



March 4, 2024

**SUMMARY OF BILL AS AMENDED (014985):** Expands the offense of reckless endangerment to include an act that involved community terrorism. Defines community terrorism as reckless endangerment that is: (1) committed against a population within a geographic territory by members of a criminal gang that regularly engages in gang-related conduct or has a pattern of criminal gang activity and the commission of the offense is gang-related; or (2) that is committed within 1,000' of the real property that comprises a public or private elementary school, middle school, secondary school, preschool, child care agency, public library, recreational center, or park.

Requires a court to: (1) prohibit a person sentenced to probation for such an offense from entering the geographic territory in which the offense was committed, for the duration of the person's sentence; (2) require that the person wear a global positioning monitoring device (GPS) to ensure compliance with the prohibition as a condition of probation; and (3) pay the costs associated with operating the GPS device for the person.

Requires the Board of Parole to prohibit a person sentenced to confinement and who becomes eligible for parole from entering the geographic territory in which the offense was committed and include the prohibition and monitoring requirement as a condition of parole.

Authorizes application for issuance of a restricted license upon release from confinement, and if granted, payment of \$65 in application fees to the Department of Safety (DOS) for a restricted driver license. Requires a person whose driver license was revoked or prohibited to apply for and receive a restricted license for a period of at least five years before being eligible for a driver license without restrictions.

Adds reckless endangerment that involved community terrorism to the list of offenses a homeowner's association, neighborhood association, neighborhood watch or similarly organized residential entity is authorized to seek an injunction or restraining order prohibiting an offender who meets outlined criteria from entering the boundaries of the residential area.

**FISCAL IMPACT OF BILL AS AMENDED:**

**Increase State Expenditures – \$128,000 Incarceration**

**Other Fiscal Impact – To the extent that the required modifications to the Department of Safety's A-List system can be accomplished within available**

**resources provided under the current vendor contract, the proposed legislation will not result in a significant increase in state expenditures. Otherwise, those modifications could result in a one-time increase in state expenditures of up to \$29,000 in FY24-25.**

**Passage of the proposed legislation will result in an increase in state expenditures from the Electronic Monitoring Indigency Fund and an equal increase in mandatory local expenditures for any offender granted probation or parole and determined to be indigent. The extent and timing of any such increase cannot be determined with reasonable certainty.**

Assumptions for the bill as amended:

- Tennessee Code Annotated § 39-13-103(a) establishes that a person commits reckless endangerment who recklessly engages in conduct that places or may place another person in imminent danger of death or serious bodily injury.
- Pursuant to § 39-13-103(b):
  - Reckless endangerment is a Class A misdemeanor.
  - Reckless endangerment committed with a deadly weapon is a Class E felony.
  - Reckless endangerment by discharging a firearm or antique firearm into a habitation is a Class C felony, unless the habitation was unoccupied at the time of the offense, in which event it is a Class D felony.
  - Reckless endangerment by discharging a firearm from within a motor vehicle is a Class C felony.
  - In addition to such authorized penalties, the court shall assess a fine of \$50.00.
- The proposed legislation expands the offense of reckless endangerment to include an act:
  - Committed against a population within a geographic territory by members of a criminal gang that regularly engages in gang-related conduct or has a pattern of criminal gang activity and the commission of the offense is gang-related; or
  - That is committed within 1,000' of the real property that comprises a public or private elementary school, middle school, secondary school, preschool, child care agency, public library, recreational center, or park.
- Per the language of the legislation, reckless endangerment related to an act of community terrorism is punishable as a Class C felony and requires a restricted driver license for a period of five years . A defendant is authorized to apply for issuance of a restricted license upon release from confinement, and if granted, pay \$65 in application fees to the DOS for a restricted driver license. A defendant is then authorized to apply for issuance of an unrestricted license five years after issuance of a restricted driver's license, and if granted, pay \$65 in application fees to the DOS.
- This analysis assumes individuals charged with reckless endangerment:
  - Related to criminal gang activity pursuant to this legislation would be charged with a Class D felony offense of reckless endangerment committed by discharging a firearm into an unoccupied habitation, pursuant to Tenn. Code Ann. § 39-13-103(b)(3) under current law; and

- Committed within 1,000' of the real property that comprises a public or private elementary school, middle school, secondary school, preschool, child care agency, public library, recreational center, or park would be charged with a Class E felony offense of reckless endangerment committed with a deadly weapon, pursuant to Tenn. Code Ann. § 39-13-103(b)(2) under current law.
- Based upon information provided by the Department of Correction (DOC), there has been an average of 1.1 admissions in each of the last 10 years for the Class D felony offense under Tenn. Code Ann. § 39-13-103(b)(3) for reckless endangerment committed by discharging a firearm into an unoccupied habitation, with an estimated average time served of 0.89 years, after adjusting for pre-trial jail credits.
- The average time served for a Class C felony is 1.52 years.
- Accounting for recidivism rates, the proposed legislation will result in 0.81 admissions annually serving an additional 0.63 years (1.52 – 0.89).
- Based on population data from the U.S. Census Bureau, population growth in Tennessee averaged 0.95 percent per year (from 2020 to 2023).
- The weighted average operational costs per inmate per day are estimated to be \$54.04 for inmates housed at state facilities and \$49.88 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
\$ 1,700	FY24-25
\$ 9,900	FY25-26
\$ 10,000	FY26-27

- Based upon information provided by the DOC, there has been an average of 81.4 admissions in each of the last 10 years for the Class E felony offense under Tenn. Code Ann. § 39-13-103(b)(2) for reckless endangerment committed with a deadly weapon, with an estimated average time served of years, 0.52 after adjusting for pre-trial jail credits.
- Of these 81.4 admissions, it is assumed 10 percent or 8.14 (81.4 x 10.0%) occurred within 1,000' of the real property that comprises a public or private elementary school, middle school, secondary school, preschool, child care agency, public library, recreational center, or park and would be enhanced to a Class C felony under the proposed legislation.
- Accounting for recidivism rates, the proposed legislation will result in 6.02 admissions annually serving an additional 1 year (1.52 – 0.52).
- The increase in incarceration costs is estimated to be the following over the next three-year period:

Increase in State Expenditures	
Amount	Fiscal Year
\$ 55,700	FY24-25
\$ 117,000	FY25-26

\$	118,000	FY26-27
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- Pursuant to Tenn. Code Ann. § 9-4-210, recurring cost increases are to be estimated on the highest of the next three fiscal years; therefore, the recurring increase in incarceration costs will be \$128,000 (\$10,000 + \$118,000).
- It is reasonably assumed Class A misdemeanor convictions for reckless endangerment pursuant to § 39-13-103(b)(1) would not be impacted by the proposed legislation.
- The proposed legislation will require some changes to the DOS' A-List software system. It is assumed that these modifications can be accomplished by the vendor under the current contractual agreement without a need for additional expenditures; therefore, any fiscal impact to DOS is estimated to be not significant.
- However, if the scope of work required by this and other legislation subsequently enacted exhausts the relevant contract provision, the proposed legislation could result in an increase in state expenditures up to \$29,000 in FY24-25.
- Any impact on state revenue associated with revocation or prohibition of issuance of driver licenses or issuance of restricted licenses is estimated to be not significant.
- Adding reckless endangerment that is committed as an act of community terrorism to the list of offenses a homeowner's association, neighborhood association, neighborhood watch or similarly organized residential entity is authorized to seek an injunction or restraining order prohibiting an offender who meets outlined criteria from entering the boundaries of the residential area will primarily impact private entities and will not have a significant impact on the court system.
- The person ordered to wear a GPS device is responsible for the costs associated with the service, unless the court determines the person to be indigent.
- Pursuant to Tenn. Code Ann. 40-11-152(h), if the magistrate determines that the defendant is indigent, the magistrate must order the defendant to pay any portion of the costs associated with the GPS system for which the defendant has the ability to pay, as determined by the magistrate. Any portion of the costs that the defendant is unable to pay shall come from the Electronic Monitoring Indigency Fund (EMIF), subject to the availability of funds.
- Pursuant to Tenn. Code Ann. § 55-10-419(g), for GPS monitoring, the state is only obligated to provide a 50 percent match with participating local governments, subject to availability.
- The average cost of a GPS monitoring device is estimated to be \$7 per day.
- The length of time an offender will spend on probation or parole and be required to wear a GPS device is unknown. Further, the exact number of offenders that will be determined to be indigent is unknown.
- There exists within the state treasury the Electronic Monitoring Indigency Fund (EMIF) established for the purposes of paying for the costs associated with GPS and other monitoring devices ordered on those whom the court has deemed indigent.
- For any offender granted probation or parole and determined to be indigent, there will be a mandatory increase in local expenditures to the EMIF along with an equal increase in matching state expenditures. The extent and timing of any such increase is dependent upon multiple unknown factors and cannot be determined with reasonable certainty.
- 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 fiscal memo are available upon request.

**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

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