

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 7034

August 21, 2023

SUMMARY OF BILL: Enhances, from a Class A misdemeanor to a Class E felony, the penalty for a violation of an order of protection or restraining order when based on conduct that constitutes stalking.

Enhances the penalty for stalking from a Class A misdemeanor to a Class E felony.

Enhances the penalty for stalking from a Class E felony to a Class D felony if the defendant, at the time of the offense, was required to or was registered with the Tennessee Bureau of Investigation (TBI) as a sexual offender, violent sexual offender, or violent juvenile sexual offender.

Enhances the penalty for aggravated stalking from a Class E felony to a Class D felony.

Authorizes a court to order an independent professional mental health assessment of a defendant convicted of stalking.

Requires a court to include in a sentence a requirement that the offender undergo mental health treatment if such assessment indicates the defendant needs and is amenable to mental health treatment.

Requires a defendant charged with stalking, aggravated stalking, or especially aggravated stalking to undergo a mental health evaluation as a condition of bail or other pretrial release.

Effective October 1, 2023.

FISCAL IMPACT:

Increase State Expenditures – \$9,766,800 Incarceration
\$397,700/FY23-24/General Fund
\$530,200/FY24-25 and Subsequent Years/General Fund

Decrease Local Expenditures – \$567,100/FY23-24
\$756,100/FY24-25 and Subsequent Years

Assumptions:

Enhancing the Penalty for Violation of an Order of Protection for Stalking:

- Pursuant to Tenn. Code Ann. § 39-13-113(g), it is a Class A misdemeanor offense, punishable by a fine of not less than \$100 nor more than \$2,500, to knowingly violate a domestic violence order of protection or a restraining order issued to a victim of domestic assault, sexual assault, or stalking.
- The proposed legislation enhances the penalty to a Class E felony for a violation based on conduct that constitutes stalking.
- Based on information provided by the Administrative Office of the Courts (AOC), there has been an average of 178.8 Class A misdemeanor convictions of violating a protection order in each of the last 10 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 1,788 convictions (178.8 / 10.0%) per year for Class A misdemeanor violation of a protection order.
- It is reasonably assumed that 25 percent, or 447 (1,788 x 25.0%), of such Class A misdemeanor convictions for violating a protection order are related to stalking.
- The average time served for a Class E felony offense is 0.59 years.
- The proposed draft legislation will result in 447 admissions annually serving 0.59 years.
- Based on population data from the U.S. Census Bureau, population growth in Tennessee averaged 1.07 percent per year (from 2019 to 2022).
- The weighted average operational costs per day are estimated to be \$50.63 for inmates housed at state facilities and \$52.11 for inmates housed at local facilities.
- The increase in incarceration costs is estimated to be the following over the next three-year period:

Increase in State Expenditures	
Amount	Fiscal Year
\$ 4,907,700	FY24-25
\$ 4,960,300	FY25-26
\$ 5,013,500	FY26-27

Enhancing the Penalty for Stalking, from a Class A Misdemeanor to a Class E Felony:

- Pursuant to Tenn. Code Ann. § 39-17-315(b)(2), it is a Class A misdemeanor for a person to intentionally engage in stalking.
- The proposed draft legislation enhances such penalty to a Class E felony offense.
- Based on information provided by the AOC, there has been an average of 41.9 Class A misdemeanor convictions of stalking in each of the last 10 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 419 convictions (41.9 / 10.0%) per year for Class A misdemeanor stalking.
- The proposed draft legislation will result in 419 admissions annually serving 0.59 years.

- The increase in incarceration costs is estimated to be the following over the next three-year period:

Increase in State Expenditures	
Amount	Fiscal Year
\$ 4,600,300	FY24-25
\$ 4,649,500	FY25-26
\$ 4,699,200	FY26-27

Enhancing the Penalty for Stalking, from a Class E Felony to a Class D Felony:

- Pursuant to Tenn. Code Ann. § 39-17-315(b)(3), it is a Class E felony offense for a person to intentionally engage in stalking if the defendant, at the time of the offense was required to or was registered with the TBI as a sexual offender, violent sexual offender or violent juvenile sexual offender.
- The proposed draft legislation enhances such penalty to a Class D felony offense.
- Based upon information provided by the Department of Correction (DOC), there has been an average of 0.5 admissions per year over the last 10 years for the Class E felony offense under Tenn. Code Ann. § 39-17-315(b)(3) for felony stalking.
- The average time served for Class E felony stalking is 0.98 years.
- The average time served for a Class D felony offense is 1.04 years.
- Accounting for recidivism rates, the proposed draft legislation will result in 0.34 admissions annually serving an additional 0.06 years (1.04 – 0.98).
- The increase in incarceration costs is estimated to be the following over the next three-year period:

Increase in State Expenditures	
Amount	Fiscal Year
\$ 1,700	FY24-25
\$ 2,000	FY25-26
\$ 2,000	FY26-27

Enhancing the Penalty for Aggravated Stalking, from a Class E Felony to a Class D Felony:

- Pursuant to Tenn. Code Ann. § 39-17-315(c)(2), aggravated stalking is a Class E felony offense.
- The proposed legislation enhances such penalty to a Class D felony offense.
- Based upon information provided by the DOC, there has been an average of 8.8 admissions per year over the last 10 years for the Class E felony offense under Tenn. Code Ann. § 39-17-315(c)(2) for aggravated stalking.
- The average time served for Class E felony aggravated stalking is 0.83 years.
- The average time served for a Class D felony offense is 1.04 years.
- Accounting for recidivism rates, the proposed draft legislation will result in 5.97 admissions annually serving an additional 0.21 years (1.04 – 0.83).
- The increase in incarceration costs is estimated to be the following over the next three-year period:

Increase in State Expenditures	
Amount	Fiscal Year
\$ 46,500	FY24-25
\$ 51,500	FY25-26
\$ 52,100	FY26-27

- Pursuant to 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 \$9,766,800 (\$5,013,500 + \$4,699,200 + \$2,000 + \$52,100).

Decrease in Class A Misdemeanors:

- It is assumed that an individual convicted of a Class A misdemeanor offense will spend an average of 15 days in a 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 decrease in expenditures to local governments is estimated to be \$567,111 $\{[(447 \text{ convictions} + 419 \text{ convictions}) \times \$58.21 \times 15] \times 75\% \}$ in FY23-24 and \$756,148 $[(447 \text{ convictions} + 419 \text{ convictions}) \times \$58.21 \times 15]$ in FY24-25 and subsequent years.

Mental Health Assessments:

- The proposed draft legislation authorizes a court to order an independent mental health assessment for a defendant charged with stalking. If such assessment indicates a need of mental health treatment, a court must include in a sentence a requirement that the offender undergo mental health treatment.
- Pursuant to Tenn. Code Ann. § 39-17-315(g)(3), the court is required to order the offender pay the costs of such independent mental health assessment unless the offender is indigent.
- This analysis assumes there will not be a significant change in the number of court-ordered, independent mental health assessments for indigent offenders charged with stalking.
- The proposed draft legislation further requires a defendant charged with stalking, aggravated stalking, or especially aggravated stalking to undergo a mental health evaluation as a condition of bail or other pretrial release.
- It is estimated that 25 percent or 107 $[(419 \text{ stalking} + 8.8 \text{ aggravated stalking} + 1.5 \text{ especially aggravated stalking}) \times 25.0\%]$ individuals charged with stalking, aggravated stalking or especially aggravated stalking will undergo a mental health evaluation as a condition of bail or other pretrial release.
- Based on information previously provided by the Department of Mental Health and Substance Abuse Services (DMHSAS), the cost of a mental health examination is estimated to be \$800.
- The recurring increase in state expenditures to the General Fund for court ordered mental health evaluations is estimated to be \$85,600 $(107 \times \$800)$.

- Based on the *Forensic and Juvenile Court Services Annual Report for the period July 1, 2021 – June 30, 2022 (FY 22)* issued by the DMHSAS, approximately 24 percent of outpatient evaluations are referred for inpatient evaluations over the previous ten fiscal years.
- It is estimated that 24 percent of the total individuals evaluated or 26 (107 x 24.0%) individuals will be determined to require involuntary inpatient evaluation.
- The average inpatient evaluation cost is estimated to be approximately \$450 per patient per day. The average length of inpatient evaluation is assumed to be 23 days. The recurring increase in state expenditures to the General Fund is estimated to be \$269,100 (26 x \$450 x 23).
- Further, approximately 19 percent, or 5 (26 x 19.0%) of the inpatient evaluations will result in inpatient treatment. The average inpatient treatment cost is estimated to be approximately \$450 per patient per day. The average length of inpatient treatment is assumed to be 78 days. The recurring increase in state expenditures to the General Fund is estimated to be \$175,500 (5 x \$450 x 78).
- The total increase in state expenditures to the General Fund is estimated to be \$397,650 [(\$85,600 + \$269,100 + \$175,500) x 75%] in FY23-24 and \$530,200 (\$85,600 + \$269,100 + \$175,500) in FY24-25 and subsequent years.
- 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 insignificant. The proposed legislation will not significantly change state or local revenue.
- The estimated fiscal impact of the proposed legislation does not consider the availability of beds in state and local facilities, but is based solely on the current operating costs of state facilities and the reimbursement rates for local facilities as is required by Tenn. Code Ann. § 9-4-210.
- All calculations used in completion of this draft fiscal analysis are available upon request.

CERTIFICATION:

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



Krista Lee Carsner, Executive Director

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