

**TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE**



FISCAL NOTE

SB 560 - HB 666

April 3, 2009

SUMMARY OF BILL: Broadens the definition of “dangerous felony” to include attempt to commit first degree murder, second degree murder, aggravated assault, aggravated robbery, aggravated arson, and burglary for the offense of possessing a firearm during the commission or attempt to commit a dangerous felony.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures - \$27,267,400/Incarceration*

Assumptions:

- Currently it is a Class D felony for a person to possess a firearm with the intent to go armed during the commission of or attempt to commit a dangerous felony. It is a Class C felony to employ a firearm during the commission of, attempt to commit, flight or escape from the commission of, or flight or escape from the attempt to commit a dangerous felony. The minimum sentences range from three to 10 years, depending on the defendant’s criminal history.
- According to the Department of Correction (DOC), there has been an average of 38 admissions for the Class A felony offense of criminal attempt to commit first degree murder in each of the past 10 years. DOC estimates 50 percent (19) involved the employment of a firearm during the commission of a dangerous felony.
- 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 compound population growth of 11.78 percent over the next 10 years. Population growth will result in two additional offenders. The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 21 offenders. DOC estimates 25 percent of those (5) had a prior conviction and will serve a 10-year minimum sentence at 85 percent (8.5 years).
- According to the Department, 42 percent of offenders will re-offend within three years of their release. A recidivism discount of 42 percent has been applied to this estimate to account for the impact of offenders

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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 (5 offenders x 42% recidivism discount = 2.1 offenders).

- According to DOC, the average operating cost per offender per day for calendar year 2009 is \$59.80. The cost per offender at 8.5 years is \$185,656.87 (\$59.80 x 3,104.63 days). The average post-conviction time served for an offender convicted of criminal attempt to commit first degree murder is 11.77 years. Because the average time served for attempt to commit first degree murder is longer than the sentence for the firearms offenses, no additional incarceration costs will result from those offenders who receive a concurrent sentence for employing a firearm during an attempt to commit first degree murder. One offender will receive a consecutive sentence and will serve an additional 10-year minimum sentence at 85 percent (8.5 years) as a result of this bill. The total additional operating cost for one offender is \$185,656.87.
- The remaining 16 (21 – 5) offenders would serve a six-year minimum sentence at 85 percent (5.1 years) for possession. A recidivism discount of 42 percent (16 offenders x 42% recidivism discount = 7 offenders) will result in nine offenders (16 – 7). One offender will receive a consecutive sentence and will serve an additional six-year minimum sentence at 85 percent (5.1 years). The cost per offender at 5.1 years is \$111,394.24 (\$59.80 x 1,862.78 days). The total additional operating cost for one offender is \$111,394.24.
- According to DOC, there has been an average of 136 admissions for the felony offense of second degree murder in each of the past 10 years. DOC estimates 50 percent (68) involved the employment of a firearm during the commission of a dangerous felony. Population growth will result in seven additional offenders. The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 75 offenders. DOC estimates 25 percent of those (19) had a prior conviction and will serve a 10-year minimum sentence at 85 percent (8.5 years). A recidivism discount of 42 percent (19 offenders x 42% recidivism discount = 8 offenders) will result in 11 offenders (19 – 8).
- The average post-conviction time served for an offender convicted of second degree murder is 14.44 years. Because the average time served for second degree murder is longer than the sentence for the firearms offenses, no additional incarceration costs will result from those offenders who receive a concurrent sentence for employing a firearm during second degree murder. One offender will receive a consecutive sentence and will serve an additional 10-year minimum sentence at 85 percent (8.5 years) as a result of this bill. The total additional operating cost for one offender is \$185,656.87.
- The remaining 56 (75 – 19) offenders would serve a six-year minimum sentence at 85 percent (5.1 years) for possession. A recidivism discount

of 42 percent (56 offenders x 42% recidivism discount = 24 offenders) will result in 32 offenders (56 - 24). One offender will receive a consecutive sentence and will serve an additional six-year minimum sentence at 85 percent (5.1 years). The cost per offender at 5.1 years is \$111,394.24 (\$59.80 x 1,862.78 days). The total additional operating cost for one offender is \$111,394.24.

- According to DOC, there has been an average of 950 admissions for the felony offense of aggravated assault in each of the past 10 years. DOC estimates 50 percent (475) involved the employment of a firearm during the commission of a dangerous felony. Population growth will result in 50 additional offenders in the tenth year. The maximum cost in the tenth year is based on 525 offenders. DOC estimates 25 percent of those (131) had a prior conviction and will serve a 10-year minimum sentence at 85 percent (8.5 years).
- The average post-conviction time served for an offender convicted of aggravated assault is 3.36 years. A recidivism discount of 42 percent (131 offenders x 42% recidivism discount = 55 offenders) will result in 76 offenders (131 - 55). The cost per offender at 3.36 years is \$73,388.95 (\$59.80 x 1,227.24 days). The cost for increasing the average sentence length by 5.14 years (an increase from 3.36 average time served to a 10-year minimum sentence at 85 percent) is \$112,267.92 (\$185,656.87 - \$73,388.95). The total additional operating cost for 76 offenders is \$8,532,361.92 (\$112,267.92 x 76).
- The remaining 55 (131 - 76) offenders would serve a six-year minimum sentence at 85 percent (5.1 years) for possession. A recidivism discount of 42 percent (55 offenders x 42% recidivism discount = 23 offenders) will result in 32 offenders (55 - 23). The cost of increasing the average sentence length by 1.74 years (an increase from 3.36 years to 5.1 years) is \$38,005.29 (\$111,394.24 - \$73,388.95). The total additional operating cost for 32 offenders is \$2,272,716.34 (\$38,005.29 x 32).
- According to DOC, there has been an average of 671 admissions for the felony offense of aggravated robbery in each of the past 10 years. DOC estimates 50 percent (336) had prior convictions and would serve a mandatory six-year sentence at 85 percent (5.1 years). Population growth would result in 35 additional offenders. The maximum cost in the tenth year is based on 371 offenders. No additional incarceration costs for these offenders with prior convictions as they are serving more than six years at 85 percent. DOC estimates 25 percent (93) of those involved the employment of a firearm during the commission of a dangerous felony and would serve a mandatory 10-year sentence at 85 percent (8.1 years). The average post-conviction time served for an offender convicted of aggravated robbery is 5.99 years.
- According to the Department, 35 percent of offenders will re-offend within two years of their release. A recidivism discount of 35 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 (93 offenders x 35% recidivism discount = 33 offenders). The cost for increasing the average sentence length by from 5.99 years to 8.5 years is based on 51 (84 - 33) offenders. The cost per offender at 5.99 years is \$130,832.83 (\$59.80 x 2,187.84 days). The cost per offender at 8.5 years is \$185,656.87 (\$59.80 x 3,104.63 days). The cost of increasing the average sentence length is \$54,824.04 (\$185,656.87 - \$130,832.83). The total additional operating cost for 51 offenders is \$2,796,026.04 (\$54,824.04 x 51).

- According to DOC, there has been an average of four admissions for the felony offense of aggravated arson in each of the past 10 years. DOC estimates 25 percent (1) involved the employment of a firearm during the commission of a dangerous felony. No significant incarceration cost increase will occur due to population growth in this period. The maximum cost in the tenth year is based on one offender.
- The average post-conviction time served for an offender convicted of aggravated arson is 15.26 years. Because the average time served for aggravated arson is longer than the sentence for the firearms offenses, no additional incarceration costs will result from those offenders who receive a concurrent sentence for employing a firearm during aggravated arson. One offender will receive a consecutive sentence and will serve an additional 10-year minimum sentence at 85 percent (8.5 years) as a result of this bill. The total additional operating cost for one offender is \$185,656.87.
- According to DOC, there has been an average of 927 admissions for the felony offense of burglary in each of the past 10 years. Estimate 50 percent (464) involved the employment of a firearm during the commission of a dangerous felony. Population growth will result in 49 additional offenders in the tenth year. The maximum cost in the tenth year is based on 513 offenders. DOC estimates 25 percent of those (129) had a prior conviction and will serve a 10-year minimum sentence at 85 percent (8.5 years).
- The average post-conviction time served for an offender convicted of burglary is 2.26 years. A recidivism discount of 42 percent (129 offenders x 42% recidivism discount = 54 offenders) will result in 75 offenders (129 - 54). The cost per offender at 2.26 years is \$49,363.11 (\$59.80 x 825.47 days). The cost for increasing the average sentence length by 6.24 years (an increase from 2.26 average time served to a 10-year minimum sentence at 85 percent) is \$136,293.76 (\$185,656.87 - \$49,363.11). The total additional operating cost for 75 offenders is \$10,222,032 (\$136,293.76 x 75).
- The remaining 54 (129 - 75) offenders would serve a six-year minimum sentence at 85 percent (5.1 years) for possession. A recidivism discount

of 42 percent (54 offenders x 42% recidivism discount = 23 offenders) will result in 31 offenders (54 - 23). The cost of increasing the average sentence length by 2.84 years (an increase from 2.26 years to 5.1 years) is \$85,951.13 (\$111,394.24 - \$25,443.11). The total additional operating cost for 31 offenders is \$2,664,485.03 (\$85,951.13 x 31).

- Any impact to the caseloads for the state trial courts can be accommodated within existing judicial resources.

**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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