



January 20, 2024

SUMMARY OF BILL: Requires an individual convicted of rape of a child be sentenced to death, imprisonment for life without possibility of parole, or imprisonment for life. Requires the sentence for a juvenile convicted of rape of a child be as a Range III offender.

Authorizes a sentence of death for an individual convicted of aggravated rape of a child and especially aggravated rape of a child. Changes the age at which a person can be a victim of especially aggravated child rape, from less than 18 years old, to more than 12 years but less than 18 years.

Prohibits a defendant with intellectual disability from a sentence of death for any offense.

FISCAL IMPACT:

Other Fiscal Impact – Passage of the proposed legislation may result in future increases in expenditures to the Public Defenders Conference, Office of the Post-Conviction Defender and Indigent Defense Fund. The extent and timing of any such increases cannot be determined with reasonable certainty.

Assumptions:

Mandatory Sentence Requirements for Rape of a Child:

- Pursuant to Tenn. Code Ann. § 39-13-522(b)(1)-(2), rape of a child is a Class A felony and offenders are required to be sentenced as a Range II offender, but may be punished as a Range III violation, where appropriate.
- Pursuant to Tenn. Code Ann. § 40-35-112(b)(1), a Range II sentence for a Class A felony is not less than 25 years nor more than 40 years.
- Pursuant to Tenn. Code Ann. § 40-35-112(c)(1), a Range III sentence for a Class A felony is not less than 40 years nor more than 60 years.
- The proposed legislation requires an individual convicted of such offense to be sentenced to death, imprisonment for life, or life without possibility of parole; juvenile offenders are required to be sentenced as a Range III offender.
- Based upon information provided by the Department of Correction (DOC), there has been an average of 37.5 admissions per year over the last 10 years for the Class A felony offense under Tenn. Code Ann. § 39-13-522 for rape of a child, with an average sentence of 28.29 years.

- Pursuant to Tenn. Code Ann. § 40-35-501(j)(1), a person convicted of rape of a child on or after July 1, 1995 is required to serve 100 percent of the sentence imposed, provided that earned credits may reduce the sentence imposed by up to 15 percent.
- The average time served for the Class A felony offense of rape of a child is 24 years (28.29 years x 85% minimum). The minimum time served is 21.25 years (25 years minimum Range II x 85% minimum).
- Requiring a juvenile defendant convicted of rape of a child to be sentenced as a Range III offender, and an adult defendant to be sentenced to death, imprisonment for life, or life without possibility of parole, may lead to additional incarceration costs beginning in FY45-46.
- However, pursuant to Tenn. Code Ann. § 9-4-210, this analysis estimates the highest cost for admissions in the next three years; therefore, any additional time added by the proposed legislation resulting in sentences exceeding three years in length surpass the window of this analysis and will not significantly impact incarceration costs.

Authorization of a Sentence of Death for Aggravated Rape of a Child and Especially Aggravated Rape of a Child:

- Pursuant to Tenn. Code Ann. § 39-13-531(b)(2), aggravated rape of a child is a Class A felony offense and an adult defendant is required to be sentenced to imprisonment for life without the possibility of parole.
- The proposed legislation authorizes the death penalty as a punishment for a person convicted of aggravated rape of a child.
- Based upon information provided by the DOC, there has been an average of one admission per year over the last 10 years for the Class A felony offense under Tenn. Code Ann. § 39-13-531 for aggravated rape of a child.
- Pursuant to Tenn. Code Ann. § 39-13-535(a)(1)-(3), especially aggravated rape of a child is the unlawful sexual penetration of a victim by the defendant or the defendant by a victim, if the victim is less than 18 years old, accompanied by aggravating circumstances including the defendant torturing, mutilating, or kidnapping the victim.
- The proposed legislation changes the age at which a person can be a victim of especially aggravated child rape from less than 18 years old, to more than 12 years but less than 18 years.
- Pursuant to Tenn. Code Ann. § 39-13-535(b)(2), especially aggravated rape of a child is a Class A felony offense and an adult defendant is required to be sentenced to imprisonment for life without the possibility of parole.
- Pursuant to 39-13-204(i), no death penalty or sentence of imprisonment for life without possibility of parole shall be imposed except upon a unanimous finding that the state has proven beyond a reasonable doubt the existence of one or more aggravating circumstances, including that the murder was especially heinous, atrocious, or cruel, in that it involved torture or serious physical abuse beyond that necessary to produce death.
- The proposed legislation changes the language of this provision to reference an offense instead of murder, thus authorizing the death penalty for serious offenses such as especially aggravated rape of a child.
- The Class A felony offense of especially aggravated rape of a child was created by Public Chapter 1062 of 2022. As such, statistics for convictions of the recently created offense are not yet available.

- This analysis assumes individuals convicted of especially aggravated rape of a child receive a sentence comparable to an individual convicted of aggravated rape of a child, or imprisonment for life without the possibility of parole.
- Based on information previously provided by the DOC, over the last 10 years there have been 7 inmates who served an average of 33.10 years incarcerated before being executed.
- Authorizing an individual convicted of aggravated rape of a child or especially aggravated rape of a child to be sentenced to death will result in a decrease in incarceration costs; however, the first impact would not be seen until FY57-58.
- Pursuant to Public Chapter 1007 of 2022, cost decreases are to be estimated on the actual estimated costs to be reduced over the next three-year period; therefore, any decreases in time served by the proposed legislation surpass the window of this analysis and will not significantly impact incarceration costs in the immediate future. However, costs associated with executing the defendant would be incurred. The net effect of such future events cannot be determined with reasonable certainty; however, any net impact resulting from authorizing the death penalty in the outlined circumstances is estimated to be not significant.

Intellectually Disabled Defendants:

- Pursuant to Tenn. Code Ann. § 39-13-203(b), no defendant with intellectual disability at the time of committing first degree murder shall be sentenced to death.
- The proposed legislation prohibits a sentence of death for a defendant with intellectual disability at the time of committing any offense.
- Pursuant to Tenn. Code Ann. § 9-4-210, this analysis estimates the highest cost for admissions in the next three years; therefore, any additional time added by the proposed legislation resulting in sentences exceeding three years in length surpass the window of this analysis and will not significantly impact incarceration costs.
- Costs associated with imprisoning the defendant for life would be incurred. The net effect of such future events cannot be determined with reasonable certainty; however, any net impact resulting from prohibiting the death penalty in the outlined circumstances is estimated to be not significant.

Impact to the Court System, Public Defenders Conference and Post-Conviction Defenders Conference:

- According to the Administrative Office of the Courts (AOC), while cases where a defendant is sentenced to death generally require more of a trial court's time and resources, the offenses of rape of a child, aggravated rape of a child and especially aggravated rape of a child are already being charged throughout the state; therefore, any increase in the caseloads of the trial courts as a result of the legislation is assumed to be not significant.
- The proposed legislation may result in an increase in the number of capital punishment cases appointed a public defender or that will proceed to post-conviction and be handled by the Office of the Post-Conviction Defender (OPCD).
- The AOC administers the Indigent Defense Fund, which compensates attorneys for representing defendants in criminal matters, including capital punishment cases, as well

as covers expenses for private counsel appointed for post-conviction proceedings and investigators and experts testifying in such cases.

- Authorizing a sentence of death for additional outlined offenses may result in an increase in expenditures to the Public Defenders Conference, OPCD and Indigent Defense Fund; however, the timing and extent of any future impacts is dependent upon multiple unknown factors, including but not limited to, the number of defendants who will be sentenced to death and the complexity and longevity of such cases, and cannot be determined with reasonable certainty.

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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