

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



FISCAL NOTE

SB 139 - HB 497

February 25, 2015

**SUMMARY OF BILL:** Redefines “criminal gang offense” to mean the commission, attempted commission, solicitation, coercion, or intimidation of another to commit any offense under title 39, chapters 13, 14, 16, or 17; or any criminal offense, anywhere, that involves violence, the use of a deadly weapon, or the possession of a deadly weapon.

**ESTIMATED FISCAL IMPACT:**

**Increase State Expenditures – \$4,308,600 Highest Projected Cost of Next 10 Years/Incarceration\***

Assumptions:

*Assumptions Relative to Criminal Gang Offenses:*

- Under current law, a “criminal gang offense” is any offense during the perpetration of which the defendant knowingly causes, or threatens to cause, death or bodily injury. The bill would broaden the definition to include no less than 200 felonies, including attempts and solicitations. The felonies affected include:
  - Approximately 35 Class B felonies, for which the 10-year average admissions are 1,726.2 admissions per year;
  - Approximately 56 Class C felonies, for which the 10-year average admissions are 4,280.5 admissions per year;
  - Approximately 59 Class D felonies, for which the 10-year average admissions are 2,488.6 admissions per year; and
  - Approximately 50 Class E felonies, for which the 10-year average admissions are 1,164.6 admissions per year.
- It is assumed that one percent of these admissions was committed by a criminal gang member and would be sentenced at one classification higher.
- According to the Department of Correction (DOC), the average operating cost per offender per day for calendar year 2015 is \$66.03.

*Assumptions Relative to Class B Felonies:*

- The bill would result in 17 Class B felonies ( $1,726.2 \times 0.01 = 17.26$ ) being enhanced to Class A felonies.
- Population growth will account for two additional admissions ( $17 \times .1178$ ) for a total of 19 ( $17 + 2$ ).
- 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

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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 (19 offenders x .491 = 9 offenders).

- The bill would result in each offender serving an additional 9.45 years (15.14 years, the average time served for a Class A felony – 5.69 years, the average time served for a Class B felony).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 10 offenders [19 offenders – 9 (recidivism discount)] serving an additional 9.45 years (3,451.61 days) for a total of \$227,910 (\$66.03 x 3,451.61 days). The cost for 10 offenders is \$2,279,100 (\$227,910 x 10).

*Assumptions Relative to Class C Felonies:*

- The bill would result in 43 Class C felonies ( $4,280.5 \times 0.01 = 42.8$ ) being enhanced to Class B felonies.
- Population growth will account for five additional admissions ( $43 \times .1178$ ) for a total of 48 ( $43 + 5$ ).
- 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 ( $48 \text{ offenders} \times .491 = 24 \text{ offenders}$ ).
- The bill would result in each offender serving an additional 2.51 years (5.69 years, the average time served for a Class B felony – 3.18 years, the average time served for a Class C felony).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 24 offenders [ $48 \text{ offenders} - 24 \text{ (recidivism discount)}$ ] serving an additional 2.51 years (916.78 days) for a total of \$60,535 ( $\$66.03 \times 916.78 \text{ days}$ ). The cost for 24 offenders is \$1,452,840 ( $\$60,535 \times 24$ ).

*Assumptions Relative to Class D Felonies:*

- The bill would result in 25 Class D felonies ( $2,488.6 \times 0.01 = 24.89$ ) being enhanced to Class C felonies.
- Population growth will account for three additional admissions ( $25 \times .1178$ ) for a total of 28 ( $25 + 3$ ).
- According to the DOC, 42.92 percent of offenders will re-offend within two 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 ( $28 \text{ offenders} \times .4292 = 12 \text{ offenders}$ ).
- The bill would result in each offender serving an additional 1.14 years (3.18 years, the average time served for a Class C felony – 2.04 years, the average time served for a Class D felony).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based

on 16 offenders [28 offenders – 12 (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 16 offenders is \$439,904 (\$27,494 x 16).

*Assumptions Relative to Class E Felonies:*

- The bill would result in 12 Class E felonies ( $1,164.6 \times 0.01 = 11.64$ ) being enhanced to Class D felonies.
- Population growth will account for one additional admission ( $12 \times .1178$ ) for a total of 13 ( $12 + 1$ ).
- According to the DOC, 32.23 percent of offenders will re-offend within one year of their release. A recidivism discount of 32.23 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 ( $13 \text{ offenders} \times .3223 = 4 \text{ offenders}$ ).
- The bill would result in each offender serving an additional 0.63 years (2.04 years, the average time served for a Class D felony – 1.41 years, the average time served for a Class E felony).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 9 offenders [13 offenders – 4 (recidivism discount)] serving an additional 0.59 years (230.11 days) for a total of \$15,194 ( $\$66.03 \times 230.11 \text{ days}$ ). The cost for nine offenders is \$136,746 ( $\$15,194 \times 9$ ).

*Assumptions Relative to the Total Incarceration Cost:*

- The total incarceration cost is \$4,308,590 ( $\$2,279,100 + \$1,452,840 + \$439,904 + \$136,746$ ).

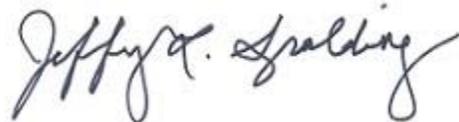
*Assumptions Relative to the Courts, District Attorneys, and Public Defenders:*

- The bill does not create any new cases, rather affects the potential sentence that a defendant may receive. The bill may impact the work of the courts, the district attorneys, and the public defenders during the sentencing phase, but it will only do so for 59 cases each year. The bill does not significantly impact the operations of the Administrative Office of the Courts, the District Attorneys General Conference, or the District Public Defenders Conference so as to require any additional appropriations.

*\*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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