



March 25, 2024

SUMMARY OF BILL AS AMENDED (017292): Establishes that evidence that a person was suspected to be impaired secondary to the sedative or otherwise intoxicating effects of a controlled substance and was administered an opioid antagonist within 24 hours prior to the time of an alleged Driving Under the Influence (DUI) offense, creates a presumption that the defendant's ability to drive was sufficiently impaired. Authorizes a first responder who administers an opioid antagonist to an individual experiencing an opioid-related overdose to provide information on the risks associated with driving for a 24-hour period following administration, in an effort to ensure that the individual is informed of the potential dangers and legal responsibilities.

FISCAL IMPACT OF BILL AS AMENDED:

Increase State Expenditures – \$1,200 Incarceration

Increase Local Expenditures – Net Impact – \$255,500/FY24-25 and Subsequent Years*

Assumptions for the bill as amended:

- Pursuant to Tenn. Code Ann. § 55-10-401(1), it is unlawful for any person to drive or to be in physical control of any automobile or other motor driven vehicle on any of the public roads and highways of the state, or on any streets or alleys, or while on the premises of any shopping center, trailer park, or apartment house complex, or any other premises that is generally frequented by the public at large, while under the influence of any intoxicant, marijuana, controlled substance, controlled substance analogue, drug, substance affecting the central nervous system, or combination thereof that impairs the driver's ability to safely operate a motor vehicle by depriving the driver of the clearness of mind and control of oneself that the driver would otherwise possess.
- Pursuant to Tenn. Code Ann. § 55-10-402(a)(1)-(3) is a Class A misdemeanor and requires a minimum sentence as follows:
 - First conviction: 48 consecutive hours; or 7 consecutive days if the person has a blood alcohol concentration (BAC) of 0.20 percent or more;
 - Second conviction: 45 consecutive days; or 17 days, with completion of a clinical substance abuse assessment; and
 - Third conviction: 120 consecutive days, or 65 days with completion of a clinical substance abuse assessment.
- Pursuant to Tenn. Code Ann. § 55-10-402(a)(4)-(6):

- A fourth conviction for DUI is sentenced as a Class E felony offense, with a minimum 150 days incarcerated;
- A fifth conviction for DUI is sentenced as a Class D felony offense, with a minimum 150 days incarcerated; and
- A sixth or subsequent conviction for DUI is sentenced as a Class C felony offense, with a minimum 150 days incarcerated.
- Pursuant to Tenn. Code Ann. § 63-1-152(a)(2), opioid antagonist means a formulation of naloxone hydrochloride or another similarly acting and equally safe drug approved by the United States Food and Drug Administration for the treatment of a drug-related overdose.
- The proposed legislation creates a presumption that a defendant's ability to drive was sufficiently impaired if there is evidence that the person was suspected to be impaired secondary to the sedative or otherwise intoxicating effects of a controlled substance and was administered an opioid antagonist within 24 hours prior to the time of an alleged DUI offense.
- Based on information provided on the Department of Mental Health and Substance Abuse Services (DMHSAS) website, between October 2017 and March 2023, more than 450,000 units of naloxone was distributed to Tennesseans, or approximately 81,818 units per year (450,000 / 5.5 years).
- Based on information provided by the Administrative Office of the Courts and the Department of Correction (DOC) Jail Summary Reports, there have been an average of 12,147.7 Class A misdemeanor convictions of DUI in each of the last five years.
- This analysis estimates that of the 12,147.7 DUIs, an average of:
 - 70 percent or 8,503.4 (12,147.7 x 70.0%) are first time offenses with a BAC between 0.08 and 0.19;
 - 25 percent or 3,036.9 (12,147.7 x 25.0%) are first time offenses with a BAC 0.20 or greater;
 - 4 percent or 485.9 (12,147.7 x 4.0%) are second time offenses; and
 - 1 percent or 121.5 (12,147.7 x 1.0%) are third time offenses.
- It is reasonably assumed there will be a one percent increase in Class A misdemeanors for DUI as a result of the proposed legislation, or 121.48 (12,147.69 x 1.0%).
- This analysis estimates that of the 121.48 new Class A misdemeanors,
 - 25 percent or 30.37 (121.48 x 25%) will be first time offenders and required to serve 48 consecutive hours;
 - 70 percent or 85.04 (121.48 x 70%) will have one prior DUI offense and will be required to serve 45 consecutive days;
 - 4 percent or 4.86 (121.48 x 4%) will have two prior DUI offenses and will be required to serve 120 days; and
 - 1 percent or 1.21 (121.48 x 1%) will have three prior DUI offenses and will be enhanced to a Class E felony and be required to serve 150 days.
- 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 \$59.07.
- The recurring mandatory increase in expenditures to local governments is estimated to be \$264,087 [(30.37 convictions x \$59.07 x 2 days) + (85.04 convictions x \$59.07 x 45 days) + (4.86 convictions x \$59.07 x 120 days)].

- The recurring mandatory decrease in expenditures to local governments is estimated to be \$8,577 (1.21 convictions x \$59.07 x 120 days).
- The recurring mandatory net increase in expenditures to local governments is estimated to be \$255,510 (\$264,087 - \$8,577) in FY24-25 and subsequent years.
- Based upon information provided by the Department of Correction (DOC), over the last 10 years, there has been an average of:
 - 76.8 admissions per year for the Class E felony offense for a fourth DUI, with an average time served of 0.70 years;
 - 5.60 admissions per years for the Class D felony offense for a fifth DUI, with an average time served of 0.80 years; and
 - 11.50 admissions per year for the Class C felony offense for a sixth or subsequent DUI, with an average time served of 1.29 years.
- This analysis estimates there will be a one percent increase in felony admissions as a result of the proposed legislation, as follows:
 - 0.77 (76.8 x 1.0%) Class E felony admissions will be enhanced to a Class D felony offense and will serve 0.10 (0.80 – 0.70) additional years and
 - 0.06 (5.60 x 1.0%) Class D felony admissions will be enhanced to a Class C felony offense and will serve 0.49 (1.29 – 0.80) additional years.
- 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
\$ 1,000	FY24-25
\$ 1,100	FY25-26
\$ 1,200	FY26-27

- Pursuant to Public 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 \$1,200.
- 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 note are available upon request.

*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.

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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