

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 2576 - SB 2567

February 23, 2016

SUMMARY OF BILL: The bill shall be known as the “Public Safety Act of 2016” (The Act).

Domestic Abuse Victims

The Act authorizes a law enforcement officer responding to an incident of domestic abuse to pursue an order of protection in accordance with Tenn. Code Ann. § 36-3-602 on behalf of the victim, regardless of the time of day, whether or not the victim requests the officer to pursue the order or whether or not an arrest has been made.

The Act requires a presiding judge in each judicial district to make available at all times outside of the court’s normal operating hours an official authorized to issue an order of protection at the request of a law enforcement officer on behalf of a domestic abuse victim.

The Act requires an automatic order of protection to be issued at the respondent’s initial appearance before the court after arrest if the arresting officer had probable cause to believe the respondent used or attempted to use deadly force against the domestic abuse victim.

The Act creates a new Class E felony for third or subsequent convictions for domestic assault if the domestic abuse victim’s relationship with the defendant is that of a current or former spouse, a dating relationship, or the victim is an adult or minor child of any person in such relationship with the defendant. Anyone convicted of the new offense must serve 90 consecutive days in a local jail or workhouse.

Grading of Theft and Theft-Related Offenses

The Act modifies the grading of theft of property or services (theft) under Tenn. Code Ann. § 39-14-105. Theft will be punished as a Class A misdemeanor if the value of the property or services is \$1,000 or less. Theft will be punished as a Class E felony if the value of the property or services is greater than \$1,000 but less than \$2,500. Theft will be punished as a Class D felony if the value of the property or services is \$2,500 or more, but less than \$10,000. The Act does not modify the grading of Class C felony theft, Class B felony theft, or Class A felony theft.

The Act, by modifying the grading of theft, also modifies the grading of offenses punished as theft. These offenses include, but are not limited to, criminal simulation under Tenn. Code Ann. § 39-14-115, forgery under Tenn. Code Ann. § 39-14-114, fraudulent use of a credit card under Tenn. Code Ann. § 39-14-118, vandalism under Tenn. Code Ann. § 39-14-408, and worthless checks under Tenn. Code Ann. § 39-14-121.

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The Act updates Tenn. Code Ann. § 40-35-104 relative to sentencing alternatives to coincide with the changes made to the grading of theft. The change ensures that those convicted of Class E felony theft as an especially mitigated offender or standard offender are not required to serve a sentence of continuous confinement with the Department of Correction (DOC).

Release Eligibility for Selling, Manufacturing, or Delivering a Controlled Substance

The Act prohibits release eligibility for anyone convicted of selling, manufacturing, or distribution of a controlled substance under Tenn. Code Ann. § 39-17-417 on or after January 1, 2017, until the offender has served no less than 70 percent of the sentence received if the person has at least two prior convictions for the same offenses.

The Act defines “prior conviction” for purposes of the subsection to mean that the person served and was released or discharged from serving, or is serving, a separate period of incarceration or supervision for the commission of the sale, manufacture, or distribution of a controlled substance. “Prior conviction” also includes any convictions under the laws of any other state that would constitute selling, manufacturing, or delivering a controlled substance if committed in Tennessee.

The Act defines “separate period of incarceration or supervision” to include a sentence to any sentence alternative provided for in Tenn. Code Ann. § 40-35-104(c)(3)-(9).

The sale, manufacture, or delivery of a controlled substance shall be considered as having been committed after a separate period of incarceration or supervision if committed while the defendant is on probation, parole, community supervision, supervised release, incarcerated for the offense at issue, assigned to a program where the person enjoys the privilege of supervised release, or on escape status from any correctional institution when incarcerated for the offense at issue.

Release Eligibility for Aggravated Burglary

The Act prohibits release eligibility for anyone convicted of aggravated burglary under Tenn. Code Ann. § 39-14-403 on or after January 1, 2017, until the offender has served no less than 70 percent of the sentence received if the person has at least two prior convictions for the same offense.

The Act defines “prior conviction” for purposes of the subsection to mean that the person served and was released or discharged from serving, or is serving, a separate period of incarceration or supervision for the commission of aggravated burglary. “Prior conviction” also includes any convictions under the laws of any other state that would constitute aggravated burglary if committed in Tennessee.

The Act defines “separate period of incarceration or supervision” to include a sentence to any sentence alternative provided for in Tenn. Code Ann. § 40-35-104(c)(3)-(9).

Aggravated burglary shall be considered as having been committed after a separate period of incarceration or supervision if committed while the defendant is on probation, parole, community supervision, supervised release, incarcerated for the offense at issue, assigned to a

program where the person enjoys the privilege of supervised release, or on escape status from any correctional institution when incarcerated for the offense at issue.

Release Eligibility for Especially Aggravated Burglary

The Act prohibits release eligibility for anyone convicted of especially aggravated burglary under Tenn. Code Ann. § 39-14-404 on or after January 1, 2017, until the offender has served no less than 70 percent of the sentence received if the person has at least two prior convictions for the same offense.

The Act defines “prior conviction” for purposes of the subsection to mean that the person served and was released or discharged from serving, or is serving, a separate period of incarceration or supervision for the commission of especially aggravated burglary. “Prior conviction” also includes any convictions under the laws of any other state that would constitute especially aggravated burglary if committed in Tennessee.

The Act defines “separate period of incarceration or supervision” to include a sentence to any sentence alternative provided for in Tenn. Code Ann. § 40-35-104(c)(3)-(9).

Especially aggravated burglary shall be considered as having been committed after a separate period of incarceration or supervision if committed while the defendant is on probation, parole, community supervision, supervised release, incarcerated for the offense at issue, assigned to a program where the person enjoys the privilege of supervised release, or on escape status from any correctional institution when incarcerated for the offense at issue.

Risk and Needs Assessments

The Act defines “validated risk and needs assessment” as a determination of a person’s risk to reoffend and the needs that, when addressed, reduce the risk to reoffend through the use of an actuarial assessment tool designated by the DOC that assesses the dynamic and static factors that drive criminal behavior.

The Act requires a validated risk and needs assessment be included in any presentence report. The Act requires a court to consider the results of a validated risk and needs assessment in determining the specific sentence and the appropriate combination of sentencing alternatives to impose on a defendant.

The Act requires every criminal sentence to be based on a validated risk and needs assessment in addition to the other factors that must be considered (e.g., evidence in the record, sentencing hearing, and presentence report) under Tenn. Code Ann. § 40-35-210(b).

For purposes of revoking a suspended sentence or probation, the Act requires a court to direct the presentence service officer to prepare and submit an updated validated risk and needs assessment for the offender, and the Act requires the court to consider the results of the assessment in determining the appropriate disposition of the probation violation charge.

The Act requires the DOC, county correctional facilities, and community corrections agencies to perform a validated risk and needs assessment for each felony offender under their

supervision or custody not only upon receipt of the felon, but also annually throughout the period of supervision or custody. The DOC, county correctional facilities, community corrections agencies, the Board of Parole (BOP), and the courts must use the assessments in making decisions and recommendations on programming and treatment options and on post-prison supervision conditions for those who have been incarcerated. If deemed appropriate by the DOC, portions of the assessment shall be shared with community providers, but such disclosure should respect the privacy rights of the offender.

Graduated Sanctions

The Act institutes a system of “graduated sanctions” to impose for violations of the conditions of community supervision. The provisions of this system are to be codified in Title 40, Chapter 28. “Graduated sanctions” is defined as a wide range of non-prison offender accountability measures and programs, including, but no limited to, electronic supervision tools; drug and alcohol testing or monitoring; day or evening reporting centers; restitution centers; forfeiture of earned compliance credits; rehabilitative interventions such as substance abuse or mental health treatment; reporting requirements to supervision officers; community service or work crews; secure or unsecure residential treatment facilities or halfway houses; and short-term or intermittent incarceration.

Supervised individuals shall be subject to violation and revocation proceedings and possible incarceration for failure to comply with the conditions of supervision when such failure constitutes a significant risk to prior victims of the supervised individual or the community at large and cannot be appropriately managed in the community. Supervised individuals shall also be subject to sanctions other than revocation and incarceration as appropriate to the severity of the violation behavior, the risk of future criminal behavior by the offender, and the need for, and availability of, interventions which may assist the offender to remain compliant and crime-free in the community.

The system of graduated sanctions shall set forth a menu of presumptive sanctions for the most common types of supervision violations, which include, but are not limited to, failure to report; failure to pay fines, fees, and victim restitution; failure to participate in a required program or service; failure to complete community service; violation of a protective or no contact order; and failure to refrain from the use of alcohol or controlled substances.

The system shall take into account various factors such as severity of the current violation, criminal history of the offender, number and severity of previous supervision violations, the offender’s assessed risk level, and the extent to which graduated sanctions were imposed for previous violations.

The Act authorizes the DOC to (1) modify the conditions of community supervision for the limited purpose of imposing graduated sanctions and (2) place a supervised individual who violates the conditions of community supervision in a state or local correctional or detention facility or residential center for a period of one to 30 days, but such placement may not exceed 30 days in any one calendar year.

The supervision officer intending to modify the conditions of community supervision must give notice of the intended sanction to the supervised individual. The notice must inform the

supervised individual of the technical violation or violations alleged, the date or dates of the violation or violations, and the graduated sanction to be imposed. The supervised individual must immediately accept the sanction or, if permitted, object to the sanction or sanctions proposed. If the individual objects, the individual is entitled to an administrative review within five days of the issuance of the notice. Failure to comply with the sanction shall constitute a violation of probation, parole, or post-release supervision.

A sanction confining a supervised individual in a correctional or detention facility for more than 30 consecutive days may not be imposed as a graduated sanction except by court order or order of the releasing authority.

A graduated sanction may not be issued for a violation that would otherwise warrant an additional, separate felony charge.

Upon successful completion of a graduated sanction or sanctions, a court cannot revoke the term of community supervision or impose additional sanctions for the same violation.

The DOC is required to establish an administrative process to review and approve or reject, prior to imposition, graduated sanctions that deviate from those prescribed. The DOC must also establish an administrative process to review contested graduated sanctions, which shall be heard by the chief supervision officer.

The chief supervision officer shall perform a quarterly review of the confinement sanctions recommended by supervision officers and assess any disparities that may exist among officers, evaluate the effectiveness of the sanctions measured by the supervised individuals' subsequent conduct, and monitor the impact on the DOC's number and type of revocations for violations of the conditions of supervision.

ESTIMATED FISCAL IMPACT:

**Increase State Expenditures – \$7,295,400/FY16-17
\$8,758,900/FY17-18 and Subsequent Years**

**Decrease State Expenditures –
Net Impact – \$10,341,600/Incarceration*/FY16-17
Net Impact – \$25,680,300/Incarceration*/FY17-18
Net Impact – \$36,936,300/Incarceration*/FY18-19 and Subsequent Years**

**Increase Local Expenditures –
\$211,200/Incarceration**/FY16-17
\$422,400/Incarceration**/FY17-18 and Subsequent Years**

Funding in the amount of \$10,173,400 is included in the Governor's FY16-17 Recommended Budget Document (\$575,000 One-Time and \$9,598,400 Recurring) on page A-40.

Assumptions:

Domestic Abuse Victims

- The Act authorizes any law enforcement officer responding to a domestic abuse incident to pursue an order of protection on behalf of the victim against the defendant regardless of the time of day. Further, the Act requires an authorized official to be available any time of day to issue an order of protection pursued by a law enforcement officer pursuant to the officer's authority under the Act. The presiding judge of the judicial district must make the authorized official available.
- It is assumed that the Act is requiring one authorized official for each of the 31 judicial districts. The Administrative Office of the Courts (AOC) does not have sufficient data to determine which courts do and do not have an authorized official available 24 hours a day.
- The Act requires any judicial district that does not have an official available to make one available. Of the 31 judicial districts, it is assumed that the AOC will need to employ at least 10 authorized individuals to meet the requirements of the Act.
- It is further assumed that each position will require \$75,000 in recurring expenditures.
- The Act will increase recurring state expenditures by \$750,000 ($\$75,000 \times 10$ positions).
- The Act creates a new Class E felony for third or subsequent convictions for domestic assault if the domestic abuse victim's relationship with the defendant is that of a current or former spouse, a dating relationship, or the victim is an adult or minor child of any person in such relationships with the defendant. Anyone convicted of the new offense must serve 90 consecutive days in a local jail or workhouse.
- Statistics from the AOC show an average of 676.4 convictions per year over the last five years for Class A, B, and C misdemeanor domestic assault. These statistics represent convictions that are disposed of at the state court level. It is assumed that only 10 percent of misdemeanor convictions are at the state court level. It is assumed that there are a total of 6,764 convictions (676.4×10) per year for violations of Tenn. Code Ann. § 39-13-111.
- However, there are six separate classes of victims under Tenn. Code Ann. § 39-13-111. The statistics are not separated by class of victim. The Act will only enhance assaults against a current or former spouse, someone in a dating relationship with the defendant, or a child of a current or former spouse or someone in a dating relationship with the defendant. Further, the enhanced offense only applies in third or subsequent convictions. It is assumed that one percent ($6,764 \times 0.01 = 67.6$) of current domestic assault convictions will be enhanced under the Act.
- 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 eight ($67.6 \times .1178$) additional admissions for a total of 76 ($68 + 8$).
- A recidivism discount does not apply because the Act creates a new felony. The offenders affected by the Act are currently serving any period of confinement under local custody rather than DOC custody.
- The average time served for a Class E felony is 1.47 years.
- Fiscal Review generally calculates incarceration notes pursuant to an established formula. The formula calls for a weighted average of the cost per day to house a felon. A

weighted average is used because there is no reasonable way to determine which felons will serve their sentence in a local jail and which will serve in DOC custody.

- The act requires every offender to serve the 90-day minimum period of confinement in a local jail or workhouse. For this reason and this reason only, the average cost per day of \$49.04 will be used to calculate the increase in incarceration costs.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 78 offenders) serving 1.47 years (536.92 days) for a total of \$26,330.56 (\$49.04 x 536.92 days). The cost for 78 offenders is \$2,053,783.68 (\$26,330.56 x 78).

Grading of Theft and Theft-Related Offenses

- Tennessee Code Annotated § 39-14-105 establishes the grading of theft. Other offenses use the grading of theft to set the classification of the offense (e.g., criminal simulation under Tenn. Code Ann. § 39-14-115, forgery under Tenn. Code Ann. § 39-14-114, fraudulent use of a credit card under Tenn. Code Ann. § 39-14-118, vandalism under Tenn. Code Ann. § 39-14-408, and worthless checks under Tenn. Code Ann. § 39-14-121).
- The Act changes the grading of theft as follows:

Classification	Current Grading	Proposed Grading
A Misdemeanor	< or = \$500	< or = \$1,000
E Felony	\$500 – \$1,000	\$1,000 – \$2,500
D Felony	\$1,000 – \$10,000	\$2,500 – \$10,000
C Felony	\$10,000 – \$60,000	\$10,000 – \$60,000
B Felony	\$60,000 – \$250,000	\$60,000 – \$250,000
A Felony	\$250,000 or more	\$250,000 or more

- Under the Act, Class E felonies will be prosecuted as Class A misdemeanors and some current Class D felonies will be prosecuted as Class E felonies.
- It is assumed that 10 percent of current D felonies will be prosecuted as Class E felonies under the proposed grading.
- According to the DOC, the average operating cost per offender per day for calendar year 2016 is \$67.73.

Theft

- Statistics from the DOC show a 10-year average of 336.5 admissions per year for Class E felony theft. These offenders will not serve their incarceration in DOC custody, but rather in local custody if a period of confinement is required.
- Over the last 10 years, the average time served for Class E felony theft has been 1.18 years (431 days).
- The Act will decrease recurring state incarceration costs by an estimated \$9,837,579.31 (337 admissions x 431 days x \$67.73).
- Thefts that will become Class A misdemeanors under the Act may serve time in local custody. Fiscal Review does not possess any data on the average time served for misdemeanor offenses.

- Some may not serve a period of confinement while others may serve up to 11 months, 29 days. It is assumed that the average time served among the misdemeanants will be 20 days.
- The estimated 2016 cost per inmate per day for local jails is \$60.00.
- The Act will increase recurring local incarceration costs by an estimated \$404,400.00 (337 misdemeanants x 20 days x \$60.00).
- Statistics from the DOC show a 10-year average of 961.2 admissions per year for Class D felony theft. It is assumed that 10 percent ($961.2 \times 0.1 = 96$ admissions) will be prosecuted as Class E felony thefts and will serve lesser sentences.
- Over the last 10 years, the average time served for Class D felony theft has been 2.04 years. The Act will result in each affected offender serving 0.86 years ($2.04 - 1.18$), or 314.12 days, less than under the current grading of theft.
- The Act will decrease recurring state incarceration costs by an estimated \$2,042,433.37 (96 admissions x 314.12 days x \$67.73).

Forgery

- Tennessee Code Annotated § 39-14-114 punishes forgery as theft under Tenn. Code Ann. § 39-14-105, but in no event less than a Class E felony. The Act will not affect Class E felony incarcerations for forgery. It will only decrease the number of persons incarcerated for Class D felony forgery.
- Statistics from the DOC show a 10-year average of 69.1 admissions per year for Class D felony forgery. It is assumed that 10 percent ($69.1 \times 0.1 = 7$ admissions) will be prosecuted as Class E felony forgery and will serve lesser sentences.
- Over the last 10 years, the average time served for Class D felony forgery has been 3.34 years, and the average time served for Class E felony forgery has been 1.99 years. The Act will result in each affected offender serving 1.35 years ($3.34 - 1.99$), or 493.09 days, less than under the current grading of theft.
- The Act will decrease recurring state incarceration costs by an estimated \$233,778.90 (7 admissions x 493.09 days x \$67.73).

Criminal Simulation

- Tennessee Code Annotated § 39-14-115 punishes criminal simulation as theft under Tenn. Code Ann. § 39-14-105, but in no event less than a Class E felony. The Act will not affect Class E felony incarcerations for criminal simulation. It will only decrease the number of persons incarcerated for Class D felony criminal simulation.
- Statistics from the DOC show a 10-year average of 17.8 admissions per year for Class D felony criminal simulation. It is assumed that 10 percent ($17.8 \times 0.1 = 2$ admissions) will be prosecuted as Class E felony criminal simulation and will serve lesser sentences.
- Over the last 10 years, the average time served for Class D felony criminal simulation has been 2.13 years, and the average time served for Class E felony criminal simulation has been 1.68 years. The Act will result in each affected offender serving 0.45 years ($2.13 - 1.68$), or 164.36 days, less than under the current grading of theft.
- The Act will decrease recurring state incarceration costs by an estimated \$22,264.21 (2 admissions x 164.36 days x \$67.73).

Fraudulent Use of a Credit Card

- Statistics from the DOC show a 10-year average of 5.8 admissions per year for Class E felony fraudulent use of a credit card. These offenders will not serve their incarceration in DOC custody, but rather in local custody if a period of confinement is required.
- Over the last 10 years, the average time served for Class E felony fraudulent use of a credit card has been 1.05 years (383.51 days).
- The Act will decrease recurring state incarceration costs by an estimated \$155,850.79 (6 admissions x 383.51 days x \$67.73).
- Offenses for fraudulent use of a credit card that will become Class A misdemeanors under the Act could serve time in local custody. It is assumed that the average offender prosecuted as a Class A misdemeanor will not serve any jail time.
- Statistics from the DOC show a 10-year average of 14.4 admissions per year for Class D felony fraudulent use of a credit card. It is assumed that 10 percent (14.4 x 0.1 = 1 admission) will be prosecuted as Class E felony fraudulent use of a credit card and will serve a lesser sentence.
- Over the last 10 years, the average time served for Class D felony fraudulent use of a credit card has been 2.06 years. The Act will result in each affected offender serving 1.01 years (2.06 – 1.05), or 368.9 days, less than under the current grading of theft.
- The Act will decrease recurring state incarceration costs by an estimated \$24,985.60 (1 admission x 368.9 days x \$67.73).

Worthless Checks

- Statistics from the DOC show a 10-year average of 2.2 admissions per year for Class E felony worthless checks. These offenders will not serve their incarceration in DOC custody, but rather in local custody if a period of confinement is required.
- Over the last 10 years, the average time served for Class E felony worthless checks has been 0.87 years (317.77 days).
- The Act will decrease recurring state incarceration costs by an estimated \$43,045.12 (2 admissions x 317.77 days x \$67.73).
- Offenses for worthless checks that will become Class A misdemeanors under the Act could serve time in local custody. It is assumed that the average offender prosecuted as a Class A misdemeanor will not serve any jail time.
- Statistics from the DOC show a 10-year average of 10.5 admissions per year for Class D felony worthless checks. It is assumed that 10 percent (10.5 x 0.1 = 1 admission) will be prosecuted as Class E felony worthless checks and will serve a lesser sentence.
- Over the last 10 years, the average time served for Class D felony worthless checks has been 2.56 years. The Act will result in each affected offender serving 1.69 years (2.56 – 0.87), or 617.27 days, less than under the current grading of theft.
- The Act will decrease recurring state incarceration costs by an estimated \$41,807.70 (1 admission x 617.27 days x \$67.73).

Vandalism

- Statistics from the DOC show a 10-year average of 29.6 admissions per year for Class E felony vandalism. These offenders will not serve their incarceration in DOC custody, but rather in local custody if a period of confinement is required.

- Over the last 10 years, the average time served for Class E felony vandalism has been 0.86 years (314.12 days).
- The Act will decrease recurring state incarceration costs by an estimated \$638,260.43 (30 admissions x 314.12 days x \$67.73).
- Vandalisms that will become Class A misdemeanors under the Act may serve time in local custody. Some may not serve a period of confinement while others may serve up to 11 months, 29 days. It is assumed that the average time served among the misdemeanants will be 10 days.
- The estimated 2016 cost per inmate per day for local jails is \$60.00.
- The Act will increase recurring local incarceration costs by an estimated \$18,000.00 (30 misdemeanants x 10 days x \$60.00).
- Statistics from the DOC show a 10-year average of 49.4 admissions per year for Class D felony vandalism. It is assumed that 10 percent (49.4 x 0.1 = 5 admissions) will be prosecuted as Class E felony vandalisms and will serve lesser sentences.
- Over the last 10 years, the average time served for Class D felony vandalism has been 2.52 years. The Act will result in each affected offender serving 1.66 years (2.52 – 0.86), or 606.32 days, less than under the current grading of theft.
- The Act will decrease recurring state incarceration costs by an estimated \$205,330.27 (5 admissions x 606.32 days x \$67.73).

Release Eligibility for Certain Drug Offenses

- The Act requires any offender convicted of a third or subsequent offense for Class A, B, or C felony manufacturing, selling, or delivering a controlled substance under Tenn. Code Ann. § 39-17-417 to serve no less than 70 percent of the sentence received before being eligible for release.
- The Act limits application, however, to manufacturing, selling, and delivering a controlled substance—omitting possession with intent—as well as to only third and subsequent convictions. It is assumed that five percent of current admissions will be affected by the Act.
- Statistics from the DOC show a 10-year average of approximately 1,354.9 admissions per year for Class C felony violations of Tenn. Code Ann. § 39-17-417. It is assumed that five percent (1,354.9 x 0.05 = 67.75) of these admissions will be affected by the Act.
- The average time served for a Class C felony is 3.22 years. It is assumed that the average sentence received for these offenses is eight years. It is further assumed that the average offender currently serves 40 percent (3.22 / 8 = 40.3) of the sentence received.
- The Act will require each affected offender to serve no less than 70 percent, or 5.6 years (8 x 0.7). The Act will require each affected offender to serve an additional 2.38 years (5.6 – 3.22).
- 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 eight (67.75 x .1178) additional admissions for a total of 76 (68 + 8).
- According to the DOC, 49.2 percent of offenders will re-offend within three years of their release. A recidivism discount of 49.2 percent has been applied to this estimate to account for the impact of offenders who will re-offend under current law within the

additional time added by the Act. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (76 offenders x .492 = 37 offenders).

- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 39 offenders [76 offenders – 37 (recidivism discount)] serving an additional 2.38 years (869.3 days) for a total of \$58,877.69 (\$67.73 x 869.3 days). The cost for 39 offenders is \$2,296,229.87 (\$58,877.69 x 39).
- Statistics from the DOC show a 10-year average of approximately 935 admissions per year for Class B felony violations of Tenn. Code Ann. § 39-17-417. It is assumed that five percent (935 x 0.05 = 46.75) of these admissions will be affected by the Act.
- The average time served for a Class B felony is 6.59 years. It is assumed that the average sentenced received for these offenses is 16 years. It is further assumed that the average offender currently serves 41 percent (6.59 / 16 = 41.2) of the sentence received.
- The Act will require each affected offender to serve no less than 70 percent, or 11.2 years (16 x 0.7). The Act will require each affected offender to serve an additional 4.61 years (11.2 – 6.59).
- 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 five (46.75 x .1178) additional admissions for a total of 52 (47 + 5).
- According to the DOC, 49.2 percent of offenders will re-offend within three years of their release. A recidivism discount of 49.2 percent has been applied to this estimate to account for the impact of offenders who will re-offend under current law within the additional time added by the Act. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (52 offenders x .492 = 26 offenders).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 26 offenders [52 offenders – 26 (recidivism discount)] serving an additional 4.61 years (1,683.8 days) for a total of \$114,043.77 (\$67.73 x 1,683.8 days). The cost for 26 offenders is \$2,965,138.12 (\$114,043.77 x 26).
- Statistics from the DOC show a 10-year average of approximately 33.4 admissions per year for Class A felony violations of Tenn. Code Ann. § 39-17-417. It is assumed that five percent (33.4 x 0.05 = 1.67) of these admissions will be affected by the Act.
- The average time served for a Class A felony is 17.35 years. It is assumed that the average sentence received for these offenses is 30 years. It is further assumed that the average offender currently serves 57.8 percent (17.35 / 30) of the sentence received.
- The Act will require each affected offender to serve no less than 70 percent, or 21 years (30 x 0.7). The Act will require each affected offender to serve an additional 3.65 years (21 – 17.35).
- 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 not affect the fiscal impact of this portion of the Act.
- According to the DOC, 49.2 percent of offenders will re-offend within three years of their release. A recidivism discount of 49.2 percent has been applied to this estimate to account for the impact of offenders who will re-offend under current law within the

additional time added by the Act. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (2 offenders x .492 = 1 offenders).

- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender [2 offenders – 1 (recidivism discount)] serving an additional 3.65 years (1,333.16 days) for a total of \$90,294.93 (\$67.73 x 1,333.16 days).

Release Eligibility for Aggravated Burglary and Especially Aggravated Burglary

- The Act requires any offender convicted of a third or subsequent offense for aggravated burglary under Tenn. Code Ann. § 39-14-403 to serve no less than 70 percent of the sentence received before being eligible for release.
- It is assumed that 10 percent of current admissions will be affected by the Act.
- Statistics from the DOC show a 10-year average of approximately 1,348.6 admissions per year for aggravated burglary. It is assumed that 10 percent (1,348.6 x 0.1 = 134.86) of these admissions will be affected by the Act.
- Statistics from the DOC show the average time served for aggravated burglary is 3.18 years. The average sentence received is 4.61 years. The average offender currently serves 69 percent (3.18 / 4.61) of the sentence received.
- The Act will require each affected offender to serve no less than 70 percent, or 3.23 years (4.61 x 0.7). The Act will require each affected offender to serve an additional 0.05 years (3.23 – 3.18).
- 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 16 (134.86 x .1178) additional admissions for a total of 151 (135 + 16).
- According to the DOC, 33.3 percent of offenders will re-offend within one year of their release. A recidivism discount of 33.3 percent has been applied to this estimate to account for the impact of offenders who will re-offend under current law within the additional time added by the Act. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (151 offenders x .333 = 50 offenders).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 101 offenders [151 offenders – 50 (recidivism discount)] serving an additional 0.05 years (18.26 days) for a total of \$1,236.75 (\$67.73 x 18.26 days). The cost for 101 offenders is \$124,911.73 (\$1,236.75 x 101).
- The Act requires any offender convicted of a third or subsequent offense for especially aggravated burglary under Tenn. Code Ann. § 39-14-404 to serve no less than 70 percent of the sentence received before being eligible for release.
- It is assumed that 10 percent of current admissions will be affected by the Act.
- Statistics from the DOC show a 10-year average of approximately 9.6 admissions per year for aggravated burglary. It is assumed that 10 percent (9.6 x 0.1 = 0.96) of these admissions will be affected by the Act.
- Statistics from the DOC show the average time served for especially aggravated burglary is 3.86 years. The average sentence received is 9.72 years. The average offender currently serves 39.7 percent (3.86 / 9.72) of the sentence received.

- The Act will require each affected offender to serve no less than 70 percent, or 6.8 years (9.72 x 0.7). The Act will require each affected offender to serve an additional 2.94 years (6.8 – 3.86).
- 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 not affect the fiscal impact of this portion of the Act.
- A recidivism discount of 49.2 percent applies, but due to the low number of admissions impacted by this portion of the Act, the recidivism discount does not impact the incarceration cost for this portion of the Act.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender serving an additional 2.94 years (1,073.84 days) for a total of \$72,731.18 (\$67.73 x 1,073.84 days).

Risk and Needs Assessments

- The Act requires a validated risk and needs assessment in any presentence report. A court must consider the results of a validated risk and needs assessment in determining the specific sentence and the appropriate combination of sentencing alternatives to impose on a defendant.
- For the purposes of revoking a suspended sentence or probation, the Act requires a court to direct the presentence service officer to prepare and submit an updated validated risk and needs assessment for the offender, and the Act requires the court to consider the results of the assessment in determining the appropriate disposition of the probation violation charge.
- The DOC will need a validated assessment tool to provide the assessments. The DOC will also need training for the employees that will use the tool to complete validated risk and needs assessments.
- Implementation, configuration, integration, training, and subscription and license fees, for the tool are estimated to increase one-time state expenditures by \$2,209,000 in FY16-17. It is assumed that ongoing maintenance for the tool will increase recurring state expenditures by \$50,000 beginning in FY17-18.

Graduated Sanctions

- The Act establishes a system of graduated sanctions. The correctional industry uses sanctions for technical violations committed by offenders under community supervision.
- Staff with the DOC will implement and oversee management of the graduated sanction system. The DOC will task this staff with ensuring imposition of sanctions are consistent statewide.
- The DOC will establish six centers that will administer evidence-based programs and offer reentry assistance to offenders, including education assistance, job assistance, and housing assistance.
- These six centers will require additional space and furnishings. It is assumed that the DOC will need five offices at an approximate size of 5,450 square feet for each office and one office at an approximate size of 17,000 square feet at a rate of \$18.00 per square foot. The Act will increase recurring state expenditures by an estimated \$796,500 (44,250 square feet x \$18.00) beginning in FY16-17.

- The six centers will also require furnishings. It is assumed that the 5,450 square foot centers will require \$59,365 for furnishings and the 17,000 square foot center will require \$185,175 for furnishings. The Act will increase one-time state expenditures by an estimated \$482,000 [(\$59,365 x 5) + \$185,175].
- These centers will employ evidence-based programs developed by vendors. Currently, the DOC contracts with 13 vendors providing these services. The DOC will need to contract with an additional seven vendors. Contracts with these vendors are estimated to increase recurring state expenditures by \$933,600 beginning in FY16-17.
- The DOC will need staff at the centers and at various locations throughout the state to oversee the graduated sanctions system and to provide reentry services to offenders.
- In total, the DOC needs 102 positions. Those positions are:
 - 31 Correctional Counselor II (CC2) positions;
 - 27 Probation/Parole Officer III (PPO3) positions;
 - 14 Administrative Service Assistant II (ASA2) positions;
 - 11 Correctional Counselor III (CC3) positions;
 - 9 Psychiatric Social Worker II (PSW2) positions;
 - 8 Correctional Program Director I (CPD1) positions;
 - 1 Correctional Program Director II (CPD2) position; and
 - 1 Accountant III (Acct3) position.
- Each position will require \$10,600 (\$3,000 travel + \$2,600 supplies + \$2,000 training + \$1,000 computer/phone/internet + \$2,000 professional services) in recurring expenditures. The Act will increase recurring state expenditures by an estimated \$1,081,200 (\$10,600 x 102 positions).
- The positions will require recurring state expenditures for salary and benefits as follows:

	<i>Base Salary</i>	<i>Benefits (15.03%)</i>	<i>FICA (7.65%)</i>	<i>Insurance</i>	<i>Salary and Benefits</i>	<i>Total</i>
CC2 (31 positions)	\$32,815.20	\$4,932.12	\$2,510.36	\$6,544.56	\$46,802.25	\$1,450,869.67
PPO3 (27 positions)	\$36,192.00	\$5,439.66	\$2,768.69	\$6,544.56	\$50,944.91	\$1,375,512.45
ASA2 (14 positions)	\$31,270.80	\$4,700.00	\$2,392.22	\$6,544.56	\$44,907.58	\$628,706.08
CC3 (11 positions)	\$36,194.40	\$5,440.02	\$2,768.87	\$6,544.56	\$50,947.85	\$560,426.35
PSW2 (9 positions)	\$39,903.60	\$5,997.51	\$3,052.63	\$6,544.56	\$55,498.30	\$499,484.67
CPD (8 positions)	\$46,173.60	\$6,939.89	\$3,532.28	\$6,544.56	\$63,190.33	\$505,522.66
CPD2 (1 position)	\$48,483.60	\$7,287.09	\$3,709.00	\$6,544.56	\$66,024.24	\$66,024.24
Acct3 (1 position)	\$44,400.00	\$6,673.32	\$3,396.60	\$6,544.56	\$61,014.48	\$61,014.48

- The salaries and benefits for these positions will increase recurring state expenditures by an estimated \$5,147,560.60 (\$1,450,869.67 + \$1,375,512.45 + \$628,706.08 + \$560,426.35 + \$499,484.67 + \$505,522.66 + \$66,024.24 + \$61,014.48).
- The staff in the central, 17,000-square-foot office will have statewide responsibilities that will require extensive travel. The DOC will need to purchase 10 vehicles for the staff. The Motor Vehicle Management Division of the Department of General Services

indicates that each vehicle will cost approximately \$25,000. Ten vehicles will increase one-time expenditures by \$250,000 ($\$25,000 \times 10$).

- The graduated sanctions system will ultimately decrease the number of offenders that reenter DOC's custody as a result of the offender's parole, probation, or community supervision having been revoked.
- The sanctions are intended to provide swift, proportionate measures for technical violations.
- Reducing the number of offenders reentering the DOC's custody will decrease incarceration costs.
- According to the DOC, approximately 40 percent of their annual admissions are offenders reentering because of revoked parole, probation, or community supervision—approximately 5,061 admissions per year.
- The Act has an effective date of January 1, 2017. Graduated sanctions will begin on that date. It is assumed that from January 1, 2017, to June 30, 2017, the DOC will see a reduction in revocation admissions of six percent, or 304 admissions ($5,061 \times 0.06 = 303.66$). In FY17-18, it is assumed that the DOC will see a reduction in revocation admissions of 16 percent, or 810 admissions ($5,061 \times 0.16 = 810$). It is assumed that in FY18-19 and subsequent fiscal years, the DOC will see a reduction in revocation admissions for 25 percent, or 1,265 admissions ($5,061 \times 0.25 = 1,265.25$).
- It is assumed that each person reentering DOC's custody for a revocation serves an average of 365.25 days. According to the DOC, the average operating cost per offender per day for calendar year 2016 is \$67.73.
- The Act will decrease incarceration costs by an estimated \$7,520,468.28 ($304 \times 365.25 \times \67.73) in FY16-17.
- The Act will decrease incarceration costs by an estimated \$20,038,089.83 ($810 \times 365.25 \times \67.73) in FY17-18.
- The Act will decrease incarceration costs by an estimated \$31,294,053.86 ($1,265 \times 365.25 \times \67.73) in FY18-19 and subsequent fiscal years.

Total Impact of the Act

Incarceration Costs

- The decrease in state incarceration costs relative to the gradation of theft and theft-related offenses will be \$13,245,335.70 ($\$9,837,579.31 + \$2,042,433.37 + \$233,778.90 + \$22,264.21 + \$155,850.79 + \$24,985.60 + \$43,045.12 + \$41,807.70 + \$638,260.43 + \$205,330.27$).
- The Act's effective date, however, is January 1, 2017. The decrease in state incarceration costs in FY16-17 will be \$6,622,667.85 ($\$13,245,335.70 / 2$).
- The decrease in state incarceration costs in FY17-18 and subsequent fiscal years will be \$13,245,335.70.
- The decrease in state incarceration costs relative to reduced revocations will be \$7,520,468.28 in FY16-17.
- The decrease in state incarceration costs relative to reduced revocations will be \$20,038,089.83 in FY17-18.
- The decrease in state incarceration costs relative to reduced revocations will be \$31,294,053.86 in FY18-19.

- The increase in state incarceration costs will be \$7,603,089.51 ($\$2,053,783.68 + \$2,296,229.87 + \$2,965,138.12 + \$90,294.93 + \$124,911.73 + \$72,731.18$). The Act's effective date, however, is January 1, 2017. The increase in state incarceration costs in FY16-17 will be \$3,801,544.76 ($\$7,603,089.51 / 2$). The increase in state incarceration costs in FY17-18 and subsequent fiscal years will be \$7,603,089.51.
- The net impact on state incarceration costs for FY16-17 will be a net decrease of \$10,341,591.37 ($\$6,622,667.85 + \$7,520,468.28 - \$3,801,544.76$).
- The net impact on state incarceration costs for FY17-18 will be a net decrease of \$25,680,336.02 ($\$13,245,335.70 + \$20,038,089.83 - \$7,603,089.51$).
- The net impact on state incarceration costs for FY18-19 will be a net decrease of \$36,936,300.05 ($\$13,245,335.70 + \$31,294,053.86 - \$7,603,089.51$).
- The increase in local incarceration costs will be \$422,400 ($\$404,400 + \$18,000$). The Act's effective date, however, is January 1, 2017. The increase in local incarceration costs in FY16-17 will be \$211,200 ($\$422,400 / 2$). The increase in local incarceration costs in FY17-18 and subsequent fiscal years will be \$422,400.

One-Time State Expenditures

- The increase in one-time state expenditures will be \$2,941,000.00 ($\$2,209,000.00 + \$482,000.00 + \$250,000.00$) in FY16-17.

Recurring State Expenditures

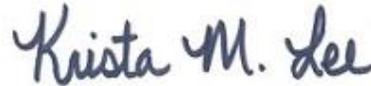
- The increase in recurring state expenditures in FY16-17 will be \$4,354,430.30 [$(\$750,000.00 + \$796,500.00 + \$933,600.00 + \$5,147,560.60 + \$1,081,200.00) / 2$].
- The increase in recurring state expenditures in FY17-18 and subsequent fiscal years will be \$8,758,860.60 ($\$750,000.00 + \$796,500.00 + \$933,600.00 + \$5,147,560.60 + \$1,081,200.00 + \$50,000.00$).

**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.*

***Article II, Section 24 of the Tennessee Constitution provides that: no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

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



Krista M. Lee, Executive Director

/trm