



August 21, 2023

## Policy Watch: Special Session

# 2023 Special Session on Public Safety

Welcome back to the Special Session Edition of Policy Watch! Many Tennesseans questioned whether it would happen (and some still think the General Assembly may adjourn before considering any bills), but the time has now come for the first “extraordinary” session of the 113th General Assembly. Let’s start with a brief recap of how we got here, shall we?

### **The Road to Special Session**

We ended this year’s regular legislative session with the Governor’s announcement that he would be reconvening legislators to pass gun safety legislation, i.e., a version of an Extreme Risk Protection Order, but by another name, which the General Assembly refused to consider during its final days of session in April 2023. The initial announcement, as well as the Governor’s [May 8, 2023 announcement, linked here](#), were in response to a mass shooting at The Covenant School in Nashville, a tragedy that left the nation mourning and led to multiple peaceful protests and marches at the State Capitol. It wasn’t only members of the public who were protesting at the Capitol; the “Tennessee Three” were subjected to expulsion proceedings in the House after using the House floor to protest “business as usual” in the wake of another senseless act of gun violence that left three children and three adults dead. Although two were expelled, they were ultimately reinstated and all three are still members in the House.

[Subscribe](#)[Past Issues](#)[Translate ▼](#)

items in the call, only one of which directly relates to firearms (a safe storage proposal, but limited to bills that do not create a penalty for failing to safely store one's firearm). The [Governor's Special Session press statement, which can be found by clicking here](#), contains seven legislative priorities: (1) Codification of Executive Order 100 and Tennessee Bureau of Investigation Report Implementation; (2) TennCare Mental Health Care Coverage Waiver; (3) Addressing Mental Health Workforce Challenges; (4) Reforms for Mental Health; (5) Strengthening the Identification of Individuals arrested for Felonies; (6) Human Trafficking Report; and (7) Promoting Safe Storage.

Missing from the Governor's legislative priorities, but (surprisingly?) making up about 1/4 of the items in the Proclamation, are matters of juvenile justice. **This is puzzling in a special session about public safety, because over the last decade, youth offending has fallen both in total numbers of arrests and as a proportion of all crime in Tennessee for which arrests have been made. In fact, statewide data shows that the youth arrest rate has fallen 63% since 2011.** *Furthermore, the juvenile justice system was created to improve societal outcomes and make youth and communities safer, so any proposals to remove youth from that system and put them into the adult system, where they are at increased risk of abuse/suicide and are not guaranteed age-appropriate mental health treatment or education programming, in the name of public safety must be strictly scrutinized.* [Click here](#) for our interview with Chris O'Brien, in which we discuss the TBI data, and Speaker Sexton responds to questions about the same.

Following the Governor's official call for special session, Disability Rights Tennessee (DRT) and the Youth Law Center released a statement expressing confusion and disappointment that measures aimed at sending more youth to the adult criminal justice system (such as blended sentencing and mandatory transfers to adult court) were included in the official call at all. The incident from which the special session grew was a mass shooting at a private school that, seemingly, had nothing to do with juvenile justice. **Thus, using a special session on public safety to criminalize young people, rather than expand services, is deeply problematic, especially given that youth have been at the forefront of calling for meaningful solutions to school shootings.** Our statement can be found by [clicking here](#), and an article from the TN Lookout highlighting our concerns is [here](#).

Remember, all bills filed must fit within the official call from the Governor. While his proclamation is broad in the sense that it covers many topics that are seemingly

[Subscribe](#)[Past Issues](#)[Translate ▼](#)

people who should not have them cannot be addressed during this special session because they do not fit within the call. For example, when a person is forced to surrender his/her gun pursuant to domestic violence order of protection, that person does not have to tell law enforcement or anyone else who the gun was surrendered to, so there is no record of who the gun ends up with.

### **What Proposals are the General Assembly Considering?**

The filing deadline in the House was Friday, August 18. The filing deadline in the Senate is today (August 21). Anything that is filed in the Senate must have a companion bill in the House if it is to pass and, since all of the House bills are in, we now know the universe of proposals we will see this special session.

The first bill of the Special Session was filed on August 9; 52 bills had been filed as of August 17; **the remaining 60 bills were filed on the deadline, giving the public, advocates, stakeholders, and system impacted persons a mere weekend to digest all 116 bills, many of which contain system changing, net-widening proposals that demand the solicitation of feedback from the marginalized and vulnerable groups they will impact the most to avoid harmful unintended consequences.**

DRT has reviewed all 116 bills that have been filed at the time of writing this newsletter (Sunday, 8/20) and they fall into the following categories: juvenile justice, schools, (mental) healthcare/insurance, criminal justice (offenses related to firearms, stalking, and threats/acts of mass violence), and data collection/reporting proposals (including expansion of mental health practitioners' duty to warn) that have major implications on privacy rights. The major themes are **harsher penalties and more confinement for youth offenders** (especially those whose alleged offense involves a stolen firearm), proposals that **stigmatize (and make it easier to criminalize) mental illness** and could lead to an influx of involuntary commitments, and **duty to report/warn requirements related to mass threats of violence**, some of which could lead to healthcare providers feeling obligated to report and warn about threats that they do not view as credible and would not have to report under current law. This could lead to a chilling effect on the mental health profession generally and on people seeking therapeutic services. [Linked here](#) is an article where DRT and other advocates weighed in about the threats of mass violence bill that creates a felony offense for certain threats and requires both a mental health evaluation (which can lead to involuntary commitment proceedings) and a behavior risk assessment prior

detention which could result in violations of due process rights.

### **Net-Widening, System Changing Legislative Proposals Require More Feedback and Democratic Process than Special Session Allows**

Due to the expedited nature of a special session, which is characterized by suspension of rules to make committees go faster, system changing and net-widening proposals would be more appropriately considered during regular session, which has the benefit of a full committee process allowing for more time, transparency, advocacy, testimony, and stakeholder input. Legislative proposals seeking to increase youth incarceration and contact with the adult criminal justice system may have unintended consequences that could potentially make Tennesseans less safe, contribute to the prevalence/severity of mental health conditions amongst youth, and negatively and disproportionately impact youth with disabilities. Similarly, efforts to lower the criteria for involuntary commitment based on a person's mental condition require careful consideration because they deprive a person of his/her freedom. **This special session will see dozens of proposals aimed at increasing confinement for vulnerable and marginalized populations. To avoid potentially harmful and negative unintended consequences, the process of considering these bills must allow for feedback from those who understand the systems and people they impact.**

Another complicated proposal that deserves more consideration and has caused some confusion regarding what it actually does is the proposal to seek a waiver from Medicaid to get around the IMD exclusion rule. In addition to our one pagers on Mental Health and Juvenile Justice, we are also linking to a document that explains what the IMD exclusion rule is, how it operates to disincentivize institutionalization, why calling it "Medicaid expansion" is misleading, and why any waiver to get around the IMD Exclusion rule should be carefully weighed.

Unfortunately, the public has had very little time to digest and weigh in on the bills that will be considered this week, the majority of which deal with complex issues. DRT did everything to try to get draft language for the juvenile justice proposals prior to the filing deadline, but came up short. It was difficult to have meaningful dialogue with legislators about proposals we had yet to see. The lack of transparency that has plagued this special session inhibits the feedback process in the same way as its expedited nature. **It would be wise to seek more feedback from stakeholders prior to implementing sweeping policy changes – listening to system impacted**

[Subscribe](#)[Past Issues](#)[Translate ▼](#)

In an effort to increase transparency, we have partnered with Stand for Children and the Justice and Safety Alliance to create and make available to the public a non-partisan bill tracker, which can be found [by clicking here](#).

That's all for today's Policy Watch! We will be back in your inbox soon for a special session recap!

Until next time,



Zoë



## Resources

- [Mental Health One Pager](#)
- [Juvenile Justice One Pager](#)
- [IMD Exclusion Explainer](#)
- [Bill Tracker](#)

[Subscribe](#)[Past Issues](#)[Translate ▼](#)

## About DRT Policy Watch

Disability Rights Tennessee's Policy Watch is a weekly brief with information about legislation that impacts Tennesseans with disabilities.

## Our Mission

DRT's mission is to protect the rights of Tennesseans with disabilities.

## Support the Watch

---

Disability Rights Tennessee (DRT) is the Protection & Advocacy system for Tennessee. The contents of this publication were developed and made possible under grants from the Department of Health and Human Services, Administration for Community Living; Substance Abuse and Mental Health Services Administration; Department of Education, Rehabilitation Services Administration; and the Social Security Administration; at taxpayer expense. Grantees undertaking projects with government sponsorship are encouraged to express freely their findings and conclusions. The contents are solely the responsibility of DRT and do not represent the opinions, policy, or official views of the federal funding administrations above and you should not assume endorsement by the Federal government.

*Copyright © 2023 Disability Rights Tennessee, All rights reserved.*

Want to change how you receive these emails?  
You can update your preferences or unsubscribe from this list.