

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



**CORRECTED
FISCAL NOTE**

SB 43 - HB 268

March 20, 2015

SUMMARY OF BILL: Broadens the list of crimes for which a judge may grant the interception of electronic communications for evidence to include the commissions of trafficking a person for a commercial sex act, promoting prostitution, and kidnapping.

ESTIMATED FISCAL IMPACT:

On February 18, 2015, a fiscal note was issued estimating a fiscal impact as follows:

(CORRECTED)

*Increase State Expenditures – \$100,600 Highest Projected Cost of Next 10
Years/Incarceration**

Upon further review, this impact was in error because it did not include the fiscal impact of an additional admission for aggravated kidnapping as a result of the bill. The estimated impact is:

(CORRECTED)

**Increase State Expenditures – \$100,600 Highest Projected Cost of Next 10
Years/Incarceration***

Decrease State Expenditures – \$15,100/TBI

Assumptions:

- Under current law, the only law enforcement officers that can obtain wiretap warrants are Tennessee Bureau of Investigation (TBI) agents and law enforcement officers in counties having a population in excess of 250,000 and who have completed the necessary training course.
- The only counties with a population over 250,000 are Davidson, Shelby, Knox, Hamilton, and Rutherford.
- A judge may only grant interception of electronic communications for evidence of homicide, conspiracy, certain major drug crimes, and criminal gang offenses.
- The bill adds three new offenses to the list—trafficking for commercial sex acts, promoting prostitution, kidnapping.
- The TBI's 2013 report, *The Geography of Trafficking in Tennessee 2013*, shows that human sex trafficking is particularly high in 13 counties, which include the 5 counties that can apply for wiretap warrants.

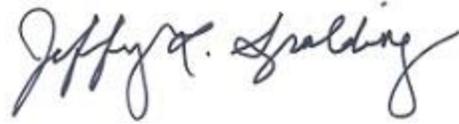
SB 43 - HB 268 (CORRECTED)

- The same report notes that most human sex trafficking is conducted over the internet and there is “little doubt that as technology evolves, so will the use of the World Wide Web, smartphones, and social media in the promotion of the human trafficking enterprise.” For this reason, wiretap warrants will become a key investigative tool to combat human sex trafficking.
- Other states have the ability to seek wiretaps for kidnapping, including Colorado. The National Center for Missing & Exploited Children, which serves as the nation’s clearinghouse for missing and sexually exploited children, shows that Colorado and Tennessee have similar numbers related to missing and exploited children. Colorado has 40 records of missing or exploited children; Tennessee has 39 records of missing or exploited children.
- Over the last 10 years, Colorado has issued two wiretaps for kidnapping cases. It is assumed that Tennessee will issue two wiretaps for kidnapping, two wiretaps for trafficking for commercial sex acts, and one wiretap for promoting prostitution over the next 10 years.
- It is assumed that the bill will result in one additional admission every 10 years for trafficking for commercial sex acts, promoting prostitution, kidnapping, aggravated kidnapping, and especially aggravated kidnapping.
- 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 the proposed legislation.
- Recidivism discounts apply, but due to the low number of admissions added by this provision, the recidivism discounts do not impact the incarceration cost for the proposed provision.
- According to the Department of Correction (DOC), the average operating cost per offender per day for calendar year 2015 is \$66.03.
- Trafficking for commercial sex acts is a Class B felony unless committed against a child under the age of 15 or committed on the grounds or within 1,000 feet of a school, in which case it is a Class A felony. It is assumed that the bill will generate one additional Class B felony admission over the next 10 years.
- The DOC has no data on the average time served by someone convicted of trafficking for commercial sex acts. It is assumed that the average person convicted of trafficking for commercial sex acts serves the same time as an average Class B felony, 5.69 years.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender every 10 years serving 5.69 years (2,078.27 days) for an annualized total of \$13,723 [(\$66.03 x 2,078.27 days) / 10 years].
- Promoting prostitution is a Class E felony, unless it is committed against a minor, in which case it is punished as trafficking for a commercial sex act. Data from the DOC shows that the average time served for promoting prostitution is 2 years.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender every 10 years serving 2 years (730.5 days) for an annualized total of \$4,823 [(\$66.03 x 730.5 days) / 10 years].
- Kidnapping is a Class C felony. Data from the DOC shows that the average time served for kidnapping is 5.35 years.

- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender every 10 years serving 5.35 years (1,954.09 days) for an annualized total of \$12,903 [(\$66.03 x 1,954.09 days) / 10 years].
- Aggravated kidnapping is a Class B felony. Data from the DOC shows that the average time served for kidnapping is 16.01 years.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender every 10 years serving 16.01 years (5,847.65 days) for an annualized total of \$38,612 [(\$66.03 x 5,847.65 days) / 10 years].
- Especially aggravated kidnapping is a Class A felony. Data from the DOC shows that the average time served for especially aggravated kidnapping is 12.67 years.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender every 10 years serving 12.67 years (4,627.72 days) for an annualized total of \$30,557 [(\$66.03 x 4,627.72 days) / 10 years].
- The bill will increase state incarceration expenditures by \$100,618 (\$13,723 + \$4,823 + \$12,903 + \$38,612 + \$30,557).
- The TBI reports that it and Shelby County law enforcement agencies have the necessary equipment to conduct wiretaps. The proposed legislation will increase the numbers of wiretaps performed over the next 10 years, but the impact that it will have on the TBI's and Shelby County's equipment cannot be reasonably be predicted.
- The increase in wiretaps will not impact the TBI's resources, as they will not have to reallocate resources from one investigation to another. TBI reports that the agents on an investigation using a wiretap will review the wiretap rather than conducting other investigative techniques (e.g., interviewing witnesses, review the case file, etc.). No new additional staff will need to be hired to assist with the added wiretaps.
- The proposed legislation will not significantly impact the annual caseload of the Administrative Office of the Courts, the District Attorneys General Conference, or the District Public Defenders Conference as it will only add five cases every 10 years.
- It is assumed that the Administrative Office of the Courts, the District Attorneys General Conference, and the District Public Defenders Conference can accommodate any impact to their caseloads within existing resources.
- The TBI reports that expanding their ability to conduct wiretaps will result in savings for labor costs. For example, the TBI estimates that the Holly Bobo kidnapping and murder case resulted in \$2,007,191 in criminal investigator hours (43,506 hours x \$45.82 per hour) during the four year investigation.
- The TBI believes that having the ability to conduct a wiretap for kidnapping would have resulted in a 30 percent savings in the Holly Bobo case (\$2,007,191 x 0.6 = \$602,157). From that, the TBI estimates that 10 percent of their labor costs result from overtime pay.
- The bill will decrease TBI's overtime expenditures by \$15,054 [(\$602,157 x 0.1) / 4] each year.

CERTIFICATION:

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



Jeffrey L. Spalding, Executive Director

/trm