



February 26, 2023

SUMMARY OF BILL: Adds fentanyl, carfentanil, remifentanil, alfentanil, thiafentanil, or certain fentanyl derivatives or analogues to the list of chemical warfare agents when intended for use in a war or other attack to cause disease or death in humans, animals, or plants.

FISCAL IMPACT:

Increase State Expenditures – \$1,266,900 Incarceration

Assumptions:

Fentanyl Derivatives and Analogues as a Weapon of Mass Destruction:

- Pursuant to Tenn. Code Ann. § 39-13-803(3), chemical warfare agents are agents intended for use in war or other attack to cause disease or death in humans, animals, or plants.
- Pursuant to Tenn. Code Ann. § 39-13-806, it is a Class B felony offense for any person, without lawful authority, to possess, develop, manufacture, produce, transfer, acquire, weaponize, or retain a chemical warfare agent or any other weapon of mass destruction.
- Pursuant to Tenn. Code Ann. § 39-17-406(b)(48), fentanyl derivatives and analogues are Schedule I controlled substances.
- Pursuant to Tenn. Code Ann. § 39-17-417(b), the sale, manufacture, delivery of, and possession with intent to sell, manufacture, or deliver less than 15 grams of fentanyl derivatives and analogues is a Class B felony with a fine of up to \$100,000.
- Pursuant to Tenn. Code Ann. § 39-17-417(i)(12), the sale, manufacture, delivery of, and possession with intent to sell, manufacture, or deliver 15 grams or more of any fentanyl derivative or analogue is a Class B felony with a fine of up to \$200,000.
- Categorizing fentanyl derivatives and analogues as a Class B felony weapon of mass destruction will not result in any sufficient change in the number of prosecutions for state or local government to experience any significant change in revenue or expenditures.

Fentanyl as a Weapon of Mass Destruction: Class C Felony to Class B Felony

- Pursuant to Tenn. Code Ann. § 39-17-408(c), fentanyl, carfentanil, remifentanil, alfentanil, and thiafentanil are Schedule II controlled substances.
- Pursuant to Tenn. Code Ann. § 39-17-417(c)(2)(A), the sale, manufacture, delivery of, and possession with intent to sell, manufacture, or deliver less than 15 grams of fentanyl,

carfentanil, remifentanil, alfentanil, and thiafentanil is a Class C felony with a fine of up to \$100,000.

- Pursuant to Tenn. Code Ann. § 39-17-417(i)(12), the sale, manufacture, delivery of, and possession with intent to sell, manufacture, or deliver 15 grams or more of fentanyl, carfentanil, remifentanil, alfentanil, and thiafentanil or any fentanyl derivative or analogue is a Class B felony with a fine up to \$200,000.
- The proposed legislation categorizes fentanyl, carfentanil, remifentanil, alfentanil, thiafentanil as a chemical warfare agent, thereby enhancing the penalty for the sale, manufacture, delivery of, and possession with intent to sell, manufacture, or deliver fentanyl, carfentanil, remifentanil, alfentanil, and thiafentanil, from a Class C felony to a Class B felony, for any amount.
- Based on information provided by the Department of Correction, there have been 393.9 Class C felony admissions for offenses under § 39-17-417(c) each year over the last ten years.
- This analysis estimates that 15 percent, or 59.08 (393.9 x 15%), of admissions each year result from convictions for fentanyl.
- Based on population data from the U.S. Census Bureau, population growth in Tennessee averaged 0.96 percent per year (from 2018 to 2021).
- After adjusting for pre-trial jail credits, the average time served for a Class B felony offense is 2.88 years and the average time served for a Class C felony offense under 39-17-417(c) is 1.01 years.
- Accounting for recidivism rates, the proposed legislation will result in 36.35 admissions annually serving an additional 1.87 (2.88 – 1.01) years.
- 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
\$ (700)	FY23-24
\$ 668,900	FY24-25
\$1,266,900	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 will be \$1,266,900.
- 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.

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive style with a large initial 'K' and 'C'.

Krista Lee Carsner, Executive Director

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