

Fiscal Note & Local Impact Statement

125th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL: **Sub. H.B. 52** DATE: **May 4, 2004**
STATUS: **As Enacted – Effective June 1, 2004** SPONSOR: **Rep. Hughes**
LOCAL IMPACT STATEMENT REQUIRED: **Yes**

CONTENTS: **Expands the offenses of aggravated vehicular homicide, vehicular homicide, and vehicular assault to also prohibit causing death or serious physical harm as a proximate result of committing a reckless operation or speeding violation in a construction zone when the victim is any person in the construction zone and notice of the prohibitions was posted, imposes a five-year mandatory prison term for a conviction of aggravated vehicular homicide and a peace officer victim specification, imposes a three-year mandatory prison term for a conviction of aggravated vehicular homicide and a specification of three OMVI-related violations, increases the penalty for discharging a firearm upon or over a public road or highway and links the amount of the increase to the injury caused, or risk of injury created, by the offense, limits the use of restitution as a sanction for misdemeanor offenders and delinquent children and changed the terminology used regarding the court's imposition of a restitution sanction, revises the definition of "economic loss" that applies to the Delinquent Child Law and the Criminal Sentencing Law, eliminates the application of the overriding purposes of misdemeanor sentencing to certain misdemeanor offenses, corrects errors in and otherwise modifies certain provisions that contain some of the Ohio Criminal Sentencing Commission's traffic law revisions, and declares an emergency**

State Fiscal Highlights

STATE FUND	FY 2004*	FY 2005	FUTURE YEARS
General Revenue Fund (GRF) and Certain Other State Funds			
Revenues	- 0 -	Minimal effect	Minimal annual effect
Expenditures	- 0 -	Minimal effect	Minimal annual effect
Highway Operating Fund (Fund 002)			
Revenues	- 0 -	Gain, potentially exceeding minimal	Gain, potentially exceeding minimal annually
Expenditures	- 0 -	Increase, potentially exceeding minimal	Increase, potentially exceeding minimal annually
Victim of Crime/Reparations Fund (Fund 402)			
Revenues	- 0 -	Potential negligible Gain	Potential negligible annual gain
Expenditures	- 0 -	- 0 -	- 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2004 is July 1, 2003 – June 30, 2004.

*For the purposes of this analysis, it is assumed the state will not begin to fully experience any of the bill's fiscal effects until FY 2005.



- **Vehicular homicide and vehicular assault.** It appears that, as a result of the bill’s vehicular homicide and vehicular assault prohibitions and related penalties, that a court may be less likely to sentence certain offenders to prison or sentence certain offenders to a shorter prison term than might otherwise have been the case under current law and sentencing practices. If that were in fact to happen, then the Department of Rehabilitation and Correction’s (DRC) GRF-funded annual incarceration costs should theoretically at least decline. The annual magnitude of such a decrease is difficult to quantify as of this writing, but would likely be no more than minimal, as the available information suggests that the number of affected offenders will be relatively small. For the purposes of this fiscal analysis, a minimal decrease means less than \$100,000 per year for the state.
- **Peace officer victim and repeat drunk driver specifications.** It appears likely that offenders that might be affected by the bill’s peace officer victim and repeat drunk driver specifications in the future are the type of offender that is already receiving a prison term under current law and sentencing practices. Thus, the likely fiscal effect of this provision will be to increase the length of stay for offenders who would already be prison-bound under current law and sentencing practices. As of this writing, the number of offenders that may be affected in this manner is uncertain, but appears to be relatively small. That said, the magnitude of the related increase in DRC’s annual incarceration costs seems unlikely to exceed minimal. For the purposes of this fiscal analysis, a minimal increase means less than \$100,000 per year for the state.
- **State incarceration costs.** The net effect of the two bullet points immediately above on DRC’s annual incarceration costs is likely to vary over time. In the initial years after the bill’s enactment, DRC’s annual incarceration costs may decline, probably no more than minimally, as a result of the vehicular homicide and vehicular assault prohibitions and related penalties. And at some point in the future, the bill’s peace officer victim and repeat drunk driver specifications may increase the length of stay for offenders who would already be prison-bound under current law and sentencing practices. The magnitude of the related increase in DRC’s annual incarceration costs seems unlikely to exceed minimal. Thus, the net effect of these offense and specification provisions on DRC’s annual incarceration costs at some point in the future is likely to be minimal. In other words, it is uncertain whether DRC’s annual incarceration costs will show a net increase or decrease, but that change, whatever its direction, would be no more than minimal. For the purposes of this fiscal analysis, “minimal” means less than \$100,000 per year for the state.
- **Discharge of a firearm.** As a result of the bill’s graduated penalty structure, it is possible that additional offenders may be sentenced to prison or that some offenders could be sentenced to prison for a longer stay than may have occurred under current law. As of this writing, it appears to LSC fiscal staff that the number of affected offenders will be relatively small and that the resulting increase in DRC’s annual incarceration costs would not exceed minimal. For the purposes of this fiscal analysis, “minimal” means an estimated cost of less than \$100,000 per year for the state.
- **Traffic law revisions.** The overall fiscal effect of the bill’s traffic law provisions on the state may be to simultaneously: (1) generate revenues, (2) lose revenues, (3) increase expenditures, and (4) decrease expenditures. As of this writing, the net effect of these potentialities on the state would appear to be minimal. In other words, it is uncertain whether the annual revenues and expenditures of certain state funds will show a net increase or decrease, but that change, whatever its direction, would be no more than minimal. For the purposes of this fiscal analysis, “minimal” means less than \$100,000 per year for any affected state fund.

- **Penalty warning signs.** As a result of the bill, the Department of Transportation appears likely to design, produce, erect, and sell more penalty warning signs. Whether the associated costs and revenues, which would affect the Department’s Highway Operating Fund (Fund 002), will exceed minimal on an ongoing basis is uncertain as of this time. “Minimal” for the purposes of this fiscal analysis means in excess of \$100,000 annually.
- **Victims of Crime/Reparations Fund (Fund 402).** The state may also gain some locally collected state court cost revenue for the Victims of Crime/Reparations Fund (Fund 402) as a result of the possibility that some cases may be elevated from a misdemeanor to a felony. If, as assumed, the number of offenders affected in this manner annually is relatively small, then the amount of additional revenue that may actually be collected for Fund 402 is likely to be negligible. For the purposes of this fiscal analysis, “negligible” means less than \$1,000 per year for Fund 402.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2004	FY 2005	FUTURE YEARS
Counties and Municipalities			
Revenues	Minimal effect	Minimal effect	Minimal annual effect
Expenditures	Potential increase, uncertain as to whether costs might exceed minimal in some local jurisdictions	Potential increase, uncertain as to whether costs might exceed minimal in some local jurisdictions	Potential annual increase, uncertain as to whether costs might exceed minimal in some local jurisdictions
Townships			
Revenues	Minimal effect	Minimal effect	Minimal annual effect
Expenditures	Increase, potentially exceeding minimal in some jurisdictions	Increase, potentially exceeding minimal in some jurisdictions	Increase, potentially exceeding minimal annually in some jurisdictions

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- **Counties and municipalities.** One noticeable local effect of the bill appears likely to result from the imposition of mandatory minimum stays of 15 and 7 days in local incarceration for certain misdemeanor violations of the offenses of vehicular homicide and vehicular assault, respectively. As of this writing, LSC fiscal staff has no readily available information indicating what the statewide average jail stay for these types of offenses is under current law and sentencing practices. Thus, it is unclear as to: (1) whether these offense modifications will increase average jail stays in any given local jurisdiction, and (2) whether if such an increase in average jail stays were in fact to occur would the magnitude of the associated costs exceed minimal, which means in excess of \$5,000 for affected counties and municipalities.
- **Discharge of a firearm.** As a result of the bill’s enhanced penalty structure, some criminal cases that would have been handled as misdemeanors by municipal courts or county courts may be elevated to felony status and end up being handled by courts of common pleas instead. As of this writing, it appears that the number of affected criminal cases will be relatively small. Thus, any resulting decrease in annual municipal criminal justice expenditures and related loss in annual court cost and fine revenues would be minimal at most. Similarly, any resulting increase in annual county criminal justice expenditures and related gain in annual court cost and fine revenues would be minimal at most. For the purposes of this fiscal analysis, “minimal” means no more than \$5,000 annually for any affected county or municipality.

- **Traffic law revisions.** The overall fiscal effect of the bill’s traffic law revisions on any given local government may be to simultaneously: (1) generate revenues, (2) lose revenues, (3) increase expenditures, and (4) decrease expenditures. As of this writing, it appears that the net effect of these potentialities on any given local government will be minimal. In other words, it is uncertain whether annual revenues and expenditures of any given local government will show a net increase or decrease, but that change, whatever its direction, would be no more than minimal. The magnitude of these potential revenue and expenditure shifts is likely to be minimal in any given local jurisdiction because the number of cases that will be affected by the bill annually should be relatively small. For the purposes of this fiscal analysis, “minimal” means no more than \$5,000 annually for any affected county or municipality.
- **Penalty warning signs.** As the bill requires certain penalty warning signs to be erected in a construction zone, it becomes rather difficult to estimate any associated local costs on an affected county or township because of variations in the amount of construction work in any given township or county in any given year. Presumably, in any given year, these local signage costs could possibly exceed minimal. However, as of this writing, LSC fiscal staff have not gathered any information that would permit one to predict more precisely how a given county or township might be affected by this signage requirement, and whether the magnitude of the related local cost for an affected county or township or the aggregated local cost statewide might exceed minimal as a one-time or ongoing annual expense.

Detailed Fiscal Analysis

Overview

For the purposes of this fiscal analysis, the bill’s most notable components include:

- Vehicular homicide and vehicular assault modifications.
- Peace officer victim specification and repeat drunken driving specification.
- Discharge of a firearm.
- Traffic law revisions.
- Penalty warning signs.
- Emergency clause.

Vehicular homicide and vehicular assault modifications

Aggravated vehicular homicide

Under current law, depending on the circumstances surrounding the violation, the offense of *aggravated vehicular homicide* is either a felony of the first, second, or third degree. The court is also required to impose a mandatory prison term under certain circumstances.

The bill adds a provision prohibiting causing death as a proximate result of committing reckless operation in a construction zone. Under the bill, a violation of this prohibition is a felony of the third degree. But, it is a felony of the second degree if, at the time of the offense, the offender was driving

under a suspension or if the offender was previously convicted of or pleaded guilty to aggravated vehicular homicide, vehicular homicide, or vehicular manslaughter, or any traffic-related homicide, manslaughter, assault offense, or has a certain number of prior OMVI violations.

Vehicular homicide

Under current law, *vehicular homicide* is generally a misdemeanor of the first degree, and a felony of the fourth degree under specified circumstances. The court is also required to impose a mandatory prison term under certain circumstances.

The bill adds a provision prohibiting causing death as a proximate result of speeding in a construction zone. A violation of this prohibition is essentially the same as it is under current law, which the exception that the court must impose a mandatory minimum of 15 days local incarceration if the violation is a misdemeanor of the first degree.

Vehicular assault

Under current law, *vehicular assault* is generally a felony of the fourth degree, and a felony of the third degree under specified circumstances. The court is also required to impose a mandatory prison term under certain circumstances.

The bill adds a provision prohibiting causing serious physical harm as a proximate result of speeding in a construction zone and generally classifies a violation of this prohibition as a misdemeanor of the first degree with a mandatory minimum of seven days local incarceration. In certain circumstances, a violation of this prohibition is a felony of the fourth degree.

Fiscal effects

In calendar year 2001, there were about 65 combined fatalities and injuries to pedestrians and workers in construction zones. Ohio statistics do not separate road construction workers from other pedestrians. Most such accidents appear to also involve speeding, and according to the Ohio Prosecuting Attorney's Association, prosecutors currently try to link speeding and recklessness and charge the offender with aggravated vehicular homicide or vehicular assault. Thus, the actual number of new first degree misdemeanor cases that could be created by the bill involving speeding alone as the proximate cause of the accident will likely be few in number statewide.

The bill's most noticeable local effect appears likely to result from the imposition of mandatory minimum stays of 15 and 7 days in local incarceration for certain misdemeanor violations of the offenses of vehicular homicide and vehicular assault, respectively. Under current law, a violation of a misdemeanor of the first degree carries a possible jail term of not more than six months and/or a fine of not more than \$1,000. As of this writing, LSC fiscal staff has no readily available information indicating what the statewide average jail stay for these types of offenses is under current law and sentencing practices. Thus, it is unclear as to: (1) whether these offense modifications will increase average jail stays in any given local jurisdiction, and (2) whether if such an increase in average jail stays were in fact to occur would the magnitude of the associated costs exceed minimal annually, which means in excess of \$5,000 for any affected county and municipality.

It appears that, as a result of the bill's new vehicular homicide and vehicular assault prohibitions and related penalties, that a court may be less likely to sentence certain offenders to prison or sentence

certain offenders to a shorter prison term than might otherwise have been the case under current law and sentencing practices. If that were in fact to happen, then the Department of Rehabilitation and Correction's (DRC) GRF-funded annual incarceration costs should theoretically at least decline. The annual magnitude of such a decrease is difficult to quantify as of this writing, but would likely be no more than minimal, as the available information suggests that the number of affected offenders will be relatively small. For the purposes of this fiscal analysis, "minimal" means less than \$100,000 per year for the state.

Peace officer victim specification and repeat drunken driving specification

Peace officer victim specification

Under the bill, if an offender is convicted of or pleads guilty to aggravated vehicular homicide and the victim of the offense is a *peace officer*, the court is required to impose a prison term of five years. This prison term may not be reduced pursuant to judicial release, earned credits, any other provision of the Pardon, Parole, and Probation Law, or by DRC. Also, the offender must serve the mandatory prison term consecutively to and prior to any prison term imposed for the underlying aggravated vehicular homicide.

Repeat drunk driving specification

If an offender is convicted of or pleads guilty to aggravated vehicular homicide and also is convicted of or pleads guilty to a specification that charges that the offender previously has been convicted of or pleaded guilty to three violations of *state OMVI*, *state OMVUAC*, or an equivalent offense, the court is required to impose a prison term of three years. If a court imposes such a prison term on an offender, the offender must serve the mandatory prison term consecutively to and prior to any prison term imposed for the underlying aggravated vehicular homicide. Additionally, the prison term may not be reduced pursuant to judicial release, earned credits, any other provision of the Pardon, Parole, and Probation Law, or by DRC.

Fiscal effects

These two provisions of the bill provide for mandatory fixed prison terms for aggravated vehicular homicide convictions involving the fatality of a peace officer and/or the presence of three prior OMVI convictions. This mandatory prison term is to be meted out in addition, and to be served consecutively, to any sentence given by the court for the underlying aggravated vehicular homicide offense. These provisions of the bill do not produce any new criminal cases nor do they change the court that would have subject matter jurisdiction over such matters. Consequently, these provisions should not produce any new costs for local jurisdictions. The predominate fiscal effect will be borne by the state and will stem from the mandatory three- and five-year prison terms as required by the peace officer and repeat drunk driving specifications.

The number of offenders that would receive these additional mandatory sentences is difficult to predict. In calendar year 2000, there were 350 alcohol-related traffic fatalities in Ohio, of which 213 involved the death of the drunk driver at fault. This leaves 137 fatalities for which the driver would be subject to prosecution. A very small number of alcohol-related fatalities involve a peace officer. It is

not clear how many of these remaining cases would involve offenders with three prior OMVI convictions.

It appears likely that, under current law and practice, such offenders are already receiving a prison term. Thus, the likely fiscal effect of this provision will be to increase the length of stay for offenders who would already be prison-bound under current law and practice. As of this writing, the number of offenders that may be affected in this manner is uncertain, but appears to be relatively small. That said, the magnitude of the related increase in DRC’s annual GRF-funded incarceration costs seems unlikely to exceed minimal. For the purposes of this fiscal analysis, “minimal” means less than \$100,000 per year for the state.

These provisions of the bill would likely have very little, if any, fiscal effect on the state and county juvenile justice systems. The reason is that there are very few juvenile drivers who would qualify for the additional terms of incarceration as mandated by these two specifications. In calendar year 2000, 16 drivers between the ages of 16 and 18 were at fault in fatal drunk driving crashes. Given the infrequency of peace officers being killed by drunk drivers and the very small number of juvenile OMVUAC offenders with three prior convictions, it seems unlikely that these features of the bill will affect many, if any, juveniles.

Discharge of a firearm

Table 1 below summarizes the bill’s graduated offense structure for discharge of a firearm upon or over a public road or highway, including the levels of seriousness and associated sentences and penalties.

**Table 1
Graduated Offense Structure for Discharge of a Firearm
Upon or Over a Public Road or Highway**

Type & Degree of Harm	Offense Level	Term of Incarceration	Maximum Fine
No particular property damage or injury to people	1st degree misdemeanor	Up to 6 months in jail	\$1,000
Created substantial risk of physical harm to any person or caused serious physical harm to property	3rd degree felony	1, 2, 3, 4, or 5 years in prison	\$10,000
Caused physical harm to any person	2nd degree felony	2, 3, 4, 5, 6, 7, or 8 years in prison	\$15,000
Caused serious physical harm to any person	1st degree felony	3, 4, 5, 6, 7, 8, 9, or 10 years in prison	\$20,000

State fiscal effects

Under current law, unchanged by the bill, a felony of the first or second degree carries a presumption for the imposition of a prison sentence, and generally, a felony of the third degree does not carry a presumption either for or against prison time.

As a result of the bill's graduated penalty structure, it is possible that additional offenders may be sentenced to prison or that some offenders could be sentenced to prison for a longer stay than might have occurred under current law. As of this writing, it appears to LSC fiscal staff that the number of affected offenders will be relatively small and that the resulting increase in DRC's annual incarceration costs would not exceed minimal. For the purposes of this fiscal analysis, "minimal" means an estimated cost of less than \$100,000 per year for the state.

The state may also gain some locally collected state court cost revenue for the Victims of Crime/Reparations Fund (Fund 402) as a result of the possibility that some cases may be elevated from a misdemeanor to a felony. If, as assumed, the number of offenders affected in this manner annually is relatively small, then the amount of additional revenue that may actually be collected for Fund 402 is likely to be negligible. For the purposes of this fiscal analysis, "negligible" means less than \$1,000 per year for Fund 402.

Local fiscal effects

This type of conduct is arguably already a violation of existing law, and offenders, if identified, would already be subject to arrest, prosecution, and sanctioning. This would most certainly be the case in any situation where people were or property was seriously harmed.

As a result of the bill's enhanced penalty structure, some criminal cases that would have been handled as misdemeanors by municipal courts or county courts may be elevated to felony status and end up being handled by courts of common pleas instead. As of this writing, it appears that the number of affected criminal cases will be relatively small. Thus, any resulting decrease in annual municipal criminal justice expenditures and related loss in annual court cost and fine revenues would be minimal at most. Similarly, any resulting increase in annual county criminal justice expenditures and related gain in annual court cost and fine revenues would be minimal at most. For the purposes of this fiscal analysis, "minimal" means no more than \$5,000 annually for any affected county or municipality.

Traffic law revisions

The bill modifies, corrects, and clarifies various traffic law provisions that became effective on January 1, 2004, as a result of the enactment of Am. Sub. S.B. 123 of the 124th General Assembly.

Local fiscal effects

The overall fiscal effect of the bill's various traffic law provisions on any given local government may be to simultaneously: (1) generate revenues, (2) lose revenues, (3) increase expenditures, and (4) decrease expenditures. As of this writing, it appears that the net effect of these potentialities on any given local government will be minimal. In other words, it is uncertain whether annual revenues and expenditures will show a net increase or decrease, but that change, whatever its direction, would be no more than minimal. The magnitude of these potential revenue and expenditure shifts is likely to be minimal in any given local jurisdiction because the number of cases that will be affected by the bill annually should be relatively small. For the purposes of this fiscal analysis, "minimal" means: (1) no

more than \$5,000 for any affected county, municipality, or township with a population of 5,000 or more; or (2) no more than \$1,000 for any affected village or township with a population of less than 5,000.

The bill's traffic law provisions that appear to carry a more immediately discernible potential fiscal effect on local governments are noted in more detail immediately below.

Increased penalties for street racing. The bill increases the penalty for the offense of *street racing* such that a violator would face, in addition to any other sanctions, a required suspension of the person's driver's license, temporary instruction permit, probationary license, or non-residential operating privilege for a period of not less than 30 days or more than 3 years. Under current law, this suspension cannot exceed 1 year.

Five year look-back period. The bill establishes a look-back period of five years during which a court must enhance the penalty for a person who is guilty of driving under financial responsibility law suspensions or cancellations if they have previously been convicted of or pleaded guilty to driving under a financial responsibility law suspension or cancellation.

Modification of suspensions. The bill allows persons placed under suspension before the bill's effective date to petition a court for limited driving privileges or to modify a suspension of 15 years or more. These appear to be narrow exceptions that should not result in a dramatic increase in the number of motions or related hearings handled annually by any given court.

Limited driving privileges. The bill permits a non-resident to seek limited driving privileges during any suspension by filing a petition in Franklin County or in the appropriate Ohio court in the county in which the offense occurred. Under Am. Sub. S.B. 123, such a non-resident must file a petition in the appropriate court in Franklin County. This change will likely shift some of the annual costs and related revenue gains that might otherwise have been experienced by Franklin County to other counties and municipalities around Ohio.

Driving without a valid license. The bill modifies the penalty for the offense of *operating a motor vehicle without a valid license* to clarify that driving without ever having held a valid driver's or commercial driver's license in Ohio or another jurisdiction is a misdemeanor of the first degree. Under current law, unchanged by the bill, an offender violating a misdemeanor of the first degree could face up to six months in local incarceration and/or a fine of up to \$1,000. As a result of this penalty modification, local governments may incur increased costs to process such traffic law violations and collect additional court and fine revenues.

State fiscal effects

The overall fiscal effect of the bill's traffic law provisions on the state may be to simultaneously: (1) generate revenues, (2) lose revenues, (3) increase expenditures, and (4) decrease expenditures. As of this writing, the net effect of these potentialities on the state would appear to be minimal. In other words, it is uncertain whether the annual revenues and expenditures of certain state funds will show a net increase or decrease, but that change, whatever its direction, would be no more than minimal. For the purposes of this fiscal analysis, "minimal" means less than \$100,000 per year for any affected state fund.

Penalty warning signs

Under current law, the Director of Transportation is required to adopt rules governing the posting of signs advising motorists that increased penalties apply for certain traffic violations occurring on streets and highways in a construction zone, and the Director of Transportation, a board of county commissioners, or a board of township trustees is permitted, but not required, to cause signs to be erected advising motorists that increased penalties apply for certain violations occurring on streets or highways in a construction zone. The bill changes this latter provision to *require* such signs to be erected.

According to the Department of Transportation, the average cost to erect such signs, including purchase price and installation, is approximately \$200 per sign. It is also apparently the Department's intention to offer to sell the necessary signs to counties and townships.

Local fiscal effects

As the bill requires certain penalty warning signs to be erected in a construction zone, it becomes rather difficult to estimate any associated local costs because of variations in the amount of construction work in any given township or county in any given year. Presumably, in any given year, these local signage costs could possibly exceed minimal for the purposes of this fiscal analysis in a number of ways as follows:

- The estimated aggregate (statewide) cost in any given year is in excess of \$100,000 for all affected counties and townships.
- The estimated cost in any given year is more than \$1,000 for any affected township with a population of less than 5,000.
- The estimated cost in any given year is more than \$5,000 for any affected county or township with a population of 5,000 or more.

As of this writing, however, LSC fiscal staff have not gathered any information that would permit one to predict more precisely how a given county or township might be affected by this signage requirement, and whether the magnitude of the related local cost for an affected county or township or aggregated statewide might exceed minimal as a one-time or ongoing annual expense.

State fiscal effects

As a result of the bill, the Department of Transportation appears likely to design, produce, erect, and sell more penalty warning signs. Whether the associated costs and revenues, which would affect the Department's Highway Operating Fund (Fund 002), will exceed minimal on an ongoing basis is uncertain as of this time. "Minimal" for the purposes of this fiscal analysis means in excess of \$100,000 annually for the state.

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