

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 2813 – SB 3431

May 14, 2010

SUMMARY OF AMENDMENT (018578): Deletes all language after the enacting clause. Effective July 1, 2010, prohibits a judge from imposing sentencing alternatives of continuous confinement in a local jail or the Department of Correction (DOC) when sentencing a defendant convicted of a non-violent property offense as defined in the bill. Authorizes a judge to sentence the defendant to any of the other sentencing alternatives authorized by Tenn. Code Ann. § 40-35-104(c) including, but not limited to, periodic confinement, work release, community corrections, probation, pre-trial diversion, or judicial diversion. If the sentencing court determines the defendant has one or more prior convictions at the time the non-violent property offense as defined by the bill is committed or the defendant has violated the terms and conditions of the alternative sentence originally imposed, the defendant may be sentenced to a period of continuous confinement. Defines “prior conviction” to mean that the defendant serves and is released or discharged from, is serving, or on escape status from a separate period of incarceration or supervision for the commission of a felony offense prior to or at the time of committing an offense on or after July 1, 2010, that is listed in the bill. Prior conviction includes convictions under the laws of any other state, government or country, that if committed in this state, would constitute a felony or if the elements of the offense are the same as the elements for a felony offense in this state. Defines “separate period of incarceration or supervision” as a sentence to any of the sentencing alternatives set out in Tenn. Code Ann. § 40-35-104(c) (3) – (9). Requires an offender convicted of the Class B felony offense of aggravated robbery to serve 85 percent of the sentence imposed by the court less sentence reduction credits earned and retained. No sentence reduction credits shall reduce the sentence imposed by the court by more than 15 percent.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures - \$19,124,100/Incarceration*
\$999,900/Board of Probation and Parole

Decrease State Expenditures - \$10,289,400

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Increase State Expenditures - \$5,436,200/Incarceration*
\$642,400/Board of Probation and Parole

Decrease State Expenditures - \$6,611,000

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Assumptions applied to amendment:

- According to DOC, there has been an average of 1,012 admissions for the non-violent property offenses defined in the bill in each of the past 10 years. The average for each offense used in the estimation of this fiscal note is as follows: 380 admissions for forgery offenses less than \$1,000 under Tenn. Code Ann. § 39-14-114; 16 admissions for criminal simulation under Tenn. Code Ann. § 39-14-115; one admission for felony theft of services under Tenn. Code Ann. § 39-14-104 where the amount of theft is less than \$1,000; two admissions for felony fraudulent use of a credit card under Tenn. Code Ann. § 39-14-118 where the amount of theft is less than \$1,000; 329 admissions for felony theft of property under Tenn. Code Ann. § 39-14-103 where the amount of theft is less than \$1,000; 10 admissions for attempted theft of property under Tenn. Code Ann. §§ 39-12-101 and 39-14-103 where the amount of the attempted theft is at least \$1,000 but less than \$10,000; five admissions for facilitating the theft of property under §§ 39-11-403 and 39-14-103 where the amount of the property is at least \$1,000 but less than \$10,000; 29 admissions for felony vandalism under Tenn. Code Ann. § 39-14-108 where the amount of vandalism is less than \$1,000; 34 admissions for attempted burglary other than a habitation under §§ 39-12-101 and 39-14-402(a)(1), (a)(2), or (a)(3); 210 admissions for burglary of an auto under § 39-14-402(a)(4); and nine admissions for burning personal property under Tenn. Code Ann. § 39-14-303.
- The proposed bill diverts the number of non-violent offenders admitted for these offenses to the Community Corrections Supervision Program rather than incarceration in state custody.
- The 10-year average number of admissions (1,012) for these offenses will be reduced in two areas. In order to avoid double-counting these offenders, the total admissions (1,012) for these offenses are reduced by 15 percent (152) to account for offenders targeted under the joint reduction plan and are not included in the fiscal impact of this bill. DOC estimates 46.4 percent (470) of the total admissions (1,012) would be convicted of an offense other than the non-violent property offenses specified in the bill and would be sentenced to continuous confinement. Those offenders would not be included in the offenders being diverted as a result of this bill.
- There would be a total of 390 offenders (1,012 - 152 - 470) diverted from local jails to the Community Corrections Program. According to BOPP, the average daily cost of this program is \$4.51 per day per offender. This cost includes the cost of offender supervision, treatment services, and operations. BOPP estimates an increase in state expenditures of \$642,438.23 ($\$4.51 \times 365.25 \text{ days} \times 390 \text{ offenders}$).
- DOC reimburses local jails at an average cost of \$46.61 per day per offender. There would be a reduction in state expenditures from the state prosecution account of \$6,610,988.48 ($\$46.41 \times 365.25 \text{ days} \times 390 \text{ offenders}$) as a result of diverting these offenders and transferring some other offenders currently housed in local jails to state prisons to replace the offenders being diverted from prison to community corrections.
- The Class B felony of aggravated robbery is defined as robbery accomplished with a deadly weapon or display of any article used to lead the victim reasonably to believe it is a deadly weapon, or where the victim suffers serious bodily injury.
- According to DOC, there has been an average of 669 admissions for aggravated robbery in each of the past 10 years.

- According to the U. S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected population growth of 11.78 percent over the next 10 years. Population growth will result in an additional 71 offenders in the tenth year. The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 740 offenders.
- According to DOC, 40 percent of offenders will re-offend within two years of their release. A recidivism rate of 40 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (740 offenders x 40 % recidivism discount = 296 offenders).
- According to DOC, the average operating cost per offender per day for calendar year 2010 is \$59.86.
- According to DOC, the average length of sentence for an offender convicted of aggravated robbery in FY09 was 9.38 years and the average post-conviction time served by offenders being released in FY09 was 6.01 years. Seventy percent of the average length of sentence would be 6.57 years. These 444 (740 – 296) offenders would serve an additional 0.56 years (an increase from 6.01 to 6.57 years) as a result of this bill. The cost per offender at 6.01 years is \$131,401.68 (\$59.86 x 2,195.15 days). The cost per offender at 6.57 years is \$143,645.44 (\$59.86 x 2,399.69 days). The additional cost of increasing the average sentence length from 6.01 to 6.57 years is \$12,243.76 (\$143,645.44 - \$131,401.68). The total additional cost for 444 offenders is \$5,436,229.44 (444 x \$12,243.76).

*Tennessee Code Annotated, Section 9-4-210, requires that: *For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.



James W. White, Executive Director

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