



February 9, 2023

**SUMMARY OF BILL:** Prohibits probation for a person convicted of aggravated assault resulting in serious bodily injury or death of another and aggravated assault involving the actual discharge of a firearm.

**FISCAL IMPACT:**

**Increase State Expenditures – \$17,077,300 Incarceration**

Assumptions:

- Pursuant to Tenn. Code Ann. § 39-13-102(a)(1)(A)(i)-(iv), a person commits aggravated assault who intentionally or knowingly commits an assault and the assault:
  - Results in serious bodily injury to another;
  - Results in the death of another;
  - Involved the use or display of a deadly weapon; or
  - Involved strangulation or attempted strangulation.
- Tennessee Code Annotated § 40-35-303 authorizes probation for eligible defendants. A defendant is eligible for probation if the sentence actually imposed is less than 10 years. A defendant is not eligible for probation, regardless of the length of sentence, for certain enumerated offenses. The proposed legislation adds aggravated assault resulting in serious bodily injury or death of another and aggravated assault involving the actual discharge of a firearm to those enumerated offenses.
- It is assumed that inchoate offenses of aggravated assault resulting in serious bodily injury or death of another and aggravated assault involving the actual discharge of a firearm (i.e., attempt, conspiracy, and solicitation) will not be prohibited from receiving probation.
- Based on information provided by the Department of Correction, there has been an average of 403 convictions in each of the last three years for the Class C felony offense under Tenn. Code Ann. § 39-13-102(a) for aggravated assault, where the offender received an average of 0.24 years pretrial jail credit before being sentenced to probation.
- However, these convictions include offenses Tenn. Code Ann. § 39-13-102(a)(1)(A)(i)-(iv). It is assumed that 75 percent or 302.25 (403 x 75%) of these convictions were for the offenses of aggravated assault resulting in serious bodily injury, death of another, or the actual discharge of a firearm.
- The average sentence for a Class C felony offense of aggravated assault is 4.74 years.

- Pursuant to Tenn. Code Ann. § 40-35-501(cc), as amended by Public Chapter 988 of 2022, a person convicted of aggravated assault resulting in serious bodily injury, death of another or involved the use or display of a deadly weapon on or after July 1, 2022 is required to serve 100 percent of the sentence imposed, provided that earned credits may reduce the sentence imposed by up to 15 percent.
- Therefore, it is assumed that a person convicted of aggravated assault under current law would serve 4.03 years (4.74 x 85%).
- The proposed legislation will result in 302.25 additional admissions annually serving 3.79 years (4.03 – 0.24).
- Based on population data from the U.S. Census Bureau, population growth in Tennessee averaged 0.96 percent per year (from 2018 to 2021).
- The weighted average operational costs per inmate per day are estimated to be \$50.63 for inmates housed at state facilities and \$52.11 for inmates housed at local facilities.
- The estimated increase in incarceration costs is estimated to be the following over the next three-year period:

Increase in State Expenditures	
Amount	Fiscal Year
\$ 5,653,700	FY23-24
\$ 11,330,500	FY24-25
\$ 17,077,300	FY25-26

- Pursuant to Public Chapter 1007 of 2022, recurring costs increases are to be estimated on the highest of the next three fiscal years; therefore, the recurring increase in incarceration costs relating to prohibiting probation for certain aggravated assault offenses will be \$17,077,300.
- The estimated fiscal impact of the proposed legislation does not consider the availability of beds in state and local facilities, but is based solely on the current operating costs of state facilities and the reimbursement rates for local facilities as is required by Tenn. Code Ann. § 9-4-210.
- All calculations used in completion of this fiscal note are available upon request.

**CERTIFICATION:**

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



Krista Lee Carsner, Executive Director

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