

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 716 - SB 1409

March 20, 2019

**SUMMARY OF BILL:** Broadens the offense of driving under the influence (DUI) to include a drug concentration in a person's blood in any amount of or active metabolite of a Schedule I controlled substance or any amount or active metabolite of a controlled substance analogue; any amount or active metabolite of a Schedule II, III, IV, or V substance for which a person does not have a valid prescription issued by a licensed health provider authorized to prescribe by the laws of this state; or the delta-9-tetrahydrocannabinol (THC) if the person's blood is five nanograms per one milliliter or greater. Enhances penalty for impaired driving within a school zone. Enhances the penalty for vehicular assault, aggravated vehicular assault, and vehicular homicide by intoxication.

**ESTIMATED FISCAL IMPACT:**

**Increase State Revenue –**

Exceeds \$9,300/Electronic Monitoring Indigency Fund  
Exceeds \$1,500/Impaired Drivers Trust Fund  
Exceeds \$800/Department of Safety  
Exceeds \$400/Finance and Administration  
Exceeds \$30,700/Alcohol and Drug Addiction Treatment Fund

**Increase State Expenditures –**

\$7,009,600 Incarceration\*  
Exceeds \$9,300/Electronic Monitoring Indigency Fund  
Exceeds \$1,500/Impaired Drivers Trust Fund  
Exceeds \$800/Department of Safety  
Exceeds \$400/Finance and Administration  
Exceeds \$30,700/Alcohol and Drug Addiction Treatment Fund

**Increase Local Expenditures – \$663,000\*\***

Assumptions:

*DUI offenses*

- Based on information provided by the Department of Safety, there has been an average of 20,229 DUI and implied consent convictions each year over the last three years.

- The proposed legislation broadens the offense of DUI to include additional drug considerations.
- This analysis estimates that 60 percent of convictions are first-time DUI misdemeanor convictions and such considerations will result in a five percent, or 607 ( $20,229 \times 60\% \times 5\%$ ), increase in first-time DUI misdemeanor convictions.
- This analysis estimates first-time DUI offenders serve 2 days in local jail.
- The average cost to local government to house an inmate in a local jail facility is \$64 per day.
- The mandatory recurring local increase in expenditures associated with the proposed legislation is estimated to be \$77,696 ( $\$64 \times 607 \times 2$ ).
- This analysis estimates that at least 50 percent of first-time DUI offenders will pay the required fees outlined in Tenn. Code Ann. § 55-10-413 and § 45-10-419.
- The recurring increase in state revenue to the Electronic Monitoring Indigency Fund is estimated to exceed \$9,257 ( $\$30.50 \times 607 \times 50\%$ ).
- The recurring increase in state revenue to the Tennessee Hospital Association (THA) is estimated to exceed \$1,366 ( $\$4.50 \times 607 \times 50\%$ ). The THA is not considered a state entity; therefore, this impact is not reflected as any impact to state or local government.
- The recurring increase in state revenue to the Department of Safety is estimated to exceed \$759 ( $\$2.50 \times 607 \times 50\%$ ).
- The recurring increase in state revenue to the Department of Finance and Administration is estimated to exceed \$379 ( $\$1.25 \times 607 \times 50\%$ ).
- The recurring increase in state revenue to the Alcohol and Drug Addiction Treatment Fund associated to the payment of such fees is estimated to exceed \$30,729 [ $\$100 + \$1.25$ ]  $\times 607 \times 50\%$ ].
- The recurring increase in state revenue to The Impaired Drivers Trust Fund is estimated to exceed \$1,518 ( $\$5 \times 607 \times 50\%$ ).
- It is reasonably assumed that there will be a corresponding recurring increase in state expenditures from the earmarked funds equal to the amount of earmarked revenue due to the increased number of DUI offenders.
- This analysis assumes individuals charged with DUIs under such considerations would have been charged with an alternate driving offense in the absence of the proposed legislation; therefore, any impact to local court clerk fees or General Fund fine revenue is estimated to be not significant.
- This analysis estimates that 10 percent are second-time DUI misdemeanor convictions and such considerations will result in a five percent, or 101 ( $20,229 \times 10\% \times 5\%$ ), increase in second-time DUI misdemeanor convictions.
- This analysis estimates second-time DUI offenders serve 45 days in local jail.
- The mandatory recurring local increase in expenditures associated with the proposed legislation is estimated to be \$290,880 ( $\$64 \times 101 \times 45$ ).
- This analysis estimates three percent are third-time DUI misdemeanor convictions and such considerations will result in a five percent, or 30 ( $20,229 \times 3\% \times 5\%$ ), increase in third-time DUI misdemeanor convictions.
- This analysis estimates that third-time DUI offenders serve 120 days in local jail.

- The mandatory recurring local increase in expenditures associated with the proposed legislation is estimated to be \$230,400 ( $\$64 \times 30 \times 120$ ).
- This analysis estimates that one percent are fourth and fifth or sixth and subsequent DUI convictions and such considerations will result in a five percent, or 10 ( $20,229 \times 1\% \times 5\%$ ) additional felony convictions.
- This analysis estimates such offenders will be convicted of a Class E felony.
- The average time served for a Class E felony is 1.28 years.
- According to the Department of Correction (DOC), the average operating cost per offender per day for calendar year 2019 is \$73.18.
- 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 ( $10 \times 8.37\%$ ) additional admission for a total of 11 ( $10 + 1$ ).
- 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 ( $11 \text{ offenders} \times .314 = 3 \text{ offenders}$ ).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on eight offenders ( $11 \text{ offenders} - 3 \text{ recidivism discount}$ ) admitted every year serving an additional 1.28 years (467.52 days) for an annualized increase in state incarceration expenditures of \$273,705 ( $\$73.18 \times 467.52 \times 8$ ).
- 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 state or local revenue.

#### *School Safety Zone*

- The proposed legislation describes a school zone as the real property that comprises a public or private elementary school, middle school, secondary school preschool, child care agency, public library, recreational center, or park.
- The proposed legislation enhances a misdemeanor DUI violation that occurs within 1,000 feet of a school zone with double the penalty and double the fine. This analysis estimates that 99 percent of DUI convictions are misdemeanor convictions and that one percent, or 200 ( $20,299 \times 99\% \times 1\%$ ), of such convictions will occur in a school zone.
- This analysis estimates individuals convicted of DUI in a school safety zone will spend an average of five days in local jail.
- The mandatory increase in local expenditures associated with the proposed legislation resulting from doubling penalties in school safety zones is estimated to be \$64,000 ( $\$64 \times 200 \times 5$ ).

- This analysis estimates that one percent of DUI convictions are felony convictions and that one percent, or 2 (20,229 x 1% x 1%), of such convictions will occur in a school zone.
- This analysis estimates that such convictions will be enhanced to a Class D felony.
- The average time served for a Class D felony is 2.3 years. The average time served for a Class E felony is 1.28 years. The proposed legislation will result in each admission serving an additional 1.02 years (2.3 – 1.28).
- Population growth and recidivism will not impact these admissions.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on two offenders admitted every year serving an additional 1.02 years (372.56 days) for an annualized increase in state incarceration expenditures of \$54,528 ( $\$73.18 \times 372.56 \times 2$ ).
- Based on information provided by the Department of Correction (DOC), there have been 34.4 admissions each year over the past five years for vehicular assault.
- Pursuant to Tenn. Code Ann. § 39-13-106, vehicular assault is a Class D felony.
- This analysis estimates that such convictions will be enhanced to a Class C felony.
- 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 an additional 1.32 years (3.62 – 2.3).
- 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 (34.4 x .0837) additional admission for a total of 37 (34 + 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 (37 offenders x 31.4% = 12 offenders).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 25 offenders (37 offenders – 12 recidivism discount) admitted every year serving an additional 1.32 years (482.13 days) for an annualized increase in state incarceration expenditures of \$882,057 ( $\$73.18 \times 482.13 \times 25$ ).
- Based on information provided by DOC, there have been 2 aggravated vehicular assault admissions over the past 10 years.
- Pursuant to Tenn. Code Ann. § 39-15-115, aggravated vehicular assault is a class C felony.
- This analysis estimates that one offender every five years will be enhanced to a Class B felony.
- The average time served for a Class C felony is 3.62 years. The average time served for a Class B felony is 6.65 years. The proposed legislation will result in each admission serving an additional 3.03 years (6.65 – 3.62).

- Population growth and recidivism will not impact these admissions.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender admitted every five years serving an additional 3.03 years (1,106.71 days) for an annualized increase in state incarceration expenditures of \$16,198 [ $(\$73.18 \times 1,106.71) / 5$ ].
- Based on information provided by DOC, there has been an average of 32.4 admissions each year over the last five years for vehicular homicide by intoxication.
- Pursuant to Tenn. Code Ann. § 39-13-213, vehicular homicide by intoxication is a Class B felony.
- This analysis estimates that such convictions will be enhanced to a Class A felony.
- The average time served for a Class B felony is 6.65 years. The average time served for a Class A felony is 18.67 years. The proposed legislation will result in each admission serving an additional 12.02 years (18.67 – 6.65 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 three (32.4 x 8.37%) additional admission for a total of 35 (32.4 + 3).
- According to the DOC, 47.2 percent of offenders will re-offend within three years of their release. A recidivism discount of 47.2 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 (35 offenders x 47.2% = 17 offenders).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 18 offenders (35 offenders – 17 recidivism discount) admitted every year serving an additional 12.02 years (4,390.31 days) for an annualized increase in state incarceration expenditures of \$5,783,092 ( $\$73.18 \times 4,390.31 \times 18$ ).

#### *Total Incarceration Costs*

- The proposed legislation will result in a recurring increase in state incarceration expenditures estimated to be \$7,009,580 ( $\$273,705 + \$54,528 + \$882,057 + \$16,198 + \$5,783,092$ ).

#### *Total Impact to Local Government*

- The proposed legislation will result in recurring mandatory increase in local expenditures estimated to be \$662,976 ( $\$77,696 + \$290,880 + \$230,400 + \$64,000$ ).

#### *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.

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive, flowing style.

Krista Lee Carsner, Executive Director

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