

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

SB 1869 - HB 2872

February 29, 2024

SUMMARY OF BILL: Requires state and local courts in which commitments to a mental institution are ordered to collect and report certain information regarding a person that was found to be incompetent to stand trial in a criminal proceeding to the Federal Bureau of Investigation's (FBI) National Instant Criminal Background Check System (NICS) and the Department of Safety (DOS). Requires the information to be reported as soon as practicable, but no later than the third business day following the date of such an order or adjudication.

Creates a Class A misdemeanor offense for a person who has been adjudicated as a mental defective, judicially committed to or hospitalized in a mental institution pursuant to the law, or had a court appoint a conservator for the person by reason of a mental defect to possess a firearm. Creates an additional Class A misdemeanor offense for a person who has been judicially committed to a mental institution or adjudicated as a mental defective to knowingly purchase or attempt to purchase a firearm. Revises, for the purposes of these new misdemeanor offenses, the meaning of "adjudicated as a mental defective" to include a finding in a criminal proceeding that a person is incompetent to stand trial.

FISCAL IMPACT:

NOT SIGNIFICANT

Assumptions:

Reporting Requirements

- Various sections of the state code require that the state and local courts in which commitments to a mental institution are ordered collect and report, as soon as practicable, but no later than the third business day following the date of such an order or adjudication, to the FBI's NICS index, certain information regarding a person who has been adjudicated as a mental defective.
- The information required to be collected and reported varies slightly among the relevant courts, but all such courts must report at least the following information:
 - complete name and all aliases of the individual judicially committed or adjudicated as a mental defective, including, but not limited to, any names that the individual may have had or currently has by reason of marriage or otherwise;
 - case or docket number of the judicial commitment or the adjudication as a mental defective;

SB 1869 - HB 2872

- date judicial commitment ordered or adjudication as a mental defective was made;
- private or state hospital or treatment resource to which the individual was judicially committed; and
- date of birth of the individual judicially committed or adjudicated as a mental defective, if such information has been provided to the clerk.
- “Adjudication as a mental defective or adjudicated as a mental defective” for these purposes currently means:
 - a determination by a court in this state that a person, as a result of marked subnormal intelligence, mental illness, incompetency, condition or disease:
 - is a danger to such person or to others; or
 - lacks the ability to contract or manage such person's own affairs due to mental defect;
 - a finding of insanity by a court in a criminal proceeding; or
 - a finding that a person is incompetent to stand trial or is found not guilty by reason of insanity pursuant to Article 50a and 76b of the Uniform Code of Military Justice (10 U.S.C. 850a and 876b respectively).
- The proposed legislation adds to the meaning of “adjudication as a mental defective or adjudicated as a mental defective”, for the purposes of these reporting requirements, a person that has been found by a court in a criminal proceeding to be incompetent to stand trial.
- It is assumed that the clerks of the various courts can collect and report the relevant information on this additional cohort of individuals to the FBI and the DOS in the normal course of business and without incurring a significant increase in expenditures, as they currently do on the other individuals considered “mental defectives”.
- The DOS and the FBI are also assumed to be able to receive such information in the normal course of business.

New Class A Misdemeanor Offenses

- Pursuant to Tenn. Code Ann. § 39-17-1307(h)(1), a person commits a Class B misdemeanor offense who carries, with the intent to go armed, a firearm and:
 - has been convicted of stalking;
 - has been convicted of the offense of driving under the influence of an intoxicant in this or any other state two or more times within the prior 10 years or one time within the prior five years;
 - has been adjudicated as a mental defective, judicially committed to or hospitalized in a mental institution, or had a court appoint a conservator for the person by reason of a mental defect; or
 - is otherwise prohibited from possessing a firearm by 18 U.S.C. 922(g) as it existed on January 1, 2021.
- The proposed legislation removes the cohort of people with one of the designated mental health conditions, and instead makes it a Class A misdemeanor offense for such persons to possess a firearm, rather than a Class B misdemeanor for them to carry with the intent to go armed.

- It also revises the definition of “adjudicated as a mental defective” to include those that had a finding in a criminal proceeding that the person is incompetent to stand trial.
- Based on information provided by the Administrative Office of the Courts and the Department of Correction Jail Summary Reports, there have been an average of 16 Class B misdemeanor convictions each year for the offense of unlawful carrying with the intent to go armed over the last five years.
- However, in addition to those that may have been convicted for unlawful carrying for having been adjudicated as a mental defective, judicially committed to or hospitalized in a mental institution, or had a court appoint a conservator for the person by reason of a mental defect, this data also includes such convictions for any person that was convicted for unlawful carrying for a second or subsequent offense, those that have been convicted of stalking, those that are prohibited from carrying due to driving under the influence violations, and those that are otherwise prohibited from possessing a firearm under federal law.
- As such, it is not known precisely how many of the 16 average convictions each year are related to those that have the relevant mental health status. But the number is assumed to be minimal.
- Therefore, even with the inclusion of those that were found to be incompetent to stand trial, Class A misdemeanor convictions for this cohort of people for possession of a firearm are also assumed to be minimal.
- Any increase in local expenditures related to incarceration from such convictions is estimated to be not significant.
- Pursuant to Tenn. Code Ann. § 39-17-1316(q)(1), it is offense to sell or offer to sell a firearm to a person knowing that the person is prohibited by state or federal law from owning, possessing or purchasing a firearm.
- Pursuant to Tenn. Code Ann. § 39-17-1316(q)(3)(A), it is an offense to transfer a firearm to a person knowing that the person has been judicially committed to a mental institution or adjudicated as a mental defective unless the person's right to possess firearms has been restored. An offense for a violation for either of these is a Class A misdemeanor.
- The proposed legislation establishes that it is a Class A misdemeanor offense for a person to knowingly purchase or attempt to purchase a firearm if the person has been judicially committed to a mental institution or adjudicated as a mental defective.
- Based on information provided by the Administrative Office of the Courts and the Department of Correction Jail Summary Reports, there has been an average of 0.6 Class A misdemeanor convictions related to these prohibitions and others governing unlawfully selling a firearm in each of the last five years.
- Given the low conviction rate for the existing offenses, Class A misdemeanor convictions for the new offense are assumed to be minimal.
- Any increase in local expenditures related to incarceration is estimated to be not significant.
- 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 minimal; therefore, any increase in local revenue from fines is estimated to be not significant.

CERTIFICATION:

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

Handwritten signature of Krista Lee Carsner in black ink.

Krista Lee Carsner, Executive Director

/jj