

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

SB 318 – HB 287

March 10, 2015

SUMMARY OF ORIGINAL BILL: Updates Schedules I through V found in title 39, chapter 17, part 4 to reflect changes made by the Drug Enforcement Agency and the Food and Drug Administration.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures – \$1,070,800 Highest Projected Cost of Next 10 Years/Incarceration*

Funding for this bill in the amount of \$1,043,500 is included in the Governor's proposed FY15-16 budget.

SUMMARY OF AMENDMENT (003876): Adds catchall language deleted by the original bill relative to 25H-NBOMe and any compound structurally derived from 2-(2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine structure with substitution in either phenyl ring to any extent.

Deletes reference to F-PB-22 still listed in Tenn. Code Ann. § 39-17-438 in original bill. F-PB-22 is being moved to Schedule I.

Corrects misspelling of hydroxymitragynine.

Changes the effective date from “upon becoming a law” to July 1, 2015.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Unchanged from the original fiscal note.

Assumptions for the bill as amended:

- The language added by the amendment is currently in the code. It was inadvertently omitted in the bill. Adding it to the original bill will not significantly impact state incarceration costs.
- The bill makes other minor changes that do not alter the impact of the bill.
- The bill codifies new schedules of drugs mirroring the changes made by the DEA and FDA.
- The bill makes the following substantive changes:

- Moves eight substances that are currently prosecuted as Class C and D felonies under Tenn. Code Ann. § 39-17-438 to Schedule I where they will be prosecuted as Class B felonies;
 - Moves 10 substances that are currently prosecuted as Class A misdemeanors under Tenn. Code Ann. § 39-17-452 to Schedule I where they will be prosecuted as Class B felonies; and
 - Moves hydrocodone containing products from Schedule III where they are prosecuted as Class C or D felonies to Schedule II where they will be prosecuted as Class B felonies.
- Statistics from the Department of Correction (DOC) show that there have no admissions under Tenn. Code Ann. § 39-17-438 since its enactment in 2006. It is assumed that listing the eight substances in Tenn. Code Ann. § 39-17-438 under Schedule I will not significantly increase state incarceration costs.
- Under Tenn. Code Ann. § 39-17-452, there are 21 substances for which producing, manufacturing, distributing, selling, offering to sale, or possessing are punishable as a Class A misdemeanor. Ten of these substances are being listed under Schedule I.
- Statistics from the AOC show that there has been an average of 4.75 misdemeanor dispositions under Tenn. Code Ann. § 39-17-452.
- These represent convictions at the state trial court level. It is assumed that the number of convictions in state trial court represent 10 percent of the convictions at the general sessions court level. It is assumed that there are 418 (4.75 x 10) total convictions each year for violations of Tenn. Code Ann. § 39-17-452. It is further assumed that 10 percent (4.8) will be punished as Class B felonies under the bill.
- 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 account for one (5 x .1178) additional admission for a total of six (5 + 1).
- It is assumed that each offender will serve the average time of other Class B felonies, 5.69 years. Since misdemeanor offenders are not confined in state custody, no recidivism discount applies.
- According to the DOC, the average operating cost per offender per day for calendar year 2015 is \$66.03.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on six offenders serving an additional 5.69 years (2,078.27 days) for a total of \$137,228 (\$66.03 x 2,078.27 days). The cost for six offenders is \$823,368 (\$137,228 x 6).
- The bill also moves hydrocodone containing products up from Schedule III to Schedule II. Schedule III products are punished as Class D felonies, whereas Schedule II products are punished as Class C felonies at a minimum.
- Statistics from the DOC show that the 10-year average of admissions for Schedule III drugs is 132 per year. It is assumed that 10 percent (13.2) of these admissions will be punished as Class C felonies, and serve the same time as an average Class C felony, 3.18 years.
- Each offender will serve an additional 1.14 years (3.18, the average time served for a Class C felony – 2.04, the average time served for a Class D 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 account for two (13 x .1178) additional admission for a total of 15 (13 + 2).

- According to the DOC, 42.92 percent of offenders will re-offend within three years of their release. A recidivism discount of 42.92 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 (15 offenders x .4292 = 6 offenders).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on nine offenders [15 offenders – 6 (recidivism discount)] serving an additional 1.14 years (416.39 days) for a total of \$27,494 (\$66.03 x 416.39 days). The cost for nine offenders is \$247,446 (\$27,494 x 9).
- The total increase in incarceration costs is \$1,070,814 (\$823,368 + \$247,446).
- The bill enhances the penalty for certain controlled substances, but does not criminalize any substantive new conduct. The bill may slightly increase the work of the District Attorneys General Conference and the District Public Defenders Conference, but given that the bill will only affect 15 cases across the entire state, it is assumed that any impact can be accommodated within existing resources without any additional appropriations.
- The AOC confirms that the bill will not have a significant impact on its caseload.

**Tennessee Code Annotated § 9-4-210 requires an appropriation from recurring revenues for the estimated operation cost of any law enacted after July 1, 1986 that results in a net increase in periods of imprisonment in state facilities. The amount appropriated shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Jeffrey L. Spalding, Executive Director

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