

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 197 - SB 215

May 2, 2019

SUMMARY OF ORIGINAL BILL: Limits the prohibition of sentence reduction credits to persons convicted of Class A, B, or C felonies against a person. Authorizes such inmates to continue to earn sentence reduction credits, but specifies that such credits will not reduce the inmates' release eligibility dates (RED), but rather apply toward expiration of the inmates' sentence. Creates a presumption that an inmate convicted of a Class E or Class D nonviolent offense is to be released on parole upon the inmate reaching his or her release eligibility date, unless good cause is shown as to why the inmate should not be released.

CORRECTED FISCAL IMPACT OF ORIGINAL BILL:

Decrease State Expenditures – \$7,668,100 Incarceration*

SUMMARY OF AMENDMENT (008911): Deletes and replaces language in the bill such that substantive changes are to: (1) change the effective date to January 1, 2020; and (2) specifies that the presumption that an inmate convicted of a Class E or Class D nonviolent offense is to be released on parole upon the inmate reaching his or her release eligibility date, unless good cause is shown as to why the inmate should not be released applies to offenses committed on or after January 1, 2020.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

**Decrease State Expenditures – \$7,668,100/FY20-21 and Subsequent
Years/Incarceration***

Assumptions for the bill as amended:

- The proposed legislation is effective January 1, 2020 and applies to offenses committed on or after that date. Further, Tenn. Code Ann. § 9-4-210 requires the amount appropriated for periods of imprisonment in state facilities to be based upon the highest cost of the next 10 years. Therefore, this analysis estimates the net impact of the proposed legislation as the largest estimated increase in expenditures netted against the largest estimated decrease in state expenditures over the next 10 year period beginning in FY20-21.

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- Tenn. Code Ann. §§ 40-35-105 to -109 establish sentencing classifications for felons. An inmate is sentenced as an especially mitigated offender, a standard offender (Range I), a multiple offender (Range II), a persistent offender (Range III), or a career offender.
- Tenn. Code Ann. § 40-35-501 establishes the release eligibility date (RED) for inmates sentenced to the Department of Correction (DOC) or to a local jail or workhouse.
- The classification determines the minimum percentage of the sentence that an inmate must serve. The percentages are as follows:

Classification	Percentage
Especially Mitigated	20% - 30%
Standard	30%
Multiple	35%
Persistent	45%
Career	60%

- These percentages can be reduced with sentence credits earned and retained by inmates while serving the sentence.
- The proposed legislation prohibits an inmate convicted of a Class A, B, or C felony against a person under Title 39, Chapter 13 from using sentence credits to reduce the time served below the percentages listed above.
- Based on information provided by DOC, there has been an average of 11.67 releases for inmates that committed Class A, B, or C felony crime against a person each year over the last three years.
- Based on information provided by DOC, there has been an average of one Class A, B, or C felony crime against a person with a parole hearing prior to the RED in each year over the last three years; therefore, this analysis estimates 9 percent (1 / 11) of Class A, B, or C felony crimes against a person have hearing dates before RED.
- Based on information provided by DOC, there has been an average of 7,728 Class A, B, and C felony admissions each year over the last three years.
- This analysis estimates that the proposed legislation will result in 9 percent, or 696 (7,728 x 9%), of such offenders not having a hearing date prior to RED.
- Based on information provided by DOC, the average number of days gained between the hearing date and the RED by inmates that committed a Class A, B, or C felony against a person is 194.67 days each year over the last three 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 58 (696 x 8.37%) additional admissions for a total of 754 (696 + 58).
- 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

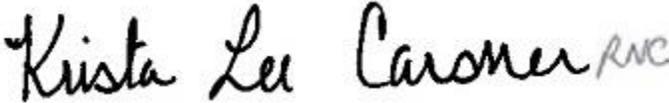
committed the subsequent offense at the same felony level as under current law (754 offenders x 31.4% = 237 offenders).

- According to the DOC, the average operating cost per offender per day for calendar year 2019 is \$73.18.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 517 offenders (754 offenders – 237 recidivism discount) serving an additional 194.67 days at a cost of \$14,246 (\$73.18 x 194.67 days) per offender. The cost for 517 offenders is \$7,365,182 (\$14,246 x 517).
- Based on information provided by DOC, in 2018, 415 nonviolent Class D and E felony inmates remained in DOC custody after their RED.
- This analysis estimates that 75 percent, or 311 (415 x 75%), inmates released after RED may not have good cause why they were not released.
- Based on information provided by DOC, inmates that committed Class D and E nonviolent felony crimes spent an average of 889.3 days incarcerated after RED.
- 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 26 (311 x 8.37%) additional admissions for a total of 337 (311 + 26).
- According to the DOC, 31.4 percent of offenders will re-offend within one 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 (337 offenders x 31.4% = 106 offenders).
- Creating a presumption that an inmate convicted of Class E or Class D nonviolent offense is to be released on parole upon the inmate reaching his or her release eligibility date unless good cause is shown as to why the inmate should not be released will result in a decrease in state incarceration expenditures estimated to be \$15,033,243 [\$73.18 per day x 889.3 days x (337 offenders – 106 recidivism discount)].
- The net fiscal impact of the proposed legislation in FY20-21 and subsequent fiscal years is estimated to be a recurring decrease of \$7,668,061 (\$15,033,243 - \$7,365,182) in state incarceration expenditures.
- The proposed legislation impacts neither the caseloads of the courts, public defenders, or district attorneys or the sentencing, nor the sentencing of felons.

**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 beginning in FY20-21.*

CERTIFICATION:

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

Handwritten signature of Krista Lee Carsner RNC in black ink.

Krista Lee Carsner, Executive Director

/amj