



February 5, 2020

SUMMARY OF BILL: Creates a Class D felony offense for the knowing and unlawful possession of a telecommunications device in a penal institution. Creates a new sentencing enhancement factor if an offense was planned or executed by using a telecommunication device within a penal institution.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures – \$25,528,000 Incarceration*

Assumptions:

Creation of Offense

- Penal institutions include all state correctional facilities and local jails.
- Based on information provided by DOC, 926 state prison disciplinarys were issued for possession of a cell phone in calendar year 2018.
- This analysis estimates there will be approximately 350 convictions each year resulting from state institutions and 50 convictions each year resulting from local jails.
- The average time served for a Class D felony is 2.26 years.
- Population growth and recidivism will not impact these admissions.
- According to the DOC, the average operating cost per offender per day for calendar year 2020 is \$75.52.
- Pursuant to Tenn. Code Ann. § 9-4-210, 400 (350 + 50) offenders will be admitted every year serving 825.47 days (2.26 x 365.25). The annualized increase in state incarceration expenditures is estimated to be \$24,935,798 (\$75.52 x 825.47 x 400).

Creation of Sentencing Enhancement

- This analysis estimates that one offense in each felony classification will be enhanced each year.
- The average time served for felony offenses is as follows:
 - Class A felony – 18.69 years;
 - Class B felony – 6.48 years;
 - Class C felony – 3.50 years;
 - Class D felony – 2.26 years; and
 - Class E felony – 1.35 years.

- This analysis assumes that the average offender is sentenced to the lowest period of confinement within Range II and that each affected offender will be sentenced to the highest period of confinement within Range II.
- Currently, the average time percentage of the sentence received for each class is:
 - Class A felony – 74.76 percent (18.69 average time served / 25 years, the lowest sentence in Range II);
 - Class B felony – 54.00 percent (6.48 average time served / 12 years, the lowest sentence in Range II);
 - Class C felony – 58.33 percent (3.5 average time served / 6 years, the lowest sentence in Range II);
 - Class D felony – 56.50 percent (2.26 average time served / 4 years, the lowest sentence in Range II); and
 - Class E felony – 67.50 percent (1.35 average time served / 2 years, the lowest sentence in Range II).
- This analysis estimates that the offenders will serve a similar percentage of the sentences enhanced under the proposed legislation.
- The proposed legislation will increase the average time served for the enhanced offenders as follows:
 - Class A felony – 29.90 years (40 years, highest sentence in Range II x 74.76%);
 - Class B felony – 10.80 years (20 years, highest sentence in Range II x 54.00%);
 - Class C felony – 5.83 years (10 years, highest sentence in Range II x 58.33%);
 - Class D felony – 4.52 years (8 years, highest sentence in Range II x 56.50%); and
 - Class E felony – 2.70 years (4 years, highest sentence in Range II x 67.50%).
- According to the DOC, the average operating cost per offender per day for calendar year 2020 is \$75.52.
- Population growth and recidivism will not impact these admissions.
- The proposed legislation will result in the Class A offender serving an additional 11.21 years (29.90 – 18.69).
- Pursuant to Tenn. Code Ann. § 9-4-210, one offender will be admitted every year serving an additional 4,094.45 days (11.21 x 365.25). The annualized increase in state incarceration expenditures is estimated to be \$309,213 (\$75.52 x 4,094.45 x 1).
- The proposed legislation will result in the Class B offender serving an additional 4.32 years (10.80 – 6.48).
- Pursuant to Tenn. Code Ann. § 9-4-210, one offender will be admitted every year serving an additional 1,577.88 days (4.32 x 365.25). The annualized increase in state incarceration expenditures is estimated to be \$119,161 (\$75.52 x 1,577.88 x 1).
- The proposed legislation will result in the Class C offender serving an additional 2.33 years (5.83 – 3.5).
- Pursuant to Tenn. Code Ann. § 9-4-210, one offender will be admitted every year serving an additional 851.03 days (2.33 x 365.25). The annualized increase in state incarceration expenditures is estimated to be \$64,270 (\$75.52 x 851.03 x 1).
- The proposed legislation will result in the Class D offender serving an additional 2.26 years (4.52 – 2.26).

- Pursuant to Tenn. Code Ann. § 9-4-210, one offender will be admitted every year serving an additional 825.47 days (2.26 x 365.25). The annualized increase in state incarceration expenditures is estimated to be \$62,339 ($\$75.52 \times 825.47 \times 1$).
- The proposed legislation will result in the Class E offender serving an additional 1.35 years (2.7 – 1.35).
- Pursuant to Tenn. Code Ann. § 9-4-210, one offender will be admitted every year serving an additional 493.09 days (1.35 x 365.25). The annualized increase in state incarceration expenditures is estimated to be \$37,238 ($\$75.52 \times 493.09 \times 1$).
- The total increase in incarceration costs is \$25,528,019 ($\$24,935,798 + \$309,213 + \$119,161 + \$64,270 + \$62,339 + \$37,238$).
- Any impact to the court system is estimated to be not significant.

**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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