



HB 786 - SB 765

March 29, 2021

SUMMARY OF ORIGINAL BILL: Creates exceptions for the offense of open or concealed carrying of a firearm with the intent to go armed for any person legally in possession and not prohibited from carrying a firearm. Specifies that theft of a firearm worth less than \$2,500 is a Class E felony offense. Enhances the mandatory confinement period for theft of a firearm to 180 days. Creates an enhancement factor when an offense involved the theft of a firearm from a motor vehicle. Requires no release eligibility for certain offenses committed after July 1, 2021 unless 85 percent of an imposed sentence is served, less sentence credits. Prohibits a reduction of such sentences less than 70 percent of the sentence imposed.

FISCAL IMPACT OF ORIGINAL BILL:

Decrease State Revenue – \$2,676,500/FY21-22 and Subsequent Years/
Handgun Permit Division
\$594,600/FY21-22 and Subsequent Years/
Tennessee Bureau of Investigation

Increase State Expenditures – \$12,319,300 Incarceration*

Decrease State Expenditures – \$72,300/FY21-22 and Subsequent Years/
Handgun Permit Division
\$313,700/FY21-22 and Subsequent Years/
Tennessee Bureau of Investigation

Decrease Local Revenue – \$203,300/FY21-22 and Subsequent Years

Decrease Local Expenditures – Net Impact –
Exceeds \$624,900/FY21-22 and Subsequent Years

The Governor's proposed budget for FY21-22, on page A-35, recognizes a recurring increase in state expenditures to the General Fund of \$17,746,700, a recurring decrease in revenue to the Handgun Permit Division of \$2,411,100, and a recurring decrease in revenue to the Tennessee Bureau of Investigation of \$469,600 in FY21-22 and subsequent years.

SUMMARY OF AMENDMENT (006044): Deletes all language after the enacting clause.

Creates exceptions for the offense of open or concealed carrying of a firearm with the intent to go armed for any person legally in possession and not prohibited from carrying a firearm.

Creates a Class A misdemeanor offense for the following persons to possess a firearm:

- Is a fugitive from justice;
- Is an unlawful user of or addicted to any controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802);
- Has been adjudicated as a mental defective or has been committed to a mental institution;
- Is an alien and:
 - Is illegally or unlawfully in the United States; or
 - Except as provided in 18 U.S.C. 922(y)(2), has been admitted to the United States under a nonimmigrant visa;
- Has been discharged from the United States armed forces under dishonorable conditions; or
- Having been a citizen of the United States, has renounced the person's citizenship.

Specifies that theft of a firearm worth less than \$2,500 is a Class E felony offense. Enhances the mandatory confinement period for theft of a firearm to 180 days. Creates an enhancement factor when an offense involved the theft of a firearm from a motor vehicle. Requires no release eligibility for certain offenses committed after July 1, 2021 unless 85 percent of an imposed sentence is served, less sentence credits. Prohibits a reduction of such sentences less than 70 percent of the sentence imposed.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

**Decrease State Revenue – \$2,676,500/FY21-22 and Subsequent Years/
Handgun Permit Division
\$594,600/FY21-22 and Subsequent Years/
Tennessee Bureau of Investigation**

Increase State Expenditures – \$12,319,300 Incarceration*

**Decrease State Expenditures – \$72,300/FY21-22 and Subsequent Years/
Handgun Permit Division
\$313,700/FY21-22 and Subsequent Years/
Tennessee Bureau of Investigation**

Decrease Local Revenue – \$203,300/FY21-22 and Subsequent Years

**Decrease Local Expenditures – Net Impact –
Exceeds \$588,700/FY21-22 and Subsequent Years**

The Governor's proposed budget for FY21-22, on page A-35, recognizes a recurring increase in state expenditures to the General Fund of \$17,746,700, a recurring decrease in revenue to the Handgun Permit Division of \$2,411,100, and a recurring decrease in revenue to the Tennessee Bureau of Investigation of \$469,600 in FY21-22 and subsequent years.

Assumptions for the bill as amended:

Handgun Carry Permits:

- Per the language of this legislation, a person legally in possession of a firearm will have the same defenses and exceptions as a person who has been issued an enhanced handgun carry permit.
- For the purposes of this fiscal note, it is assumed all enhanced or concealed carrying permits issued will be standard, non-military or law enforcement permits.
- Handgun carry permits afford holders reciprocity; allowing them to legally carry a firearm in various other states.
- The cohort of individuals that would forego applying for or renewing an Enhanced Handgun Carry Permit (EHCP) or a Concealed Handgun Carry Permit (CHCP) would do so because: (1) they have no intention of carrying out-of-state, (2) the number of instances they feel compelled to carry a firearm on their person will be relatively limited, and (3) they can save money by forgoing applying for or renewing a permit.
- There have been 10 states that have switched to constitutional carry within the past six years. According to the Federal Bureau of Investigation's National Instant Criminal Background Check System, of those states, there has been an average decline of 19.54 percent in criminal background check requests for those specific states following the passage of constitutional carry. This percentage does not account for general population growth and steady increase in criminal background check requests in states that do not have constitutional carry.
- Therefore, it can be reasonably estimated there will be a reduction of approximately 20 percent in new and renewal EHCP and CHCP applications each year as a result of this legislation.
- As CHCPs have only begun being issued January 1, 2020, there is only one year's figures available as of yet. It is expected that without this legislation, 33,143 CHCPs will be issued annually. Based on the figures of the previous five fiscal years, the Department of Safety (DOS) will issue an average of 41,813 new EHCPs each year, 84,116 EHCPs renewals each year, and 22,602 lifetime handgun carry permits (LHCP) each year.
- A 20 percent reduction is equivalent to 8,363 new EHCP applications (41,813 annual issuances x 20% reduction), 16,823 renewal EHCP applications (84,116 annual issuances x 20% reduction), 4,520 new LHCP applications (22,602 annual issuances x 20% reduction), and 6,629 CHCP applications (33,143 annual issuances x 20%).
- The cost of a new EHCP is \$100. The cost of a renewed EHCP is \$50. From every new EHCP fee paid, \$15 is allocated to the applicable sheriff's department to cover the cost of a local background check; \$15 is allocated to the Tennessee Bureau of Investigation (TBI) for updating and maintaining their databases; \$31.15 is allocated to the TBI to cover the cost of fingerprint vendors, TBI background checks, and Federal Bureau of Investigation (FBI) fingerprint background checks; the remaining \$38.85 is retained by the Handgun Permit Division (HPD) of DOS to specifically fund the administrative expenses of the HPD.
- Pursuant to the current allocation of revenue derived from new EHCP application fees, the recurring decrease in state revenue to the HPD is estimated to be \$1,166,053 [(8,363 x \$38.85) + (16,823 x \$50)]; the recurring decrease in state revenue to the TBI is

estimated to be \$385,952 [8,363 x (\$15 + \$31.15)]; and the mandatory recurring decrease in local revenue is estimated to be \$125,445 (8,363 x \$15) in FY21-22 and subsequent years.

- Pursuant to Tenn. Code Ann. § 39-17-1351(x)(2), a LHCP is \$300. Of that fee, \$15 is allocated to the applicable sheriff's department to cover the cost of a local background check; \$15 is allocated to the TBI for updating and maintaining their databases; \$31.15 is allocated to the TBI to cover the cost of fingerprint vendors, TBI background checks, and FBI fingerprint background checks; the remaining \$238.85 is retained by the HPD.
- Pursuant to the current allocation of revenue derived from LHCP application fees, the recurring decrease in state revenue to the HPD is estimated to be \$1,079,602 (4,520 x \$238.85) the recurring decrease in state revenue to the TBI is estimated to be \$208,598 [4,520 x (\$15 + \$31.15)]; and the mandatory recurring decrease in local revenue is estimated to be \$67,800 (4,520 x \$15) in FY21-22 and subsequent years.
- For every CHCP fee paid, the entirety of the \$65 is retained by the HPD. The expected impact to the HPD is a \$430,885 (6,629 x \$65) decrease in revenue in FY21-22 and subsequent years.
- The total recurring decrease in state revenue to the HPD is estimated to be \$2,676,540 (\$1,166,053 + \$1,079,602 + \$430,885); the recurring decrease in state revenue to the TBI is estimated to be \$594,550 (\$385,952 + \$208,598); and the mandatory recurring decrease in local revenue is estimated to be \$193,245 (\$125,445 + \$67,800) in FY21-22 and subsequent years.
- In addition, there will be a recurring decrease in state expenditures as a result of producing fewer permit cards. The printing cost to produce one permit is \$1.99. The recurring decrease in state expenditures for the HPD in printing the EHCP, CHCP, and LHCP will be \$72,307 [(8,363 + 16,823 + 6,629 + 4,520) x \$1.99] in FY21-22 and subsequent years.
- The TBI reports a cost for vendor fingerprinting expense of \$8.65 per background check. The recurring decrease in TBI vendor fingerprint expenditures is estimated to be \$111,438 [(8,363 + 4,520) x \$8.65].
- The TBI reports a cost of \$11.25 payable to the FBI for each FBI national background check conducted on each initial permit application. The recurring decrease in TBI expenditures made to the FBI is estimated to be \$144,934 [(8,363 + 4,520) x \$11.25].
- For every CHCP application, the TBI is required to perform a fingerprint background check. The decrease in state expenditures to the TBI as a result of not performing the expected 20 percent of CHCP background checks will be \$57,341 (6,629 x \$8.65) in FY21-22 and subsequent years.
- The total recurring decrease in state expenditures for TBI is estimated to be \$313,713 (\$111,438 + \$144,934 + \$57,341) in FY21-22 and subsequent years.
- Pursuant to Tenn. Code Ann. § 39-17-1351(q)(1), DOS partners with 48 county clerks' offices in the state to issue EHCP renewals. The county clerks are authorized to charge an additional \$4.00 per renewal application, which is retained by the county. All 48 charge the full \$4.00.
- These entities process approximately 15 percent of EHCP renewals.
- This legislation will result in a recurring decrease in revenue of \$10,094 [(16,823 x 15%) x \$4.00].

- The total mandatory decrease in local government revenue is \$203,339 (\$193,245 + \$10,094) in FY21-22 and subsequent years.
- There is not be enough of a reduction in workload to impact total personnel required for the function of the HPD.

Convictions:

- Pursuant to Tenn. Code Ann. § 39-17-1307(a), it is a Class C misdemeanor offense to carry, with the intent to go armed, a firearm or a club, punishable with possible imprisonment and/or by a fine not to exceed \$500.
- In the last three fiscal years, there has been an average of 133 Class C misdemeanor offense convictions under this section of code.
- 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 local revenue.
- This legislation would create a Class A misdemeanor offense for the below persons to possess a firearm.
 - Is a fugitive from justice;
 - Is an unlawful user of or addicted to any controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802);
 - Has been adjudicated as a mental defective or has been committed to a mental institution;
 - Is an alien and:
 - Is illegally or unlawfully in the United States; or
 - Except as provided in 18 U.S.C. 922(y)(2), has been admitted to the United States under a nonimmigrant visa;
 - Has been discharged from the United States armed forces under dishonorable conditions; or
 - Having been a citizen of the United States, has renounced the person's citizenship.
- Class A misdemeanor convictions are penalized by an average of 15 days in local jail.
- For the purposes of this analysis, it is assumed that an average of 25 percent, or 33 (133 x 25%), of those previously convicted under Tenn. Code Ann. § 39-17-1307(a) will be convicted under this amended provision each fiscal year.
- Based on the 2020 Fiscal Review Committee survey, the weighted average cost to local governments to house an inmate in a local jail facility is \$73 per day.
- There will be a mandatory increase in local incarceration expenditures of \$36,135 (33 convictions x \$73 x 15 days) in FY21-22 and subsequent years.

Theft of a Firearm/Theft of a Firearm from a Motor Vehicle Enhancement:

- This analysis assumes the average price of a firearm is less than \$1,000; therefore, theft of a firearm is a Class A misdemeanor under current law.
- Pursuant to Tenn. Code Ann. § 39-14-105(d), theft of a firearm is required to be punished by a minimum of 30 days confinement.
- Based on the 2020 Fiscal Review Committee survey, the weighted average cost to local governments to house an inmate in a local jail facility is \$73 per day.

- It is estimated an average of 300 individuals per year are admitted to local incarceration for theft of a firearm.
- Enhancing theft of a firearm to a Class E felony offense will result in a recurring decrease in local incarceration expenditures in FY21-22 and subsequent fiscal years estimated to be \$657,000 (300 admissions x 30 days x \$73).
- Based on population data from the U.S. Census Bureau, population growth in Tennessee averaged 0.80 percent per year for each of the past 10 years (from 2009 to 2019), yielding a projected compound population growth rate of 8.3 percent. Assuming Tennessee's population continues growing by the same rates over the next 10-year period, population growth will account for 25 (300 x 8.3%) additional admissions for a total of 325 (300 + 25).
- According to the DOC, 46.28 percent of offenders will re-offend within three years of their release. A recidivism discount of 46.28 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 the proposed legislation. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (325 offenders x 46.28% = 150 offenders).
- According to the DOC, the average operating cost per offender per day for calendar year 2021 is \$80.46.
- The average time served for a Class E felony is 0.60 years.
- Pursuant to Tenn. Code Ann. § 9-4-210, 175 (325 – 150 recidivism discount) offenders will be admitted every year serving 219.15 days (0.60 x 365.25). The annualized increase in state incarceration expenditures is estimated to be \$3,085,742 (\$80.46 x 219.15 x 175).
- The proposed legislation creates a sentencing enhancing factor for offenses involving the theft of a firearm from a motor vehicle.
- This analysis assumes 25 percent of theft of firearm offenses will result in a Class D felony enhancement.
- The average time served for a Class D felony is 1.08 years. The average time served for a Class C felony is 0.60 years. The proposed legislation will result in Class D sentence enhancement serving an additional 0.48 (1.08 – 0.60) years.
- Pursuant to Tenn. Code Ann. § 9-4-210, 56 (226 x 25%) offenders will be admitted every year serving an additional 175.32 days (0.48 x 365.25). The annualized increase in state incarceration expenditures is estimated to be \$789,950 (\$80.46 x 175.32 x 56).
- The average time served for a Class E felony offense exceeds the mandatory minimum confinement period of 180 imposed by the proposed legislation; therefore, any impact resulting from establishing a mandatory minimum is estimated to be not significant.

Sentencing:

- The proposed legislation requires the following offenses occurring on or after July 1, 2021, to have no release eligibility until the person reaches 85 percent of the sentence imposed by the court, less sentence credits earned and retained not to reduce such sentence below 70 percent of the sentence imposed:

- Unlawful possession of a firearm by a person convicted of a felony crime of violence, an attempt to commit a felony crime of violence, or a felony involving use of a deadly weapon;
- Unlawful possession of a firearm by a person convicted of a felony drug offense;
- Unlawful possession of a handgun by a person convicted of a felony; and
- Unlawful providing a handgun to a juvenile or permitting a juvenile to possess a handgun.

Unlawful Possession of a Firearm by a Person Convicted of a Felony Crime of Violence, an Attempt to Commit a Felony Crime of Violence or a Felony Involving Use of a Deadly Weapon:

- Pursuant to Tenn. Code Ann. § 39-17-1307(b)(1)(A), unlawful possession of a firearm by a person convicted of a felony crime of violence, an attempt to commit a felony crime of violence, or a felony involving use of a deadly weapon is a Class B felony.
- Based on information provided by the DOC, there has been an average of 72 admissions each year over the past three years for violations of Tenn. Code Ann. § 39-17-1307(b)(1)(A).
- Based on population data from the U.S. Census Bureau, population growth in Tennessee averaged 0.80 percent per year for each of the past 10 years (from 2009 to 2019), yielding a projected compound population growth rate of 8.3 percent. Assuming Tennessee's population continues growing by the same rates over the next 10-year period, population growth will account for 6 (72 x 8.3%) additional admissions for a total of 78 (72 + 6).
- According to the DOC, 46.28 percent of offenders will re-offend within three years of their release. A recidivism discount of 46.28 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 the proposed legislation. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (78 offenders x 46.28% = 36 offenders).
- Based on information previously provided by DOC, the proposed legislation will extend the average sentence of an admission for violations of Tenn. Code Ann. § 39-17-1307(b)(1)(A) by 1,940.39 days per offender.
- According to the DOC, the average operating cost per offender per day for calendar year 2021 is \$80.46.
- Pursuant to Tenn. Code Ann. § 9-4-210, 42 (78 – 36 recidivism discount) offenders will be admitted every year serving an additional 1,940.39 days. The annualized increase in state incarceration expenditures is estimated to be \$6,557,199 (\$80.46 x 1,940.39 x 42).

Unlawful Possession of a Firearm by a Person Convicted of Felony Drug Offense:

- Pursuant to Tenn. Code Ann. § 39-17-1307(b)(1)(B), unlawful possession of a firearm by a person convicted of a felony drug offense is a Class C felony offense.
- Based on information provided by the DOC, there has been an average of 37 admissions each year over the past three years for violations of Tenn. Code Ann. § 39-17-1307(b)(1)(A).
- Based on population data from the U.S. Census Bureau, population growth in Tennessee averaged 0.80 percent per year for each of the past 10 years (from 2009 to 2019),

yielding a projected compound population growth rate of 8.3 percent. Assuming Tennessee's population continues growing by the same rates over the next 10-year period, population growth will account for 3 (37 x 8.3%) additional admissions for a total of 40 (37 + 3).

- According to the DOC, 40.34 percent of offenders will re-offend within two years of their release. A recidivism discount of 40.34 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 the proposed legislation. 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 40.34% = 16 offenders).
- Based on information previously provided by DOC, the proposed legislation will extend the average sentence of an admission for violations of Tenn. Code Ann. § 39-17-1307(b)(1)(B) by 955.59 days per offender.
- According to the DOC, the average operating cost per offender per day for calendar year 2021 is \$80.46.
- Pursuant to Tenn. Code Ann. § 9-4-210, 24 (40 – 16 recidivism discount) offenders will be admitted every year serving an additional 955.59 days. The annualized increase in state incarceration expenditures is estimated to be \$1,845,283 (\$80.46 x 955.59 x 24).

Unlawful Possession of a Handgun by a Person Convicted of a Felony:

- Pursuant to Tenn. Code Ann. § 39-17-1307(c), unlawful possession of a handgun by a person convicted of a felony is a Class E felony offense.
- Based on information provided by the DOC, there has been an average of one admission each year over the past three years for violations of Tenn. Code Ann. § 39-17-1307(c).
- Population growth and recidivism will not impact these admissions.
- Based on information previously provided by DOC, the proposed legislation will extend the average sentence of an admission for violations of Tenn. Code Ann. § 39-17-1307(c) by 511.35 days per offender.
- According to the DOC, the average operating cost per offender per day for calendar year 2021 is \$80.46.
- Pursuant to Tenn. Code Ann. § 9-4-210, one offender will be admitted every year serving an additional 511.35 days. The annualized increase in state incarceration expenditures is estimated to be \$41,143 (\$80.46 x 511.35 x 1).

Unlawful Providing a Handgun to a Juvenile or Permitting a Juvenile to Possess a Handgun:

- Pursuant to Tenn. Code Ann. § 39-17-1320, it is a Class A misdemeanor offense for a person to intentionally, knowingly, or recklessly to provide a handgun with or without remuneration to any person that the person providing the handgun knows or has reason to believe the violation of juvenile knowingly possessing a handgun.
- Based on information provided by Administrative Office of the Courts, there has been an average of 0.8 Class A misdemeanor convictions under Tenn. Code Ann. § 39-17-1320 each year over the last 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 eight convictions ($0.8 / 10\% = 8$) per year for misdemeanor violations of Tenn. Code Ann. § 39-17-1320.

- Based on the 2020 Fiscal Review Committee survey, the weighted average cost to local governments to house an inmate in a local jail facility is \$73 per day.
- This analysis estimates that on average individuals are sentenced to 100 days in local jail and spending an average of 15 days in local jail.
- The proposed legislation will result in a recurring mandatory increase in local incarceration expenditures in FY21-22 and subsequent fiscal years estimated to be \$32,120 $\{ \$73 \times [(100 \times 70\%) - 15] \times 8 \}$.
- Pursuant to Tenn. Code Ann. § 39-17-1320, it is a Class D felony offense for a parent or guardian intentionally, knowingly, or recklessly to provide a handgun to a juvenile or permit a juvenile to possess a handgun, if the parent or guardian knows of a substantial risk that the juvenile will use a handgun to commit a felony.
- Based on information provided by DOC, there have been zero admissions for this violation of Tenn. Code Ann. § 39-17-1320 over the past 10 years.
- Any impact to state incarceration resulting from requiring felony offenses under Tenn. Code Ann. § 39-17-1320 to serve at least 70 percent of the sentence imposed is estimated to be not significant.

Total Impact:

- The total recurring decrease in state revenue to the HPD is estimated to be \$2,676,540 ($\$1,166,053 + \$1,079,602 + \$430,885$).
- The recurring decrease in state expenditures for the HPD will be \$72,307 $[(8,363 + 16,823 + 6,629 + 4,520) \times \$1.99]$ in FY21-22 and subsequent years.
- The recurring decrease in state revenue to the TBI is estimated to be \$594,550 ($\$385,952 + \$208,598$) in FY21-22 and subsequent years.
- The total recurring decrease in state expenditures for TBI is estimated to be \$313,713 ($\$111,438 + \$144,934 + \$57,341$) in FY21-22 and subsequent years.
- The total mandatory decrease in local government revenue is \$203,339 ($\$193,245 + \$10,094$) in FY21-22 and subsequent years.
- The total recurring net decrease in local expenditures in FY21-22 and subsequent years is estimated to exceed \$588,745 ($\$657,000 - \$32,120 - \$36,135$).
- The total annualized increase in state incarceration expenditures resulting from the proposed legislation is estimated to be \$12,319,317 ($\$3,085,742 + \$789,950 + \$6,557,199 + \$1,845,283 + \$41,143$).

*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

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