars (\$40.00) shall be assessed for each violation of § 69-9-217(a) occurring on or after July 1, 2018, and resulting in a conviction for such offense. All proceeds collected pursuant to this subdivision (c)(12) shall be transmitted to the treasurer for deposit in the electronic monitoring indigency fund pursuant to § 55-10-419(g).

SECTION 5. Tennessee Code Annotated, Section 55-10-419(g), is amended by deleting the language "69-9-219(c)(9)" in subdivisions (1) and (2), and substituting "69-9-219(c)(12)".

SECTION 6. This act takes effect July 1, 2023, the public welfare requiring it.