STATE OF TENNESSEE

EXECUTIVE ORDER

BY THE GOVERNOR

No. 19

AN ORDER ESTABLISHING THE GOVERNOR'S TASK FORCE ON THE USE OF ENHANCEMENT FACTORS IN CRIMINAL SENTENCING

WHEREAS, on June 24, 2004, in *Blakely v. Washington,* the U.S. Supreme Court struck down the sentencing structure used by the State of Washington, which also used a system based on presumptive sentences and the determination of enhancement and mitigating factors by judges; and

WHEREAS, the Supreme Court held that the system used by the State of Washington deprived defendants of their Sixth Amendment constitutional right to jury trial because criminal penalties were enhanced based on factual findings by a judge using a preponderance of the evidence standard instead of factual findings by a jury using the standard of beyond a reasonable doubt; and

WHEREAS, the State of Tennessee adopted its current structure for imposing punishment on felony offenders in the Tennessee Criminal Sentencing Reform Act of 1989 (the "Act"); and

WHEREAS, the sentencing structure contained in the Act is similar to that used in the State of Washington and therefore may be subject to constitutional challenge; and

WHEREAS, the Act's sentencing structure has served the State well, and appropriate efforts should be made to preserve the Act while making those changes, if any, necessary to conform to the Supreme Court's ruling; and

WHEREAS, the Governor desires to work with those judges, prosecutors, public defenders, defense attorneys, correction officials and others involved in the criminal justice system to assess the impact of the *Blakely* decision on Tennessee's sentencing laws and to develop an appropriate response.

NOW THEREFORE, I, Phil Bredesen, Governor of the State of Tennessee, by virtue of the power and authority vested in me by the Tennessee Constitution and law, do hereby order and direct the following:

1. The Governor's Task Force on the Use of Enhancement Factors in Criminal Sentencing is hereby established. The Task Force is charged with the responsibility of assessing the impact of the *Blakely* decision on Tennessee's sentencing laws and recommending to the Governor an appropriate response to the decision. Specifically, the Governor charges the Task Force with the following responsibilities:

    a. To determine whether the impact of the *Blakely* decision on Tennessee's sentencing laws is of such breadth and severity that the General Assembly should be called into special session to revise the sentencing laws; and
    b. To recommend any appropriate legislation to address the issues raised by the *Blakely* decision.

The Task Force shall present its conclusions on subparagraph (a) to the Governor on or before August 27, 2004. If the Governor, based on the

Task Force's recommendation, concludes that a special session on this issue is warranted, the Task Force shall present its conclusions on subparagraph (b) to the Governor prior to the convening of the special session. If the Governor, based on the Task Force's recommendation, concludes that a special session is not warranted, the Task Force shall present its conclusions on subparagraph (b) to the Governor on or before November 15, 2004.

2. The Task Force shall have thirteen (13) members, consisting of the following individuals:

a. One (1) member of the Tennessee Senate to be selected by the Speaker of the Senate;
b. One (1) member of the Tennessee House of Representatives to be selected by the Speaker of the House of Representatives;
c. Attorney General and Reporter or his designee;
d. Commissioner of Correction; and
e. Chairman of the Board of Probation and Parole.

FUTHERMORE, the Governor shall appoint eight (8) additional members to the Task Force, which shall include at least one representative of the following groups involved in the criminal justice system: appellate judges, criminal trial judges, general sessions court judges, district attorneys, public defenders, criminal defense lawyers and victims of crimes. The Governor shall appoint a Chair from among the members. The Chair shall have the authority to appoint up to five (5) ex-officio, non-voting, members to serve in an advisory capacity.

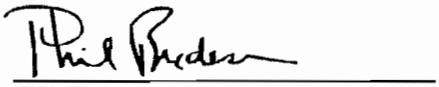
3. The Task Force shall be attached to the Office of the Governor for administrative purposes. In addition, the Administrative Office of the Courts has agreed to provide staff support and any other assistance as requested.

4. All Executive Branch departments, agencies, boards and commissions, and any other divisions of state government, shall fully cooperate with the Task Force in carrying out the mandates of this Executive Order.

5. Non-legislative members shall receive no compensation for their service on the Task Force but may be reimbursed for those expenses allowed by the provisions of the comprehensive travel regulations as promulgated by the Department of Finance and Administration and approved by the Attorney General and Reporter. Members of the General Assembly shall be reimbursed in the same manner as they are paid for attending legislative meetings pursuant to Tennessee Code Annotated, Section 3-1-106.

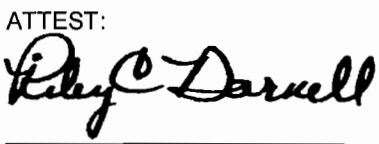
6. The Task Force will cease to function at the conclusion of the 2005 session of the General Assembly.

IN WITNESS WHEREOF, I have subscribed my signature and caused the Great Seal of the State of Tennessee to be affixed this 22nd day of July, 2004.



GOVERNOR

ATTEST:



SECRETARY OF STATE