

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 167 - SB 403

February 24, 2019

SUMMARY OF ORIGINAL BILL: Repeals the Motor Vehicle Habitual Offenders Act. Reduces failure to appear in court offenses for Class A misdemeanor violations. Revises the punishment for introduction of certain contraband in penal institutions. Creates a Class D felony for the offense of possessing a telecommunications device in a correctional facility. Requires a 30-day minimum confinement period for any person who is convicted of theft a firearm. Enhances the penalty for fifth DUI offenses. Removes the statute of limitations of certain convictions for consideration of DUI convictions.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures – Net Impact – \$10,713,700 Incarceration*

Increase Local Expenditures – \$302,700**

SUMMARY OF AMENDMENT (004195): Deletes and replaces the effective date of the bill such that the only substantive change is to change the effective date of the repeal of the Motor Vehicle Habitual Offenders Act to January 1, 2020.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Increase State Expenditures – Net Impact –
\$13,331,000/FY19-20 Incarceration*
\$10,713,700/FY20-21 and Subsequent Years Incarceration*

Increase Local Expenditures – \$302,700**

Assumptions for the bill as amended:

Repeal of the Motor Vehicle Habitual Offenders Act

- Under current law, pursuant to Tenn. Code Ann. § 55- 20-6, the Motor Vehicle Habitual Offenders (MVHO) Act outlines the procedure for individuals convicted of certain

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driving offenses within certain frequencies to reach MVHO status. MVHO status results in the loss of the offender's driver license and a class E felony.

- This legislation repeals the MVHO Act and authorizes individuals whose driver license was revoked or restricted due to the MVHO Act prior to July 1, 2019, to petition the court for reinstatement of such driver license. If the court determines the revocation or restriction was due solely to the MVHO Act, the court is required to order reinstatement of such license.
- Based on information provided by the Department of Safety and Homeland Security, any impact on the Department resulting from the reissuance of driver licenses under the provisions of this legislation is estimated to be not significant.
- This legislation removes a violation of MVHO as one qualifier for an individual to be charged with aggravated vehicular assault.
- Any impact to state incarceration costs resulting from the proposed legislation relative to aggravated vehicular assault convictions is estimated to be not significant.
- Based on information provided by DOC, there has been an average of 153 admissions for offenses under the MVHO Act each year over the last five years.
- According to the DOC, the average operating cost per offender per day for calendar year 2019 is \$73.18.
- The average time served for a Class E felony is 1.28 years or 467.52 days.
- The proposed legislation repeals the MVHO Act effective January 1, 2020. The effective date provision for the repeal of the MVHO Act will make the legislation effective for approximately 50 percent of FY19-20 and 100 percent of FY20-21 and subsequent fiscal years.
- Repealing the Act will result in a decrease in state incarceration expenditures in FY19-20 estimated to be \$2,617,303 [(153 admissions x 467.52 days x \$73.18) x 50%].
- Repealing the Act will result in a recurring decrease in state incarceration expenditures in FY20-21 and subsequent years estimated to be \$5,234,606 (153 admissions x 467.52 days x \$73.18).

Failure to Appear in Court

- Under current law, pursuant to Tenn. Code Ann. § 39-16-609(e), if a person fails to appear in court for a Class A misdemeanor charge, the person is charged with a separate Class E felony offense that is authorized to be served consecutively to any sentence for which the defendant failed to appear.
- This legislation makes failure to appear in court for a Class A misdemeanor a separate Class A misdemeanor offense that is required to be served consecutively to any sentence for which the defendant failed to appear.
- The average time served for a Class E felony is 1.28 years or 467.52 days.
- Based on information provided by DOC, there has been an average of 153 Class E felony admissions for failure to appear in court each year over the last five years.
- According to the DOC, the average operating cost per offender per day for calendar year 2019 is \$73.18.
- Reducing failure to appear charges for Class A misdemeanor offenses will lead to a recurring decrease in state incarceration expenditures estimated to be \$5,234,606 (153 admissions x 467.52 x 73.18).

- Charging individuals who fail to appear in court for a Class A misdemeanor offense with a separate Class A misdemeanor offense will increase local incarceration costs.
- Ten percent of individuals previously charged with Class F felony offenses for failure to appear will now serve an average 15-day local jail sentence.
- The average cost to local governments to house an inmate in a local jail facility is \$64 per day.
- Reducing failure to appear charges for Class A misdemeanors will lead to a recurring mandatory increase in local expenditures estimated to be \$14,688 [(153 admissions x 10%) x 15 days x \$64].
- Based on the Fiscal Review Committee's 2008 study and the Administrative Office of the Courts' 2012 study on collection of court costs, fees, and fines, collection in criminal cases is insignificant. The proposed legislation will not significantly increase local revenue.
- The proposed legislation requires citation notices issued by sheriffs for failure to appear in court be revised to reflect the current maximum sentence for a Class A misdemeanor.
- Any cost to local government resulting from the revision of citation notices for failure to appear in court is estimated to be not significant.

Contraband in Penal Institutions

- Under current law, pursuant to Tenn. Code Ann. § 39-16-201, it is a Class C felony offense to knowingly and with unlawful intent, take, send or otherwise cause to be taken into any penal institution or to knowingly possess in any penal institution where prisoners are quartered or under custodial supervision, any weapons, ammunition, explosives intoxicants, legend drugs, or any controlled substances or controlled substance analogues.
- This legislation reduces the penalty for introduction of intoxicants, legend, drugs, or any controlled substances or controlled substance analogues into a penal institution to a class D felony.
- Introduction of weapons, ammunition, or explosives into a penal intuition remains a class C felony.
- Based on information provided by DOC, there has been an average of 156 Class C felony admissions for introduction of contraband in a penal institution each year over the last five years.
- This analysis estimates 80 percent of admissions are a result of introduction of intoxicants, legend drugs, or any controlled substances or controlled substance analogues into the penal system.
- The proposed analysis will result in 80 percent, or 125 admissions (156 x 80%) being reduced one classification each year.
- The average time served for a Class D felony is 2.3 years. The average time served for a class C felony is 3.62 years. The proposed legislation will result in each admission serving 1.32 (3.62 - 2.30) fewer years.
- According to the DOC, the average operating cost per offender per day for calendar year 2019 is \$73.18.
- Reducing the penalty for introduction of intoxicants, legend, drugs, or any controlled substances or controlled substance analogues into a penal institution will lead to a

recurring decrease in state incarceration expenditures estimated to be \$4,410,284 [125 admissions x (365.25 days x 1.32 years) x \$73.18].

- Under current law, pursuant to Tenn. Code Ann. § 39-16-201, the offense of taking, sending, or otherwise causing a telecommunication device to be taken into a penal institution is a Class E felony. This legislation enhances the offense to a Class D felony.
- Based on information provided by DOC, there has been an average of five class D felony admissions for introduction of a telecommunication device in a penal facility each year over the last five years.
- The average time served for a Class E felony is 1.28 years. The average time served for a Class D felony is 2.30 years. The proposed legislation will result in each admission serving an additional 1.02 (2.30 - 1.28) years.
- According to the DOC, 32.2 percent of offenders will re-offend within one year of their release. A recidivism discount of 32.2 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 (5 offenders x 32.2% = 2 offenders).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on three offenders (5 offenders – 2 recidivism discount) admitted each year serving an additional 1.02 years (372.56 days) for an annualized increase in state incarceration expenditures of \$81,792 (\$73.18 x 372.56 x 3).
- Pursuant to Tenn. Code Ann. § 39-16-201, telecommunication devices include, but are not limited to, cellular phones, digital phones, and modem equipment devices.
- This legislation creates a Class D felony for the knowing and unlawful possession of a telecommunications device in a penal institution.
- Penal institutions include all state correctional facilities and local jails.
- Based on information provided by DOC, 926 state prison disciplinarys were issued for possession of a cell phone in calendar year 2018.
- This analysis estimates there will be approximately 350 convictions each year resulting from state institutions and 50 convictions each year resulting from local jails.
- The average time served for a Class D felony is 2.30 years.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 400 (350 + 50) offenders every year serving an additional 2.30 years (840.08 days) for an annualized increase in state incarceration expenditures of \$24,590,822 (\$73.18 x 840.08 days x 400).

Theft of Firearm

- This analysis assumes the average price of a firearm is less than \$1,000; therefore, theft of a firearm is a Class A misdemeanor.
- This analysis assumes individuals convicted of a Class A misdemeanor for theft of a firearm are spending an average of 15 days in local jail.
- The proposed legislation mandates a minimum 30 days confinement.
- The average cost to local governments to house an inmate in a local jail facility is \$64 per day.
- It is estimated 300 individuals per year will be convicted of theft of a firearm.

- Mandating a minimum 30 days of confinement will result in an additional 15 (30-15) days confinement for gun theft offenses that will lead to a recurring mandatory increase in local expenditures estimated to be \$288,000 [300 admissions x 15 days x \$64].

Driving Under the Influence

- Under current law, pursuant to Tenn. Code Ann § 55-10-402(a)(4), a fourth or fifth driving under the influence (DUI) offense is punished as a Class E felony.
- The proposed legislation enhances the punishment for a fifth DUI conviction to a Class D felony.
- The average time served for a Class E felony is 1.28 years. The average time served for a Class D felony is 2.30 years. The proposed legislation will result in each admission serving an additional 1.02 years.
- Based on information provided by DOC, there has been an average of 77.2 admissions per year for fourth and subsequent DUI offenses each year over the last five years.
- Based on population data from the U.S. Census Bureau, population growth in Tennessee averaged 0.81 percent per year for each of the past 10 years (from 2008 to 2018), yielding a projected compound population growth rate of 8.37 percent. Assuming Tennessee's population continues growing by the same rates over the next 10-year period, population growth will account for six (77.2 x 8.37%) additional admissions for a total of 83 (77 + 6).
- This analysis estimates 40 percent or 33 (83 admissions x 40%) of such offenses are fifth time DUI offenses.
- According to the DOC, the average operating cost per offender per day for calendar year 2019 is \$73.18.
- According to the DOC, 32.2 percent of offenders will re-offend within one year of their release. A recidivism discount of 32.2 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 (33 offenders x 32.2% = 11 offenders).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 22 offenders (33 offenders – 11 recidivism discount) admitted each year serving an additional 1.02 years (372.56 days) for an annualized increase in state incarceration expenditures of \$599,807 (\$73.18 x 372.56 x 22).
- Under current law, pursuant to Tenn. Code Ann. § 55-10-405(c), prior convictions of vehicular assault, aggravated vehicular assault, vehicular homicide, and aggravated vehicular homicide are considered in determining if a person convicted of DUI is a multiple offender only when the prior convictions occurred within the last 10 years.
- This legislation considers such offenses in the calculation of multiple offenses regardless of the time of occurrence.
- Based on information provided by DOC, there has been an average of two admissions per year for sixth and subsequent DUI offenses each year over the past five years.
- Ten percent, or eight [(77.2 + 2) x 10%], fourth offense or subsequent offenders will be enhanced one offense as a result of the removal of 10 year prior restriction and serve an average of two additional years.

- Based on population data from the U.S. Census Bureau, population growth in Tennessee averaged 0.81 percent per year for each of the past 10 years (from 2008 to 2018), yielding a projected compound population growth rate of 8.37 percent. Assuming Tennessee's population continues growing by the same rates over the next 10-year period, population growth will account for one (8 x 8.37%) additional admission for a total of nine (8 + 1).
- This analysis estimates the enhancement will result in each admission serving an additional two years.
- According to the DOC, the average operating cost per offender per day for calendar year 2019 is \$73.18.
- According to the DOC, 41.7 percent of offenders will re-offend within two years of their release. A recidivism discount of 41.7 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 (8 offenders x 41.7% = 3 offenders).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on six offenders (9 offenders – 3 recidivism discount) admitted each year serving an additional two years (730.5 days) for an annualized increase in state incarceration expenditures of \$320,748 ($\$73.18 \times 730.5 \text{ days} \times 6$).

Total Incarceration Costs

- The proposed legislation will result in a decrease in state incarceration expenditures in FY19-20 estimated to be \$12,262,193 ($\$2,617,303 + \$5,234,606 + \$4,410,284$)
- The proposed legislation will result in a recurring decrease in state incarceration expenditures in FY20-21 and subsequent fiscal years estimated to be \$14,879,496 ($\$5,234,606 + \$5,234,606 + \$4,410,284$)
- The proposed legislation will result in a recurring increase in state incarceration expenditures for FY19-20 and subsequent years estimated to be \$25,593,169 ($\$81,792 + \$24,590,822 + \$599,807 + \$320,748$).
- The net impact of this legislation will result in an increase in state incarceration expenditures in FY19-20 estimated to be \$13,330,976 ($\$25,593,169 - \$12,262,193$).
- The net impact of this legislation will result in a recurring increase in state incarceration expenditures in FY20-21 and subsequent fiscal years estimated to be \$10,713,673 ($\$25,593,169 - \$14,879,496$).

Total Impact to Local Government

- The proposed legislation will result in recurring mandatory increase in local expenditures estimated to be \$302,688 ($\$14,688 + \$288,000$).

Courts, Public Defenders, and District Attorneys

- The courts, public defenders, and district attorneys can accommodate any impact within their existing resources. Any impact to the court system is estimated to be not significant.

*Tennessee Code Annotated, Section 9-4-210, requires that: *For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues 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.

Handwritten signature of Krista Lee Carsner in black ink.

Krista Lee Carsner, Executive Director

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