

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 458 - SB 720

March 14, 2023

SUMMARY OF BILL: Authorizes courts to use the same sentencing alternatives for boating under the influence (BUI) as used for driving under the influence (DUI). Authorizes a judge to sentence a first-time BUI offender in Davidson County to serve 200 hours of community service in lieu of the mandatory minimum 48-hour jail sentence.

Increases the period of suspension of boating privileges, from six months to 12 months, for a BUI or BUI-related implied consent violation. Prohibits a person arrested for BUI from refusing a breath or blood test to determine the alcoholic or drug content of the person's blood when the test is administered pursuant to a warrant.

Adds the same sentencing enhancing factor for the offense of boating under the influence (BUI) as used for used for driving under the influence (DUI).

Establishes that a prior conviction of vehicular assault, aggravated vehicular, vehicular homicide or aggravated vehicular homicide must be treated the same as a prior conviction of boating under the influence for the purpose of determining if a person is a repeat or multiple offender for a conviction of BUI if the person was convicted of the prior offenses within 10 years of the date of the present violation.

FISCAL IMPACT:

Increase State Expenditures – \$65,300 Incarceration

Decrease Local Expenditures –

Net Impact - \$3,700/FY23-24 and Subsequent Years

Assumptions:

Sentencing Enhancement

- Pursuant to Tenn. Code Ann. § 69-9-217(a), it is unlawful for any person or persons to operate any vessel subject to registration or any commercial vessel on the public waters of the state while under the influence of any intoxicant, marijuana, narcotic drug, or drug producing stimulating effects on the central nervous system.
- Pursuant to Tenn. Code Ann. § 69-9-219(c)(1)(A)-(G), boating under the influence (BUI), is a Class A misdemeanor and requires a minimum sentence as follows:

HB 458 - SB 720

- First conviction: 48 consecutive hours; or 7 consecutive days if the person has a blood alcohol concentration (BAC) of 0.20 percent or more;
- Second conviction: 45 consecutive days; or 25 days, with completion of a clinical substance abuse assessment; and
- Third conviction: 120 consecutive days, or 65 days with completion of a clinical substance abuse assessment.
- Pursuant to Tenn. Code Ann. § 69-9-219(c)(1)(E), a fourth conviction for BUI is sentenced as a Class E felony offense, with a minimum 150 days incarcerated.
- Pursuant to Tenn. Code Ann. § 69-9-219(c)(1)(F), a fifth conviction for a BUI and for which prior convictions for vehicular assault, aggravated vehicular assault, vehicular homicide or aggravated vehicular homicide are to be included, is sentenced as a Class D felony offense, with a minimum of 150 days incarcerated.
- Pursuant to Tenn. Code Ann. § 69-9-219(c)(1)(G), a sixth and subsequent conviction for BUI is a Class C felony offense, with a minimum sentence of 150 days incarcerated.
- The proposed legislation requires the following sentence enhancements for BUI, regardless of if the person has any prior convictions:
 - Mandatory minimum period of incarceration of 30 days if the person was accompanied by a child under 18 years of age, in addition to any period of incarceration received for the violation.
 - Enhanced to a Class D felony, and is punished as provided for vehicular assault if the person was accompanied by a child under 18 years of age, and the child suffers serious bodily injury as the proximate result of the BUI offense; and
 - Enhanced to a Class B felony and is punished as provided for vehicular homicide involving intoxication if the person was accompanied by a child under 18 years of age, and the child is killed as the proximate result of the BUI offense.
- According to the Tennessee Wildlife Resources Agency (TWRA) *Tennessee Boating Incident Statistical Report*, in 2021 there were 72 BUI arrests, 3 fatal boating incidents where alcohol was found to be the primary cause, and 3 boating incidents that resulted in serious injury. This figure is assumed to remain relatively consistent.
- Based upon information provided by the Department of Correction (DOC), there has been zero admissions per year over the last 10 years for the Class E felony, Class D felony, or Class C felony offense under Tenn. Code Ann. § 69-9-219 for a fourth, fifth or six or subsequent BUI.
- Therefore, it can be reasonably assumed that all 72 BUI arrests were for a first, second or third BUI offense.
- This analysis estimates that of the 72 BUIs, an average of 58 are first time offenses with a BAC between 0.08 and 0.19, 4 are first time offenses with a BAC 0.20 or greater, 9 are second time offenses, and 1 is a third time offense.
- This analysis assumes the minimum confinement time per offense.
- This analysis estimates five percent or 3.6 (72 x 5.0%) of BUI arrests will be required to serve 30 days incarcerated, that would have served 48 hours in local jail under current law.
- The proposed legislation will result in 3.6 convictions annually serving an additional 28 days (30-2) in local jail.

- Based on cost estimates provided by local government entities throughout the state and reported bed capacity within such facilities, the weighted average cost per day to house an inmate in a local jail facility is \$58.21.
- The recurring mandatory increase in expenditures to local governments is estimated to be \$5,868 (3.6 convictions x \$58.21 x 28) in FY23-24 and subsequent years.
- This analysis estimates there will be one conviction enhanced to a Class D felony pursuant to the proposed legislation, that would be a second offense Class A misdemeanor under current law, serving 45 days in local jail; and
- The average time served for a Class D felony is 1.04 years.
- The proposed legislation will result in one admission annually serving an additional 0.92 years (1.04 – 45 days).
- Based on population data from the U.S. Census Bureau, population growth in Tennessee averaged 0.96 percent per year (from 2018 to 2021).
- The weighted average operational costs per inmate per day are estimated to be \$50.63 for inmates housed at state facilities and \$52.11 for inmates housed at local facilities.
- The estimated increase in incarceration costs is estimated to be the following over the next three-year period:

Increase in State Expenditures	
Amount	Fiscal Year
\$ 17,100	FY23-24
\$ 17,200	FY24-25
\$ 17,400	FY25-26

- One conviction enhanced to a Class B felony pursuant to the proposed legislation, that would be a third offense Class A misdemeanor under current law, serving 120 days in local jail.
- The average time served for a Class B felony is 2.88 years.
- The proposed legislation will result in one admission annually serving an additional 2.55 years (2.88 – 120 days).
- The estimated increase in incarceration costs is estimated to be the following over the next three-year period:

Increase in State Expenditures	
Amount	Fiscal Year
\$ 18,600	FY23-24
\$ 37,300	FY24-25
\$ 47,900	FY25-26

- Pursuant to Public Chapter 1007 of 2022, recurring costs increases are to be estimated on the highest of the next three fiscal years; therefore, the recurring increase in incarceration costs will be \$65,300 (\$17,400 + \$47,900).

- The recurring mandatory decrease in expenditures to local governments is estimated to be \$9,605 [(1 conviction x \$58.21 x 45 days) + (1 conviction x \$58.21 x 120 days)] in FY23-24 and subsequent years.
- The net decrease in expenditures to local governments is estimated to be \$3,736 (\$9,605 - \$5,868) in FY23-24 and subsequent years.

Prior Convictions to Determine if Repeat or Multiple Offender

- Based on information provided by the Administrative Office of the Courts (AOC), there has been an average of 2.5 Class A misdemeanor convictions of BUI in each of the last two 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 25 convictions (2.5 / 10.0%) per year for Class A misdemeanor BUI.
- It is unknown how many offenders of BUI are also subsequently convicted of vehicular assault, aggravated vehicular, vehicular homicide or aggravated vehicular homicide, or how many may be in the future. However, it is assumed to not significantly increase state or local incarcerations.

Alternative Sentences

- The proposed legislation authorizes the judge to sentence a first-time offender in Davidson County to serve 200 hours of community service in lieu of the mandatory minimum 48-hour jail sentence.
- Based on information provided by the AOC, there have been zero convictions for BUI in Davidson County in the last two years; therefore, any decrease in local government expenditures associated with an alternative jail sentence in Davidson County is estimated to be not significant.

Monitoring Devices

- The proposed legislation authorizes a court to order any person convicted of BUI to be monitored by:
 - A transdermal monitoring device or other alternative alcohol or drug monitoring device;
 - Electronic monitoring device with random alcohol or drug testing;
 - Global position monitoring device; or
 - Any other monitoring device the court believes necessary to ensure the person complies with the conditions of probation and, if applicable, the results of the clinical substance abuse assessment.
- Any impact on the Electronic Monitoring Indigency Fund is estimated to be not significant.

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

/jb