

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 238 - SB 328

March 6, 2019

SUMMARY OF ORIGINAL BILL: Reduces the drug-free zone in Davidson, Hamilton, Knox and Shelby Counties to 500 feet. Enhances the penalty to distribute a small amount of marijuana not in excess of one-half ounce in a drug-free zone by one classification.

FISCAL IMPACT OF ORIGINAL BILL:

Decrease State Expenditures – Net Impact – \$1,872,900 Incarceration*

Decrease Local Expenditures – \$25,900

SUMMARY OF AMENDMENT (005146): Deletes and replaces all language after the enacting clause. Reduces the drug-free zone in Davidson, Hamilton, Knox and Shelby Counties to 500 feet. Creates offenses for possession with intent to manufacture or sell less than one-half an ounce of marijuana and for selling less than one-half an ounce of marijuana and enhances such offenses when they occur in a drug-free zone.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Unchanged from the original fiscal note.

Assumptions for the bill as amended:

Davidson, Hamilton, Knox and Shelby County School Safety Zones

- Tenn. Code Ann. § 39-17-432 enhances drug offenses under Tenn. Code Ann. § 39-17-417 by one classification if committed within 1,000 feet of a school, child care agency, public library, or park, also known as a “drug-free zone”, and offenses committed within 1,000 feet of a public or private elementary, middle, or secondary school, also known as a “school safety zone”, are eligible for additional incarceration time resulting from such enhancement.
- The proposed legislation decreases drug-free zones, including school safety zones, from 1,000 feet to 500 feet from such locations for offenses occurring in Davidson, Hamilton, Knox and Shelby Counties.

- Based on information provided by the Department of Correction (DOC), the following are the average number of drug offenses committed in Davidson, Hamilton, Knox, and Shelby County drug-free zones each year over the last five years:
 - Class A felony – 7
 - Class B felony – 15.4
 - Class C felony – 29.7
 - Class D felony – 14.3
 - Class E felony – 18.9
- This analysis estimates that 50 percent of all offenses are committed beyond 500 feet from a school safety zone; therefore; the proposed legislation will result in the following admissions being prosecuted one classification lower than they would be under current law:
 - Class A felony – 3.5 (7 x 50%)
 - Class B felony – 7.7 (15.4 x 50%)
 - Class C felony – 14.9 (29.7 x 50%)
 - Class D felony – 7.2 (14.3 x 50%)
- The average time served by felony class is:
 - Class A felony – 18.67 years
 - Class B felony – 6.65 years
 - Class C felony – 3.62 years
 - Class D felony – 2.30 years
 - Class E felony – 1.28 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 (7.7 x 8.37%) additional Class C felony admission, one (14.9 x 8.37%) additional Class D felony admission, and one (7.2 x 8.37%) additional Class E felony admission.
- Recidivism will not impact these admissions.
- The proposed legislation will result in:
 - 4 Class A felonies being punished as Class B felonies
 - 9 (7.7 + 1) Class B felonies being punished as Class C felonies
 - 16 (14.9 + 1) Class C felonies being punished as Class D felonies
 - 8 (7.2 + 1) Class D felonies punished as Class E felonies
- According to the DOC, the average operating cost per offender per day for calendar year 2019 is \$73.18.
- The proposed legislation will result in four offenders each serving 12.02 fewer years (18.67 - 6.65), or 4,390.31 fewer days, than under current law.
- The proposed legislation will decrease recurring state incarceration expenditures by an estimated \$1,285,132 (\$73.18 x 4,390.31 days x 4 offenders).
- The proposed legislation will result in nine offenders each serving 3.03 fewer years (6.65 - 3.62), or 1,106.71 fewer days, than under current law.
- The proposed legislation will decrease recurring state incarceration expenditures by an estimated \$728,901 (\$73.18 x 1,106.71 days x 9 offenders).

- The proposed legislation will result in 16 offenders each serving 1.32 fewer years (3.62 - 2.30), or 482.13 fewer days, than under current law.
- The proposed legislation will decrease recurring state incarceration expenditures by an estimated \$564,516 ($\$73.18 \times 482.13 \times 16$ offenders).
- The proposed legislation will result in 8 offenders each serving 1.02 fewer years (2.30 - 1.28), or 372.56 fewer days, than under current law.
- The proposed legislation will decrease recurring state incarceration expenditures by an estimated \$218,112 ($\73.18×372.56 days $\times 8$ offenders).
- The total recurring decrease in state incarceration expenditures resulting from the proposed legislation is estimated to be \$2,796,661 ($\$1,285,132 + \$728,901 + \$564,516 + \$218,112$).

Marijuana Offenses in a Drug- Free Zone

- Pursuant to Tenn. Code Ann. § 39-17-418, simple possession or casual exchange of a controlled substance and distribution of less than one-half an ounce of marijuana to an adult are Class A misdemeanor offenses and casual exchange of such substances to a minor who is at least two years the adult's junior is punished as a Class E felony.
- The proposed legislation creates Class A misdemeanor offenses for possession with intent to manufacture or sell less than one-half an ounce of marijuana and for selling of less than one-half an ounce of marijuana. Under current law, such offenses would be enhanced to a Class E felony when involving a sale to a minor who is at least two years the adult's junior. Therefore, any impact resulting from these offenses are estimated to be not significant.
- Additionally, the proposed legislation enhances such offenses to a Class E felony when the offenses are committed in a school safety zone and to a Class D felony when committed in a school safety zone and such offenses involve a sale to a minor who is at least two years the adult's junior.
- Based on information provided by DOC, there have been zero Class E felony admissions for causal exchange to a minor each year over the last five years; therefore, any impact resulting from enhancing such penalty is estimated to be not significant.
- The average time served for a Class E felony is 1.28 years.
- Based on information provided by the Administrative Office of the Courts (AOC), there has been an average of 1,869 Class A misdemeanor convictions under Tenn. Code Ann. § 39-17-418 each year over the past five years. This analysis assumes that only 10 percent of misdemeanor convictions are at the state court level. As a result, it is estimated that there are a total of 18,690 convictions ($1,869 / 10\% = 18,690$) per year for misdemeanor violations of Tenn. Code Ann. § 39-17-418.
- This analysis estimates that 20 percent, or 3,738 ($18,690 \times 20\%$) of such convictions are for casual distribution of a small amount of marijuana not in excess of one-half ounce and will now be charged as possession with intent to manufacture or sell less than one-half an ounce of marijuana and for selling of less than one-half an ounce of marijuana.
- This analysis assumes that one percent, or 37 ($3,738 \times 1\%$), of convictions will take place in school safety zones, as defined by the proposed legislation.
- 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 three (37 x 8.37%) additional admissions for a total of 40 (37 + 3).

- According to the DOC, 31.4 percent of offenders will re-offend within one year of their release. A recidivism discount of 31.4 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 (40 offenders x 31.4% = 13 offenders).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 27 offenders (40 offenders – 13 recidivism discount) admitted every year serving an additional 1.28 years (467.52 days) for an annualized increase in state incarceration expenditures of \$923,754 (\$73.18 x 27 offenders x 467.52 days).
- Under current law, this analysis assumes offenders are spending an average of 15 days in local jail for Class A misdemeanor convictions of Tenn. Code Ann. § 39-17-418.
- The average cost to local governments to house an inmate in a local jail facility is \$64 per day.
- The proposed legislation will lead to a mandatory recurring decrease in local incarceration expenditures estimated to be \$25,920 (\$64 x 27 offenders x 15 days).

Total Incarceration Costs

- The proposed legislation will lead to a recurring net decrease in state incarceration expenditures estimated to be \$1,872,907 (\$2,796,661 - \$923,754).

Courts, Public Defenders, and District Attorneys

- The proposed legislation does not create new offenses, and, therefore, will not increase the caseloads of the courts, public defenders, or district attorneys. The courts, public defenders, and district attorneys can accommodate any impact within their existing resources.

**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.*

CERTIFICATION:

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



Krista Lee Carsner, Executive Director

/amj