

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 810 – SB 1230

May 2, 2017

SUMMARY OF ORIGINAL BILL: Enacts the *Elderly and Vulnerable Adult Protection Act*.

Reorganizes certain statutory provisions relative to protecting the elderly and vulnerable populations as well as enhance certain offenses committed against the elderly and vulnerable populations.

FISCAL IMPACT OF ORIGINAL BILL:

Decrease State Revenue – Exceeds \$7,600/General Fund

Increase State Revenue – Exceeds \$15,100/District Attorneys

Increase State Expenditures – Net Impact – \$4,197,700/Incarceration*

Increase Local Expenditures – Less Than \$109,200**

SUMMARY OF AMENDMENT (008325): Deletes and rewrites the proposed legislation to redefine “elderly adult” to mean any person over 70 years of age and to create a new offense for financial exploitation, which is graded as theft but punished one classification higher.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Decrease State Revenue – Exceeds \$7,600/General Fund

Increase State Revenue – Exceeds \$15,100/District Attorneys

Increase State Expenditures – \$360,600/Incarceration*

HB 810 – SB 1230

Assumptions for the bill as amended:

Current Laws on Elder Abuse

- Title 71, Chapter 6, Part 1 is titled the Tennessee Adult Protection Act. Tennessee Code Annotated § 71-6-117 and -119 prohibit the knowing or willful abuse, neglect, or exploitation of an adult. Under Title 71, Chapter 6, Part 1, “adult” is defined as a person over 18 years of age “who because of mental or physical dysfunctioning or advanced age is unable to manage such person's own resources, carry out the activities of daily living, or protect such person from neglect, hazardous or abusive situations without assistance from others.” The proposed legislation creates separate definitions for “elderly adult” and “vulnerable adult”, but the new definitions protect substantially the same population as the current definition of “adult” under the Adult Protection Act.
- The proposed legislation creates a new part to title 39. One section of this part moves provisions from Tenn. Code Ann. § 71-6-117 relative to reporting felony convictions to the Department of Health; maintaining a registry of persons who have abused, neglected, or exploited an elderly or vulnerable person; and procedures for challenging placement on the registry.
- Most of these provisions are substantially similar or identical to the requirements in Tenn. Code Ann. § 71-6-117. Therefore, it is assumed that reorganizing them into the proposed new part of the code will not significantly impact current state expenditures.
- However, proposed subsection (b) to § 39-15-505 would change the transfer of criminal fines in elder or vulnerable abuse cases from the state treasurer to the district attorney of the individual district in which the case was prosecuted. These funds would be used by the district attorney for education, enforcement, and victim services for elderly and vulnerable adult prosecutions.
- The proposed legislation will decrease state revenue to the General Fund and increase state revenue to district attorneys. However, the Treasury could not provide any information on the amount of funds that would be transferred from the General Fund to the district attorneys.
- The Department of Health reports that an average of 116 individuals has been added to the elder abuse registry each year over the last five years. However, a 35 percent increase was realized between 2014 and 2015, and a 28 percent increase was realized between 2015 and 2016.
- Assuming a 30 percent increase in the annual average, approximately 151 individuals will be added annually (116×1.30). Further, it is assumed this will remain constant into perpetuity.
- These individuals, having been convicted of some form of elder abuse, are currently subject to a fine of \$50 to \$200 dollars, which is transmitted to the General Fund.
- Not every individual is subject to or pays the maximum fine. It is assumed that the average fine paid by each defendant will be equal to or exceed \$50; therefore, it is estimated that at least \$7,550 (151 individuals x \$50 fine) will no longer be transmitted to the General Fund as a result of the proposed legislation.
- The proposed subsection (b) to § 39-15-505 increases the current \$50 to \$200 fine to not less than \$1,000 for felony convictions.

- Though the fine is set at a minimum of \$1,000, not every defendant will be able to pay the full amount of the fine.
- It is assumed that the average amount of the fine paid by each defendant, misdemeanor or felony, will be equal to or exceed \$100; therefore, it is estimated that at least \$15,100 (151 individuals x \$100 fine) will be transmitted to the District Attorneys as a result of the proposed legislation.

Elder or Vulnerable Financial Exploitation

- Tennessee Code Annotated §§ 71-6-117 and 39-14-111 prohibit exploitation of an adult, defined for both statutes as someone incapable of managing their own resources, carrying out the activities of daily living, or protecting themselves from neglect, hazardous, or abusive situations. Financial exploitation of an adult is a class D felony under both sections.
- The proposed legislation creates a new offense for financial exploitation of an elderly or vulnerable adult. Financial exploitation under the proposed legislation of an elderly or vulnerable adult is graded the same as theft. This offense is substantially similar to the offenses under Tenn. Code Ann. §§ 71-6-117 and 39-14-111. However, it applies to adults 70 years of age or older and is punished one classification higher than theft.
- The proposed legislation will result in some current theft offenses committed against an elderly or vulnerable adult being enhanced by one classification.
- Statistics from the Department of Correction (DOC) show annual theft admissions over the last 10 years as follows:
 - Class B felony – 28.7 admissions;
 - Class C felony – 290.9 admissions;
 - Class D felony – 972.9 admissions; and
 - Class E felony – 333.6 admissions.
- It is assumed that 0.8 percent of current theft admissions will be enhanced under the proposed financial exploitation offense.
- The proposed legislation will result in the following admissions being enhanced one classification:
 - Class B felony – 0.23 admission (28.7 x 0.008);
 - Class C felony – 2.33 admissions (290.9 x 0.008);
 - Class D felony – 7.78 admissions (972.9 x 0.008); and
 - Class E felony – 2.67 admissions (333.6 x 0.008).
- The proposed legislation will result in one class B felony theft admission every three years being enhanced to a class A felony.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will not affect this admission.
- The average time served for a class A felony is 16.79 years. The average time served for a class B felony is 6.32 years. The proposed legislation will result in one offender every three years serving an additional 10.47 years (3,824.17 days).
- A recidivism discount of 48.6 percent applies, but due to the low number of admissions affected, the recidivism discount does not impact the incarceration cost for class B felony admissions enhanced.

- According to the DOC, the average operating cost per offender per day for calendar year 2017 is \$68.75.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender every three years serving 10.47 years (3,824.17days) for an annualized cost of \$87,637 [(\$68.75 x 3,824.17days) / 3].
- The proposed legislation will result in two class C felony theft admissions each year being enhanced to a class B felony.
- Population growth will not affect these admissions.
- The average time served for a class B felony is 6.32 years. The average time served for a class C felony is 3.51 years. The proposed legislation will result in each offender serving an additional 2.81 years (1,026.35 days).
- According to the DOC, 48.6 percent of offenders will re-offend within three years of their release. A recidivism discount of 48.6 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this proposed legislation. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (2 offenders x .486 = 1 offender).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender (2 offenders – 1 recidivism discount) serving an additional 2.81 years (1,026.35 days) for a total of \$70,562 (\$68.75 x 1,026.35 days).
- The proposed legislation will result in eight class D felony theft admissions each year being enhanced to a class C felony.
- Population growth will account for one (8 x .1178) additional admission for a total of 9 (8 + 1).
- The average time served for a class C felony is 3.51 years. The average time served for a class D felony is 2.23 years. The proposed legislation will result in each offender serving an additional 1.28 years (467.52 days).
- According to the DOC, 43.1 percent of offenders will re-offend within two years of their release. A recidivism discount of 43.1 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this proposed legislation. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (9 offenders x .431 = 4 offenders).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on five offenders (9 offenders – 4 recidivism discount) serving an additional 1.28 years (467.52 days) for a total of \$32,142 per offender (\$68.75 x 467.52 days). The cost for five offenders is \$160,710 (\$32,142 x 5).
- The proposed legislation will result in three class E felony theft admissions each year being enhanced to a class D felony.
- Population growth will not affect these admissions.
- The average time served for a class D felony is 2.23 years. The average time served for a class E felony is 1.40 years. The proposed legislation will result in each offender serving an additional 0.83 years (303.16 days).
- According to the DOC, 33.2 percent of offenders will re-offend within one year of their release. A recidivism discount of 33.2 percent has been applied to this estimate to

account for the impact of offenders who would re-offend under current law within the additional time added by this proposed legislation. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (3 offenders x .332 = 1 offender).

- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on two offenders (3 offenders – 1 recidivism discount) serving an additional 0.83 years (303.16 days) for a total of \$20,842 per offender (\$68.75 x 303.16 days). The cost for two offenders is \$41,684 (\$20,842 x 2).

Total Increase in State Incarceration Costs

- The proposed legislation will increase state incarceration costs by \$360,593 (\$87,637 + \$70,562 + \$160,710 + \$41,684).

Courts, District Attorneys, and Public Defenders

- The proposed legislation only creates a few new felony cases per year. It mainly impacts sentencing of existing cases. It is assumed that the District Attorneys General Conference, the District Public Defenders Conference, and the courts can accommodate the impact to their caseloads within existing resources without an increased appropriation or reduced reversion.

**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 M. Lee, Executive Director

/trm