

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**FISCAL NOTE**

**SB 393 - HB 1149**

February 19, 2023

**SUMMARY OF BILL:** Requires a warden, sheriff, Board of Parole (BOP), or other correction authority, upon discharging a person who has been convicted of a misdemeanor or Class D or E felony from custody upon completion of sentence or granting a certificate of final discharge, to notify the court that imposed the sentence that the person has completed the sentence.

Requires the court to issue an order of expunction upon completion of a person's sentence for a misdemeanor or Class D or E felony that did not involve the use, attempted use, or threatened use of physical force against another person or the use or possession of a deadly weapon and is not a sexual offense or violent sexual offense. Requires the order of expunction to be issued without cost to the person.

**FISCAL IMPACT:**

**Increase State Expenditures – Exceeds \$3,290,200/FY23-24  
Exceeds \$3,285,700/FY24-25 and Subsequent Years**

**Decrease Local Revenue – \$5,760,000/FY23-24 and Subsequent Years**

**Increase Local Expenditures – Exceeds \$5,225,000/FY23-24 and Subsequent Years\***

**Other Fiscal Impact – Passage of the proposed legislation could jeopardize Federal Highway Administration funds to the Tennessee Department of Transportation's Highway Fund.**

Assumptions:

- Pursuant to Tenn. Code Ann. § 8-21-401(d)(3), a court is authorized to charge a \$100 fee to process petitions for expunction.
- The proposed legislation removes the requirement to petition for expunction and thus, the potential requirement to pay a \$100 fee, for any person that has completed a sentence for a misdemeanor or Class D or E felony conviction that meets the criteria of this legislation.
- Based on information previously provided by the Tennessee Bureau of Investigation (TBI), it is estimated that there are approximately 72,000 petitions for expunction filed each year. It is not known precisely how many or what percentage of those petitions will

be eliminated by expunging misdemeanors and Class D and E felonies that meet the proposed criteria automatically. It is assumed to reduce them by 80 percent.

- Therefore, the decrease in local revenue related to a decrease in the number of petitions for expungement filed is estimated to be \$5,760,000 (72,000 petitions x 80% x \$100) in FY23-24 and subsequent years.
- The proposed legislation significantly changes the process by which expungements and petitions for expungement are currently administered. Most significantly, it shifts the responsibility of determining eligibility of offenses for expunction from a shared responsibility between the petitioner, the district attorney's (DA) office, and the court, with the DA's office doing most of the review work and presenting evidence to the court regarding their judgement on eligibility, to all of the responsibility for vetting offenses for eligibility on the courts. Secondly, it requires state and local law enforcement and correctional authorities to notify the court that imposed the sentence upon a relevant defender's completion of the sentence. Currently, according to information provided by the relevant entities, there are no systems or processes, nor adequate resources or personnel in place at most of these entities to effectuate the legislation's requirements.
- The Administrative Office of the Courts (AOC) will require 32 additional full-time positions, one for each judicial district around the state, to serve as expungement coordinators, working closely with clerks, judges, court staff, the TBI, and state and local law enforcement and correctional authorities to determine eligibility and process expungements.
- In addition to salary and benefits, there will be an unknown increase in state expenditures needed to set up the offices of these personnel across the state and provide them with the appropriate equipment, supplies, communication, and other necessities.
- Therefore, the recurring increase in state expenditures related to the expungement coordinators is estimated to exceed \$3,033,088 (\$2,400,000 salary + \$633,088 benefits) in FY23-24 and subsequent years.
- Based on information provided by the Tennessee Sheriffs Association, sheriffs and local correctional authorities across the state do not have adequate personnel, resources, or access to the needed information in order to track inmates' completion of sentences and notify the relevant court personnel. It is not known precisely what each jurisdiction or entity would require. It is reasonably assumed that each county across the state would require one additional full-time position to assist in these duties. Furthermore, it is likely that many of them will need additional software or various system enhancements. In addition to salary and benefits, each position will require an increase in local expenditures related to any such enhancements, equipment, supplies, communication, and other necessities. For the purposes of this analysis, it is assumed to be, at minimum \$10,000 per fiscal year per county. It is not known what salary will be required to retain such personnel in the various counties across the state. It is assumed to be an average base salary of \$45,000 per position. This figure does not include benefits that are offered at varying rates throughout the local governments.
- Therefore, the recurring increase in local expenditures in all 95 counties, systems enhancements, and other expenses is estimated to exceed \$5,225,000 [(95 counties x (\$45,000 + \$10,000))] in FY23-24 and subsequent years.
- The BOP estimates that it will require three additional Administrative Service Assistant 4 positions in order to perform its additional responsibilities.

- The increase in state expenditures for these positions is estimated to be \$257,119 (\$178,488 salary + \$51,631 benefits + \$4,500 setup + \$22,500 supplies and other) in FY23-24.
- The increase in state expenditures for these positions is estimated to be \$252,619 (\$178,488 salary + \$51,631 benefits + \$22,500 supplies and other) in FY24-25 and subsequent years.
- Local DA's offices across the state are estimated to realize a significant decrease in workload related to vetting petitions for expunction and eligibility of offenses. The precise fiscal impact of any such decrease is unknown and cannot be reasonably quantified. It is assumed that the decrease in workload is not enough to justify the discharge of any current staff.
- The proposed legislation is also estimated to increase the workload on local court clerks to some degree. However, they will also realize a significant decrease in workload related to processing petitions that will no longer be filed and it is assumed that most of the burden related to any new responsibilities of local courts can be accommodated by the new expungement coordinators provided to the AOC. It is assumed that any remaining burden that falls on local clerks of court can be accommodate utilizing existing resources and personnel.
- The Department of Correction states that any fiscal impact to the department as a result of the proposed legislation will be not significant.
- The total increase in state expenditures is estimated to exceed \$3,290,207 (\$3,033,088 AOC + \$257,119 BOP) in FY23-24.
- The total increase in state expenditures is estimated to exceed \$3,285,707 (\$3,033,088 AOC + \$252,619 BOP) in FY24-25 and subsequent years.
- Based on information provided by the Department of Transportation (TDOT), if passed as written, the proposed legislation could be in violation of federal regulations governing commercial driver licenses (CDLs), by 'masking' previous convictions of driving under the influence.
- Pursuant to 49 CFR § 383.51, a CDL holder is disqualified from operating a motor vehicle for one year for a first violation of driving under the influence, and three years if the offense occurred while operating a commercial motor vehicle transporting hazardous materials. A CDL holder is disqualified for life for a second violation of driving under the influence.
- Pursuant to 49 CFR § 384.226, "the state must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a CLP or CDL holder's conviction for any violation, in any type of motor vehicle, of a state or local traffic control law (other than parking, vehicle weight, or vehicle defect violations) from appearing on the CDLIS driver record, whether the driver was convicted for an offense committed in the state where the driver is licensed or another state."
- Pursuant to 49 CFR § 384.401, an amount up to four percent of Federal-aid highway funds shall be withheld from a state on the first day of the fiscal year following such state's first year of noncompliance. An amount up to eight percent of the Federal-aid highway funds shall be withheld from a state on the first day of the fiscal year following such state's second or subsequent year(s) of noncompliance.
- Based on information provided by TDOT, the total amount of Federal Highway Administration (FHWA) funds to be received in FY23-24 is estimated to be

\$1,284,549,000. It is assumed that four percent, or \$51,381,960 ( $\$1,284,549,000 \times 4\%$ ) could be withheld in FY23-24.

- The total amount of FHWA funds received by TDOT is expected to increase in FY24-25 to \$1,310,235,000. It is assumed that eight percent, or \$104,818,800 ( $\$1,310,235,000 \times 8\%$ ) could be withheld in FY24-25 and subsequent years.

*\*Article II, Section 24 of the Tennessee Constitution provides that: no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

## **CERTIFICATION:**

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



Krista Lee Carsner, Executive Director

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