

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 2159 – SB 2621

April 9, 2018

**SUMMARY OF ORIGINAL BILL:** Enacts the “Elderly and Vulnerable Adult Protection Act of 2018” to enhance crimes committed against the elderly or vulnerable adults.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures – Net Impact – \$3,125,800 Incarceration\*

Increase Local Expenditures – Less Than \$114,700\*\*

**SUMMARY OF AMENDMENT (016566):** Deletes and rewrites the proposed legislation such that the only substantive changes are: (1) defines adult protective services; (2) removes the provisions related to elderly or vulnerable adult abuse offenses; (3) requires the reporting of abuse or sexual misconduct against an elderly or vulnerable adult to be reported to adult protective services or local law enforcement within 48 hours; and (4) deletes all sexual based offenses.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Increase State Expenditures – Net Impact – \$332,300 Incarceration\*

Increase Local Expenditures – Less Than \$114,700\*\*

Assumptions for the bill as amended:

*Current Laws on Elder Abuse and Neglect*

- Title 71, Chapter 6, Part 1 is titled the Tennessee Adult Protection Act. Tennessee Code Annotated § 71-6-117 and -119 prohibit the knowing or willful abuse, or neglect 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.” The proposed legislation creates separate definitions for “elderly adult” and

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“vulnerable adult”, but the new definitions protect substantially the same population as the current definition of “adult” under the Adult Protection Act.

- Chapter 466 of the Public Acts of 2017 enacted the Elder and Vulnerable Adult Protection Act. This act established new procedures relative to registering persons convicted of elder abuse, and it created a new financial exploitation offense.
- The proposed legislation creates new offenses that are similar to the current abuse and neglect offenses under the Adult Protection Act. The proposed legislation, however, changes the felony classification of some of these offenses and creates some new offenses. These changes, outlined below, will impact state incarceration costs.

#### *Elder or Vulnerable Neglect*

- Tennessee Code Annotated § 71-6-117 prohibits anyone from knowingly, other than by accidental means, neglecting an “adult” as defined by Tenn. Code Ann. § 71-6-102.
- The proposed legislation creates a new felony offense for neglecting an elderly or vulnerable adult and a new misdemeanor offense for neglect through abandonment or confinement. Neglect of a vulnerable adult is a class D felony, which is the same classification as the current neglect offense. Neglect of an elderly adult is a class E felony, which is one classification lower than the current offense.
- Though the proposed legislation reduces the felony classification one level for neglect, the definition of “neglect” is broader under the proposed legislation than under current law.
- Tennessee Code Annotated § 71-6-102 defines “abuse or neglect” as “the infliction of physical pain, injury, or mental anguish, or the deprivation of services by a caretaker that are necessary to maintain the health and welfare of an adult or a situation in which an adult is unable to provide or obtain the services that are necessary to maintain that person’s health or welfare.”
- The proposed legislation defines “neglect” as the failure to provide care, supervision, and services necessary to maintain the physical and mental health of the elderly or vulnerable adult; the failure of a caretaker to make a reasonable effort to protect an elderly or vulnerable adult from abuse, neglect, or exploitation by others; abandonment through the knowing desertion or forsaking of an elderly or vulnerable adult; or confinement through the knowing restriction or movement of an elderly or vulnerable adult.
- While abandonment and confinement only apply to the new misdemeanor offense, the failure to make a reasonable effort to protect an elderly or vulnerable adult against abuse, neglect, or exploitation is a much broader definition of neglect. This broader definition will result in additional admissions for neglect.
- Statistics from the DOC show an average of two admissions for abuse under Tenn. Code Ann. § 71-6-117 each year over the last three years. The three-year average is used because there has been an increase in admissions over the last three years, and is most representative of the current number of admissions per year.
- Tennessee Code Annotated § 71-6-117 covers abuse, neglect, and exploitation. It is assumed that one-third of current admissions ( $2 \times 0.333 = 0.67$ ) are attributable to neglect.

- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will not affect this admission.
- 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 2.15 years (785.29 days). The average time served for a Class E felony is 1.31 years (478.48 days). The proposed legislation will result in one offender per year serving 0.84 years (306.81 days) less than under current law.
- The proposed legislation will result in a decrease in state incarceration costs of \$21,808 (1 admission x 306.81 days x \$71.08) per year.
- It is assumed that the broader offense of neglect will result in one additional admission each year for neglect.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender serving 1.31 years (478.48 days) at a cost of \$34,010 (\$71.08 x 478.48 days).
- 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 five convictions for misdemeanor neglect of an elderly or vulnerable adult resulting from abandonment or confinement. 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 2018 cost per inmate per day for local jails is \$63.00.
- The proposed legislation will increase local incarceration costs by less than \$114,660 (5 admissions x 364 days x \$63.00 per day).

*Elder or Vulnerable Aggravated Neglect*

- Tennessee Code Annotated § 71-6-119 prohibits anyone from knowingly grossly neglecting an impaired adult if the neglect results in serious mental or physical harm. Willful neglect is currently a class C felony.
- The proposed legislation creates a new offense for neglecting an elderly or vulnerable adult in which (a) the neglect results in serious psychological injury or serious physical harm or (b) the neglect causes serious bodily injury. The proposed legislation classifies an offense under (a) as the same classification as willful neglect under Tenn. Code Ann. § 71-6-119. An offense committed under (b) is classified as a class B felony, which is one classification higher than willful neglect.
- However, there will be more admissions under (a), because the definition of “neglect” in the proposed legislation is broader than the current definition. Thus, more acts will qualify as aggravated neglect of an elderly or vulnerable adult.
- Statistics from the DOC show an average of one admission every three years for willful neglect.
- It is assumed that the new offense of aggravated neglect will result in one additional class C felony admission every three years and one admission every three years being enhanced because of serious bodily injury.
- The DOC does not have any data on the average time served for willful neglect. The average time served for class C felony will be used.

- The proposed legislation will result in one additional admission every three years for class C felony aggravated neglect. The average time served for a class C felony is 3.28 years (1,198.02 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 3.28 years (1,198.02 days) for an annualized cost of \$28,385 [(\$71.08 x 1,198.02 days) / 3].
- The proposed legislation will result on one admission every three years being enhanced one classification to a class B felony. The average time served for a class C felony is 3.28 years (1,198.02 days). The average time served for a class B felony is 6.39 years (2,333.95 days). The proposed legislation will result in each offender serving an additional 3.11 years (1,135.93 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 3.11 years (1,135.93 days) for an annualized cost of \$26,914 [(\$71.08 x 1,135.93 days) / 3].

#### *First Degree Murder*

- Under Tenn. Code Ann. § 39-13-202, first degree murder is the premeditated and intentional killing of another or the killing of another committed in the perpetration of certain enumerated offenses.
- The proposed legislation adds physical abuse in violation of Tenn. Code Ann. § 71-6-119, and aggravated neglect of an elderly or vulnerable adult in violation of Tenn. Code Ann. § 39-15-508, to the list of offenses.
- First degree murder is punishable by death, imprisonment for life without the possibility of parole, or imprisonment for life.
- Anyone convicted of first degree murder after July 1, 1995 and sentenced to imprisonment for life must serve no less than 51 years (18,627.75 days) before being released.
- It is assumed that the proposed legislation will result in one additional first degree murder conviction every five years.
- Population growth will not affect these admissions.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender every five years serving 51 years (18,627.75 days) for an annualized cost of \$264,812 [(\$71.08 x 18,627.75 days) / 5].

#### *Total Increase in State Incarceration Costs*

- The proposed legislation will increase state incarceration costs by a net total of \$332,313 [(\$34,010 + \$28,385 + \$26,914 + \$264,812) increases – \$21,808 decreases].

#### *Courts, District Attorneys, and Public Defenders*

- 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.

\*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 M. Lee, Executive Director

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