

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

SB 677 - HB 881

March 29, 2019

SUMMARY OF BILL: Enacts the *Drug Treatment Instead of Incarceration Act*. Requires a court to order a clinical assessment for a person charged with a “nonviolent drug offense”. Creates a presumption that a person charged with a first nonviolent drug offense, prior to entry of the plea, be ordered to complete a rehabilitative drug treatment program.

Sets a maximum sentence of 30 days for a first time offender who fails to complete the treatment. Sets other sentence limits for certain offenders.

Creates the Substance Abuse Treatment Fund within the Department of Mental Health and Substance Abuse Services (DMHSAS). Requires DMHSAS to annually study the effectiveness and financial impact of the programs funded under the provisions of this legislation.

ESTIMATED FISCAL IMPACT:

Increase State Revenue –

Up to \$19,021,600/Substance Abuse Treatment Fund

Increase State Expenditures –

Net Impact – Up to \$18,885,100/General Fund

Up to \$19,021,600/Substance Abuse Treatment Fund

Decrease State Expenditures – \$28,825,100 Incarceration*

Assumptions:

- The proposed legislation establishes a new procedure for dealing with nonviolent drug offenders. Current procedures and programs exist for drug offenders, violent or not, in which participation can be completed instead of serving a period of confinement.
- Tennessee Code Annotated § 40-35-303(d) authorizes assessment and/or treatment as a condition of supervised probation. Tennessee Code Annotated § 40-15-105(a)(2) requires participation in a rehabilitation program as a condition of pretrial diversion.
- Further, a fund currently exists to help defendants pay for drug and alcohol assessments and treatment. Tennessee Code Annotated § 40-33-211(c) requires remaining revenue from the forfeiture of motor vehicles be transmitted to the DMHSAS. These funds are placed in the Alcohol and Drug Addiction Treatment Fund.

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- The Public Safety Act of 2016 established new procedures aimed at reducing the recidivism rate in Tennessee. Under the Act, a presentence report must include the results of a validated risk and needs assessment.
- Pursuant to Tenn. Code Ann. § 41-1-126(a), a validated risk and needs assessment means a determination of a person's risk to reoffend and the needs that, when addressed, reduce the risk to reoffend through the use of an actuarial assessment tool that assesses the dynamic and static factors that drive criminal behavior. The Department of Correction (DOC) conducts validated risk and needs assessments.
- The proposed legislation will control the process for all misdemeanor nonviolent drug offenders and first-offense felony drug offenders. Current processes and programs will control for all other matters.
- Statistics from the DOC indicate an average of 3,905 first-time convictions for felony nonviolent drug offenses. According to DOC, all 3,905 offenders avoided jail time and were sentenced to probation. It is assumed there are an additional 400 first-time nonviolent drug offenders per year that either receive a sentence to a period of confinement or violate probation and serve a period of confinement.
- Approximately 4,305 (3,905 + 400) first-time felony nonviolent drug offenders will be subject to the provisions of the proposed legislation.
- Statistics from the Administrative Office of the Courts (AOC) indicate approximately 19,500 misdemeanor drug convictions each year. It is assumed that 75 percent (14,625 offenses) of these offenses are nonviolent.
- It is estimated that 18,930 defendants (14,625 + 4,305) will be subject to the provisions of the proposed legislation and that 95 percent (18,930 x 0.95 = 17,984) will consent to an assessment.
- It is assumed that the DMHSAS will conduct the assessments for all felony nonviolent drug offenders, rather than the DOC conducting a validated risk and needs assessment. DMHSAS will conduct the assessments for all offenders (17,984) subject to the provisions of the proposed legislation.
- DOC's cost to complete a validated risk and needs assessment is approximately \$31.70. The proposed legislation will decrease state expenditures by \$136,469 (4,305 x \$31.70).
- The DMHSAS cost to complete an assessment is \$55. The proposed legislation creates a Substance Abuse Treatment Fund to assist indigent defendants on the cost of assessments and treatment.
- Statistics from the U.S. Department of Justice's Bureau of Justice Statistics show a national indigence rate of more than 70 percent. It is estimated that 70 percent (17,984 x 0.7 = 12,589) of the 17,984 defendants subject to the provisions of the proposed legislation will be found indigent.
- The proposed legislation will increase expenditures from the Substance Abuse Treatment Fund by \$692,395 (12,589 x \$55) for assessments.
- It is assumed that 80 percent (12,589 x 0.8 = 10,071) of the indigent defendants assessed will require some treatment.
- Fiscal Review staff cannot reasonably determine the treatment that would be required for each defendant. However, the DMHSAS previously provided information on the average costs across all modalities.

- The costs range from \$1,169 to \$1,820. It is assumed that each defendant will require no more than \$1,820 in treatment. The proposed legislation will increase expenditures from the Substance Abuse Treatment Fund up to \$18,329,220 (10,071 x \$1,820) for treatment.
- It is assumed that monies will have to be appropriated from the General Fund to the Substance Abuse Treatment Fund.
- The proposed legislation will result in a net recurring increase in state expenditures from the General Fund up to \$18,885,146 (\$18,329,220 + \$692,395 - \$136,469), and will increase recurring state revenue to the Substance Abuse Treatment Fund up to \$19,021,615 (\$18,329,220 + \$692,395).
- The proposed legislation limits the time a nonviolent drug offender, misdemeanor or felony, can serve to 30 days if the offender does not successfully complete treatment.
- Most nonviolent offenders do not serve time for their first offense. If they serve time, it is usually 30 days or less. The proposed legislation will not impact local incarceration costs.
- The proposed legislation will impact state incarceration costs. Statistics from the DOC indicate an average of 3,905 first-time convictions for felony nonviolent drug offenses.
- According to DOC, all 3,905 offenders avoided jail time and were sentenced to probation. It is assumed there are an additional 400 first-time nonviolent drug offenders per year that either receive a sentence to a period of confinement or violate probation and serve a period of confinement.
- Most defendants convicted of a felony nonviolent drug offense will receive probation if they commit a class C, class D, or class E felony offense. Most that commit a class B or class A felony offense will not receive probation as the sentence received will most likely be greater than 10 years.
- The proposed legislation will result in 400 defendants who currently serve time for their offenses, being limited to 30 days confinement.
- Based on conviction statistics from the AOC, it is assumed that the 400 offenders are distributed among class C, class D, and class E felony classes as follows:
 - Class C felonies – 178 offenders;
 - Class D felonies – 98 offender; and
 - Class E felonies – 124 offenders.
- 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 15 (178 x .0837) additional class C admissions for a total of 193 (178 + 15), 8 (98 x .0837) additional class D admissions for a total of 106 (98 + 8), and 10 (124 x .0837) additional class E admissions for a total of 134 (124 + 10).
- According to the DOC, the average operating cost per offender per day for calendar year 2019 is \$73.18.
- The average time served for class C felonies is 3.62 years (1,322.21 days). The proposed legislation will result in each offender serving 1,292.21 fewer days (1,322.21 – 30).
- The proposed legislation will decrease state incarceration costs by \$18,250,838 (193 admissions x 1,292.21 days x \$73.18).

- The average time served for class D felonies is 2.30 years (840.08 days). The proposed legislation will result in each offender serving 810.08 fewer days (840.08 – 30).
- The proposed legislation will decrease state incarceration costs by \$6,283,855 (106 admissions x 810.08 days x \$73.18).
- The average time served for class E felonies is 1.28 years (467.52 days). The proposed legislation will result in each offender serving 437.52 fewer days (467.52 – 30).
- The proposed legislation will decrease state incarceration costs by \$4,290,374 (134 admissions x 437.52 days x \$73.18).
- The proposed legislation will result in a total recurring decrease in state incarceration costs of \$28,825,067 (\$18,250,838 + \$6,283,855 + \$4,290,374).
- The proposed legislation does not create any new offenses, but rather changes the procedure for disposing of certain matters. It is assumed that the courts, public defenders, and district attorneys can accommodate any impact to their operations within existing resources.

**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.*

CERTIFICATION:

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



Krista Lee Carsner, Executive Director

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