

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 2817 - SB 2671

March 16, 2020

**SUMMARY OF ORIGINAL BILL:** Extends, from 30 to 45, the number of days within the expiration, extension, or denial of an order authorizing a wire, oral, or electronic communication that the issuing or denying judge is required to report outlined information to the Attorney General and Reporter (AG).

FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

**SUMMARY OF AMENDMENTS (015802, 016836):** Amendment 015802 creates exceptions for the offense of open or concealed carrying of a firearm with the intent to go armed for any person legally in possession and not prohibited from carrying a firearm. Specifies that theft of a firearm worth less than \$2,500 is a Class E felony offense. Enhances the mandatory confinement period for theft of a firearm to 180 days. Creates an enhancement factor when an offense involved the theft of a firearm from a motor vehicle. Requires no release eligibility for certain offenses committed after July 1, 2020 unless 85 percent of an imposed sentence is served, less sentence credits. Prohibits a reduction of such sentences less than 70 percent of the sentence imposed.

Amendment 016836 adds language to amendment 015802 to require a juvenile who is adjudicated delinquent for conduct that, if committed by an adult, would constitute theft of a firearm to be committed to the Department of Children's Services for a period for not less than one year and outlines commitment requirements.

**FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENTS:**

**Decrease State Revenue - Exceeds \$2,411,100/FY20-21 and Subsequent Years/  
Handgun Permit Division  
Exceeds \$496,600/FY20-21 and Subsequent Years/  
Tennessee Bureau of Investigation**

**Foregone State Revenue –  
Exceeds \$203,500/FY20-21 and Subsequent Years/  
Handgun Permit Division**

**Increase State Expenditures –**  
**\$17,746,700 Incarceration\***  
**\$3,605,100/FY20-21 and Subsequent Years/General Fund**

**Decrease State Expenditures –**  
**Exceeds \$59,700/FY20-21 and Subsequent Years/**  
**Handgun Permit Division**  
**Exceeds \$214,100/FY20-21 and Subsequent Years/**  
**Tennessee Bureau of Investigation**

**State Expenditures – Cost Avoidance –**  
**Exceeds \$6,200/FY20-21 and Subsequent Years/**  
**Handgun Permit Division**

**Increase Federal Expenditures – \$2,634,400/FY20-20 and Subsequent Years**

**Decrease Local Revenue – Exceeds \$172,500/FY20-21 and Subsequent Years**

**Decrease Local Expenditures – Net Impact –**  
**Exceeds \$459,300/FY20-21 and Subsequent Years**

Assumptions for the bill as amended:

***Revenue / Foregone Revenue:***

- Per the language of this legislation, a person legally in possession of a firearm and not prohibited from purchasing a firearm in the person's state of residence will have the same defenses and exceptions as a person who has been issued a handgun carry permit.
- Handgun carry permits afford holders reciprocity; allowing them to legally carry a firearm in various other states.
- The cohort of individuals that would forego applying for or renewing an Enhanced Handgun Carry Permit (EHCP) or a Concealed Handgun Carry Permit (CHCP) would do so because: (1) they have no intention of carrying out-of-state, (2) the number of instances they feel compelled to carry a firearm on their person will be relatively limited, and (3) they can save money by forgoing applying for or renewing a permit.
- Therefore, it can be reasonably estimated there will be a reduction of at least 20 percent in new and renewal EHCP, new CHCP, and Lifetime Handgun Carry Permit applications each year as a result of this legislation.
- Based on the figures of the previous five fiscal years, the Department of Safety (DOS) issues an average of 53,805 new EHCP each year and 92,172 EHCP renewals each year.
- CHCP first began being issued on January 1, 2020. A total of 5,217 permits were issued in the month of January.
- It can be reasonably assumed that this figure is exponentially greater than the imminent months' averages will be. Estimating that this will level out to an average of one-quarter of January's figures, each month, 15,651 [(5,217 x 25%) x 12 months] new CHCPs will be issued annually without this legislation.

- The minimum of a 20 percent reduction is equivalent to 10,761 new EHCP applications (53,805 annual issuances x 20% reduction), 18,434 renewal EHCP applications (92,172 annual issuances x 20% reduction), and 3,130 CHCP applications (15,651 annual issuances x 20%).
- The cost of a new EHCP is \$100. The cost of a renewed EHCP is \$50. From every new EHCP fee paid, \$15 is allocated to the applicable sheriff's department to cover the cost of a local background check; \$15 is allocated to the Tennessee Bureau of Investigation (TBI) for updating and maintaining their databases; \$31.15 is allocated to the TBI to cover the cost of fingerprint vendors, TBI background checks, and Federal Bureau of Investigation (FBI) fingerprint background checks; the remaining \$38.85 is retained by the Handgun Permit Division (HPD) of DOS to specifically fund the administrative expenses of the HPD.
- Pursuant to the current allocation of revenue derived from new EHCP application fees, the recurring decrease in state revenue to the HPD is estimated to exceed \$1,339,765 [(10,761 x \$38.85) + (18,434 x \$50)]; the recurring decrease in state revenue to the TBI is estimated to exceed \$496,620 [10,761 x (\$15 + \$31.15)]; and the mandatory recurring decrease in local revenue is estimated to exceed \$161,415 (10,761 x \$15) in FY20-21 and subsequent years.
- Based on the figures of the previous five fiscal years, DOS issues an average of 17,856 new Lifetime Handgun Carry Permits each year.
- The current cost of a Lifetime EHCP is \$300 which is retained entirely by the HPD.
- There will be a reduction of at least 3,571 (17,856 x 20%) of new Lifetime Handgun Carry Permit applications each fiscal year as a result of this legislation.
- Thus, there will be a recurring decrease in state revenue to the HPD of \$1,071,300 (\$300 x 3,571) in FY21-22 and subsequent years
- The total recurring decrease in state revenue to the HPD is estimated to exceed \$2,411,065 (\$1,339,765 + \$1,071,300).
- For every CHCP fee paid, the entirety of the \$65 is retained by the HPD. The expected impact to the HPD is at least \$203,450 (3,130 x \$65) in foregone revenue in FY20-21 and subsequent years.
- Pursuant to Tenn. Code Ann. § 39-17-1351(q)(1), DOS is authorized to contract with a local government agency for the provision of any service related to the renewal of handgun carry permits, subject to applicable contracting statutes and regulations. A contracting agency is authorized to charge an additional fee of \$4.00 for each renewal application, which shall be retained by the agency for administrative costs.
- This law went into effect on July 1, 2019. There are currently 45 contracting local government agencies.
- There are no current figures of how many EHCP renewals they have processed. However, pursuant to Tenn. Code Ann. § 55-50-331(a), DOS is authorized to contract for the provision of any service related to the issuance, examination and renewal of driver licenses subject to applicable contracting statutes and regulations. Currently, these contracting entities consist of forty-five county clerk offices, three cities or towns, and one AAA Auto Club. In FY17-18, DOS contracted entities processed 16.52 percent of the eligible transactions of driver license duplicates and renewals.
- It can be reasonably assumed that these 45 contracting local government agencies will process at least 15 percent, or 13,826, of all EHCP renewals.

- This will result in a decrease in EHCP renewal applications at contracting local government agencies of 2,765 (13,826 x 20%)
- It is further assumed that all contracting agencies charge the additional \$4.00 fee as authorized.
- The mandatory decrease in revenue to local governments related to this fee will be at least \$11,060 (2,765 x \$4.00) in FY20-21 and subsequent years.
- The total recurring mandatory decrease in local government revenue in FY20-21 and subsequent years is estimated to exceed \$172,475 (\$161,415 + \$11,060).

***Expenditures / Cost Avoidance:***

- In addition, there will be a recurring decrease in state expenditures as a result of producing fewer permit cards. The printing cost to produce one permit is \$1.99. The recurring decrease in state expenditures for the HPD in printing EHCP will exceed \$59,702  $\{[(10,761 + 18,434 + 3,571) - 2,765] \times \$1.99\}$  in FY20-21 and subsequent years.
- The cost avoidance in state expenditures to the HPD as a result of not printing the expected 20 percent of CHCP is \$6,229 (3,130 x \$1.99) in FY20-21 and subsequent years.
- The TBI reports a cost for vendor fingerprinting expense of \$8.65 per background check. The recurring decrease in TBI vendor fingerprint expenditures is estimated to exceed \$93,083 (10,761 x \$8.65).
- The TBI reports a cost of \$11.25 payable to the FBI for each FBI national background check conducted on each initial permit application. The recurring decrease in TBI expenditures made to the FBI is estimated to exceed \$121,061 (10,761 x \$11.25).
- The total recurring decrease in state expenditures for TBI is estimated to exceed \$214,144 (\$93,083+ \$121,061) in FY20-21 and subsequent years.
- For every CHCP application, the TBI is required to perform a fingerprint background check. The cost avoidance in state expenditures to the TBI as a result of not performing the expected 20 percent of CHCP background checks will exceed \$27,075 (3,130 x \$8.65) in FY20-21 and subsequent years.
- The recurring mandatory decrease in local government expenditures is estimated to exceed \$5,502 (2,765 x \$1.99).

***Convictions:***

- Pursuant to Tenn. Code Ann. § 39-17-1307(a), it is a Class C misdemeanor offense to carry, with the intent to go armed, a firearm or a club, punishable with possible imprisonment and/or by a fine not to exceed \$500.
- In the last three fiscal years, there has been an average of 133 Class C misdemeanor offense convictions under this section of code.
- 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 increase local revenue.
- There will not be a sufficient reduction of prosecutions for state or local government to experience any significant decrease in revenue or expenditures.

***Theft of a Firearm/Theft of a Firearm from a Motor Vehicle Enhancement:***

- This analysis assumes the average price of a firearm is less than \$1,000; therefore, theft of a firearm is a Class A misdemeanor under current law.
- Pursuant to Tenn. Code Ann. § 39-14-105(d), theft of a firearm is required to be punished by a minimum of 30 days confinement.
- The average cost to local governments to house an inmate in a local jail facility is \$64 per day.
- It is estimated an average of 300 individuals per year are admitted to local incarceration for theft of a firearm.
- Enhancing theft of a firearm to a Class E felony offense will result in a recurring decrease in local incarceration expenditures in FY20-21 and subsequent fiscal years estimated to be \$576,000 (300 admissions x 30 days x \$64).
- 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 25 (300 x .0837) additional admissions for a total of 325 (300 + 25).
- According to the DOC, 30.4 percent of offenders will re-offend within one year of their release. A recidivism discount of 30.4 percent has been applied to this estimate to account for the impact of offenders who would re-offend within the additional time added by the proposed legislation. It is assumed that the re-offender would have committed the subsequent offense at the same felony level (325 offenders x 30.4% = 99 offenders).
- According to the DOC, the average operating cost per offender per day for calendar year 2020 is \$75.52.
- The average time served for a Class E felony is 1.35 years.
- Pursuant to Tenn. Code Ann. § 9-4-210, 226 (325 – 99 recidivism discount) offenders will be admitted every year serving 493.09 days (1.35 x 365.25). The annualized increase in state incarceration expenditures is estimated to be \$8,415,781 (\$75.52 x 493.09 x 226).
- The proposed legislation creates a sentencing enhancing factor for offenses involving the theft of a firearm from a motor vehicle.
- This analysis assumes 25 percent of theft of firearm offenses will result in a Class D felony enhancement.
- The average time served for a Class D felony is 2.26 years. The average time served for a Class C felony is 1.35 years. The proposed legislation will result in Class D sentence enhancement serving an additional .91 (2.26 – 1.35) years.
- Pursuant to Tenn. Code Ann. § 9-4-210, 56 (226 x 25%) offenders will be admitted every year serving an additional 332.38 days (.91 x 365.25). The annualized increase in state incarceration expenditures is estimated to be \$1,405,675 (\$75.52 x 332.38 x 56).
- The average time served for a Class E felony offense exceeds the mandatory minimum confinement period of 180 imposed by the proposed legislation; therefore, any impact resulting from establishing a mandatory minimum is estimated to be not significant.

***Sentencing:***

- The proposed legislation requires the following offenses occurring on or after July 1, 2020, to have no release eligibility until the person reaches 85 percent of the sentence imposed by the court, less sentence credits earned and retained not to reduce such sentence below 70 percent of the sentence imposed:
  - Unlawful possession of a firearm by a person convicted of a felony crime of violence, an attempt to commit a felony crime of violence, or a felony involving use of a deadly weapon;
  - Unlawful possession of a firearm by a person convicted of a felony drug offense;
  - Unlawful possession of a handgun by a person convicted of a felony; and
  - Unlawful providing a handgun to a juvenile or permitting a juvenile to possess a handgun.

***Unlawful Possession of a Firearm by a Person Convicted of a Felony Crime of Violence, an Attempt to Commit a Felony Crime of Violence or a Felony Involving Use of a Deadly Weapon:***

- Pursuant to Tenn. Code Ann. § 39-17-1307(b)(1)(A), unlawful possession of a firearm by a person convicted of a felony crime of violence, an attempt to commit a felony crime of violence, or a felony involving use of a deadly weapon is a Class B felony.
- Based on information provided by the DOC, there has been an average of 72 admissions each year over the past three years for violations of Tenn. Code Ann. §39-17-1307(b)(1)(A).
- 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 6 (72 x 8.37%) additional admissions for a total of 78 (72 + 6).
- According to the DOC, 46.4 percent of offenders will re-offend within three years of their release. A recidivism discount of 46.4 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 the proposed legislation. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (78 offenders x 46.4% = 36 offenders).
- The proposed legislation will extend the average sentence of an admission for violations of Tenn. Code Ann. § 39-17-1307(b)(1)(A) by 1,940.39 days per offender.
- According to the DOC, the average operating cost per offender per day for calendar year 2020 is \$75.52.
- Pursuant to Tenn. Code Ann. § 9-4-210, 42 (78 – 36 recidivism discount) offenders will be admitted every year serving an additional 1,940.39 days. The annualized increase in state incarceration expenditures is estimated to be \$6,154,607 (\$75.52 x 1,940.39 x 42).

***Unlawful Possession of a Firearm by a Person Convicted of Felony Drug Offense:***

- Pursuant to Tenn. Code Ann. § 39-17-1307(b)(1)(B), unlawful possession of a firearm by a person convicted of a felony drug offense is a Class C felony offense.

- Based on information provided by the DOC, there has been an average of 37 admissions each year over the past three years for violations of Tenn. Code Ann. § 39-17-1307(b)(1)(A).
- 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 3 (37 x 8.37%) additional admissions for a total of 40 (37 + 3).
- According to the DOC, 40.4 percent of offenders will re-offend within two years of their release. A recidivism discount of 40.4 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 the proposed legislation. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (40 offenders x 40.4% = 16 offenders).
- The proposed legislation will extend the average sentence of an admission for violations of Tenn. Code Ann. § 39-17-1307(b)(1)(B) by 955.59 days per offender.
- According to the DOC, the average operating cost per offender per day for calendar year 2020 is \$75.52.
- Pursuant to Tenn. Code Ann. § 9-4-210, 24 (40 – 16 recidivism discount) offenders will be admitted every year serving an additional 955.59 days. The annualized increase in state incarceration expenditures is estimated to be \$1,731,988 (\$75.52 x 955.59 x 24).

*Unlawful Possession of a Handgun by a Person Convicted of a Felony:*

- Pursuant to Tenn. Code Ann. § 39-17-1307(c), unlawful possession of a handgun by a person convicted of a felony is a Class E felony offense.
- Based on information provided by the DOC, there has been an average of one admission each year over the past three years for violations of Tenn. Code Ann. §39-17-1307(c).
- Population growth and recidivism will not impact these admissions.
- The proposed legislation will extend the average sentence of an admission for violations of Tenn. Code Ann. §39-17-1307(c) by 511.35 days per offender.
- According to the DOC, the average operating cost per offender per day for calendar year 2020 is \$75.52.
- Pursuant to Tenn. Code Ann. § 9-4-210, one offender will be admitted every year serving an additional 511.35 days. The annualized increase in state incarceration expenditures is estimated to be \$38,617 (\$75.52 x 511.35 x 1).

*Unlawful Providing a Handgun to a Juvenile or Permitting a Juvenile to Possess a Handgun:*

- Pursuant to Tenn. Code Ann. § 39-17-1320, it is a Class A misdemeanor offense for a person to intentionally, knowingly, or recklessly to provide a handgun with or without remuneration to any person that the person providing the handgun knows or has reason to believe the violation of juvenile knowingly possessing a handgun.
- Based on information provided by Administrative Office of the Courts, there has been an average of .8 Class A misdemeanor convictions under Tenn. Code Ann. § 39-17-1320

each year over the last five 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 a total of eight convictions ( $.8 / 10\% = 8$ ) per year for misdemeanor violations of Tenn. Code Ann. § 39-17-1320.

- The average cost to local governments to house an inmate in a local jail facility is \$64 per day.
- This analysis estimates that on average individuals are sentenced to 100 days in local jail and spending an average of 15 days in local jail.
- The proposed legislation will result in a recurring increase in local incarceration expenditures in FY20-21 and subsequent fiscal years estimated to be \$28,160 { $\$64 \times [(100 \times 70\%) - 15] \times 8$ }.
- Pursuant to Tenn. Code Ann. § 39-17-1320, it is a Class D felony offense for a parent or guardian intentionally, knowingly, or recklessly to provide a handgun to a juvenile or permit a juvenile to possess a handgun, if the parent or guardian knows of a substantial risk that the juvenile will use a handgun to commit a felony.
- Based on information provided by DOC, there have been zero admissions for this violation of Tenn. Code Ann. § 39-17-1320 over the past 10 years.
- Any impact to state incarceration resulting from requiring felony offenses under Tenn. Code Ann. § 39-17-1320 to serve at least 70 percent of the sentence imposed is estimated to be not significant.

#### *Juveniles Adjudicated Delinquent*

- Based on data obtained through the Tennessee Bureau of Investigation (TBI) Tennessee Incident Based Reporting System (TIBRS), there has been an average of 424.5 juveniles arrested for theft from a motor vehicle each year from 2015 and 2018.
- This analysis assumes 50 percent, or 212.3 ( $424.5 \times 50\%$ ), of such arrests for delinquent acts of theft are theft of a firearm from a motor vehicle.
- This analysis assumes 48.6 percent, or 103 ( $212.3 \times 48.6\%$ ), of arrests resulted in juveniles adjudicated delinquent for conduct that, if committed by an adult, would constitute theft of a firearm from a motor vehicle.
- Tenn. Code Ann. § 37-1-131 outlines the orders for disposition after a finding of delinquency. Three of the available options are county probation, state probation and state custody, all of which have maximum period of six months, or 182.63 days ( $365.25 / 2$ ), unless certain stipulations are met.
- This analysis assumes orders for such juveniles will be for 182.63 days.
- Based on information in the Department of Children's Services (DCS) *Report to Governor Bill Lee and The Chief Clerks of the Senate and House of Representatives Pursuant to Public Chapter 1005* published on January 31, 2019, the average daily rate for state probation of juveniles in FY17-18 was \$19.80.
- This analysis assumes this is the daily rate for both state and county probation and that such rate will remain constant in FY20-21 and future fiscal years.
- Based on information provided by DCS, the FY19-20 daily rate for the affected population in DCS custody was \$239.28. This analysis assumes this rate will remain constant in FY20-21 and future fiscal years.
- This analysis assumes:
  - 25 percent, or 26 ( $103 \times 25\%$ ), of such orders are to county probation;



- 15 percent, or 15 (103 x 15%), of such orders are to state probation; and
- 60 percent, or 62 (103 x 60%), of such orders are to state custody
- The proposed legislation will result in a recurring decrease in county probation expenditures in FY20-21 and subsequent fiscal years estimated to be \$94,018 (26 x \$19.80 x 182.63).
- The proposed legislation will result in a recurring decrease in state probation expenditures in FY20-21 and subsequent fiscal years estimated to be \$54,241 (15 x \$19.80 x 182.63).
- The proposed legislation will result in a recurring increase in state expenditures in FY20-21 and subsequent fiscal years estimated to be \$6,293,792{[(26 + 15) x \$239.28 x 365.25] + (62 x \$239.38 x 182.63)}.
- The recurring net increase in state expenditures in FY20-21 and subsequent fiscal years of \$6,239,551 (\$6,293,792 - \$54,241) will be compiled of \$3,605,146 from the General Fund (\$2,402,227 + \$1,202,919) in state funds and \$2,634,406 (\$2,322,428 + \$311,978) in federal funds as follows:
  - \$2,402,227 in DCS state funds (\$6,239,551 x 38.5%)
  - \$1,202,919 in TennCare state funds [(\$6,239,551 x 56.5%) x 34.122%]
  - \$2,322,428 in TennCare federal funds [(\$6,239,551 x 56.5%) x 65.878%]
  - \$311,978 in federal funds (\$6,239,551 x 5%)

***Total Impact:***

- The total annualized increase in state incarceration expenditures resulting from the proposed legislation is estimated to be \$17,746,668 (\$8,415,781 + \$1,405,675 + \$6,154,607 + \$1,731,988 + \$38,617).
- The total recurring net decrease in local expenditures in FY20-21 and subsequent years is estimated to exceed \$459,324 (\$5,502 + \$576,000 - \$28,160 - \$94,018).

*\*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.*

**CERTIFICATION:**

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



Krista Lee Carsner, Executive Director

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