

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 2868 - SB 3005

March 1, 2012

SUMMARY OF BILL: Expands the definition of “enterprise” to include criminal gangs and the definition of “racketeering activity” to include the commission of or attempt to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit a criminal gang offense for the purposes of the Racketeer and Corrupt Organization Act (RICO).

ESTIMATED FISCAL IMPACT:

Increase State Expenditures - \$109,800/Incarceration*

Assumptions:

- Currently under Tenn. Code Ann. § 39-12-205, RICO violations are Class B felonies. Upon conviction the offender can be fined up to \$250,000, or sentenced to imprisonment from within Range II, unless the person qualifies for a higher range, or both.
- Criminal gang offense means any violation of state law, during the perpetration of which the defendant knowingly causes, or threatens to cause, death or bodily injury to another and specifically includes rape of a child, aggravated rape, and rape; or that results, or was intended to result, in the defendant’s receiving money or anything of value from the commission of any aggravated burglary, or from the illegal sale, delivery, or manufacture of a controlled substance or firearm.
- According to the Department of Correction, after a review of all offenses included in Tenn. Code Ann. §§ 39-17-417, 39-17-1004, and 39-17-1005, the average length of sentence is within Range II, except for Schedule VI drugs (Class C felony), with an average of three admissions in each of the past five years.
- 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. No significant incarceration cost increase will occur due to population growth in this period.
- According to the Department, 39.6 percent of offenders will re-offend within two years of their release. A recidivism discount of 39.6 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 bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (3 offenders x 39.6% recidivism discount = 1.19 offenders).

- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on two (3 – 1.19) offenders serving an additional 2.45 years (5.43 years for a Class B – 2.98 years for a Class C).
- According to the Department of Correction (DOC), the average operating cost per offender per day for calendar year 2012 is \$61.36. The additional operating cost for 2.45 years (894.86 days) is \$54,908.61 (\$61.36 x 894.86 days). The total additional operating cost for two offenders is \$109,817.22 (\$54,908.61 x 2 offenders).
- Any increase in caseloads for state trial and appellate courts can be accommodated within existing judicial 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.*

CERTIFICATION:

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



Lucian D. Geise, Executive Director

/lsc