

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 909 - SB 1039

March 8, 2019

SUMMARY OF ORIGINAL BILL: Creates the *Elderly and Vulnerable Adult Protection Act of 2019*. Revises various provisions governing the protection of elderly and vulnerable adults. Creates new criminal offenses for knowingly abusing, neglecting or sexually exploiting an elderly or vulnerable adult. Expands the definition of 'neglect' to include the failure of a caregiver to make a reasonable effort to protect an elderly or vulnerable adult from abuse or sexual exploitation.

Adds a conservator, agent or employee of the Tennessee Commission on Aging and Disability (TCAD), attorney ad litem, and the adults themselves as persons who may petition the court for an order of protection.

Requires persons convicted of abuse, sexual exploitation, neglect, and financial exploitation to be placed on a registry managed by the Department of Health (DOH).

Establishes a process for an ex parte order of protection being issued upon a petition filed by a law enforcement officer responding to an incident involving an elderly or vulnerable adult victim. Increases, from 120 days to one year, the maximum amount of time for which an ex parte order of protection may be issued or extended. Decreases, from five days to three days prior to a hearing, the time within which a copy of a petition and notice of the date set for a hearing, as well as any copy of an ex parte order of protection, must be served.

Changes, from December 1 of each year to January 31 of the following year, the date by which each District Attorney General must file an annual report that summarizes the work of a vulnerable adult protective investigative team for the previous calendar year with the chairs of the Senate Judiciary Committee and the Judiciary Committee of the House of Representatives. Effective January 1, 2020.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures – Net Impact – \$1,624,400 Incarceration*

Increase Local Expenditures – Less Than \$279,600**

SUMMARY OF AMENDMENT (005431): Deletes and replaces all language after the enacting clause such that the only substantive changes are: (1) to establish it is a Class C felony when a person commits the offense of aggravated abuse of an elderly or vulnerable adult and the act results in serious psychological injury; (2) authorize the court to waive any court costs, taxes, or fees for obtaining an order of protection upon a finding that the individual for whose benefit an order of protection has been sought is indigent; (3) to establish the DHS is not responsible for court costs, costs of representation, or costs for a guardian ad litem related to a petition for an ex parte order of protection, or any ex parte order of protection issued pursuant to this section.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Increase State Expenditures – Net Impact – \$490,600 Incarceration*

Increase Local Expenditures – Less Than \$279,600**

Assumptions for the bill as amended:

Placement on Abuse Registry

- Pursuant to Tenn. Code Ann. § 39-15-506(a)(1), the names of persons convicted of financial exploitation, neglect or aggravated neglect of an elderly or vulnerable adult are required to be added to a registry managed by the DOH.
- Pursuant to Tenn. Code Ann. § 39-15-506(a)(3), the DOH is required to notify the person convicted by mail of their inclusion on the registry. The person convicted may challenge the accuracy of the report that the criminal disposition has occurred, such hearing conclusions were made, or any factual issue related to the correct identity of the person. If the person convicted makes such a challenge within 60 days of notification of inclusion on the registry, the Commissioner of the DOH, or the Commissioner's designee, shall afford the person an opportunity for a hearing on the matter.
- The proposed legislation adds persons convicted of abuse, aggravated abuse, or sexual exploitation of an elderly or vulnerable adult be placed on the registry.
- The number of additional persons convicted and placed on the registry as a result of this legislation is estimated to be less than 50 new cases per year; therefore, any fiscal impact to the DOH is estimated to be not significant.

Current Laws on Elder Abuse

- Title 71, Chapter 6, Part 1 is titled the Tennessee Adult Protection Act. Tenn. Code Ann. § 71-6-117 and -119 prohibit the knowing abuse 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.”

- Public Chapter 1050 of the Public Acts of 2018 created new offenses for the neglect of an elderly or vulnerable adult.
- The proposed legislation creates new offenses for aggravated abuse and sexual exploitation of an elderly or vulnerable adult and changes the felony classification of some of the current offenses for knowingly abusing an elderly or vulnerable adult.
- These changes, outlined below, will impact state incarceration costs.

Elder or Vulnerable Abuse

- Tenn. Code Ann. § 71-6-117 prohibits anyone from knowingly, other than by accidental means, abusing an “adult” as defined by Tenn. Code Ann. § 71-6-102.
- The proposed legislation creates a new offense for knowingly abusing an elderly or vulnerable adult. Under the proposed legislation, abuse against an elderly adult is a class E felony (currently a class D felony), and abuse against a vulnerable adult is a class D felony (currently a class D felony).
- The proposed legislation will decrease state incarceration costs.
- Statistics provided by the Department of Corrections (DOC) show an annual average of two admissions for elder abuse, neglect and exploitation.
- It is assumed that one-third of current admissions ($2 \times 0.333 = 0.67$) are attributable to abuse.
- Based on population data from the U.S. Census Bureau, population growth in Tennessee averaged 0.81 percent per year for each of the past 10 years (from 2008 to 2018), yielding a projected compound population growth rate of 8.37 percent. Population growth will not affect the number of admissions.
- The DOC has insufficient data on the average time served for persons convicted under Tenn. Code Ann. § 71-6-117. The average time served by felony class will be used.
- The average time served for Class D felony is 2.30 years (840.08 days). The average time served for a Class E felony is 1.28 years (467.52 days). The proposed legislation will result in one offender per year serving 1.02 years (372.56 days) less than under current law.
- According to the DOC, the average operating cost per offender per day for calendar year 2019 is \$73.18.
- The proposed legislation will result in a decrease in state incarceration costs of \$27,264 (1 admission x 372.56 days x \$73.18) per year.
- The proposed legislation will not impact incarceration costs for vulnerable adults because the felony classification is unchanged.

Elder or Vulnerable Aggravated Abuse

- Tenn. Code Ann. § 71-6-119 prohibits anyone from knowingly physically abusing an impaired adult if the abuse results in serious mental or physical harm.

- The proposed legislation creates a new offense for abusing an elderly or vulnerable adult and (a) the abuse results in serious psychological injury or serious physical harm; (b) the abuse involves the use of a deadly weapon or strangulation; or (c) the abuse results in serious bodily harm.
- An offense under (a) would be the same offense and classification as abuse under Tenn. Code Ann. § 71-6-119. An offense under (b) or (c) would constitute aggravated assault, but the new offense would enhance the felony classification one level to a class B felony.
- The proposed legislation will increase state incarceration costs for offenses committed under (b) and (c).
- Statistics provided by the DOC show an annual average of 998.4 admissions per year for aggravated assault. It is assumed that 1 percent ($998.4 \times 0.01 = 10$ admissions) of current admissions are committed against an elderly or vulnerable adult and involve the use of a deadly weapon or result in serious bodily injury.
- The proposed legislation will result in 10 admissions each year being punished one classification higher under the new aggravated elder abuse offense.
- Based on population data from the U.S. Census Bureau, population growth in Tennessee averaged 0.81 percent per year for each of the past 10 years (from 2008 to 2018), yielding a projected compound population growth rate of 8.37 percent. Assuming Tennessee's population continues growing by the same rates over the next 10-year period, population growth will account for one ($10 \times .0837$) additional admission for a total of 11 ($10 + 1$).
- Statistics provided by the DOC indicate that the average time served for aggravated assault is 3.62 years. The average time served for a class B felony is 6.65 years. The proposed legislation will result in each admission serving an additional 3.03 years (1,106.7 days).
- According to the DOC, 47.2 percent of offenders will re-offend within three years of their release. A recidivism discount of 47.2 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 ($11 \text{ offenders} \times .472 = 5 \text{ offenders}$).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 6 offenders ($11 \text{ offenders} - 5 \text{ recidivism discount}$) each year serving an additional 3.03 years (1,106.7 days) for a total of \$80,988 per offender ($\$73.18 \times 1,106.7 \text{ days}$). The annualized cost for 6 offenders is \$485,928 ($\$80,988 \times 6$).

Elder or Vulnerable Neglect

- The proposed legislation expands the definition of neglect to include the failure of a caregiver to make a reasonable effort to protect an elderly or vulnerable adult from abuse or sexual exploitation.
- Pursuant to Tenn. Code Ann. § 39-15-507(b)-(c), the offense of neglect of an elderly adult is a Class E felony and neglect of a vulnerable adult is a Class D felony.
- Statistics from the DOC show an annual average of two admissions for abuse under Tenn. Code Ann. § 71-6-117.

- Tenn. Code Ann. § 71-6-117 covers abuse, neglect, and financial exploitation. It is assumed that one-third of current admissions ($2 \times 0.333 = 0.67$) are attributable to neglect.
- It is assumed that the broader offense of neglect will result in one additional admission every three years for Class E felony neglect of an elderly adult and one additional admission every three years for Class D felony neglect of a vulnerable adult.
- The average time served for a class D felony is 2.30 years (840.08 days).
- 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 2.30 years (840.08 days) for an annualized cost of \$20,492 [$(\$73.18 \times 840.08 \text{ days}) / 3$].
- The average time served for a Class E felony is 1.28 years (467.52 days).
- 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 1.28 years (467.52 days) for an annualized cost of \$11,404 [$(\$73.18 \times 467.52 \text{ days}) / 3$].

Elder or Vulnerable Sexual Exploitation

- The proposed legislation creates a new offense for knowingly sexually exploiting an elderly or vulnerable adult. The proposed legislation classifies sexually exploiting an elderly or vulnerable adult as a class A misdemeanor.
- The Tennessee Incident Based Reporting System (TIBRS) (<http://tennesseecrimeonline.tbi.tn.gov/public/Browse/browsetables.aspx>) contains various statistics on offenses committed in Tennessee as well as victim information.
- The offense of “forcible fondling” includes “touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against the person’s will; or not forcibly or against the person’s will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental incapacity”. This offense would constitute sexual exploitation if committed against an elderly or vulnerable adult.
- TIBRS indicates that there have been 869 forcible fondling incidents in 2017 committed against victims over 18 years of age. Current census data only counts disabled, or vulnerable, individuals who are not institutionalized. Because institutionalized individuals are at a greater risk for abuse and exploitation, the census data is not helpful to this analysis.
- It is assumed that 20 percent ($869 \text{ incidents} \times 0.2 = 174 \text{ incidents}$) of forcible fondling incidents were committed against a vulnerable adult, which includes those with permanent mental or physical incapacities.
- TIBRS reports incidents. These incidents may or may not result in charges being levied against the alleged offender. Further, not all charges will result in convictions.
- It is assumed that the proposed legislation will result in 10 admissions each year for sexual exploitation of a vulnerable adult.
- TIBRS indicates that 23 forcible fondling incidents were committed against victims over 65 years of age. It is assumed that the proposed legislation will result in two admissions per year for sexual exploitation of an elderly adult.
- There is insufficient data to reasonably estimate the increase in local incarceration costs resulting from the creation of a new misdemeanor offense. However, it is reasonable to

assume that there will be no more than 12 (10 + 2) convictions for misdemeanor sexual exploitation of an elderly or vulnerable adult each year. It is also reasonable to assume that each person convicted will serve no more than 11 months, 29 days (364 days)—the maximum punishment for a class A misdemeanor.

- The estimated 2019 cost per inmate per day for local jails is \$64.00.
- The proposed legislation will increase local incarceration costs by less than \$279,552 (12 admissions x 364 days x \$64.00 per day).
- 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.

Total Increase in State Incarceration Costs

- The proposed legislation will increase state incarceration costs by a net total of \$490,559 [(\$485,928 + \$20,492 + \$11,404 increases) – \$27,265 decreases].

Other Assumptions

- The proposed legislation expands the number of people who are authorized to petition for an order of protection for an elderly or vulnerable adult to include a conservator, agent or employee of the TCAD, attorney ad litem, and the adults themselves.
- Authorizing additional people to petition for an order of protection on behalf of an adult beyond only relatives could increase the Adult Protective Services (APS) program caseload; however, APS is not responsible for court costs, costs of representation, or costs for a guardian ad litem related to a petition for an ex parte order of protection, or any ex parte order of protection issued pursuant to this section.
- The court is authorized to waive any court costs, taxes, or fees for obtaining an order of protection upon a finding that the individual is indigent. It is reasonably assumed that the number of such actions will not be significant. Therefore, any increase in state expenditures will be not significant.
- Based on information provided by the Department of Human Services (DHS), passage of this legislation will have no effect on policies or procedures of the DHS; therefore, any fiscal impact is estimated to be not significant.
- The proposed legislation may result in an increase in local expenditures to the County Officials Association of Tennessee (COAT); however, any such increase is estimated to be not significant.
- Passage of this legislation will have no effect on policies or procedures of the TCAD; therefore, any fiscal impact to TCAD is not significant.

*Tennessee Code Annotated, Section 9-4-210, requires that: *For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 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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