

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 457 - SB 454

March 10, 2015

SUMMARY OF BILL: Defines aggravated vehicular homicide, a Class A felony, to include vehicular homicide when the driver had a blood alcohol content (BAC) of 0.20 or had a BAC of 0.08 and some concentration of methamphetamine.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures – \$515,100/Highest Projected Cost of the Next 10 Years/Incarceration*

Assumptions:

- Currently, one commits aggravated vehicular homicide when one commits vehicular homicide and:
 - Has two or more prior convictions for DUI, vehicular assault, or any combination of the two;
 - Has a prior conviction for vehicular homicide; or
 - At the time of the offense, has a BAC of .20 and has a prior conviction for DUI or vehicular assault.
- The bill removes the prior conviction requirement for someone driving with a BAC of 0.20. Currently, someone who commits vehicular homicide while driving with a BAC of 0.20 or more, but no prior convictions for DUI or vehicular assault, is guilty of vehicular homicide. Removing the prior conviction requirement will result in more offenders currently being prosecuted for aggravated vehicular homicide, a Class A felony, rather than vehicular homicide, a Class B felony.
- Statistics from the Department of Correction (DOC) show there has been an average of 11 fatalities with a recorded BAC of 0.20 over the past three years in Tennessee. The bill would result in the intoxicated driver for each fatality being admitted for aggravated vehicular homicide, rather than vehicular homicide.
- According to statistics from the DOC, there has been an average of 6.5 admissions each year for aggravated vehicular homicide in the past 10 years. It is assumed that one-third (2 admissions) of these admissions were the result of a 0.20 BAC and a prior conviction for either DUI or vehicular assault and are currently admitted for aggravated vehicular homicide. The bill will result in nine admissions (11 fatalities per year with BAC of 0.20 or higher – 2 admissions per year under current law) for aggravated vehicular homicide while driving with a 0.20 BAC each year that are currently being admitted for vehicular homicide.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12

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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 (9 x .1178) additional admissions for a total of 10 (9 + 1).

- Over the past 10 years, the average time served for vehicular homicide by intoxication has been 4.31 years. Over the past 10 years, the average time served for aggravated vehicular homicide has been 7.87 years. The bill will result in each offender serving an additional 3.56 years (7.87 years – 4.31 years).
- According to the DOC, 49.1 percent of offenders will re-offend within three years of their release. A recidivism discount of 49.1 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 (10 offenders x .491 = 5 offenders).
- 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 five offenders [10 offenders – 5 (recidivism discount)] serving an additional 3.56 years (1,300.29 days) for a total of \$85,858 (\$66.03 x 1,300.29 days). The cost for five offenders is \$429,290 (\$85,858 x 5).
- The bill also enhances vehicular homicide to aggravated homicide when someone commits vehicular homicide while driving with a BAC of 0.08 and some concentration of methamphetamine. Currently under Tenn. Code Ann. § 39-13-213(a)(2), someone who recklessly kills someone through the operation of a motor vehicle and the death was the proximate result of alcohol intoxication, drug intoxication, or both, is guilty of vehicular homicide, not aggravated vehicular homicide. The bill will result in some offenses currently being prosecuted under Tenn. Code Ann. § 39-13-213(a)(2), a Class B felony, being prosecuted for aggravated vehicular homicide, a Class A felony.
- According to statistics from the DOC, there has been an average of 35.6 admissions for vehicular homicide by intoxication. It is assumed that 20 percent (7 admissions) of these admissions were the proximate result of both alcohol and drug intoxication. It is further assumed that 33 percent (2 admissions) of the 7 admissions were from alcohol and methamphetamine intoxication. The bill will result in two admissions per year being enhanced from vehicular homicide by intoxication, a Class B felony, to aggravated vehicular homicide, a Class A felony.
- Population growth will not affect the fiscal impact of this legislation.
- The applicable recidivism discount (49.11 percent) will reduce the number of admissions by one offender (2 x .4911 = 1 offender).
- Over the past 10 years, the average time served for vehicular homicide by intoxication has been 4.31 years. Over the past 10 years, the average time served for aggravated vehicular homicide has been 7.87 years. The bill will result in each offender serving an additional 3.56 years (7.87 years – 4.31 years).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender serving an additional 3.56 years (1,300.29 days) for a total of \$85,858 (\$66.03 x 1,300.29 days).
- The total additional incarceration cost is \$515,148 (\$429,290 + \$85,858).

- The number of prosecutions for aggravated vehicular homicide will be offset by a reduction in prosecutions for vehicular homicide. It is assumed that the convictions for aggravated vehicular homicide will come from those offenses currently being prosecuted as vehicular homicide that would constitute aggravated vehicular homicide, as defined in the bill. Any impact on the caseloads of the District Attorneys General Conference, the District Public Defenders Conference, or the courts can be accommodated within existing resources without an increased appropriation or reduced reversion

**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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